

1. 9:30 A.M. Agenda

Documents:

[2020-08-05 Council Agenda.pdf](#)

2. City Council Meeting Materials

Documents:

[Leak Appeal Raines - 2020-08-05-000504-000.Pdf](#)
[2020-08-05 Gimlet Lane Memo.pdf](#)
[2020-08-05 Volunteer Workers Compensation Coverage.pdf](#)
[2020-08-05 Firework Memo.pdf](#)
[2020-08-05 Public Contracting Rules.pdf](#)
[2020-08-05 Property Memo.pdf](#)
[2020-08-05 Vacation Rental Memo.pdf](#)
[2020-08-05 National Health Center Week.pdf](#)
[2020-135 RES 24hr Lodging Hold Removal.pdf](#)
[2020-136 RES Vacation Rental Lottery.pdf](#)
[2020-138 RES Outdoor Seating Expansion Draft.pdf](#)
[2020-08-05 Driftwood Memo.pdf](#)
[Face Covering Proposal.pdf](#)

2.I. Addendum Items

Documents:

[Driftwood Public Comment 2.Pdf](#)
[Firework Public Comment.pdf](#)
[Assessing_And_Responding_To_ShortTerm_Rentals_In_Oregon_SDinatale_UofO\(1\).Pdf](#)

2.II. City Council Meeting Materials Addendum

Documents:

[Driftwood Addendum 3.Pdf](#)



**CITY OF YACHATS
SPECIAL CITY COUNCIL WORK SESSION & COUNCIL MEETING**

441 Hwy 101 N., Yachats OR
Wednesday, August 5, 2020 at 9:30 am
To Be Held Via Zoom

Join Zoom Meeting

<https://us02web.zoom.us/j/85312507009?pwd=cjMyUFdYWVNPMdRaYnF0ZDk5ZFZFE1Zz09>

Meeting ID: 853 1250 7009

Passcode: 961256

One tap mobile

+16699006833,,85312507009#,,,,,0#,,961256# US (San Jose)

+12532158782,,85312507009#,,,,,0#,,961256# US (Tacoma)

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

Meeting ID: 853 1250 7009

Passcode: 961256

Find your local number: <https://us02web.zoom.us/j/85312507009?pwd=cjMyUFdYWVNPMdRaYnF0ZDk5ZFZFE1Zz09>

PUBLIC HEARING

- I. Tricia Raines Appeal of Water Bill

WORK SESSION

- | | | |
|------|---|--------------------------------|
| I. | Gimlet Lane | Guest: Yachats Fire Department |
| II. | Volunteer Workers Compensation Coverage | Guest: Brown & Brown |
| III. | Illegal Fireworks | |
| IV. | Public Contracting Rules | |
| V. | Frohnmayr Letter RE: Donated Property – Community Garden E 2 nd & Prospect | |
| VI. | Vacation Rental Program | |

Our village is a place where natural resources are valued and protected, where diversity is celebrated, and where a vibrant economy and sense of community pride create and recreate a living spirit. Yachats cares not just for its citizens' basic needs but also supports them in their efforts to excel mentally, physically, artistically, and spiritually. It is a community with an enduring sense of itself.

REGULAR COUNCIL MEETING

- I. Announcements, Correspondence and Proclamations
- II. Public Comment: **Topics not listed on the agenda:** 5-minute limitation per person
- III. Consent Agenda
- IV. New Business
 - 1. Council Meeting Times
- V. Old Business
 - 1. Driftwood paving project
 - 2. Mask Proposal
- VI. Other Business
 - A. From Mayor
 - B. From Council
 - C. From Staff

The work session and regular council meeting are open to the public and interested citizens are invited to attend. These are open meetings under Oregon law, but a work session is not a community forum; audience participation is at the discretion of the Council. Meetings are audio-recorded. Public meeting minutes are available for review at City Hall. The meeting place is accessible to persons with disabilities. For accommodations, please call (541) 547-3565, or Oregon Relay 1-800-735-2900 TDD) two days in advance. City of Yachats does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation, or any other legally protected status.

In accordance with ORS 192.630, City of Yachats will make a good faith effort to provide accommodations for any person desiring to attend a public meeting, if the request is made at least 48 hours in advance of the meeting time. The meeting room is physically accessible to persons with mobility devices; a sign language or foreign language interpreter may be available, with advance notice. Call City Hall at 541-547-3565 or Oregon Relay 1-800-735-2900 (TDD) two days in advance.

Posted 07/29/2020



CITY OF YACHATS

Date: August 5, 2020

To: Yachats City Council

From: Kimmie Jackson, Deputy Recorder

Re: Raines – Water/Sewer Leak Appeal 2020-08-05-000504-000

Appeal Number 2020-08-05-000504-000

Any decision or action of the Deputy Recorder and City Manager made or taken pursuant to this policy may be appealed to the council by filing written notice of appeal with the recorder within thirty (30) days following such decision or action.

Such notice of appeal shall set forth in reasonable detail the action or decision appealed from the appellant's grounds for reversal or modification thereof. The council shall set a time for hearing upon such appeal. The action of the council upon such appeal shall be final.

Patricia Raines is appealing the City of Yachats decision to deny relief per the City of Yachats Administrative Policy No. 19 for relief of a water leak.

This issue of a water leak came about on the January 1, 2020 billing.

Water Billing Process

The meter reading is completed and turned into city hall; the billing clerk downloads the route into the billing software. the billing clerk scans the reports to see if there are any excessive amounts that might indicate a leak. The billing clerk identifies if it is a mis-read or if it's possibly a leak. The billing clerk makes it a priority to call the owners as soon as there's an indication there is a possible leak. If the billing clerk is unable to

E-MAIL cityhall@mail.yachatsoregon.org WEB SITES www.yachatsoregon.org www.yachatsdocuments.info

The City of Yachats OR does not discriminate on the basis of race, color, religion, creed, gender, national origin, age, disability, marital or veteran status, sexual orientation or any other legally-protected status.

PO Box 345, 441 N. Highway 101, Yachats OR 97498 Phone (541) 547-3565 Fax (541) 547-3063
Relay Oregon 800-735-2900 (TDD)



CITY OF YACHATS

reach the customer, the billing clerk sends the bill with a letter that states the usage is higher than normal.

The phone number the City had on file for Ms. Raines was not a working number. The bills were prepared and sent out Tuesday, December 31, 2019.

Ms. Raines contacted the City office on Tuesday, January 7, 2020, and discussed a possible leak and Ms. Raines did want her hand valve shut off until she could return to town. The billing clerk then prepared a shut off requested by customer and forwarded to Public Works. On January 7, 2020, the shut off request was signed and completed by Public Works, and not on January 13th as Ms. Raines indicated on her letter.

Ms. Raines then came to City Hall with a letter on March 12, 2020, asking for relief, along with backup documentation that Jack O Plumbing discovered a main leak and made the repairs. The billing clerk did mention Ms. Raines might want to check with her insurance company to see if they would be able to provide some financial relief for the utility charges. The billing clerk forwarded the request to the City Manager and it was denied because it didn't meet Admin Policy 19. On March 16, 2020 a letter was sent informing Ms. Raines that the request was denied in accordance to the City of Yachats Administrative Policy 19. Under no circumstances was the city negligent in notifying the customer of the issues as they arose.

Attached are the January and February bills which the leak impacted. The leak was repaired on February 11, 2020, invoices attached.

Ms. Raines read an article regarding the leak Fisterra and Yachats Brewing had, and the sewer forgiveness portion of the bill that was granted and would like the same consideration on the sewer side.

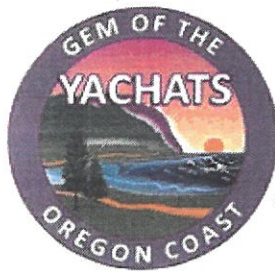
The total sewer side portion of the bill for January is \$401.72 & February is \$1,276.40; the annual sewer average for Ms. Raines bill is \$699.94, divided by 12=\$58.32 for the monthly average.

Total Sewer amount \$1,678.12 - **\$1,619.80 (credit)**

This amount highlighted would be the credit according to Admin Policy 19. I am unaware of how Ms. Raines came up with her stated amount \$1,520.86 on her June 5, 2020 letter.

E-MAIL cityhall@mail.yachatsoregon.org WEB SITES www.yachatsoregon.org www.yachatsdocuments.info
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City of Yachats
PO Box 345
Yachats, OR 97498
Office: (541) 547-3565
www.yachatsoregon.org
cityhall@yachatsmail.org

PATRICIA RAINES
PO Box 50094
Eugene, OR 97405

Account Statement

ACCOUNT INFORMATION

ACCOUNT: 000504-000
SERVICE ADDRESS: 491 W 3rd Street
SERVICE PERIOD: 12/1/2019 to 12/1/2019
BILLING DATE: 12/31/2019

DUE DATE: 1/15/2020

METER READING

Serial No	Previous Reading		Current Reading		Cons
	Date	Reading	Date	Reading	
34057820	11/19/2019	163	12/19/2019	225	6200

SPECIAL MESSAGE

Reminder: Bills become late after the 15th of each month at 1.5% interest after 30 days and with each subsequent statement. Please make sure if you are away for more than 3 days, to turn your handvalve off to prevent possible leaks. Make sure your Meter Box is free and clear of debris and the Box is unobstructed so that the meter can be read. For payment and paperless options, go to <https://yachatsor.merchanttransact.com/>

USAGE HISTORY

NO USAGE HISTORY

CURRENT CHARGES

Capital Reserve Water	36.45
Water Residential	331.59
Capital Reserve Sewer	36.45
Sewer Residential	365.27

TOTAL CURRENT CHARGES 769.76

BILL SUMMARY

Previous Balance	-109.28
Payments Received	0.00
Additional Billing	0.00
Current Charges	769.76
TOTAL AMOUNT DUE	660.48

401.72

Payment Coupon

ACCOUNT INFORMATION

PLEASE RETURN THIS PORTION ALONG WITH YOUR PAYMENT

PLEASE MAKE CHECK PAYABLE TO:

CITY OF YACHATS

ACCOUNT: 000504-000
SERVICE ADDRESS: 491 W 3rd Street
SERVICE PERIOD: 12/1/2019 to 12/1/2019
BILLING DATE: 12/31/2019

DUE DATE: 1/15/2020

PATRICIA RAINES
PO Box 50094
Eugene, OR 97405

AMOUNT DUE

TOTAL AMOUNT DUE BY 1/15/2020 **660.48**

AMOUNT ENCLOSED

REMIT PAYMENT TO:



City of Yachats
PO Box 345
Yachats, OR 97498



City of Yachats
PO Box 345
Yachats, OR 97498
Office: (541) 547-3565
www.yachatsoregon.org
cityhall@yachatsmail.org

PATRICIA RAINES
PO Box 50094
Eugene, OR 97405

Account Statement

ACCOUNT INFORMATION

ACCOUNT: 000504-000
SERVICE ADDRESS: 491 W 3rd Street
SERVICE PERIOD: 1/1/2020 to 1/31/2020
BILLING DATE: 2/1/2020

DUE DATE: 2/15/2020

METER READING

	Previous Reading		Current Reading		
Serial No	Date	Reading	Date	Reading	Cons
34057820	12/19/2019	225	1/27/2020	435	21000

SPECIAL MESSAGE

Reminder: Bills become late after the 15th of each month at 1.5% interest after 30 days and with each subsequent statement. Please make sure if you are away for more than 3 days, to turn your handvalve off to prevent possible leaks. Make sure your Meter Box is free and clear of debris and the Box is unobstructed so that the meter can be read. For payment and paperless option, go to <https://yachatsor.merchanttransact.com/>

USAGE HISTORY

NO USAGE HISTORY

CURRENT CHARGES

Capital Reserve Water	120.81
Water Residential	1,036.07
Capital Reserve Sewer	120.81
Sewer Residential	1,155.59

TOTAL CURRENT CHARGES 2,433.28

BILL SUMMARY

Previous Balance	660.48
Payments Received	0.00
Adjustment	40.00
Additional Billing	0.00
Current Charges	2,433.28

TOTAL AMOUNT DUE 3,133.76

<#1,276.40>

Payment Coupon

ACCOUNT INFORMATION

PLEASE RETURN THIS PORTION ALONG WITH YOUR PAYMENT

PLEASE MAKE CHECK PAYABLE TO:

CITY OF YACHATS

ACCOUNT: 000504-000
SERVICE ADDRESS: 491 W 3rd Street
SERVICE PERIOD: 1/1/2020 to 1/31/2020
BILLING DATE: 2/1/2020

DUE DATE: 2/15/2020

PATRICIA RAINES
PO Box 50094
Eugene, OR 97405

AMOUNT DUE

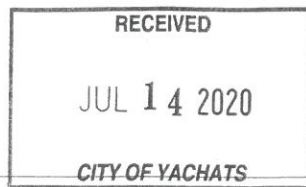
TOTAL AMOUNT DUE BY 2/15/2020 3,133.76

AMOUNT ENCLOSED

REMIT PAYMENT TO:



City of Yachats
PO Box 345
Yachats, OR 97498



File

July 11, 2020

Dear Mayor W. John Moore-

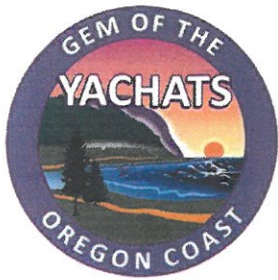
Thank you for your letter dated June 17, 2020 concerning my water leak at my home at 491 W. 3rd.

I imagine my surprise after reading in the Yachats News on July 9, the article about the water leak at Fisterra in Feb 2020. According to Layne Morrill of Fisterra management, they were forgiven the sewer charges of \$11,000 but not forgiven the charge for water leaked into the ground. Mr. Morrill told Yachats City Council that the City rules verbage allows for relief of sewer charges as it does not go into the waste~~er~~ water system.

It was also reported by the Yachats News that Nathan, owner of "The Farm Store" got "some" relief of his water leak charge last year on the same grounds.

This consideration need be given to me as well. Therefore my demand of \$1520.86 credit on my bill be issued immediately and without delay.

Sincerely,
Tricia Raines
(541) 513-2471



CITY OF YACHATS

PO Box 345 (441 N. Highway 101), Yachats OR 97498

Phone (541) 547-3565

Fax (541) 547-3063

Relay Oregon 800-735-

2900 (TDD)

June 11, 2020

To: Shannon Beaucaire, City Manager & Mayor Moore

From: Kimmie Jackson, Deputy Recorder

Re: Raines – Water/Sewer Leak

This memo is in response to Ms. Raines letter dated June 5, 2020 to the Mayor and City Manager. This issue of a water leak came about on the January 1, 2020 billing.

The meter reading is completed and turned into city hall; the billing clerk downloads the route into the billing software. I scan the reports to see if there are any large reads, I identify if it is a miss read or if it's possibly a leak. I make it a priority to call owners as soon as I have an indication there is a possible leak. If I am unable to reach the customer, I send the bill with a letter that states the usage is higher than normal. The phone number we had on file was not a working number. The bills were prepared and sent out Tuesday, December 31, 2019.

Ms. Raines contacted our office on Tuesday, January 7, 2020, and we spoke about a possible leak and Ms. Rains did want her hand valve shut off. I then prepared a shut off request by customer and forwarded to Public work. On January 7, 2020, the request was signed and dated on January 7, 2020 by Public Works, and not on January 13th as you indicated on your letter.

Ms. Rains then came to City Hall with a letter on March 12th, asking for relief, along with backup documentation that Jack O Plumbing discovered a main leak and made the repairs. I did mention she might want to check with her insurance company as well to see if they would be able to provide some relief. I forwarded the information to the supervisor and received it back as request denied. On March 16th, a letter was sent denying the request according to the City of Yachats Administrative Policy 19 and did not qualify for relief currently.

Under no circumstances was the city negligent in notifying the customer of the issues as they arose.

Kimmie Jackson



CITY OF YACHATS

PO Box 345 (441 N. Highway 101), Yachats OR 97498

Phone (541) 547-3565

Fax (541) 547-3063

Relay Oregon 800-735-2900 (TDD)

June 17, 2020

Tricia Raines
P.O. Box 50094
Eugene, OR 97405

Dear Ms. Raines:

Thank you for your letter of June 5 – I just picked it up from my inbox in the City office, and I am sorry to hear about the water loss involved.

When our Deputy Recorder was going over the water bills near the end of December, she noticed a spike in your usage and suspected that a leak was the cause, so she did try to call you. The number we had on file was (541)687-2960, which was no longer a valid number so she then mailed you a notice indicating that there seemed to be a leak, and included the City's policy regarding leaks. Our current policy does not allow us to shut off water without the property owner's permission, so it could not be shut off until we got your request to shut off the service, which we received on January 7th. City public works personnel shut off the service on the 7th as requested.

Since you have owned this property for 28 years, you will recall that the City used to regularly remind all of our property owners in the newsletters that they should shut off the water anytime they plan to be gone for more than three days, just to avoid such a problem. We haven't been stressing that lately, but we will begin to regularly stress that again just to avoid situations like this.

Our current policy only allows billing relief for natural causes, which are defined as severe freezing, earthquake, or earth slide, and none of these factors were involved in this situation. Per our current policy, the full amount is due. You may appeal this to the City Council if you wish. If you would like this matter to be placed on the council agenda for appeal on July 2 or July 15, please let us know. Our council meetings are virtual these days, so you can participate in our meetings from anywhere that internet is available.

Sincerely,

W. John Moore
Yachats Mayor

JUN 09 2020
CITY OF YACHTS

June 5, 2020

Dear Ms Beaucourt:

On January 7, 2020 I was notified by the City of a water leak at 491 W. 3rd, I authorized and the City agreed to shut off the water immediately.

However, according to your records, the City failed to shut off the water

until Jan. 13. This was almost ONE WEEK later. It is unclear whether this delay was forgetful, punitive, negligent or with criminal intent.

After consulting with the

Oregon Public Utility Commission in Salem, I am demanding a credit of \$775.00 for the shut-off delay.

I am also demanding a credit of \$1520.86 for sewer charges as

NONE of this water went into the wastewater system.

In closing, I am prepared to send you a check today for \$1401.83 to resolve this matter.

Sincerely,
Teresa Raines

541 513-2471

cc: Mayor John Moore
City of Yachts

P5 No response to my letter dated March 7 from Ms. Beaucourt

May 9, 2020

City of Yachats
Box 345
Yachats OR 97498

Dear City -

Thank you for sending a copy
of my bill for my Dec 2019 water
usage and due date of Jan 15, 2020.

What I am looking to
receive, in fact, is a copy of my
January 2020 water usage and
due date of Feb 15, 2020. I never
received this bill.

Please mail to:

Patricia Raines
Box 50094
Eugene OR 97405

Service address:

491 W. 3rd

Yachats 97498

account # 000504-000

Thank you -

Patricia Raines



CITY OF YACHATS

PO Box 345 (441 N. Highway 101), Yachats OR 97498

Phone (541) 547-3565

Fax (541) 547-3063

Relay Oregon 800-735-2900 (TDD)

March 16, 2020

Linda Raines
PO Box 50094
Eugene OR 97405

RE: Acct. 000504-000 – 395 491 W 3rd Street, Yachats OR 97498

Dear Ms. Raines:

We are in receipt of your request to evaluate the Water/Sewer Bill. According to the City of Yachats Administrative Policy 19 attached, you do not qualify for relief currently. I have attached the current policy for your review. Please make sure you are familiar with Yachats Municipal Code 8.04 that explains the property owner responsibilities which is located on our city website at www.yachatsoregon.org.

We would like to offer you a payment plan if needed. Please let me know how you would like to proceed. You might also want to contact your homeowner's insurance company to see if they may cover these type of issues under your policy.

Should you have any further questions, please don't hesitate to give me a call at 541-547-3565 ex. 101.

Thank you



Kimmie Jackson

Deputy Recorder

CITY OF YACHATS

ADMINISTRATIVE POLICY NO. 19 RELIEF FOR WATER BILLING FOR NATURAL CAUSE WATER LOSS

OBJECTIVES

To provide an application process for partial credit for water charges resulting from loss as a result of natural causes; define those specific causes; and, establish the procedure by which City Hall Staff will process the applications for credit, based on the criteria to ensure that it is fair and consistent.

CRITERIA AND PROCEDURES

This policy applies only to the uncontrolled loss of municipal treated water at any residence or business as a direct result of natural causes. Relief will be considered for the quantity exceeding the average consumption.

1. The City Recorder will deny relief if it is determined that the property was unoccupied for 5 or more days and the hand valve was not present, not operational, or not used to minimize loss.
2. Any metered water service customer may apply for partial relief of the cost of water lost as a result of the below listed natural causes.
3. The City Recorder will grant relief of fifty percent (50%) of the charges above the applicant's average usage as determined by a review of the previous twelve (12) months' billings.
4. To qualify for such relief the situation shall meet the following criteria:
 - a. The excessive loss of water must not be caused by negligence of any party or individual.
 - b. The excessive cost of water must be greater than the average of the metered usage of the last twelve (12) billings.
 - c. The relief applied for will not exceed two billing cycles.
 - d. Only the owner, customer, or agent of record may apply.
 - e. Relief will not be granted for any loss that occurs more than one time at the same part of the plumbing where relief was previously granted.
 - f. The applicant must provide evidence that the leakage has been satisfactorily remedied and has been inspected by a City employee.

- g. The applicant must apply by filing a request for relief with the City Recorder, or designee.
- 5. For the City of Yachats to provide relief for a loss of water over and above the customers average usage the loss must be caused by one, or more of the following natural events:
 - a. Severe Freezing.
 - b. Earthquake. Any time that such a natural event shall occur in the immediate vicinity of Yachats earthquake damage is an allowable cause.
 - c. Earth slide. Any time an earth slide of size sufficient to cause the breaking or disconnection of plumbing the event is allowable and eligible for relief.
- 6. The City may forgive sewer charges when there has been an emergency loss of water and it is demonstrated that the lost water did not enter the sewer system.
- 7. Any decision or action of the City Recorder made or taken pursuant to this policy may be appealed to the council by filing written notice of appeal with the recorder within thirty (30) days following such decision or action. Such notice of appeal shall set forth in reasonable detail the action or decision appealed from the appellant's grounds for reversal or modification thereof. No later than the next regular council meeting following receipt of such notice, the council shall set a time for hearing upon such appeal. The action of the council upon such appeal shall be final.

2/11/20 3pm 7-5 copies w/ name

CITY OF YACHATS
REQUEST FOR EVALUATION OF WATER/SEWER BILL

Date 2-11-2020

Billing Date Jan 2020

I hereby request a review of the charges for water and/or sewer usage:

Account Name Patricia Raines Account No. 000-504-000

Service Location 491 W. 3rd

Contact Name and Phone Number 541 513-2471 Email Q

Choose One:

☐ I believe that the amount charged is inaccurate because:

☒ I believe that the measurement of the amount of water used was inaccurate because:

Check all that apply:

☐ I examined our system from the meter, through all pipes and fixtures.

☒ A licensed plumber examined our water system on 2-11-2020
Plumbers Name/Company Jack O Plumbing

AND

☐ A leak was not discovered

☒ A leak was discovered. (Location of leak main line)

☒ We are hereby requesting a credit in the amount allowed due to this discovered leak.

☐ This leak has been repaired by Jack O Plumbing on (date) 2-11-2020

Documentation of repair is required for credit

Official Use Only:

Credit Recommended: Yes No ☒ by: City Clerk II Kimberly Jackson

Credit Amount: Water\$ Total\$ *Worksheet must be attached*

Reason: does not comply with Admin Policy 19.

Concurrence by: Position not filled City Clerk III Approved by: City Manager

Posted to Utility Billing (Date)

New balance\$ 3,173.76

SHUT-OFF REQUEST

METER ACTION:

☒ TURN OFF & READ

☐ TURN ON & READ

DATE TO BE DONE: 1/7/20

RETURN TO: Kimmie

SERVICE ADDRESS: 491 W 3rd St

ACCT #: 000504

NAME: Baines

PHONE: _____

FOR: ☐ NON-PAYMENT

☒ OTHER Possible leak - Customer out of town

INITIATED BY: _____ DATE: _____

☐ METER 12/19/19

PREVIOUS READING: 225 CURRENT READING: 0435

METER #: 34057820

COMPLETED BY: Jm

DATE: 1-7-2020

☒ FEE CHARGED TO ACCOUNT Y X N _____ DATE: 2/3/20 AMOUNT: 40.00

CITY OF YACHATS

ADMINISTRATIVE POLICY NO. 19 RELIEF FOR WATER BILLING FOR NATURAL CAUSE WATER LOSS

OBJECTIVES

To provide an application process for partial credit for water charges resulting from loss as a result of natural causes; define those specific causes; and, establish the procedure by which City Hall Staff will process the applications for credit, based on the criteria to ensure that it is fair and consistent.

CRITERIA AND PROCEDURES

This policy applies only to the uncontrolled loss of municipal treated water at any residence or business as a direct result of natural causes. Relief will be considered for the quantity exceeding the average consumption.

1. The City Recorder will deny relief if it is determined that the property was unoccupied for 5 or more days and the hand valve was not present, not operational, or not used to minimize loss.
2. Any metered water service customer may apply for partial relief of the cost of water lost as a result of the below listed natural causes.
3. The City Recorder will grant relief of fifty percent (50%) of the charges above the applicant's average usage as determined by a review of the previous twelve (12) months' billings.
4. To qualify for such relief the situation shall meet the following criteria:
 - a. The excessive loss of water must not be caused by negligence of any party or individual.
 - b. The excessive cost of water must be greater than the average of the metered usage of the last twelve (12) billings.
 - c. The relief applied for will not exceed two billing cycles.
 - d. Only the owner, customer, or agent of record may apply.
 - e. Relief will not be granted for any loss that occurs more than one time at the same part of the plumbing where relief was previously granted.
 - f. The applicant must provide evidence that the leakage has been satisfactorily remedied and has been inspected by a City employee.

August 12, 2010

recvd
jan 6, 2020

DATE: 11/11/11

ACCURATE **LEAK** DETECTION

INVOICE

541-654-0553

877-845-8327

CCB# 193788

P.O. Box 40697
Eugene, OR 97404

SITE

BILLING

PO:

NAME: <u>Kent - Green Business</u>	NAME: _____
CONTACT: _____	CONTACT: _____
ADDRESS: <u>991 W 3rd</u>	ADDRESS: _____
CITY: <u>Medford</u> ZIP: <u>97504</u>	CITY: _____ ZIP: _____
HM #: _____ WK #: <u>624752</u>	CELL #: _____ WK #: _____

☐ RESIDENTIAL ☐ COMMERCIAL ☐ INDUSTRIAL ☐ APARTMENT/CONDO ☐ MUNICIPAL

SERVICE ☐ WELL ☐ IRRIGATION ☐ SLAB ☐ SEWER ☐ UTILITY LOCATE ☐ CAUSE & ORIGIN ☐ OTHER ☐

Referred By: _____

ESTIMATE FOR WORK: \$ _____ AUTHORIZATION: _____
ADDITIONAL CHARGES MAY APPLY IF INERT TRACEABLE GAS IS USED - MIN. FEE \$25.00.
PLEASE READ THE BACK OF THIS FORM BEFORE SIGNING AND AUTHORIZING WORK.

JOB INFORMATION:

METER TEST RESULTS: 506 Gal/Min 1200 Gal/Day

Leak test was performed with electronic field detector. Leak detected on the water line. Leak was located under the deck in front of the house. Leak was repaired by the homeowners.

☐ CASH ☒ CHECK # 4672 ☐ VISA ☐ MASTERCARD ☐ DISCOVER

DETECTION FEE: \$ 200

INERT GAS FEE: \$ 25

TOTAL DUE: \$ 225

AMOUNT PAID: \$ _____

THE WORK AND CHARGES ARE SATISFACTORY AS AGREED:

Signed: _____

Date: 11/11/11

Eric Melrose
 Jack O Plumbing 10616000
 390 S. 1st Street
 Crossville, TN 37626
 615 870-5742

527606

CUSTOMER'S ORDER NO.		DEPT.		DATE: 2-11-20	
NAME: T1256 Rainco					
ADDRESS: 491 West 3rd					
CITY, STATE, ZIP: Yachats, OR					
SOLD BY:	CASH	C.O.D.	CHARGE	ON ACCT.	MDSE RTD. PAID OUT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1	Lumber		410.00
2			
3	parts		15.00
4			
5	Total		
6			425.00
7			
8	fixed leak in 3/4		
9	poly line by adding		
10	3rd Ball valve		
11			
12	paid check #		462.3
13			
14			
15			

Utility Billing

Account Comments



User: kimmiejackson
Printed: 06/09/2020 - 11:05 AM
Account No: 000504-000
Customer Name: Patricia Raines
Service Address: 491 W 3rd Street
Phone Number: (541) 687-2960

Creation Date	Close Date	Comment Status	Comment
1/7/2020		Active	Customer request to turn water off. Possible leak, and she is traveling and unable to attend to it until the end of January. kj

Total Comments: 1



DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Rick McClung, Public Works

SUBJECT: Blackstone Gimlet Dr Gates Mitigation

The “locked” Gimlet Dr gates have raised the interests of homeowners that live in the Blackstone/Horizon Hill Rd neighborhood. What they are concerned about is if there was a wildfire or natural disaster that blocks Horizon Hill Rd that there would be no way for them to exit the neighborhood if the Gimlet Dr. gates are locked, thus blocking an auxiliary exit.

As noted in previous Council reports, the section of Gimlet Dr between the gates is not recognized as a City right-of-way street. The steepness of this section of road ranges 22% to 26% grade and our City code says 20% grade is the maximum allowed. Even with the road open, there are significant safety issues. Parts of the road receive little sun and become slippery with vegetation growing on the road, creating additional vehicle hazards and safety issues.

Currently, the gates are open as per implementation of resolution 2020-121 adopted by Council on June 24, 2020.

I will be present at the Council meeting to provide additional details and answer questions.

The City met with the Fire Dept to gain knowledge of the history and issues surrounding Gimlet Dr. from their perspective.

- Street is too steep to drive fire trucks on.

- Current gate locations are causing a lot of issues. They have received many calls for help from drivers being stuck at the gates because they cannot turnaround or backup -causing a very dangerous situation.
- Suggested moving the gates to a much more driver friendly location so they can turnaround safely.
- Recommended using the same lock system as Hancock Forest Management uses on their gates so they can be re-programmed. This would allow the neighborhood to be able to open the gate if it is locked.

Two Types of locks on gated roads –(from Hancock Forest Management)

- The first is a combo lock that can be re-programmed. It's a simple lock that can be purchased at Home Depot. These locks are not typically used because they can easily be broken and must be replaced frequently.
- The second type is a Best Lock which uses a key. These locks can be changed by changing out the internal core. That's the standard lock and they're expensive but high quality. You must contact Best Locks to have a specialty key series created for your company/agency.

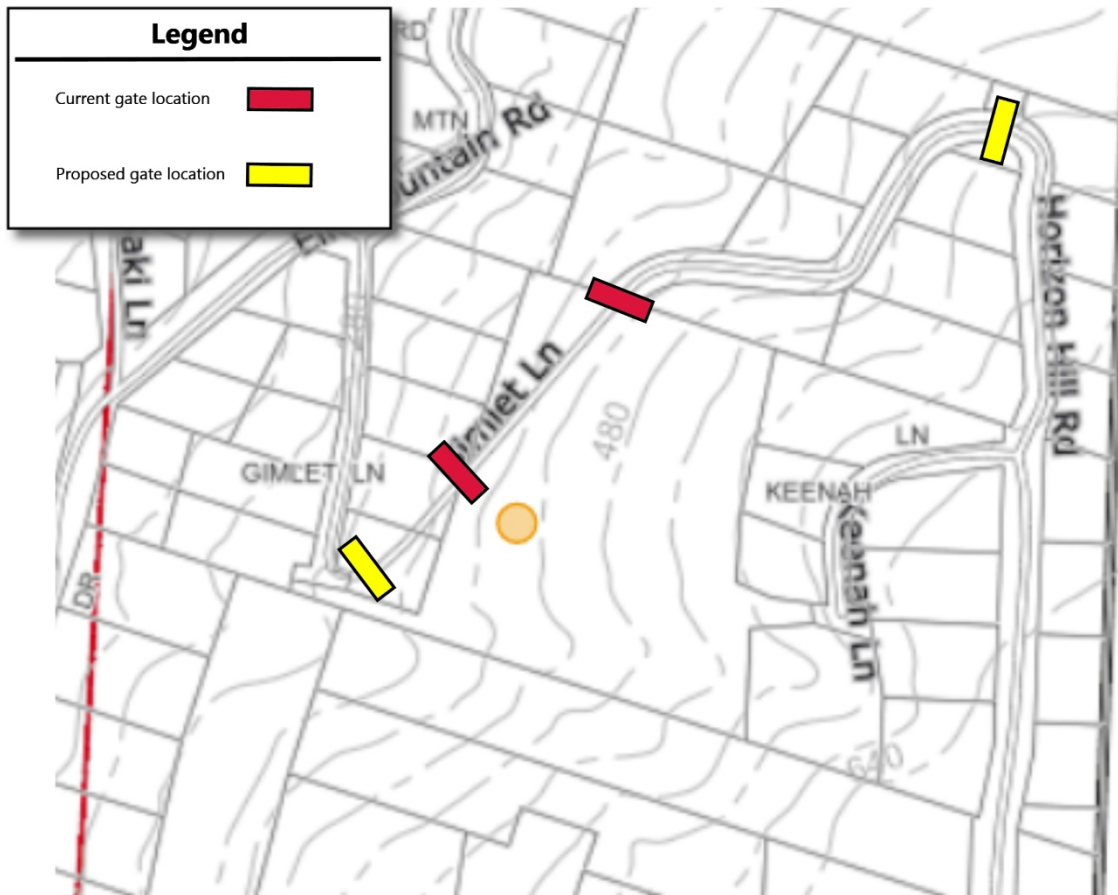
Recommendation after discussion with the Fire Department:

New gate locations/locks

- Keeps drivers off the 22%-26% portion of Gimlet.
- Allows for a driver to turnaround more safely, although the turnaround areas do not meet street standard codes -it helps mitigate driver safety.
- Programmable locks allows for the evolution of different key owners by reprogramming the lock once a year.

Council Question:

1. Does Council authorize the relocation of the gates, and installation of appropriate signage, for turnaround safety and onto City Right of Way?
2. Does Council authorize the purchase of Best Locks, reprogramming once per year, and issuance of keys annually to all homeowners on Horizon Hill Road?





DATE: June 24, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Gimlet Lane

Attached, please see the history in the memorandum presented to Council on November 22, 2019. This was originally raised in April 2019 with a concern over access in case of a wildfire.

On December 5, 2019, the City Council authorized working with the Blackstone homeowner's association to turn over gate keys, erect signage, and ensure safe access for emergency purposes.

The City has had discussions with representatives of the homeowner's association and have been unable to come to an agreement. It is once again fire season.

It is recommended at this time, that we install the signage as directed and chain open the gates in order to implement the direction given by Council on December 5, 2019.



**CITY OF YACHATS
RESOLUTION NO. 2020-121
A RESOLUTION OF THE CITY OF YACHATS, OREGON
REGARDING GIMLET LANE**

WHEREAS, on April 16, 2019, the Council was requested to review opening the gated section of Gimlet Lane for emergency access purposes and allow a secondary access in case one access was blocked by fire;

WHEREAS, after consideration of the professional opinions of the City's engineer, attorney, planner, and public works, the City Council again discussed the recommendations and research at its December 5, 2019 meeting and resolved in Resolution 2019-102:

- That the City erect signage on city property indicating that the portion of the road not owned by the City is privately owned and caution should be utilized;
- The City is to work with the Blackstone homeowner's association to turn over gate keys and establish a utility easement; and
- The City will encourage the homeowner's association to work with appropriate entities to encourage safe access for emergency purposes.

WHEREAS, City staff has had discussions with the Blackstone homeowner's association representatives.

NOW THEREFORE, the City of Yachats resolves to install signage and open the gates to allow for emergency access purposes.

Passed and adopted June 24, 2020. This Resolution is effective upon adoption.

CITY OF YACHATS

By: _____
W. John Moore, Mayor

ATTESTED TO BY:

Shannon Beaucaire, City Manager



**CITY OF YACHATS
RESOLUTION NO. 2019-102
A RESOLUTION OF THE CITY OF YACHATS, OREGON
REGARDING GIMLET LANE**

WHEREAS, on April 16, 2019, the Council was requested to review opening the gated section of Gimlet Lane for emergency access purposes;

WHEREAS, after review and research it was determined that the City did not own the gated section of Gimlet Lane (Attachment A);

WHEREAS, after consideration of the professional opinions of the City's engineer, attorney, planner, and public works, the City Council again discussed the recommendations and research at its December 5, 2019 meeting,

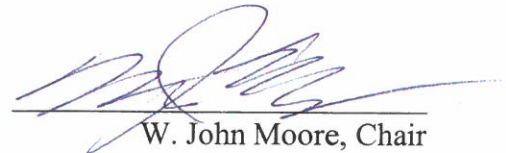
NOW THEREFORE, the City of Yachats resolves as follows:

- That the City erect signage on city property indicating that the portion of the road not owned by the City is privately owned and caution should be utilized;
- The City is to work with the Blackstone homeowner's association to turn over gate keys and establish a utility easement; and
- The City will encourage the homeowner's association to work with appropriate entities to encourage safe access for emergency purposes.

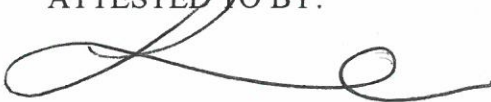
This Resolution memorializes action taken by the Council on December 5, 2019 and is effective as of that date.

CITY OF YACHATS

By: _____


W. John Moore, Chair

ATTESTED TO BY:



Shannon Beaucaire, City Manager



DATE: November 22, 2019

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Emergency Access on Gimlet

On April 16, 2019, Mr. King and Mr. Hofer requested that the gates on Gimlet Lane be opened for safety reason and to have traffic be allowed one-way going down Horizon Hill Road to Gimlet Lane.

After investigation, it was determined that the portion of the road that was blocked with the gates was not owned by the City but the homeowner's association. Council received testimony on July 3, 2019 from the City's Engineer of Record, Westech that a breakaway gate requires frequent repairs and it was dangerous to open the gate due to the steepness of the road. The safety issue was confirmed by the City's Planner, Dave Mattision. Both the engineer and planner recommended securing an easement for the City's utilities and that the road not be made public. The engineer looked into an electronic gate for vehicles going downhill, the cost upwards of \$10,000 and in an emergency the electronics might fail. The engineer also indicated that they recommended against pedestrian traffic in the area due to the liability.

Rick McClung stated the previous Mayor and Council asked Public Works to install the gates and Public Works has been using that road to service the pump station. The engineer and the City Attorney recommended that an easement be obtained for the City's utilities, installation of private road signs be installed at each end of the roadway, and that the keys to the gates be turned over to the homeowner's association. The Council concurred to get an easement for the properties of concern.

Mr. Lauritzen and Mr. Musial indicated that they recalled that the previous Council accepted the street from the homeowner's association.

Subsequently, numerous team members reviewed materials related to the subdivision. This is a summary of that research:

- Staff Report August 2005 to Planning Commission from Planner Larry Lewis

Gimlet Lane. *Gimlet Lane will be a steep road due to topographic conditions. There is a question whether or not this Gimlet Lane can be constructed with slopes that will allow for regular local traffic, or if it would only accommodate emergency vehicles. Every effort should be made to make this connecting road accessible to local traffic. The ability to accommodate local traffic would alleviate increased traffic on the existing portion of Horizon Hill Road. Yachats street design standards allow for a road to have a maximum slope of 20% however, a reduced slope is preferred. YRFPD has requested that Gimlet Lane have an all-weather surface, i.e. chip-seal, asphalt, etc.*

The 'Gimlet Lane' name needs to be approved by the Yachats Rural Fire Protection District.

Conclusions - Gimlet Lane. *Gimlet Lane shall have a minimum 40 foot right-of-way with a minimum 16 foot wide asphalt road and public walk surface, and maximum 20% slope. The street name shall be approved by YRFPD and the City.*

- Findings and Conclusions September 2005 Order to Applicant – Conditions of Approval

It is ORDERED by the Yachats Planning Commission that Case File #1-S-PC-05 for the requested fourteen (14) lot Black Stone II Subdivision be and is hereby approved. Said approval is subject to the following conditions:

Gimlet Lane. *Gimlet Lane shall have a minimum 40 foot right-of-way with a minimum 16 foot wide asphalt road and public walk surface, and maximum 20% slope. The street name shall be approved by YRFPD and the City.*

Letter from Larry Lewis to Jonathan Monschke

This decision will become effective on Tuesday, October 11, 2005 at 4:30 PM unless an appeal is filed with the City of Yachats.

- December 2011 Council Minutes – gates were installed
- 2013 Letters between Public Works Director Larry Blanchard and Northwest HOA Law Center discussing the fact that the City never accepted ownership of the streets
- 2014 correspondence between Mr. Blanchard and Mr. Musial indicating that the HOA is requesting that the City develop an agreement will pay the City to accept the streets.
 - Mr. Blanchard's correspondence indicates that the payment is \$10,048. Mr. Musial provided a check for \$8,471.20

- The notes listed as Option A refer to Gimlet Way – but do not definitively identify the portion of Gimlet in Question
- December 11, 2014 Council Minutes
 - State that Blackstone HOA agreed to pay \$10,048 for option A. There was discussion about the deficiencies that resulted in the City rejecting the street system in the subdivision. Blanchard said Option A includes only a slurry seal, but if the core samples come back showing that more work would be necessary then Option B would be required to bring the streets up to City Standards. There was consensus to spend \$250 for the core samples so that the Homeowners Association can be told which Option will be necessary before any decisions are made.
- January 8, 2015 Resolution bringing streets in Blackstone Development to City Standards.
- Maps
 - June 2003 showing Gimlet as a nature trail with Emergency vehicle turn around/access
 - July 2004 Showing Gimlet as a trail Connecting Gimlet and Keenah
 - September 2014 Memo Showing a Lincoln County Map the portion of Gimlet in question as the current status shown on a map printed November 22, 2019.

What is missing from all of this documentation is specific information regarding this small portion of Gimlet Lane.

All discussions have focused on safety. Recollections are that that specific portion of Gimlet is too steep to be safely navigated. The road was never conveyed to the City and the Engineer and Attorney have provided their recommendations.

The current recommendation is that the City obtain an easement to maintain its utilities, that signs be placed at either end indicating that the road is private, and turn over the keys to the gate to the HOA. The street is under their ownership and they can determine whether to open the gates.



City of Yachats
PUBLIC WORKS DEPARTMENT
500 W. 7th St.
P.O. Box 345
Yachats, OR 97498

MEMORANDUM

TO: Mayor-Ron Brean, Council President-Greg Scott, Council-members; Sandra Dunn, Barbara Frye

FROM: Larry R. Blanchard, Public Works Director

**DIVISION/
SECTION:** Public Works Department/ Engineering Division/Street Systems Pavement Management

RE: Blackstone Subdivision

SUBJECT: Operations and Maintenance of Blackstone Street System

Lawrence Musial, a Board member of the Blackstone Homeowners Association came before the City Council during the December 11th, 2014 City Council Meeting and asked the City Council to accept the Streets in the Blackstone Subdivision. Acceptance of the Streets would be contingent upon the Blackstone Homeowners Association payment to the City of \$10,048 under the Option "A" Proposal from the June 20th, 2013 letter from the City of Yachats Public Works Director.

The remaining criteria to determine whether Option "A" or Option "B" is acceptable is the completion of Core Sampling of the Asphalt and Crushed Rock. The City Council authorized the Public Works Director to proceed with taking Core Samples of the Asphalt and Crushed Rock under the Asphalt for the Streets in the Blackstone Subdivision.

Core Samples indicate that the Asphalt depths in the 11 sample location average between 1-3/4" to 4-1/2" inches thick, and crushed rock averaged between 6" and 11" inches thick. Street Standards typically require 2-3 inches of Class "C" Hot Mixed Asphalt, and 6" - 8" inches of Compacted Crushed Rock. If repairs are made as recommended by Option "A" the Streets in the Blackstone Subdivision would provide at a minimum Twenty-Year (20) Life prior to the next major Asphalt Deep Patching and/or Asphalt Overlay.

Recommendation

- 1) Accept the offer from the Blackstone Homeowner Association to accept the Streets in the Blackstone Subdivision contingent upon the payment of \$10,048 to the City of Yachats to repair the streets according to Option "A" as described in the June 20th, 2013 Letter from the Public Works Director of the City of Yachats.

- 2) The formal process of accepting the Streets by the City can be researched and the necessary documentation required can be outlined in future correspondence between the Blackstone Homeowners Association and the City.
- 3) The Public Works Department will include the work outlined in Option "A" in the 2014/2015 Street Repair and Rehabilitation Work described in the 2014/2015 Capital Improvements Plan. This work is estimated to be completed prior to June 30th, 2015.

Cc: Pavement Management File
Nancy Batchelder, City Recorder

Attachments: June 20th, 2013 Letter from Yachats PWD
CoringBlackstone12192014 Spreadsheet

CITY OF YACHTS

Cost Item #	Description of Work To Be done	Number of Units	Units	Number of Hours/Units	Cost/Hour or Cost/Unit	Cost of Work
Repair 1)	Hanley Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	70	Square Feet	70	5	\$350.00
Repair 2)	Gimlet/Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	16	Square Feet	16	5	\$80.00
Repair 3)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	225	Square Feet	225	5	\$1,125.00
Repair 4)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 5)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 6)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 7)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	16	Square Feet	16	5	\$80.00
Repair 8)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	36	Square Feet	36	5	\$180.00
Repair 11)	Gimlet Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	36	Square Feet	36	5	\$180.00
Repair 12)	Gimlet Way Cut, Remove AC, Regrade/Compact and Install HMA Class C	75	Square Feet	75	5	\$375.00
Repair 13)	Gimlet Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	60	Square Feet	60	5	\$300.00
Repair 14)	Gimlet Way/Horizon Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	60	Square Feet	60	5	\$300.00
Repair 15)	Core Sample thin areas to determine if a Slurry Seal or Overlay is required to retain @ least a Twenty Year Life	10	Locations	10	25	\$250.00

Street Repair and Rehabilitation

[illegible]

CITY OF YACHATS

Asphalt Thickness
Crushed Rock Thickness

Coring #	Description of Location of the Coring	Depth of Asphalt	Depth of Rock	Units	Comments
1	Center of the Intersection of Hanley Drive and Saki Lane	2-3/4"	8"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
2	Saki Lane 15' North of Hanley Drive Westside of Saki Lane	4-1/2"	6"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
3	Saki Lane 140' North of Hanley Drive Westside of Saki Lane	1-3/4"	9"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
4	Hanley Drive 176' West of the Intersection of Hanley, Gimlet, and Elk Mtn Road north side of Hanley	1-3/4"	10"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
4-A	Hanley Drive 76' West of the Intersection of Hanley, Gimlet, and Elk Mtn Road Center of Hanley	1-3/4"	9"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
5	Intersection of Gimlet and Horizon Hill Road, Center of Road	3-1/4"	6"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
6	180' North of Gimlet/Horizon Hill Road Center of Horizon Hill Road	1-3/4"	11"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
7	151' North of Gimlet/Horizon Hill Road eastside of Horizon Hill Road	2-1/4"	7"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
8	308' North of Gimlet/Horizon Hill Road westside of Horizon Hill Road	1-3/4"	7"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
9	413' North of Gimlet/Horizon Hill Road eastside of Horizon Hill Road	2-1/4"	6"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock
10	550' North of Gimlet/Horizon Hill Road westside of Horizon Hill Road	2"	7"	Inches	Standard is 2-3 inches of Class "C" Hot Mix Asphalt over 6-8 inches of 1"-0" Crushed Rock



City of Yachats
PUBLIC WORKS DEPARTMENT
500 W. 7th St.
P.O. Box 345
Yachats, OR 97498

Laurence Musial
1111 Yachats Way
Yachats, OR 97498

June 20th, 2013

Subject: Blackstone Sub-division Public Improvement Acceptability

Re: Street System Repairs and Rehabilitation Work Prior to City Acceptance for Operations and Maintenance

Dear Mr. Musial;

We discussed earlier this month that the City of Yachats-Public Works Department would be conducting an Overall Condition Index (OCI) evaluation of the street system in the Blackstone Sub-division. As a result of this evaluation I have completed the report and the following work would need to be completed before the City would consider accepting the street infrastructure as complete, and ready for the City of Yachats-Public Works Department to operate and maintain this street system.

It is apparent that there is fairly rapid deterioration of the street infrastructure due to the lack of maintenance of the street systems, therefore we will begin a massive vegetation mowing in the next few days. Also, it is evident that there are some areas especially along Gimlet that need to be either overlaid with HMA Class C Asphalt or it is possible that a Slurry Seal could slow the deterioration by sealing out the moisture penetrating the asphalt into the base rock underneath the asphalt. I have included in the cost estimate funding to complete core sampling of the existing asphalt in ten (10) locations to make sure the City will retain at least a twenty (20) year life from this street system.

I have included two (2) options; 1) Option A-Slurry Seal Gimlet Way, or Option B- Grind and Overlay Gimlet Way with 2"-inches of Class C Hot Mix Asphalt. The determination of the option the City will accept will be based on the core samples taken throughout the street system. In any event the repair work to the asphalt must be completed in either option.

I would like to meet with you to further discuss your next steps. Please contact me at your earliest convenience so we can schedule the meeting, it is imperative complete this work this before winter and to get this work placed on our schedule.

Sincerely;

Larry R. Blanchard

June 20th, 2013

Larry R. Blanchard, Public Works Director

Date

Attachment: Estimate of Cost EOC2013-002

CITY OF YACHTS

Cost Item #	Description of Work To Be done	Number of Units	Units	Number of Hours/Units	Cost/Hour or Cost/Unit	Cost of Work
Repair 1)	Hanley Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	70	Square Feet	70	5	\$350.00
Repair 2)	Gimlet/Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	16	Square Feet	16	5	\$80.00
Repair 3)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	225	Square Feet	225	5	\$1,125.00
Repair 4)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 5)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 6)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	4	Square Feet	4	5	\$20.00
Repair 7)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	16	Square Feet	16	5	\$80.00
Repair 8)	Hanley Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	36	Square Feet	36	5	\$180.00
Repair 11)	Gimlet Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	36	Square Feet	36	5	\$180.00
Repair 12)	Gimlet Way Cut, Remove AC, Regrade/Compact and Install HMA Class C	75	Square Feet	75	5	\$375.00
Repair 13)	Gimlet Way Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	60	Square Feet	60	5	\$300.00
Repair 14)	Gimlet Way/Horizon Saw Cut, Remove AC, Regrade/Compact and Install HMA Class C	60	Square Feet	60	5	\$300.00
Repair 15)	Core Sample thin areas to determine if a Slurry Seal or Overlay is required to retain @ least a Twenty Year Life	10	Locations	10	25	\$250.00

CITY OF YACHATS
RESOLUTION NO. 2015-01-02
Blackstone Street Agreement

WHEREAS, City Council authorized the Public Works Director to take core samples in order to determine the amount of work required to bring the streets in the Blackstone Development to City Standards;

WHEREAS, core samples showed that there is adequate sub-surface material to go forward with the repairs based on Option A;

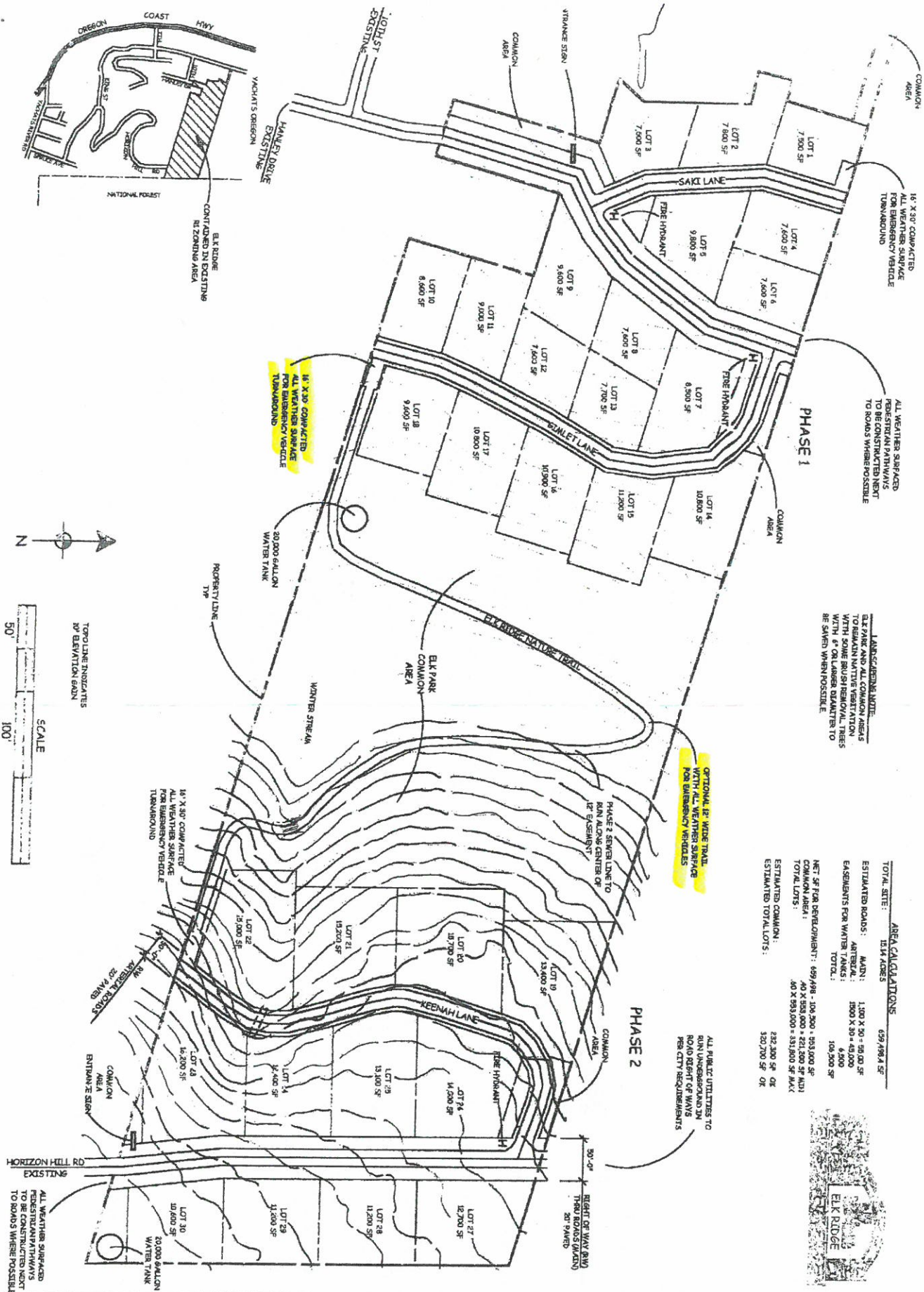
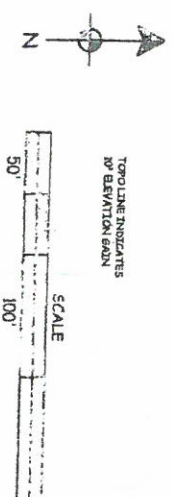
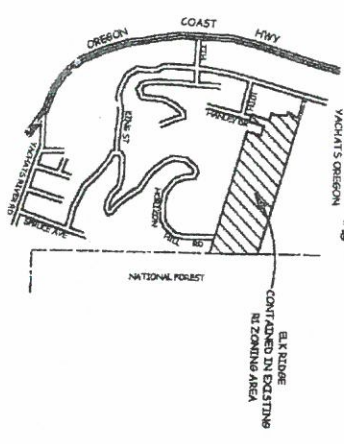
NOW THEREFORE, the City of Yachats resolves to move forward with the repairs as per Option A, attached and marked "Exhibit A", billing the Homeowners Association for the repairs, accepting the streets once the repairs have been completed and establishing a process for accepting streets in developments in the future.

This Resolution is memorializing an action taken by City Council at the January 8, 2015 meeting and was effective as of that date.

Attest:

Ronald L. Brean, Mayor

Nancy Batchelder, City Recorder



AREA CALCULATIONS

TOTAL SITE:	11.14 ACRES	699,498.4 SF
ESTIMATED ROADS:	MAIN: 1,000 X 50 = 50,000 SF	
	ARTERIAL: 1500 X 50 = 75,000 SF	
EASEMENTS FOR WATER TANKS:	6,000 SF	
TOTAL:	130,000 SF	
NET SF FOR DEVELOPMENT:	669,498 - 130,000 = 539,498 SF	
COMMON AREA:	40 X 950,000 = 38,000,000 SF	
TOTAL LOTS:	40 X 950,000 = 38,000,000 SF	
ESTIMATED COMMON:	232,200 SF	
ESTIMATED TOTAL LOTS:	357,200 SF	



DRAWN: JDM DATE: 6/18/03 SCALE: 1"=50' DRAWING NO: P1 OF 1	ELK RIDGE YACHTS OREGON PRELIMINARY PLAN	JONATHAN MONSCHKE PO BOX 2272 NEWPORT OR 97365 monschke@mac.com	TIMBER STONE DESIGN/CONSTRUCTION PO BOX 2272 NEWPORT OR 97365 503/702/2287 Not for Construction
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BLACK STONE

FINAL DESIGN
CITY OF YACHTS, LINCOLN COUNTY, OREGON



ELK RIDGE YACHTS, LLC P O BOX 88 YACHTS, OR 97498 PHONE 208.720.2287	STROKER ENGINEERING 74500 OLD CONDOR BRIDGE ROAD CLOVERDALE, OR 97312 PHONE 503.392.3502	MYTHUS SURVEYING, INC. P O BOX 206 TIDEWATER, OR 97391 PHONE 541.528.3234	DATE: JULY 2004 SCALE: 1" = 100 FEET DRAWN: CAM REVISION: 1
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City of Yachats

441 Hwy 101 N.
P O Box 345
Yachats, OR 97498

September 30, 2014

To: Yachats Mayor & City Council
cc: Nancy Batchelder, City Recorder
From: Larry Lewis, City Planner
Re: Tom Rodovsky's Request to Donate Open Space Parcel to the City
Tax Lot 2300 of Tax Map 14-12-26BB

Per your request, here is additional information regarding the above referenced parcel.

OPEN SPACE SYSTEM

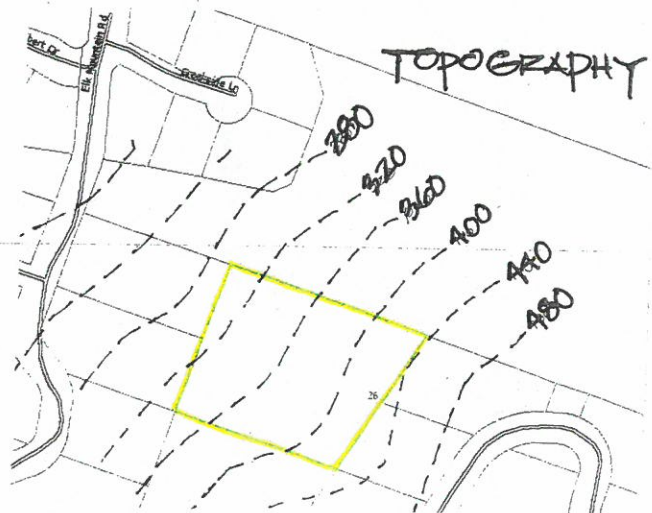
The subject parcel is dedicated as common open space. This is one of four contiguous open space parcels that collectively create a continuous open space system on the east hillside. The other open space parcels were created as part of the Blackstone I and Blackstone II Subdivisions to the south and the Creekside Planned Unit Development to the north. In the past this has been referred to as Elk Mountain Park.

TRAILS

The Village Circulation Plan identifies a continuous north-south oriented 'east side trail'. Constructing a trail through this parcel would be challenging due to the topography. It is more feasible to have a north-south oriented trail west of the parcel (alongside or near Elk Mountain Road) or east of the parcel (extend a trail north of Horizon Hill Road).

TOPOGRAPHY

This parcel has a significant slope downward from east to west. Based on limited topographic data it appears there is a 50% slope across the parcel.



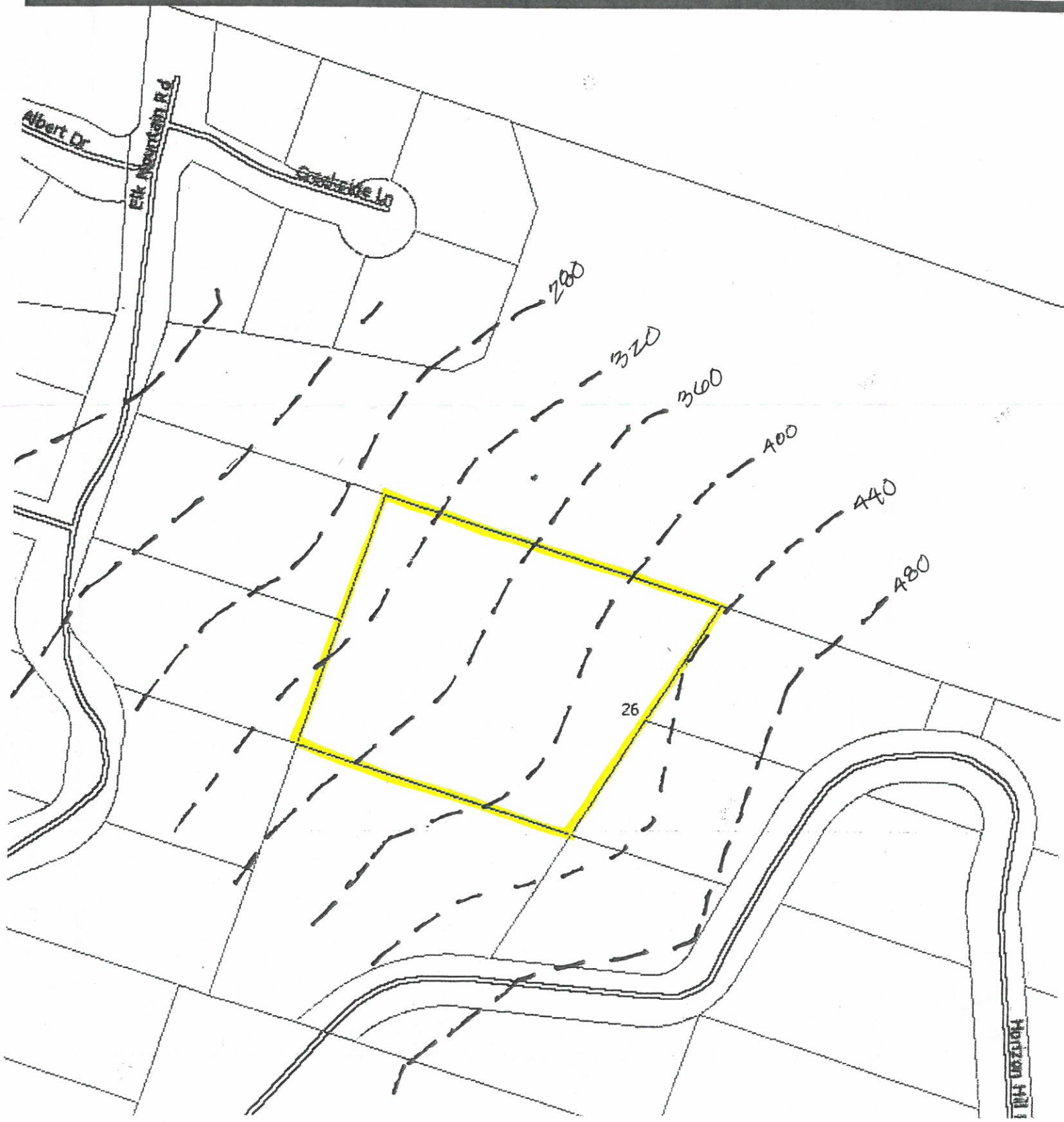
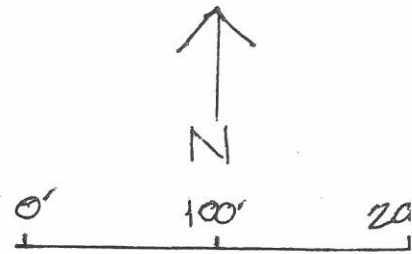
EAST HILLSIDE OPEN SPACE



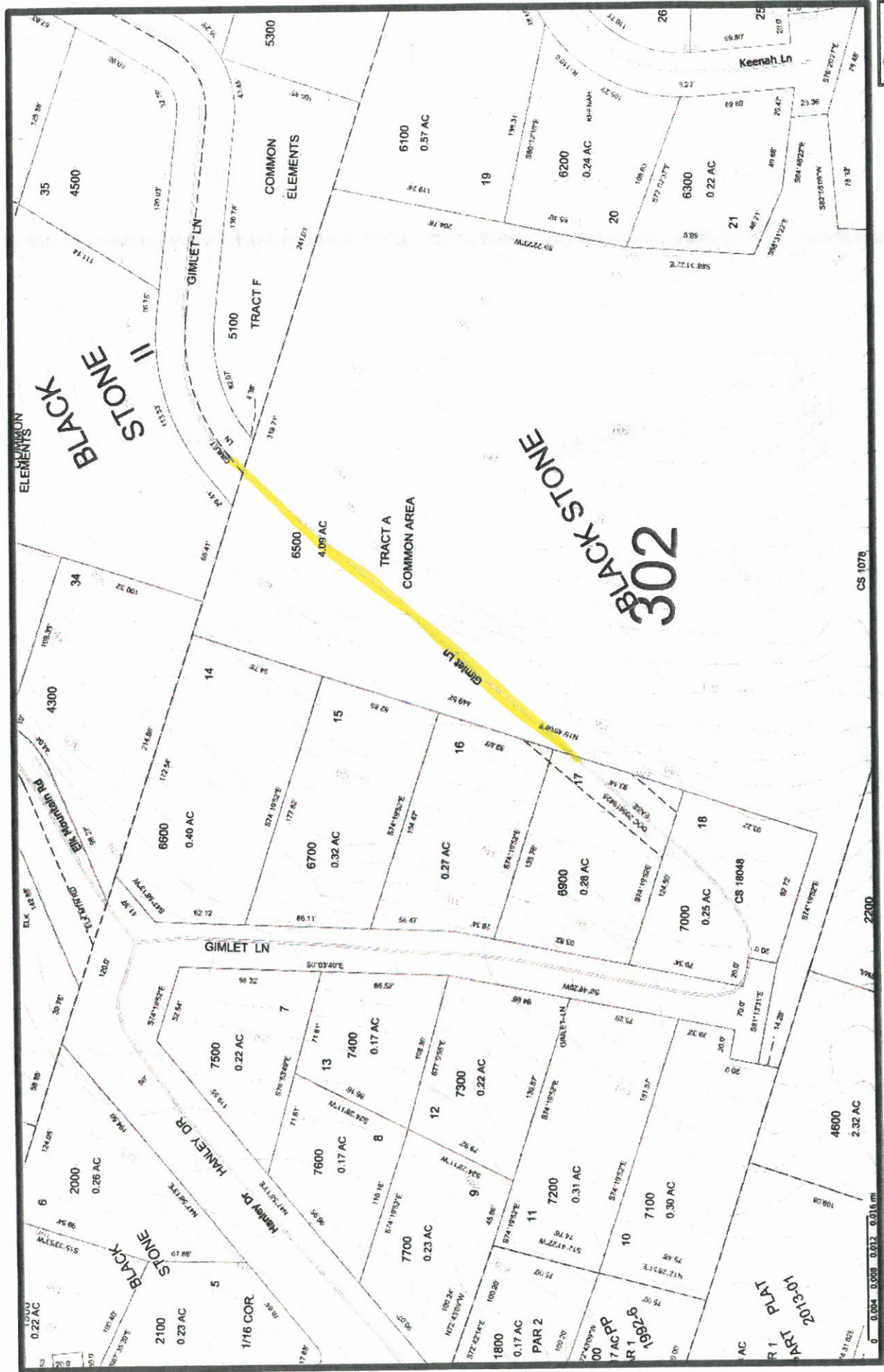
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Map





DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Volunteer Workers Compensation Coverage

Per the request of the Council at the June 24, 2020 meeting, Brown and Brown will again be a guest at the August 5, 2020 work session to discuss options regarding Volunteer Workers Compensation Coverage.



DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Discussion of Illegal Fireworks Regulations

Per the request of the Council at the June 24, 2020 meeting, the City Manager requested information from the City Attorney on the reasonableness of fines associated with Illegal Fireworks and what requirements there are for enforcement.

Reasonableness of Fines:

The answer depends of factors such as the violation at issue, the impact of the violation on the City and the public, and whether the fine amount is intended to act as an estimate of actual harm that is likely caused by the violation. For a Eugene-style regulation that really is just a regulation on the time of year when otherwise legal fireworks are allowed, a fine up to \$500 would be reasonable.

Enforcement Requirements:

If the City is going to issue citations, the enforcement officer should witness the violation. That does create significant enforcement issues for Yachats given the limited staff.

Council Question:

Given these considerations, does Council wish for City Staff to pursue drafting an ordinance similar to the Eugene Ordinance <https://eugene.municipal.codes/EC/4.934>.



CITY OF YACHATS MEMORANDUM

DATE: August 5, 2020
TO: W. John Moore, Mayor
Yachats City Council
FROM: Heather Hoen, Community Services Coordinator
SUBJECT: Public Contracting Rule Update

The Attached documents are to update the Public Contracting rules.

The Attorney General's Model of Public Contracting Rules governs public contracting to ensure a level of consistency across the State. The Statute does however allow local governing bodies to adopt their own rules and procedures along with the Model Rules.

By adopting this Resolution and rules, the City has greater flexibility on our purchasing, projects, and contracts.

The City has already used the Public Contracting Rule, Exemption E-15 which Council for the purchasing of a Vac Truck. This not only saves the staff time of developing an RFP for such a limited and specialized item, but also allows the City the ability to be more selective about the quality of the item that is being purchased, as well cost savings by buying directly.

For Council to Adopt the Public Contracting Rules:

Review, discussion and questions

Set a future date to vote on adopting the Resolution with enough time to allow for the Notice for Public Hearing to be published at least 14 days before the hearing.

LOCAL
GOVERNMENT
LAW GROUP

A member of Speer Hoyt LLC

Carolyn H. Connelly
Christy K. Monson
Ross M. Williamson*
Diana Moffat
Mark A. Wolf
Dan Lawler
*Also Admitted in Washington

April 2, 2020

Via Email Only To: citymanager@YachatsMail.org

Shannon Beaucaire, City Administrator
City of Yachats
P.O. Box 345
Yachats, OR 97498

Re: Public Contracting Rules Packet

Dear Shannon:

Enclosed are a resolution, notice, draft findings and accompanying Public Contracting Rules drafted to replace the City's Rules adopted in 2019 and address statutory amendments adopted in the interim. ORS Chapters 279A, 279B and 279C (the "Public Contracting Code" or "Code") has been in place since March 1, 2005. Since that date, the legislature has amended some aspect of the Code nearly every session. The most recent changes went into effect January 1, 2020. Per ORS 279A.065, the Attorney General's Model Rules govern public contracting. The statute goes on, however, to allow a public entity to adopt its own rules of procedure which may or may not include portions of the Attorney General's Model Rules.

Rules

To a great extent, the enclosed rules reflect the substance of the Attorney General's Model Rules to ensure compliance with the Code. Rules not dictated by statute have been modified to grant the City the greatest level of flexibility, and to simplify them as much as possible. For instance, in drafting these rules, I omitted the Attorney General's provisions allowing your entity to consider debt to the state when assessing the contractor's qualifications. If that is an important factor, that can always be added into a specific solicitation. Additionally, we filled in holes created by the Code and the Model Rules, which otherwise would not have allowed flexibility when purchasing and surplus personal property or the use of requests for proposal for public improvement contracts.

These 2020 rules address legislative amendments adopted through the 2019 legislative session, reflecting the following statutory amendments:

- 1) The 2019 legislature modified its Qualification Based Solicitation (QBS) requirements for Division 48 consultants (primarily architects and engineers) to allow price to be used as award criteria, subject to certain requirements and limitations.
- 2) For contracts over \$500,000, 2019 legislation now requires contracting agencies to place amounts deducted as retainage into interest bearing escrow accounts, unless the contractor requests an alternative, non-cash retainage method.
- 3) As of July 1, 2014, Construction Manager/General Contractor (CM/GC) Contracts are permitted only pursuant to the Attorney General's CM/GC Model Rules, even for entities which have adopted their own rules.
- 4) In 2013, the legislature increased the small procurement threshold for goods and service contracts from \$5,000 to \$10,000.
- 5) In 2011, the legislature added photogrammetric mapping and transportation planning service providers to Division 48. Please note that the only transportation planners subject to these new requirements are those which will perform services on projects subject to the National Environmental Policy Act (NEPA). In other words, Division 48 should only apply to transportation planning services provided on federally funded projects.

The final section of the attached Rules includes a set of exemptions addressing standard purchasing needs not otherwise covered by the Code or the Model Rules. Please review all Rules and the implementing Resolution carefully to ensure the chosen procedures and exemptions meet your City's need. If not, to the extent permitted by the Code, we can tailor them accordingly.

As you can see, the term "Contracting Agency," as used in the Rules and the Resolution, references the City, but also includes the City's chief administrative officer, his or her designee and any other purchasing agent, as identified by City policy. The authority of the Contracting Agency is, however, subject to all other City policies. Therefore, if your City's policies are not clear as to a City officer's authorized level of spending, this is a good time to determine that authority, and what contracting amounts must come back to the City Council. If you wish, we can help in drafting or updating such purchasing authority policies.

Adoption Process

Because the amended public contracting rules modify prior class exemptions for both the purchase of certain types of goods and services and public improvement contracts, two separate exemption adoption procedures apply. ORS 279B.085 addresses “special procurements” (otherwise known as exemptions for the purchase of goods and services). This provision requires the making of specific findings, which are included in the attached Resolution. Notice of the request for these classes of special procurements must be given at least seven days prior to the approval of the classes. The notice must be published in at least one newspaper of general circulation in the City and in as many additional issues and publications as you may desire. ORS 279B.055(4)(b).

ORS 279C.355 governs the process for granting exemptions to public improvement contracts. It requires a slightly different set of findings, which are also set forth in the enclosed Resolution. Such exemptions require the holding of a public hearing. Notice of the hearing must be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing.

As required, the enclosed Notice states that the public hearing is for the purpose of taking comments on the City’s draft findings supporting the exemption of certain classes of contracts from competitive bidding requirements. At the time the notice is published, copies of the draft findings must be made available to the public. At the City’s option, the notice may describe the process by which the findings will be adopted and may indicate the opportunity for any further public comment. I have omitted this information, but can add it, at your direction.

After filling in the blanks within the enclosed Notice, please publish it in the *Daily Journal of Commerce* or other trade newspaper of general statewide circulation at least 14 days before the hearing. The same notice must also be published in at least one newspaper of general circulation in the City at least 7 days before the hearing. The notice may also be posted on the door of the building where the meeting will be held, not later than three days prior to the date of meeting.

As indicated on the Notice, the hearing will be at a joint meeting of both the City Council and the Local Contract Review Board (i.e., in the meeting, the Council will be wearing both “hats”). The Resolution and Rules may only be adopted by the Local Contract Review Board after the public hearing (i.e., after the City has provided an opportunity for any interested person to appear and present comment). The Council can conduct other Council business at the meeting as well, so long as this is reflected in the Council agenda.

Shannon Beaucaire, City Administrator
April 2, 2020
Page 4

Please call with any questions.

Sincerely yours,

Carolyn H. Connelly

Carolyn H. Connelly
chc@localgovtlaw.com

CHC:kad

Enclosures

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NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City of Yachats will hold a joint public hearing of its City Council and its Local Contract Review Board regarding adoption of Public Contracting Rules on the _____ day of _____, 2020, at _____ a.m./p.m. The meeting will be held at _____, _____, Oregon. The proposed Resolution will replace and update the City's current Public Contracting Rules and exemptions.

The public hearing will be held for the purpose of taking comments on the City's draft findings supporting the exemption of certain classes of special procurements and public improvement contracts from competitive bidding requirements.

PUBLISHED: *Daily Journal of Commerce*

DATE: _____

PUBLISHED: *[Local Newspaper]*

DATE: _____

RESOLUTION NO. _____

**JOINT RESOLUTION OF THE CITY COUNCIL AND LOCAL CONTRACT
REVIEW BOARD OPTING OUT OF THE ATTORNEY GENERAL'S MODEL
PUBLIC CONTRACTING RULES AND AMENDING PUBLIC CONTRACTING
RULES FOR THE CITY OF YACHATS**

WHEREAS, it is the policy of the City of Yachats (City) that a sound and responsive public contracting system should allow impartial, meaningful, and open competition, preserving formal competitive selection as the standard for public contracts unless otherwise specifically exempted herein, by state law, or by subsequent ordinance or resolutions; and

WHEREAS, in 2019, the City opted out of the Public Contracting Model Rules adopted by the Attorney General under ORS subchapters 279A, 279B, and 279C set forth in Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48 and 49 (the "Model Rules") and adopted its own rules; and

WHEREAS, the Public Contracting Code divides powers and duties for contracting into two categories: those that must be performed by the "Local Contract Review Board"; and those that must be performed by the "Contracting Agency"; and

WHEREAS, pursuant to ORS 279A.060, the City Council is the Local Contract Review Board for City and, as such, is authorized to act on all such matters on behalf of the City, adopt Public Contracting Rules, and establish procedures for amendment of such rules; and

WHEREAS, City recognizes it may exempt certain public improvement contracts or classes of such contracts under ORS 279C.335; and

WHEREAS, the City Council additionally requests that the City's Local Contract Review Board approve the classes of special procurements set forth in the attached rules, based upon the findings set forth in Exhibit A to this Resolution.

NOW, THEREFORE, it is resolved as follows:

1. The City Council (Council) is hereby designated to continue as the Local Contract Review Board of the City and shall have all of the rights, powers and authority necessary to carry out the provisions of Chapters 279A, 279B, and 279C (the "Public Contracting Code") and attached Rules. Except as otherwise provided in this Resolution, the definitions established in the attached Rules apply herein. The term "Contracting Agency" as used in the attached Rules includes Contracting Agency's chief administrative officer, his or her designee, or any other purchasing agent, as designated by City policy. Those individuals are hereby designated as City's Contracting Agency and may exercise all authorities, powers and duties granted to a Contracting Agency

under the Public Contracting Code and attached Rules, unless otherwise established by City policy.

2. The above recitals and Exhibit A are hereby adopted by the Council, sitting as the Local Contract Review Board, as findings of fact supporting approval of the Council's request for classes of special procurement and public improvement contract exemptions.

3. The Model Rules adopted by the Attorney General pursuant to ORS 279A.065, including those effective January 1, 2020, do not apply to City. Instead, the City hereby prescribes the following Rules, which include portions of the Attorney General's Model Rules, as the Rules of Procedure that the City will use for its public contracting: Public Contracting Rules Chapter 137, Divisions 46, 47, 48 and 49. While the numbering of these Rules reflects the numbering system of the Attorney General's Model Rules, they incorporate City changes to the Model Rules, and, therefore, are not the Attorney General's promulgated administrative rules. City exemptions are also set forth in these Rules, as numbered Exemptions 1 through 18 (E-1 through E-18). All above-referenced Rules are attached to this Resolution as Exhibit B, and incorporated herein by this reference.

4. In accordance with ORS 279A.065(6)(b), the City shall review its Public Contracting Rules, adopted herein, each time the Attorney General modifies its Model Rules in order to determine whether amendments are required to ensure statutory compliance.

5. Amendments to these Rules and new rules shall be adopted in accordance with this Resolution and the Public Contracting Code. Special procurement requests and approvals shall be made in accordance with Division 47 of the attached Rules and ORS 279B.085. Public improvement contract exemption procedures, including notice and public hearing requirements, shall be made in accordance with Division 49 of the attached Rules and ORS 279C.335.

6. The Model Cost Accounting Guidelines developed by the Oregon Department of Administrative Services pursuant to Section 3, Chapter 869, Oregon Laws 1979 are hereby adopted as the City's Cost Accounting System to apply to public improvement projects exceeding \$5,000 and constructed with City's own equipment or personnel. ORS 279C.310. For such public improvement projects estimated to cost more than \$200,000, or for certain road maintenance projects exceeding \$125,000, City shall also comply with the requirements of ORS 279C.305.

7. All previously adopted resolutions, including Resolution No. _____, establishing public contracting rules for City are hereby repealed.

DATED this _____ day of _____, 2020.

W. John Moore, Mayor
City Council

W. John Moore, as President,
for the Local Contract Review Board

ATTEST:

ATTEST:

Shannon Beaucaire, City Manager

Shannon Beaucaire, City Manager
as Secretary for the
Local Contract Review Board

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EXHIBIT A

FINDINGS IN SUPPORT OF RESOLUTION NO. _____ ADOPTING PUBLIC CONTRACTING CODE RULES

ORS 279B.085 and 279C.335 authorize City of Yachats' (City) City Council, sitting as City's local contract review board, to approve findings submitted and exemptions requested by City Council upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts.

Pursuant to that authority, the Council makes the following findings in support of Resolution No. _____, which establishes exempt classes of contracts and the solicitation methods for their award:

No Findings Required

Pursuant to ORS 279A.025 and 279A.055, the Council is not required to adopt findings with respect to the solicitation methods and awards of the following classes of contracts identified in City's Public Contracting Rules 2020, Class Exemptions:

E-4	Contracts for Price Regulated Items
E-6	Investment Contracts
E-12	Insurance, Employee Benefit
E-17	Personal Service Contracts
E-18	Liability Insurance Contracts

The above Rules govern subjects specifically authorized by state law and, therefore, require no local exemption.

Specific Findings for Public Improvement Class Exemption

The Council approves the following specific findings for the use of Request for Proposal alternative contracting method for public improvement contracts estimated to cost over \$100,000 and also finds that the establishment of this class of contracts and the method approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts; and
2. The awarding of public improvement contracts under each exemption will result in substantial cost savings to City.

These conclusions are based on the following general findings:

- A. Operational, budget, and financial data. Where various criteria, which may or may not include cost, must be weighed in order to select an appropriate contractor for the desired project, the formal competitive bidding process costs of up to \$7,000 are a significant budgetary waste in that the most qualified contractor for the project may not be the lowest responsible bidder;
- B. Public benefits. Exempting contracts from competitive bidding requirements and instead utilizing statutory competitive proposal procedures will protect and preserve public funds, enable greater competition between the most qualified contractors, and result in a better product which meets the public's and City's needs;
- C. Value engineering, Specialized expertise required, Technical complexity. Only through a competitive proposal process can City weigh, evaluate and select the type of expertise needed to address the technical complexities of a particular public improvement project. Competitive proposal allow the City to determine which contractor may best provide such services. These are qualities not reflected in cost, where a determination on cost alone could forfeit these valuable and essential attributes;
- D. Public safety. Utilizing a competitive proposal process as opposed to competitive bidding can ensure high quality, more safely constructed facilities through the construction period, and after completion. Capitalizing upon design and construction planning and compatibility can also allow earlier use of public facilities even while construction continues;
- E. Market conditions. The increased availability of and need for technical expertise, value engineering, or other types of specialized expertise, as well as a need to investigate the compatibility, experience and availability of contractors require that certain public improvement contracts be awarded based upon an evaluation of a number of criteria, rather than simply cost.

Specific Findings for Special Classes and Methods of Award for Contracts Other Than Public Improvements.

The Council approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contracts and methods approved for their award:

1. Is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts because such exemptions still require alternative contracting procedures, ensuring:

- (1) reasonable competition; (2) the best contract price for the public; and (3) a cost-effective process for both contractors and City;
2. The awarding of public contracts under these exemptions will result in substantial cost savings to City because City will avoid costs associated with unnecessary documentation and procedures, where it is unmerited by the type and/or relatively low cost of the contracts; and
 3. The awarding of public contracts pursuant to any of the requested exemptions substantially promotes the public interest in a manner that could not practicably be realized by formal competitive solicitation procedures, given the fact that such exemptions facilitate smooth operation of City's administration and operations, include procedures and mechanisms to ensure the best product, service or outcome is obtained at the least cost to the public and City, and identified classes address areas of public contracting left unresolved by state statute which are essential for City's operations, such as awarding personal service contracts, purchasing used personal property, and disposing of surplus personal property.

Specifically, the Council finds:

E-2 – Advertising Contracts.

Alternate Award Process. In City's discretion. The process selected may be competitive or non-competitive.

Cost Savings and Other Benefits. Size of and frequency of average advertisement (including all notices required to be published by City) does not justify the cost of solicitation. Period of time from recognition of need to advertise until advertising date is too short to issue solicitation.

Effect on Competition. The potential market is limited because not all advertisers work in every market. Choice of advertising medium is somewhat price sensitive, but primarily driven by location and size of circulation in comparison with City's target audience.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-3 – Equipment Repair and Overhaul.

Alternate Award Process. As needed, in City's discretion.

Cost Savings and Other Benefits.

1. Pre-contract pricing is difficult to obtain and cannot be relied upon.

2. City has discretion to decide whether costs of solicitation are justified in relationship to size of contract and availability of skilled technicians to repair the specific equipment.
3. Delay required for solicitation would impair City's ability to respond to equipment breakdown and be injurious to the public interest.
4. Experience with contractor is crucial because reliability over the course of several projects is important.

Effect on Competition. Allows contractor to be selected based on ability to provide accurate, reliable and fast service.

Effect on Favoritism. Favoritism will not be greater than if statutory request for proposals process is used.

E-5 - Copyrighted Materials.

Alternate Award Process. As needed, in City's discretion.

Cost Savings and Other Benefits. Necessary to allow City to acquire special needs products that are unique.

Effect on Competition. None. There is no competitive market for a unique product. Copyrighted materials are generally acquired from a sole-source copyright holder, as used property, or by donation.

No Favoritism. Not applicable due to the lack of competitors and specialized contracting needs.

E-7 – Requirements Contracts.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years.

E-8 – Office Copier Purchases.

Alternate Award Process. Original contract must be based on a competitive process.

Cost Savings and Other Benefits. Size and frequency of procurements does not justify the cost of solicitation. Period of time from recognition of need until good or service required too short to issue solicitation.

Effect on Competition. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon multiple factors, not just cost.

Effect on Favoritism. Minimal, due to underlying competitive process and requirement to renew contract via formal solicitation at least every five years. In addition, rule requires evaluation and award based upon set factors, in addition to cost.

Other Factors. Allows Contracting Agency to address emergency circumstances. Cannot anticipate when immediate replacement or repairs will be needed to ensure normal operations.

E-9 - Manufacturer Direct Supplies.

Alternate Award Process. Subject to cost saving analysis.

Cost Savings and Other Benefits. Allowed only after a formal solicitation is completed and manufacturer's price is less than offers received. Cost of formal solicitation, therefore not merited.

Effect on Competition. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Effect on Favoritism. None. Allowed only after assessment of manufacturer's costs to distributor within the same pool of potential contractors that would be qualified to respond to an invitation to bid.

Other Factors. Allowed on a contract-by-contract basis and shall not result in an ongoing price agreement, further fostering competition.

E-10 – Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt.

Alternate Award Process. Intermediate procurement process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-11 – Hazardous Material Removal; Oil Cleanup.

Alternate Award Process. Rule encourages competitive procedures to the extent reasonable under the circumstances.

Cost Savings and Other Benefits. Avoids unnecessary cost and delay associated with procurement procedures when most qualified available contractor required for immediate performance. Primary consideration is public safety and compliance with hazardous material laws.

Effect on Competition. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Effect on Favoritism. Minimal, given competitive procedures encouraged by Rule and supporting findings describing circumstance requiring clean up.

Other Factors. Exemption necessary to ensure City's ability to comply with State law governing hazardous materials.

E-13 – Medical and Laboratory Supplies.

Alternate Award Process. Direct award to different vendors allowed, following initial competitive solicitation process.

Cost Savings and Other Benefits. Frequency and amount of exempt item purchases do not justify the cost of solicitation. Period of time from recognition of need through contract award too long for needed purchases of exempt fungible goods.

Effect on Competition. Minimal. Intermediate procurement process surveys market and ensures level of competition appropriate for these frequently purchased goods.

Effect on Favoritism. Purchase based on cost. Intermediate procurement process sufficiently avoids any favoritism.

E-14 – Concession Agreements.

Alternate Award Process. When in City's best interest, a competitive proposal solicitation will be used.

Cost Savings and Other Benefits. Allows City to take advantage of unique revenue opportunities.

Effect on Competition. Responds to unique opportunities for which the number of competitors may range from none to many.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Not a contract for the acquisition or disposal of goods, or services or public improvements. Most similar to personal services contract because the quality of the concession may be more important than price factors. Variation in types and sizes of concession opportunities is too great to provide a single method of solicitation. Statutory public contracting requirements may not apply. May not be a public contract. Most similar to personal services contract. Findings may not be required.

E-15 – Used Personal Property, Purchase of.

Alternate Award Process. Rule requires individualized ORS 279B.085 findings and an intermediate procurement process, where feasible.

Cost Savings and Other Benefits. Allows City to take advantage of unique opportunity to require needed goods and services for discounted prices.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

E-16 – Surplus Personal Property, Disposition of.

Alternate Award Process. Any means in City's best interest, after making individualized ORS 279B.085 findings. Items with a residual value of more than \$10,000 require local contract review board prior authorization.

Cost Savings and Other Benefits.

1. Avoids unnecessary solicitation expense by allowing City to determine whether cost of solicitation is justified by value of surplus property.
2. Allows City to establish programs for donation to charitable organizations.

Effect on Competition. No impact. Responds to unique opportunities.

Effect on Favoritism. No impact. Responds to unique opportunities.

Other Factors. Variations in the type, quantity, quality and opportunities for recycling of surplus property are too large to have this class of contracts governed by a single solicitation method.

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PUBLIC CONTRACTING RULES

2020

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PUBLIC CONTRACTING RULES 2020

DIVISION 46

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

137-046-0100

Application; Federal Law Supremacy

(1) These Public Contracting Rules (Rules) set forth the rules of procedure for Public Contracting of Contracting Agencies subject to these Rules. These Rules consist of the following four divisions:

(a) This division 46, which is applicable to all Public Contracting;

(b) Division 47, which describes procedures for Public Contracting for Goods or Services, as defined in ORS 279B.005;

(c) Division 48, which describes procedures for Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 49, which describes procedures for Public Contracting for Construction Services.

(2) In the event of conflict between rules in this division 46 and rules in divisions 47, 48 and 49, the rules in divisions 47, 48 and 49 take precedence over the rules in this division 46.

(3) Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these Rules.

(4) These division 46 rules become effective upon adoption, and apply to Public Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & ORS 279A.065

137-046-0110

Definitions for the Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Rules will have the meaning set forth in the division of the Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and if not defined there, the meaning set forth in the Code. The following terms, when capitalized in these Rules, shall have the meaning set forth below:

(1) **"Addendum"** or **"Addenda"** means an addition or deletion to, a material change in, or general interest explanation of a Solicitation Document.

(2) **"Award"** means, as the context requires, either the act or occurrence of the Contracting Agency's identification of the Person with whom the Contracting Agency will enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person, and the completion of all Contract negotiations.

(3) **"Bid"** means a written response to an Invitation to Bid.

(4) **"Closing"** means the date and time announced in a Solicitation Document as the deadline for submitting Offers.

(5) **"Code"** means the Public Contracting Code, as defined in ORS 279A.010.

(6) **"Competitive Range"** means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with Rules 137-047-0262 or 137-049-0650.

(7) **"Contract"** means a contract for sale or other disposal, or a purchase, lease, or other acquisition, by a Contracting Agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(8) **"Contract Price"** means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(9) **"Contracting Agency"** means a public body authorized by law to conduct a procurement. "Contracting Agency" includes any person authorized by a Contracting Agency to conduct procurements on the Contracting Agency's behalf.

(10) **"Contract Review Authority"** means the Local Contracting Agency's Local Contract Review Board determined as set forth in ORS 279A.060.

- (11) **"Contractor"** means the Person with whom a Contracting Agency enters into a Contract.
- (12) **"DBE Disqualification"** means a disqualification, suspension or debarment pursuant to ORS 200.065, 200.075 or 279A.110.
- (13) **"Descriptive Literature"** means the Offeror's materials submitted to provide information concerning the products or services available in response to a Solicitation Document.
- (14) **"Electronic Advertisement"** means notice of a Contracting Agency's request for Offers, request for quotes, request for information or other document inviting participation in the Contracting Agency's Procurements available over the Internet via (a) the World Wide Web or some other Internet protocol; or (b) a Contracting Agency's Electronic Procurement System. An Electronic Advertisement may include a Solicitation Document.
- (15) **"Electronic Offer"** means a response to a Contracting Agency's request for Offers or request for quotes submitted to a Contracting Agency via email or through the Contracting Agency's Electronic Procurement System.
- (16) **"Electronic Procurement System"** means an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.
- (17) **"Goods and Services"** or **"Goods or Services"** has the meaning set forth in ORS 279A.010(1)(j).
- (18) **"Invitation to Bid"** or **"ITB"** means all documents used for soliciting Bids in accordance with either ORS 279B.055, or 279C.335.
- (19) **"Offer"** means a written response to a Solicitation Document.
- (20) **"Offeror"** means a Person who submits an Offer.
- (21) **"Opening"** means the date, time and place announced in the Solicitation Document for the public opening of Written sealed Offers.
- (22) **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity that has the legal capacity to enter into a contract.
- (23) **"Personal Services"** means the services or type of services performed under a Personal Services Contract.
- (24) **"Personal Services Contract"** or **"Contract for Personal Services"** means a contract primarily for the provision of services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers, unless specifically exempt from the Code. For any single contract or class of contracts, the Contracting Agency shall have the discretion to determine whether additional types of services not specifically mentioned in this definition are personal services.
- (25) **"Product Sample"** means a representative specimen of the item offered by the Offeror in response to the Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of that product offered by the Offeror.
- (26) **"Proposal"** means a written response to a Request for Proposals.
- (27) **"Request for Proposals"** or **"RFP"** means all documents used for soliciting Proposals in accordance with ORS.279B.060, 279C.110 or Rule 137-049-0650.
- (28) **"Responsible Offeror"** (also, **"Responsible Bidder"** or **"Responsible Proposer,"** as applicable) means a Person that has submitted an Offer and meets the standards set forth in Rules 137-047-0640 or 137-049-0390(2), and that has not been debarred or disqualified by the Contracting Agency under Rules 137-047-0575 or 137-049-0370. When used alone, **"Responsible"** means meeting the aforementioned standards.
- (29) **"Responsive Offer"** (also, **"Responsive Bid"** or **"Responsive Proposal,"** as applicable) means an Offer that substantially complies in all material respects with applicable solicitation requirements. When used alone, **"Responsive"** means having the characteristic of substantially complying in all material respects with applicable solicitation requirements.
- (30) **"Signed"** or **"Signature"** means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
- (31) **"Solicitation Document"** means an Invitation to Bid, Request for Proposals or other document issued to invite Offers from prospective Contractors pursuant to ORS Chapter 279B or ORS Chapter 279C.
- (32) **"Specification"** means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(33) **“Work”** means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

(34) **“Written”** or **“Writing”** means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-046-0120

Policy

Contracting Agencies subject to the Code shall conduct Public Contracting to further the policies set forth in ORS 279A.015, elsewhere in the Code, and in these Rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.015 & ORS 279A.065

137-046-0130

Application of the Code and Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all rights, powers and authority related to Public Contracting in accordance with the Code and these Rules.

(2) Neither the Code nor these Rules apply to the contracts or the classes of contracts described in ORS 279A.025(2).

(3) Contracting Agencies otherwise subject to the Code and these Rules may enter into Public Contracts under a federal program pursuant to ORS 279A.180 without following the procedures set forth in ORS 279B.050 through ORS 279B.085.

(4) Contracting Agencies otherwise subject to the Code and these Rules may enter into contracts for Goods or Services with non-profit agencies providing employment opportunities for disabled individuals pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either ORS 279A.200 through ORS 279A.225, or ORS 279B.050 through ORS 279B.085. However, Contracting Agencies must enter into such contracts in accordance with any applicable administrative rules promulgated by the Department of Administrative Services.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.050, ORS 279A.055, ORS 279A.065 & ORS 279A.180

MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES

137-046-0200

Affirmative Action; Limited Competition Permitted

(1) Pursuant to ORS 279A.100, a Contracting Agency may limit competition on Public Contracts for Goods and Services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by the Public Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.100

137-046-0210

Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification

(1) As set forth in ORS 279A.105, a Contracting Agency may require a contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:

(a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or

(b) A business enterprise that is:

(A) Certified under ORS 200.055 as an emerging small business; and

(B) Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.

(2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

(b) The contractor certifies in writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.

(3) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers in a form prescribed by the Contracting Agency, that the Offeror has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that is a service-disabled veteran owns.

(4) DBE Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any public contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the DBE Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(D) Include a statement of the authority and jurisdiction under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed DBE Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely request. The Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing prior to hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service, or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of DBE Disqualification;

(B) The grounds for DBE Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(5) **Contract and Subcontract Conditions**. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the Award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the Award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (5) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (5)(a) of this rule.

(c) Subparagraph (5)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the

business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (5) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.065, ORS 279A.105, ORS 279A.107 & ORS 279A.110

CONTRACT PREFERENCES

137-046-0300

Preference for Oregon Goods and Services; Nonresident Bidders

(1) **Award When Offers Identical.** When a Contracting Agency receives Offers identical in price, fitness, availability and quality, and chooses to award a Contract, the Contracting Agency shall award the Contract based on the following order of precedence:

(a) The Agency shall award the Contract to the Offeror among those submitting identical offers that is offering Goods or Services or Personal Services that have been manufactured or produced in Oregon.

(b) If two or more Offerors submit identical Offers, and both offer Goods or Services or Personal Services manufactured or produced in Oregon, the Contracting Agency shall award the Contract by drawing lots among the identical Offers offering Goods or Services or Personal Services that have been manufactured or produced in Oregon. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(c) If the Contracting Agency receives identical Offers, and none of the identical Offers offer Goods or Services or Personal Services manufactured or produced in Oregon, then the Contracting Agency shall award the Contract by drawing lots among the identical Offers. The Offerors that submitted the identical Offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

(2) **Determining if Offers are Identical.** A Contracting Agency shall consider Offers identical in price, fitness, availability and quality as follows:

(a) Bids received in response to an Invitation to Bid are identical in price, fitness, availability and quality if the Bids are Responsive, and offer the Goods or Services or Personal Services described in the Invitation to Bid at the same price.

(b) Proposals received in response to a Request for Proposals are identical in price, fitness, availability and quality if they are Responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.

(c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are identical in price, fitness, availability and quality if, after completing the contracting procedure approved by the Contract Review Authority, the Contracting Agency determines, in writing, that two or more Proposals are equally advantageous to the Contracting Agency.

(d) Offers received in response to an intermediate Procurement conducted pursuant to ORS 279B.070 are identical if the Offers equally best serve the interests of the Contracting Agency in accordance with ORS 279B.070(4).

(3) **Determining if Goods or Services or Personal Services are Manufactured or Produced in Oregon.**

For the purposes of complying with section 1 of this Rule, Contracting Agencies may request, either in a Solicitation Document, following Closing, or at any other time determined appropriate by the Contracting Agency, any information the Contracting Agency determines is appropriate and necessary to allow the Contracting Agency to determine if the Goods or Services or Personal Services are manufactured or produced in Oregon. A Contracting Agency may use any reasonable criteria to determine if Goods or Services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that the Contracting Agency applies those criteria equally to each Bidder or Proposer.

(4) **Procedure for Drawing Lots.** In any instance when this Section calls for the drawing of lots, the Contracting Agency shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another.

(5) **Discretionary Preference and Award.** Under ORS 279A.128, a Contracting Agency may provide, in a Solicitation Document for Goods, Services or Personal Services, a specified percentage preference of not more than ten percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. When the Contracting Agency provides for a preference under this Section, and more than one Offeror qualifies for the preference, the Contracting Agency may give a further

preference to a qualifying Offeror that resides in or is headquartered in Oregon. A Contracting Agency may establish a preference percentage higher than ten percent by written order that finds good cause to establish the higher percentage and which explains the Contracting Agency's reasons and evidence for finding good cause to establish a higher percentage. A Contracting Agency may not apply the preferences described in this Section in a Procurement for emergency work, minor alterations, ordinary repairs or maintenance of public improvements, or construction work that is described in ORS 297C.320.

Stat. Auth.: ORS 279A.065 & ORS 279A.128

Stats. Implemented: ORS 279A.065, ORS 279A.120 & ORS 279A.128

137-046-0310

Reciprocal Preferences

(1) When evaluating Bids pursuant to Rules 137-047-0255, 137-047-0257 or 137-049-0390, Contracting Agencies shall add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that Bidder in the state in which the Bidder resides. A Contracting Agency may rely on the list prepared and maintained by the Department pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.120

137-046-0320

Preference for Recycled Materials

(1) In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, a Contracting Agency shall select the Offeror offering goods manufactured from recycled materials if each of the conditions specified in ORS 279A.125(2) exists. When making the determination under ORS 279A.125(2)(d), the Contracting Agency shall consider the costs of the goods following any adjustments the Contracting Agency makes to the price of the goods after evaluation pursuant to Rule 137-046-0310.

(2) For the purposes of this Section, a Contracting Agency shall determine if goods are manufactured from recycled materials in accordance with standards established by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.125

COOPERATIVE PROCUREMENT

137-046-0400

Authority for Cooperative Procurements

(1) Contracting Agencies may participate in, sponsor, conduct or administer Joint Cooperative Procurements, Permissive Cooperative Procurements and Interstate Cooperative Procurements in accordance with ORS 279A.200 through 279A.225.

(2) Each Purchasing Contracting Agency shall determine, in Writing, whether the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to those identified in ORS 279B.055, ORS 279B.060 or ORS 279B.085 consistent with ORS 279A.200(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0410

Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies

(1) If a Contracting Agency is an Administering Contracting Agency of a Cooperative Procurement, the Contracting Agency may establish the conditions under which Persons may participate in the Cooperative Procurements administered by the Administering Contracting Agency. Such conditions may include, without limitation, whether each Person that participates in the Cooperative Procurement must pay administrative fees to the Administering Contracting Agency, whether the participants must enter into a written agreement with the Administering Contracting Agency, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. A Contracting Agency that acts as an Administering Contracting Agency may, but is not required to, include provisions in the Solicitation

Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist Purchasing Contracting Agencies' compliance with the Code or these Rules.

(2) If a Contracting Agency, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, the Contracting Agency shall comply with the Code and these Rules, including without limitation those sections of the Code and these Rules that govern:

- (a) The extent to which the Purchasing Contracting Agency may participate in the Cooperative Procurement,
- (b) The advertisement of the solicitation document related to the Cooperative Procurement, and
- (c) Public notice of the Purchasing Contracting Agency's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.205

137-046-0420

Joint Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Joint Cooperative Procurement may do so only in accordance with ORS 279A.210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.210

137-046-0430

Permissive Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer a Permissive Cooperative Procurement may do so only in accordance with ORS 279A.215.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0440

Advertisements of Intent to Establish Contracts or Price Agreements through a Permissive Cooperative Procurement

(1) A Purchasing Contracting Agency that wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement must publish notice of its intent to do so if the Purchasing Contracting Agency estimates that it will spend in excess of \$250,000 on Goods and Services or Personal Services acquired under the Contract or Price Agreement.

(2) For purposes of determining whether a Purchasing Contracting Agency must give the notice required by Rule 137-046-0440(1), a Purchasing Contracting Agency will spend in excess of \$250,000 for Goods and Services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:

- (a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
- (b) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or

(c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

(3) The notice of intent required by Rule 137-046-0440(1) shall contain the information required by ORS 279A.215(2)(b), and Agency shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). Unless the Purchasing Contracting Agency sets forth a different time period in the notice, the Purchasing Contracting Agency shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding the Purchasing Contracting Agency's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.

(4) An Administering Contracting Agency that intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement it administers may satisfy the notice requirements set forth in Rules 137-046-0440(1) and (3) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the

Solicitation Document to potential Offerors describing how they may submit comments in response to the Administering Contracting Agency's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and these Rules.

(5) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.215

137-046-0450

Interstate Cooperative Procurements

A Contracting Agency that chooses to participate in, sponsor, conduct or administer an Interstate Cooperative Procurement may do so only in accordance with ORS 279A.220.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0460

Advertisements of Interstate Cooperative Procurements

(1) The Solicitation Document for an Interstate Cooperative Procurement is advertised in Oregon for purposes of ORS 279A.220(2)(a) if it is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by:

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

(c) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which the Purchasing Contracting Agency is a member; or

(d) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by the Purchasing Contracting Agency, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to the Purchasing Contracting Agency; or

(2) A Purchasing Contracting Agency or the Cooperative Procurement Group of which the Purchasing Contracting Agency is a member satisfies the advertisement requirement under ORS 279A.220(2)(b) if the notice is advertised in the same manner as provided in 279B.055(4)(b) and (c).

(3) The Purchasing Contracting Agency shall respond to any comments on its intent to establish a contract or price agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.220

137-046-0470

Protests and Disputes

(1) If a bidder or proposer wishes to protest the procurement process, the contents of a solicitation document related to a Cooperative Procurement, or the award or proposed award of an Original Contract, the bidder or proposer shall direct the protest to the Administering Contracting Agency, and the bidder or proposer shall make such protest in accordance with ORS 279B.400 through ORS 279B.425. If the Administering Contracting Agency is not subject to the Code, then bidders or proposers shall make such protests in accordance with the processes and procedures established by the Administering Contracting Agency.

(2) The failure of a Purchasing Contracting Agency to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent any other Purchasing Contracting Agency from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.

(3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.225

137-046-0480**Contract Amendments**

A purchasing Contracting Agency may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Rule 137-047-0800 for Goods and Service Contracts and Rule 137-049-0910 for Public Improvement Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

PUBLIC CONTRACTING RULES 2020

DIVISION 47

PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

137-047-0100

Application

These division 47 rules implement ORS chapter 279B, Public Procurements and apply to the Procurement of Goods or Services. These division 47 rules become effective upon adoption, and apply to Contracts first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

137-047-0110

Definitions

(1) "**Advantageous**" means in the Contracting Agency's best interests, as assessed according to the judgment of the Contracting Agency.

(2) "**Affected Person**" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by a Contracting Agency decision. See ORS 279B.410.

(3) "**Scope**" means the range and attributes of the Goods or Services described in the applicable Procurement document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

SOURCE SELECTION

137-047-0250

Methods of Source Selection

Except as permitted by ORS 279B.065 through 279B.085 and ORS 279A.200 through 279A.225, a Contracting Agency shall Award a Public Contract for Goods or Services based on Offers received in response to either competitive sealed Bids pursuant to ORS 279B.055 or competitive sealed Proposals pursuant to ORS 279B.060

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

137-047-0255

Competitive Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed bidding as set forth in ORS 279B.055. An Invitation to Bid is used to initiate a competitive sealed bidding solicitation and shall contain the information required by ORS 279B.055(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed bidding solicitation as set forth in 137-047-0300.

(2) **Invitation to Bid.** In addition to the provisions required by ORS 279B.055(2), the Invitation to Bid shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Bids and any other special information, e.g., whether Bids may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Bids);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);

(F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));

(G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.

(c) Bidding and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and

(C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable preferences pursuant to ORS 279B.055(6)(b).

(e) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).

(f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) **Good Cause**. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the

Contracting Agency's practical need for the highest prevalent standard in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

137-047-0257

Multistep Sealed Bidding

(1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep sealed bidding under ORS 279B.055(12).

(2) **Phased Process.** Multistep sealed bidding is a phased Procurement process that seeks information or unpriced submittals in the first phase combined with regular competitive sealed bidding, inviting Bidders who submitted technically eligible submittals in the first phase to submit competitive sealed price Bids in the second phase. The Contract must be Awarded to the lowest Responsible Bidder.

(3) **Public Notice.** When a Contracting Agency uses multistep sealed bidding, the Contracting Agency shall give public notice for the first phase in accordance with Rule 137-047-0300. Public notice is not required for the second phase. However, a Contracting Agency shall give notice of the second phase to all Bidders, inform Bidders of the right to protest Addenda issued after the initial Closing under Rule 137-047-430, and inform Bidders excluded from the second phase of the right, if any, to protest their exclusion under Rule 137-047-0720.

(4) **Procedures Generally.** In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490, a Contracting Agency shall employ the procedures set forth in this rule for multistep sealed bidding and in the Invitation to Bid.

(5) Procedure for Phase One of Multistep Sealed Bidding.

(a) **Form.** A Contracting Agency shall initiate multistep sealed bidding by issuing an Invitation to Bid in the form and manner required for competitive sealed Bids except as provided in this Rule. In addition to the requirements set forth in Rule 137-047-0255(2), the multistep Invitation to Bid must state:

(A) That the solicitation is a multistep sealed Bid Procurement and describe the process the Contracting Agency will use to conduct the Procurement;

(B) That the Contracting Agency requests unpriced submittals and that the Contracting Agency will consider price Bids only in the second phase and only from those Bidders whose unpriced submittals are found eligible in the first phase;

(C) Whether Bidders must submit price Bids at the same time as unpriced submittals and, if so, that Bidders must submit the price Bids in a separate sealed envelope;

(D) The criteria to be used in the evaluation of unpriced submittals;

(b) **Evaluation.** The Contracting Agency shall evaluate unpriced submittals in accordance with the criteria set forth in the Invitation to Bid.

(6) Procedure for Phase Two of Multistep Sealed Bidding.

(a) After the completion of phase one, if the Contracting Agency does not cancel the Solicitation, the Contracting Agency shall invite each eligible Bidder to submit a price Bid.

(b) **A Contracting Agency** shall conduct phase two as any other competitive sealed Bid Procurement except:

(A) As specifically set forth in this Rule or the Invitation to Bid;

(B) No public notice need be given of the invitation to submit price Bids because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

137-047-0260

Competitive Sealed Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Request for Proposal is used to initiate a competitive sealed Proposal solicitation and shall contain the information required by ORS 279B.060(2) and by section 2 of this rule. The Contracting Agency shall provide public notice of the competitive sealed Proposal as set forth in Rule 137-047-0300.

(2) **Request for Proposal.** In addition to the provisions required by ORS 279B.060(2), the Request for Proposal shall include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).

(b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency; and

(C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.

(e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any

Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

(5) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency will have Good Cause to specify otherwise under the following circumstances:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060, ORS 279A.107 & ORS 279B.130

137-047-0261

Procedures for Competitive Range, Multi-tiered and Multistep Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services employing any combination of the methods of Contractor selection as set forth in ORS 279B.060(6)(b). In addition to the procedures set forth in Rules 137-047-0300 through 137-047-0490 for methods of Contractor selection, a Contracting Agency may provide for a multi-tiered or multi-step selection process that permits awards to the highest ranked proposer at any tier or step, calls for the establishment of a competitive range, or permits either serial or competitive simultaneous discussions or negotiations with one or more proposers. A Contracting Agency may employ one or more or any combination of the procedures set forth in this rule for competitive range, multi-tiered and multi-step proposals.

(2) When a Contracting Agency's Request for Proposals prescribes a multi-tiered or multistep Contractor selection process, a Contracting Agency nevertheless may, at the completion of any stage in the competition and on determining the Most Advantageous Proposer (or, in multiple-award situations, on determining the awardees of the Public Contracts), award a Contract (or Contracts) and conclude the Procurement without proceeding to subsequent stages. The Contracting Agency also may, at any time, cancel the Procurement under ORS 279B.100.

(3) **Exclusion Protest.** A Contracting Agency may provide before the notice of an intent to Award an opportunity for a Proposer to protest exclusion from the Competitive Range or from subsequent phases of multi-tiered or multistep sealed Proposals as set forth in Rule 137-047-0720.

(4) **Award Protest.** A Contracting Agency shall provide an opportunity to protest its intent to Award a Contract pursuant to ORS 279B.410 and Rule 137-047-0740. An Affected Offeror may protest, for any of the bases set forth in Rule 137-047-0720(2), its exclusion from the Competitive Range or from any phase of a multi-tiered or multistep sealed Proposal process, or may protest an Addendum issued following initial Closing, if the Contracting Agency did not previously provide Proposers the opportunity to protest the exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0262

Competitive Range, Discussions and Negotiations

(1) When a Contracting Agency's solicitation process conducted under ORS 279B.060(8) calls for the Contracting Agency to establish a Competitive Range at any stage in the Procurement process, the Contracting Agency may do so as follows:

(a) Determining Competitive Range.

(A) The Contracting Agency may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria in the Request for Proposals, the Contracting Agency may determine and rank the Proposers in the Competitive Range. Notwithstanding the foregoing, however, in instances in which the Contracting Agency determines that a single Proposer has a reasonable chance of being determined the most Advantageous Proposer, the Contracting Agency need not determine or rank Proposers in the Competitive Range. In addition, notwithstanding the foregoing, a Contracting Agency may establish a Competitive Range of all Proposers to enter into discussions to correct deficiencies in Proposals.

(B) The Contracting Agency may establish the number of Proposers in the Competitive Range in light of whether the Contracting Agency's evaluation of Proposals identifies a number of Proposers who have a reasonable chance of being determined the most Advantageous Proposer, or whether the evaluation establishes a natural break in the scores of Proposers that indicates that a particular number of Proposers are closely competitive or have a reasonable chance of being determined the most Advantageous Proposer.

(b) Protesting Competitive Range. The Contracting Agency must provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Contracting Agency may provide an opportunity for Proposers excluded from the Competitive Range to protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with Rule 137-047-0720.

(2) **Discussions.** The Contracting Agency may initiate oral or written discussions with all "eligible Proposers" on subject matter within the general scope of the Request for Proposals. In conducting discussions, the Contracting Agency:

(a) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(b) May disclose other eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(8)(b) or (c);

(c) May adjust the evaluation of a Proposal as a result of discussions. The conditions, terms, or price of the Proposal may be changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.

(d) At any time during the time allowed for discussions, the Contracting Agency may:

(A) Continue discussions with a particular eligible Proposer;

(B) Terminate discussions with a particular eligible Proposer and continue discussions with other eligible Proposers; or

(C) Conclude discussions with all remaining eligible Proposers and provide to the then-eligible Proposers, notice requesting best and final Offers.

(3) **Negotiations.** Contracting Agency may commence serial negotiations with the highest-ranked eligible Proposer or commence simultaneous negotiations with all eligible Proposers..

(a) The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work and other terms and conditions authorized for negotiation in the Request for Proposals or Addenda thereto; and

(C) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals or Addenda thereto. Proposers shall not submit for negotiation, and a Contracting Agency shall not accept, alternative terms and conditions that are not reasonably related to those authorized for negotiation in the Request for Proposals or any Addendum.

(4) **Terminating Negotiations.** At any time during discussions or negotiations a Contracting Agency conducts under this rule, the Contracting Agency may terminate discussions or negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently discussing or negotiating, if the Contracting Agency reasonably believes that:

(a) The eligible Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a Contract in a timely manner.

(c) Continuing Serial Negotiations. If the Contracting Agency is conducting serial negotiations and the Contracting Agency terminates negotiations with an eligible Proposer, the Contracting Agency may then commence negotiations with the next highest scoring eligible Proposer, and continue the sequential process until the Contracting Agency has either:

(A) Determined to Award the Contract to the eligible Proposer with whom it is currently discussing or negotiating; or

(B) Decided to cancel the Procurement under ORS 279B.100.

(d) Competitive Simultaneous Negotiations. If the Contracting Agency chooses to conduct competitive negotiations, the Contracting Agency may negotiate simultaneously with competing eligible Proposers. The Contracting Agency:

(A) Shall treat all eligible Proposers fairly and shall not favor any eligible Proposer over another;

(B) May disclose other eligible Proposers' Proposals or the substance of negotiations with other eligible Proposers only if the Contracting Agency notifies all of the eligible Proposers with whom the Contracting Agency will engage in negotiations of the Contracting Agency's intent to disclose before engaging in negotiations with any eligible Proposer.

(e) Any oral modification of a Proposal resulting from negotiations must be reduced to Writing.

(5) **Best and Final Offers.** If a Contracting Agency requires best and final Offers, a Contracting Agency must establish a common date and time by which eligible Proposers must submit best and final Offers. If a Contracting Agency is dissatisfied with the best and final Offers, the Contracting Agency may make a written determination that it is in the Contracting Agency's best interest to conduct additional discussions, negotiations or change the Contracting Agency's requirements and require another submission of best and final Offers. A Contracting Agency must inform all eligible Proposers that if they do not submit notice of withdrawal or another best and final Offer, their immediately previous Offers will be considered their best and final Offers. The Contracting Agency shall evaluate Offers as modified by the best and final Offer. The Contracting Agency shall conduct the evaluations as described in Rule 137-047-0600. The Contracting Agency may not modify evaluation factors or their relative importance after the date and time that best and final Offers are due.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0263

Multistep Sealed Proposals

(1) **Generally.** A Contracting Agency may procure Goods or Services by using multistep competitive sealed Proposals pursuant to ORS 279.060(6)(b)(G).

(2) **Phased Process.** Multistep sealed Proposals is a phased Procurement process that seeks necessary information or un-priced technical Proposals in the initial phase and invites Proposers who submitted technically qualified Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposers in the final phase. The Contract shall be Awarded to the Responsible Proposer submitting the most Advantageous Proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, the Contracting Agency may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

(3) **Public Notice.** Whenever multistep sealed Proposals are used, public notice for the first phase shall be given in accordance with Rule 137-047-0300. Public notice is not required for the subsequent phases. However, a Contracting Agency shall give notice of the subsequent phases to all Proposers and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 137-047-0720.

(4) Procedure for Phase One of Multistep Sealed Proposals.

(a) Form. Multistep sealed Proposals shall be initiated by the issuance of a Request for Proposal in the form and manner required for competitive sealed Proposals except as provided in this rule. In addition to the requirements set forth in Rule 137-047-0260(2), the multistep Request for Proposal shall state:

(A) That un-priced technical Proposals are requested;

(B) Whether price Proposals are to be submitted at the same time as un-priced technical Proposals; that if they are, such price Proposals shall be submitted in a separate sealed envelope;

(C) That the solicitation is a multistep sealed Proposal Procurement, and that priced Proposals will be considered only in the subsequent phases from those Proposers whose un-priced technical Proposals are found qualified in the first phase;

(D) The criteria to be used in the evaluation of un-priced technical Proposals;

(E) That the Contracting Agency, to the extent that it finds necessary, may conduct oral or written discussions of the un-priced technical Proposals;

(F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.

(G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.

(b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.

(c) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.

(d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal.

(e) Discussion of Un-priced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal.

During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.

(f) **Methods of Contractor Selection for Phase One.** In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.

(g) **Procedure for Phase Two.** On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0265

Small Procurements

(1) **Generally.** For Procurements of Goods or Services less than or equal to \$10,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process, subject to the procurement policies of Contracting Agency.

(2) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than \$12,500.

Stat. Auth.: ORS 279A.065 & ORS 279B.065

Stats. Implemented: ORS 279B.065

137-047-0270

Intermediate Procurements

(1) **Generally.** For Procurements of Goods or Services greater than \$10,000 and less than or equal to \$150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) **Written Solicitations.** For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.

(3) **Negotiations.** A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.

(4) **Amendments.** A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds \$150,000 or increases the price more than twenty-five percent (25%) of the original Contract price, whichever is greater.

Stat. Auth.: ORS 279A.065 & ORS 279B.070

Stats. Implemented: ORS 279B.070

137-047-0275

Sole-Source Procurements

(1) **Generally.** A Contracting Agency may Award a Public Contract without competition as a sole-source Procurement, after documenting the procurement file with findings of current market research to support the determination that the Goods or Services are available from only one seller or source. The findings shall also include:

(a) a brief description of the contract or contracts to be covered including contemplated future purchases;

(b) a description of the product or service to be purchased; and

(c) the reasons the Contracting Agency is seeking this procurement method, which shall include any of the following: (i) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment, supplies, or services; or (ii) that the Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source; or (iii) the particular product is for use in a pilot or an experimental project; or (iv) other findings that support the conclusion that the Goods or Services are available from only one source. ORS 279B.075(2)(d).

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS

279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

(3) **Protest.** An Affected Person may protest the Contract Review Authority's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with Rule 137-047-0710.

Stat. Auth.: ORS 279A.065 & ORS 279B.075

Stats. Implemented: ORS 279B.075

137-047-0280

Emergency Procurements

A Contracting Agency may Award a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279B.080. For an Emergency Procurement of construction services that are not public improvements, the Procurement shall be made with competition that is reasonable and appropriate under the circumstances, in conformance with ORS 279B.080(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

137-047-0285

Special Procurements

(1) **Generally.** A Contracting Agency may Award a Public Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

(2) **Public Notice.** A Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The Contracting Agency shall give public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract, unless a different time period is stated in the request for approval notice. Award may be made at the time of approval, contingent upon expiration of the protest period or issuance of a written disposition of any protest received.

(3) **Protest.** An Affected Person may protest the approval of a Special Procurement in accordance with ORS 279B.400 and Rule 137-047-0700.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

137-047-0290

Cooperative Procurements

A Contracting Agency may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in ORS 279A.200 through 279A.225 and Rules 137-046-0400 through 137-046-0480.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

PROCUREMENT PROCESS

137-047-0300

Public Notice of Solicitation Documents

(1) **Notice of Solicitation Documents; Fee.** A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule, unless exempt pursuant to Rules 137-047-0265 through 137-047-0285. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

- (a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements; or
- (b) Placing notice on the Contracting Agency's Electronic Procurement System; or
- (c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) **Advertising.** A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

(3) **Content of Advertisement.** All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) **Posting Advertisement for Offers.** The Contracting Agency may post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) **Fees.** The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) **Notice of Addenda.** The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with Rule 137-047-0430.

Stat. Auth.: ORS 279A.065, ORS 279B.055 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0310

Bids or Proposals are Offers

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's Offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(a) In competitive bidding and competitive Proposals, the Offer is always a "Firm Offer," i.e. the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-047-0480. The Contracting Agency may elect to accept the Offer at any time during the specified period, and the Contracting Agency's Award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-047-0480, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document, with the Proposer. Where negotiation is permitted by the rules or in the Solicitation Document, Proposers are obligated to negotiate in good faith and only on those terms or conditions that the rules or the Solicitation Document have reserved for negotiation.

(2) **Contingent Offers.** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Rule 137-047-0262, a Proposer shall not make its Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.

(3) **Offeror's Acknowledgment.** By Signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-047-0262, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing, and Offeror's agreement to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279B.055 & ORS 279B.60

137-047-0320

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize facsimile Offers unless the Contracting Agency has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record, and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions To Be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer, the Contracting Agency will include in the Solicitation Document the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
- (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the Offeror to properly identify the Offer documents;
 - (F) Illegibility of Offer documents; and
 - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0330

Electronic Procurement

(1) **Electronic Procurement Authorized.**

- (a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.
- (b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.
- (c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.
- (d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

(2) **Rules Governing Electronic Procurements.** The Contracting Agency shall conduct all portions of an electronic Procurement in accordance with these division 47 rules, unless otherwise set forth in this rule.

(3) **Preliminary Matters.** As a condition of participation in an electronic Procurement the Contracting Agency may require potential Contractors to register with the Contracting Agency before the date and time on which the Contracting Agency will first accept Offers, to agree to the terms, conditions, or other requirements of a Solicitation Document, or to agree to terms and conditions governing the Procurement, such as procedures that the Contracting Agency may use to attribute, authenticate or verify the accuracy of an Electronic Offer, or the actions that constitute an electronic Signature.

(4) **Offer Process.** A Contracting Agency may specify that Persons must submit an Electronic Offer by a particular date and time, or that Persons may submit multiple Electronic Offers during a period of time established in the Electronic Advertisement. When the Contracting Agency specifies that Persons may submit multiple Electronic Offers during a specified period of time, the Contracting Agency must designate a time and date on which Persons may begin to submit Electronic Offers, and a time and date after which Persons may no longer submit Electronic Offers. The date and time after which Persons may no longer submit Electronic Offers need not be specified by a particular date and time, but may be specified by a description of the conditions that, when they occur, will establish the date and time after which Persons may no longer submit Electronic Offers. When the Contracting Agency will accept Electronic Offers for a period of time, then at the designated date and time that the Contracting Agency will first receive Electronic Offers, the Contracting Agency must begin to accept real time Electronic Offers on the Contracting Agency's Electronic Procurement System, and shall continue to accept Electronic Offers in accordance with subsection 5(b) of this rule until the date and time specified by the Contracting Agency, after which the Contracting Agency will no longer accept Electronic Offers.

(5) **Receipt of Electronic Offers.**

(a) When a Contracting Agency conducts an electronic Procurement that provides that all Electronic Offers must be submitted by a particular date and time, the Contracting Agency shall receive the Electronic Offers in accordance with these division 47 rules.

(b) When the Contracting Agency specifies that Persons may submit multiple Offers during a period of time, the Contracting Agency shall accept Electronic Offers, and Persons may submit Electronic Offers, in accordance with the following:

(A) Following receipt of the first Electronic Offer after the day and time the Contracting Agency first receives Electronic Offers the Contracting Agency shall post on the Contracting Agency's Electronic Procurement System, and updated on a real time basis, the lowest Electronic Offer price or the highest ranking Electronic Offer. At any time before the date and time after which the Contracting Agency will no longer receive Electronic Offers, a Person may revise its Electronic Offer, except that a Person may not lower its price unless that price is below the then lowest Electronic Offer.

(B) A Person may not increase the price set forth in an Electronic Offer after the day and time that the Contracting Agency first accepts Electronic Offers.

(C) A Person may withdraw an Electronic Offer only in compliance with these division 47 rules. If a Person withdraws an Electronic Offer, it may not later submit an Electronic Offer at a price higher than that set forth in the withdrawn Electronic Offer.

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279A.065

BID AND PROPOSAL PREPARATION

137-047-0400

Offer Preparation

(1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

(2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.

(3) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.

(4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0410

Offer Submission

(1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.

(2) **Identification of Offers.**

(a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.

(b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.

(3) **Receipt of Offers.** The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0420

Pre-Offer Conferences

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.

(3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.

(4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

(5) **Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rules 137-047-0255(2) or 137-047-0260(2).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0430

Addenda to Solicitation Document

(1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgment of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda.

(2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda in a manner intended to foster competition and to make prospective Offerors aware of the Addenda. The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available before Closing, and at each subsequent step or tier of evaluation if the Contracting Agency will engage in a multistep competitive sealed Bid process in accordance with Rule 137-047-0257, or a multi-tiered or multistep competitive sealed Proposal process in accordance with Rules 137-047-0261 through 137-047-0263. The following is an example of how a Contracting Agency may specify how it will provide notice of Addenda: "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's web site. Addenda may be downloaded off the Contracting Agency's web site. Offerors should frequently check the Contracting

Agency's web site until Closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."

(3) Timelines; Extensions.

(a) The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by a countervailing public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.

(b) Notwithstanding subsection 3(a) of this rule, an Addendum that modifies the evaluation criteria, selection process or procedure for any tier of competition under a multistep sealed Bid or a multi-tiered or multistep sealed Proposal issued in accordance with ORS 279B.060(6)(d) and Rules 137-047-0261 through 137-047-0263 must be issued no fewer than five (5) Days before the beginning of that tier or step of competition, unless the Contracting Agency determines that a shorter period is sufficient to allow Offerors to prepare for that tier or step of competition. The Contracting Agency shall document the factors it considered in making that determination, which may include, without limitation, the scope of the changes to the Solicitation Document, the location of the remaining eligible Proposers, or whether shortening the period between issuing an Addendum and the beginning of the next tier or step of competition favors or disfavors any particular Proposer or Proposers.

(4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-047-0730, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with Rule 137-047-0730, then the Contracting Agency may consider an Offeror's request for change or protest to the Addendum only, and the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum. Notwithstanding any provision of this section (4) of this rule, a Contracting Agency is not required to provide a protest period for Addenda issued after initial Closing during a multi-tier or multistep Procurement process conducted pursuant to ORS 279B.055 or ORS 279B.060.

Stat. Auth.: ORS 279A.065 & ORS 279B.060

Stats. Implemented: ORS 279B.060

137-047-0440

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rules 137-047-0400 and 137-047-0410, unless otherwise specified in the Solicitation Document. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Document Number (or other identification as specified in the Solicitation Document).

(2) Withdrawals.

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the individual and location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in person prior to the Closing, upon presentation of appropriate identification and evidence of authority satisfactory to the Contracting Agency.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) of this rule to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Document Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Procurement file.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0450

Receipt, Opening, and Recording of Offers; Confidentiality of Offers.

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0460

Late Offers, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. An Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-047-0470 or 137-047-0262.

Stat. Auth.: ORS 279A.065 & ORS 279B.055

Stats. Implemented: ORS 279B.055

137-047-0470

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;
(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and
(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.
(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.
(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.
(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065 & ORS 279B.055
Stats. Implemented: ORS 279B.055

137-047-0480

Time for Agency Acceptance

An Offeror's Offer is a Firm Offer, irrevocable, valid and binding on the Offeror for not less than thirty (30) Days following Closing unless otherwise specified in the Solicitation Document.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

137-047-0490

Extension of Time for Acceptance of Offer

A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065

QUALIFICATIONS AND DUTIES

137-047-0500

Responsibility of Bidders and Proposers

Before Awarding a Contract the Contracting Agency shall determine that the Bidder submitting the lowest Bid or Proposer submitting the most Advantageous Proposal is Responsible. The Contracting Agency shall use the standards set forth in ORS 279B.110 and Rule 137-047-0640(1)(c)(F) to determine if a Bidder or Proposer is Responsible. In the event a Contracting Agency determines a Bidder or Proposer is not Responsible it shall prepare a Written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Offer.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.110

137-047-0525

Qualified Products Lists

A Contracting Agency may develop and maintain a qualified products list pursuant to ORS 279B.115.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0550

Prequalification of Prospective Offerors

(1) A Contracting Agency may prequalify prospective Offerors pursuant to ORS 279B.120 and 279B.125.

(2) Notwithstanding the prohibition against revocation of prequalification in ORS 279B.120(3), a Contracting Agency may determine that a prequalified Offeror is not Responsible prior to Contract Award.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

137-047-0575

Debarment of Prospective Offerors

(1) **Generally.** A Contracting Agency may Debar prospective Offerors for the reasons set for the in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.

(2) **Responsibility.** Notwithstanding the limitation on the term for Debarment in ORS 279B.130(1)(b), a Contracting Agency may determine that a previously Debarred Offeror is not Responsible prior to Contract Award.

(3) **Imputed Knowledge.** A Contracting Agency may attribute improper conduct of a Person or its affiliate or affiliates having a contract with a prospective Offeror to the prospective Offeror for purposes of Debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

(4) **Limited Participation.** A Contracting Agency may allow a Debarred Person to participate in solicitations and Contracts on a limited basis during the Debarment period upon Written determination that participation is Advantageous to a Contracting Agency. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

OFFER EVALUATION AND AWARD

137-047-0600

Offer Evaluation and Award

(1) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate Offers only as set forth in the Solicitation Document, pursuant to ORS 279B.055(6)(a) and 279B.060(6)(b), and in accordance with applicable law. The Contracting Agency shall not evaluate Offers using any other requirement or criterion.

(a) Evaluation of Bids.

(A) **Nonresident Bidders.** In determining the lowest Responsive Bid, the Contracting Agency shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and Rule 137-046-0310 for Nonresident Bidders.

(B) **Public Printing.** The Contracting Agency shall for the purpose of evaluating Bids apply the public printing preference set forth in ORS 282.210.

(C) **Award When Bids are Identical.** If the Contracting Agency determines that one or more Bids are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(b) Evaluation of Proposals.

(A) **Award When Proposals are Identical.** If the Contracting Agency determines that one or more Proposals are identical under Rule 137-046-0300, the Contracting Agency shall Award a Contract in accordance with the procedures set forth in Rule 137-046-0300.

(B) **Public Printing.** The Contracting Agency shall for the purpose of evaluating Proposals apply the public printing preference set forth in ORS 282.210.

(c) **Recycled Materials.** When procuring Goods, the Contracting Agency shall give preference for recycled materials as set forth in ORS 279A.125 and Rule 137-046-0320.

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All

Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

(3) Negotiations.

(a) Bids. Except as permitted by section 2 of this rule, a Contracting Agency shall not negotiate with any Bidder. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(b) Requests for Proposals. A Contracting Agency may conduct discussions or negotiate with Proposers only in accordance with ORS 279B.060(6)(b) and Rule 137-047-0262. After Award of the Contract, the Contracting Agency and Contractor may only modify the Contract in accordance with Rule 137-047-0800.

(4) Award.

(a) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer submitting the most Advantageous, Responsive Proposal. The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest.

(b) Multiple Items. An Invitation to Bid or Request for Proposals may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a "market basket" of items representative of the Contracting Agency's expected purchases, or grand total of all items.

(c) Multiple Awards - Bids.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under an Invitation to Bid in accordance with the criteria set forth in the Invitation to Bid. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service, or product compatibility. A multiple Award may be made if Award to two or more Bidders of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Bidders that multiple Contracts may be Awarded for any Invitation to Bid shall not preclude the Contracting Agency from Awarding a single Contract for such Invitation to Bid.

(B) If an Invitation to Bid permits the Award of multiple Contracts, the Contracting Agency shall specify in the Invitation to Bid the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(d) Multiple Awards – Proposals.

(A) Notwithstanding subsection 4(a) of this rule, a Contracting Agency may Award multiple Contracts under a Request for Proposals in accordance with the criteria set forth in the Request for Proposals. Multiple Awards shall not be made if a single Award will meet the Contracting Agency's needs, including but not limited to adequate availability, delivery, service or product compatibility. A multiple Award may be made if Award to two or more Proposers of similar Goods or Services is necessary for adequate availability, delivery, service or product compatibility. Multiple Awards may not be made for the purpose of dividing the Procurement into multiple solicitations, or to allow for user preference unrelated to obtaining the most Advantageous Contract. A notice to prospective Proposers that multiple Contracts may be Awarded for any Request for Proposals shall not preclude the Contracting Agency from Awarding a single Contract for such Request for Proposals.

(B) If a Request for Proposals permits the Award of multiple Contracts, the Contracting Agency shall specify in the Request for Proposals the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.

(e) Partial Awards. If after evaluation of Offers, the Contracting Agency determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:

(A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or

(B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.

(f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

Stat. Auth.: ORS 279A.065 & ORS 279B.060

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0610

Notice of Intent to Award

(1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation

documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.

(2) **Finality.** The Contracting Agency's Award shall not be final until the later of the following:

(a) The expiration of the protest period provided pursuant to Rule 137-047-0740; or

(b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.

(3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

Stat. Auth.: ORS 279A.065 & ORS 279B.135

Stats. Implemented: ORS 279B.135

137-047-0620

Documentation of Award

(1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.

(2) **Contents of Award Record.** The Contracting Agency's record shall include:

(a) For Bids:

(A) Bids;

(B) Completed Bid tabulation sheet; and

(C) Written justification for any rejection of lower Bids.

(b) For Proposals:

(A) Proposals;

(B) The completed evaluation of the Proposals;

(C) Written justification for any rejection of higher scoring Proposals; and

(D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0630

Availability of Award Decisions

(1) **Contract Documents.** To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.

(2) **Availability of Award Decisions.** A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

(3) **Availability of Procurement Files.** After notice of intent to Award, the Contracting Agency shall make Procurement files available in accordance with applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055 & ORS 279B.060

137-047-0640

Rejection of an Offer

(1) **Rejection of an Offer.**

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

- (F) Is not in substantial compliance with the Solicitation Document; or
- (G) Is not in substantial compliance with all prescribed public Procurement procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;
- (B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);
- (C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;
- (D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
- (E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or
- (F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:
- (i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and
- (ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);
- (iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);
- (iv) Is legally qualified to contract with the Contracting Agency;
- (v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and
- (vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.
- (2) **Form of Business Entity.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.
- (3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-1610.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100, ORS 279B.110 & ORS 279B.130

137-047-0650

Rejection of All Offers

(1) **Rejection.** A Contracting Agency may reject all Offers as set forth in ORS 279B.100. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.

(2) **Criteria.** The Contracting Agency may reject all Offers based upon the following criteria:

- (a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0660

Cancellation of Procurement or Solicitation

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Procurement or solicitation as set forth in ORS 279B.100.

(2) **Notice of Cancellation Before Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall provide Written notice of cancellation in the same manner that the Contracting Agency initially provided notice of the solicitation. Such notice of cancellation shall:

- (a) Identify the Solicitation Document;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Notice of Cancellation After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency shall provide Written notice of cancellation to all Offerors who submitted Offers.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

137-047-0670

Disposition of Offers if Procurement or Solicitation Canceled

(1) **Prior to Opening.** If the Contracting Agency cancels a Procurement or solicitation prior to Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

(2) **After Opening.** If the Contracting Agency cancels a Procurement or solicitation after Opening, the Contracting Agency:

- (a) May return Proposals in accordance with ORS 279B.060(6)(c); and
- (b) Shall keep Bids in the Procurement file.

(3) **Rejection of All Offers.** If the Contracting Agency rejects all Offers, the Contracting Agency shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

LEGAL REMEDIES

137-047-0700

Protests and Judicial Review of Special Procurements

(1) **Purpose.** An Affected Person may protest the approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a Written protest with the Contract Review Authority for the Contracting Agency and exhaust all administrative remedies.

(2) **Delivery.** Notwithstanding the requirements for filing a writ of review under ORS chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a Written protest to the Contract Review Authority for the Contracting Agency within seven (7) Days after the first date of public notice of the approval of a Special Procurement by the Contract Review Authority for the Contracting Agency, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this rule or such different time period as may be provided in the public notice of the approval of a Special Procurement. The Contract Review Authority shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement, or revoke the approval of the Special Procurement.

(5) **Judicial Review.** An Affected Person may seek judicial review of the Contract Review Authority's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

Stat. Auth.: ORS 279A.065 & ORS 279B.400

Stats. Implemented: ORS 279B.400

137-047-0710

Protests and Judicial Review of Sole-Source Procurements

(1) **Purpose.** For sole-source Procurements requiring public notice under Rule 137-047-0275, an Affected Person may protest the determination of the Contract Review Authority or designee that the Goods or Services or class of Goods or Services are available from only one source. Pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Person must file a Written protest with the Contract Review Authority or designee and exhaust all administrative remedies.

(2) **Delivery.** Unless otherwise specified in the public notice of the sole-source Procurement, an Affected Person must deliver a Written protest to the Contract Review Authority or designee within seven (7) Days after the first date of public notice of the sole-source Procurement, unless a different protest period is provided in the public notice of a sole-source Procurement.

(3) **Content of Protest.** The Written protest must include:

- (a) A detailed statement of the legal and factual grounds for the protest;
- (b) A description of the resulting harm to the Affected Person; and
- (c) The relief requested.

(4) **Contract Review Authority Response.** The Contract Review Authority or designee shall not consider an Affected Person's sole-source Procurement protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the public notice of the sole-source Procurement. The Contract Review Authority or designee shall issue a Written disposition of the protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

(5) **Judicial Review.** Judicial review of the Contract Review Authority's or designee's disposition of a sole-source Procurement protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

137-047-0720

Protests and Judicial Review of Multi-Tiered and Multistep Solicitations

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest

is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(2) **Basis for Protest.** An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for the Contracting Agency's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. (For example, the protesting Offeror must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Offerors are removed from consideration, and that those ineligible Offerors are ineligible for inclusion in the Competitive Range because: their Proposals were not Responsive, or the Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.)

(3) **Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of the Competitive Range or notice of subsequent tiers or steps.

(4) **Content of Protest.** The Affected Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(5) **Contracting Agency Response.** The Contracting Agency shall not consider an Affected Offeror's multi-tiered or multistep solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum under Rule 137-047-0430 reflecting its disposition or cancel the Procurement or solicitation under Rule 137-047-0660.

(6) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a multi-tiered or multistep solicitation protest shall be in accordance with ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

137-047-0730

Protests and Judicial Review of Solicitations

(1) Purpose.

(a) A prospective Offeror may protest the Procurement process or the Solicitation Document for a Contract solicited under ORS 279B.055, 279B.060 and 279B.085 as set forth in ORS 279B.405(2). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

(b) Specific Special Procurements. Notwithstanding section 1(a) of this rule, a Person may not protest, challenge, or review approval of a Special Procurement except in conformance with ORS 279B.400.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a Written protest to the Contracting Agency not less than ten (10) Days prior to Closing.

(3) **Content of Protest.** In addition to the information required by ORS 279B.405(4), a prospective Offeror's Written protest shall include a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Offeror believes will remedy the conditions upon which the prospective Offeror based its protest.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

(5) **Extension of Closing.** If the Contracting Agency receives a protest from a prospective Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider and respond to the protest.

(6) **Clarification.** Prior to the deadline for submitting a protest, a prospective Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.

(7) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

Stat. Auth.: ORS 279A.065 & ORS 279B.405

Stats. Implemented: ORS 279B.405

137-047-0740

Protests and Judicial Review of Contract Award

(1) **Purpose.** An Offeror may protest the Award of a Contract, or the intent to Award of a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Delivery.** Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first.

(3) **Content of Protest.** An Offeror's Written protest shall specify the grounds for the protest to be considered by the Contracting Agency pursuant to ORS 279B.410(2).

(4) **Contracting Agency Response.** The Contracting Agency shall not consider an Offeror's Contract Award protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall issue a Written disposition of the protest in a timely manner as set forth in ORS 279B.410(4). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either Award the Contract to the successful protestor or cancel the Procurement or solicitation.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a Contract Award protest shall be in accordance with ORS 279B.415.

Stat. Auth.: ORS 279A.065 & ORS 279B.410

Stats. Implemented: ORS 279B.410 & ORS 279B.415.

137-047-0745

Protests and Judicial Review of Qualified Products List Decisions

(1) **Purpose.** A prospective Offeror may protest the Contracting Agency's decision to exclude the prospective Offeror's Goods from the Contracting Agency's qualified products list under ORS 279B.115. A prospective Offeror must file a Written protest and exhaust all administrative remedies before seeking judicial review of the Contracting Agency's qualified products list decision.

(2) **Delivery.** Unless otherwise stated in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list, a prospective Offeror must deliver a Written protest to the Contracting Agency within seven (7) Days after issuance of the Contracting Agency's decision to exclude the prospective Offeror's Goods from the qualified products list.

(3) **Content of Protest.** The prospective Offeror's protest shall be in Writing and must specify the grounds upon which the protest is based.

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Contracting Agency's notice to prospective Offerors of the opportunity to submit Goods for inclusion on the qualified products list. The Contracting Agency shall issue a Written disposition of the protest in a timely manner. If the Contracting Agency upholds the protest, it shall include the successful protestor's Goods on the qualified products list.

(5) **Judicial Review.** Judicial review of the Contracting Agency's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

137-047-0750

Judicial Review of Other Violations

Any violation of ORS chapter 279A or 279B by a Contracting Agency for which no judicial remedy is otherwise provided in the Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.420

137-047-0760

Review of Prequalification and Debarment Decisions

Review of the Contracting Agency's prequalification and Debarment decisions shall be as set forth in ORS 279B.425.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.425

137-047-0800

Amendments to Contracts and Price Agreements

(1) **Generally.** A Contracting Agency may amend a Contract without additional competition in any of the following circumstances:

- (a) The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approved Special Procurement, if any. An amendment is not within the scope of the Procurement if the Agency determines that if it had described in the Procurement the changes to be made by the amendment, it would likely have increased competition or affected award of the Contract.;
- (b) These Rules otherwise permit the Contracting Agency to Award a Contract without competition for the goods or services to be procured under the Amendment.
- (c) The amendment is necessary to comply with a change in law that affects performance of the Contract.
- (d) The amendment results from renegotiation of the terms and conditions, including the Contract Price, of a Contract and the amendment is Advantageous to the Contracting Agency, subject to all of the following conditions:
 - (A) The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the unamended Contract.
 - (B) The Contracting Agency determines that, with all things considered, the amended Contract is at least as favorable to the Contracting Agency as the unamended Contract; and
 - (C) The renegotiated Contract will not increase or extend the total term of the original contract by more than one (1) year. Also, if multiple contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than one (1) year longer than the longest term of any of the prior Contracts.
- (e) If the Contract is the result of a Cooperative Procurement, the amended Contract may not materially change the terms, conditions, and prices of the Original Contract.

(2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to sections 1 or 2 of this rule, provided also that the total increase in Contract price does not exceed the amount set forth in Rule 137-047-0265 for small Procurements and Rule 137-047-0270 for intermediate Procurements.

(3) **Emergency Contract.** A Contracting Agency may amend a Contract Awarded as an emergency Procurement if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.

(4) **Price Agreements.** A Contracting Agency may amend or terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement;
- (b) As permitted by this rule;
- (c) If the circumstances set forth in ORS 279B.140(2) exist; or
- (d) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-047-0810

Termination of Price Agreements

(1) A Contracting Agency may terminate a Price Agreement as follows:

- (a) As permitted by the Price Agreement.
- (b) If the circumstances set forth in ORS 279B.140(2) exist; or
- (c) As permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279B.140

PUBLIC CONTRACTING RULES 2020

DIVISION 48

CONSULTANT SELECTION: ARCHITECTURAL, ENGINEERING, PHOTOGRAMMETRIST, TRANSPORTATION PLANNING AND LAND SURVEYING SERVICES AND RELATED SERVICES CONTRACTS

137-048-0100

Application

These division 48 rules apply to the screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services under Contracts, and set forth the following procedures:

- (a) Procedures through which Contracting Agency selects Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
- (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and providers of Related Services for certain public improvements owned and maintained by a Local Government.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0110

Definitions

In addition to the definitions set forth in ORS 279A.010, 279C.100, and Rule 137-046-0110, the following definitions apply to these division 48 rules:

- (1) **"Consultant"** means an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or provider of Related Services. A Consultant includes a business entity that employs Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors or providers of Related Services, or any combination of the foregoing.
- (2) **"Estimated Fee"** means Contracting Agency's reasonably projected fee to be paid for a Consultant's services under the anticipated Contract, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the Contract.
- (3) **"Price Agreement,"** for purposes of this Division 48, is limited to mean an agreement related to the procurement of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under agreed-upon terms and conditions, including, but not limited to terms and conditions of later work orders or task orders for Project-specific Services, and which may include price or Consultant compensation information, with:
 - (a) No guarantee of a minimum or maximum purchase; or
 - (b) An initial work order, task order or minimum purchase, combined with a continuing Consultant obligation to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services in which the Contracting Agency does not guarantee a minimum or maximum additional purchase.
- (4) **"Project"** means all components of a Contracting Agency's planned undertaking that gives rise to the need for a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services, under a Contract.
- (5) **"Transportation Planning Services"** are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange area management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321 et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321 et. seq.
- (6) **"Related Services"** means personal services, other than architectural, engineering, photogrammetric, mapping, Transportation Planning or land surveying services, that are related to planning, designing, engineering or overseeing public improvement projects or components of public improvements, including, but not limited to, landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services,

material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner's representation services or land-use planning services.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0120

[Reserved.]

137-048-0130

Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agency shall follow the applicable selection procedure under either Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). In following the Direct Appointment Procedure under Rule 137-048-0200, Contracting Agency may base its selection of a consultant on any information available to Agency.

(2) When selecting Consultants to perform Related Services, Contracting Agency shall follow either its Division 47 or Division 48 rules, as determined in its sole discretion.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

(4) Contracting Agency may use electronic methods to screen and select a Consultant in accordance with the procedures described in Rule 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public

Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

SELECTION PROCEDURES

137-048-0200

Direct Appointment Procedure

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project

as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.115

137-048-0210

Informal Selection Procedure

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Consultant's specialized experience, capabilities and technical competence, which may be demonstrated with Consultant's proposed approach and methodology to meet the project requirements;

(ii) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(iii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iv) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (v) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
- (vi) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
- (vii) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
- (viii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
- (ix) If the Contracting Agency complies with the additional requirements of Section (3) of this Rule or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.

(c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.

(3) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:

- (a) States in the RFP:
 - (A) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (B) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
 - (i) Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
 - (ii) The relative weight in points or percentages the Contracting Agency will give each factor;
 - (C) An estimate of the cost of services the Contracting Agency seeks in the procurement;
 - (D) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
- (b) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
- (c) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
 - (A) Must include:
 - (i) A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
 - (ii) A reasonable estimate of hours that the Consultant will require to perform the services sought.
 - (B) May include, at the Contracting Agency's request, additional pricing information that is limited to:
 - (i) A description of each task proposed by Consultant;
 - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
 - (iii) A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
- (d) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultants does not wish to provide a price proposal.
- (f) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.

(4) If Contracting Agency does not cancel the RFP after it reviews and ranks each Consultant, Contracting Agency will begin negotiating a Contract with the highest ranked Consultant. Contracting Agency shall direct negotiations toward obtaining written agreement on:

- (a) The Consultant's scope of services, performance obligations and performance schedule;
- (b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the Contracting Agency and Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with Section (4) of this rule, and as limited by Section (3) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any of the Consultants do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).

(6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110

137-048-0220

Formal Selection Procedure

(1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.

(2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.

(a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking Consultants;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

- (H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.
- (b) A Contracting Agency may not request pricing policies, cost proposals, or other pricing information in the RFQ, but may request for any or all of the following:
- (A) A statement describing Consultants' general qualifications and related performance information;
 - (B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;
 - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;
 - (E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;
 - (F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;
 - (G) Consultants' geographic proximity to and familiarity with the physical location of the Project;
 - (H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - (J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and
 - (K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.
- (c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:
- (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
 - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
 - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.
- (d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.
- (e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.
- (a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
- (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.
 - (B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:
 - (i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
 - (ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;
 - (iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
 - (iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;

- (v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the Contracting Agency complies with the additional requirements of Section (4)(b) of this Rule, or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at anytime if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (N) Where applicable, a statement requiring design compliance with ORS 279C.527, regarding green energy technology; and
- (O) A sample form of the Contract.
- (b) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
 - (A) States in the RFP:
 - (i) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
 - (ii) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
 1. Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and

2. The relative weight in points or percentages the Contracting Agency will give each factor;

(ii) An estimate of the cost of services the Contracting Agency seeks in the procurement;

(iii) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.

(B) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.

(C) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:

(i) Must include:

1. A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
2. A reasonable estimate of hours that the Consultant will require to perform the services sought.

(ii) May include, at the Contracting Agency's request, additional pricing information that is limited to:

1. A description of each task proposed by Consultant;
2. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
3. A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.

(D) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultant does not wish to provide a price proposal.

(E) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.

(c) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(d) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's scope of services, performance obligations and performance schedule;

(B) Payment methodology, Consultant's rates and number hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(e) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(d), and as limited by subsection (4)(b) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & ORS 279C.527

137-048-0230

Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(4) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.105 & ORS 279C.110

137-048-0240

Protest Procedures

(1) **RFP Protest and Request for Change.** Pursuant to ORS 279C.110(8), Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** Pursuant to ORS 279C.110(8), Consultants may protest Contracting Agency's Consultant selection for award, as follows:

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & 279C.110

137-048-0250**Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs**

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0260**Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency**

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279C.110 & ORS 279C.125

137-048-0270

Price Agreements

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information requested for Price Agreements with any Division 48 Consultant may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) The payment methodology, Consultant rates and number of hours, and a maximum, not-to-exceed price for the services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the services; and

- (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

POST-SELECTION CONSIDERATIONS

137-048-0300

Prohibited Payment Methodology; Purchase Restrictions

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
 - (a) Consultant's costs under the Contract plus a percentage of those costs; or
 - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
 - (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
 - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
 - (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
 - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.105

137-048-0310

Expired or Terminated Contracts; Reinstatement

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
 - (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
 - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
 - (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

137-048-0320

Contract Amendments

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

Stat. Auth.: ORS 279A.065 & ORS 279C.105

Stats. Implemented: ORS 279A.065 & ORS 279C.110

PUBLIC CONTRACTING RULES 2020

DIVISION 49

GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

137-049-0100

Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

137-049-0110

Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.300 & ORS 279C.305

137-049-0120

Definitions

(1) **"Conduct Disqualification"** means a Disqualification pursuant to ORS 279C.440.

(2) **"Disqualification"** means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) **"Foreign Contractor"** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) **"Notice"** means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

137-049-0130

Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0140

Contracts for Construction Other than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

137-049-0150

Emergency Contracts; Bidding and Bonding Exemptions

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

137-049-0160

Intermediate Procurements; Competitive Quotes and Amendments

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to exceed \$5,000 and not to exceed \$100,000 may be Awarded in accordance with this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.

(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.412.

FORMAL PROCUREMENT RULES

137-049-0200

Solicitation Documents; Required Provisions; Assignment or Transfer

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

(B) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) That statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

(F) The time, date and place of Opening;

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

(I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.";

(K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;

(L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;

(M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-049-0440(3));

(N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and

(O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.

(P) Where applicable, a statement requiring compliance with ORS 279C.527, green energy technology.

(b) Evaluation Process:

(A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;

(B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;

(C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;

(i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;

(ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and

(c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Bd for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

(M) Time limitation on claims for overtime (ORS 279C.545);

(N) Prevailing wage rates (ORS 279C.800 to 279C.870);

(O) BOLI Public Works bond (ORS 279C.830(3));

(P) Retainage (ORS 279C.550 to 279C.570);

(Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);
(S) Notice of claim (ORS 279C.605);
(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

137-049-0210

Notice and Advertising Requirements; Posting

(1) **Notice and Distribution Fee.** A Contracting Agency may furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

(a) Mailing Notice of the availability of Solicitation Documents to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing Notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing Notice on the Contracting Agency's Internet Web site.

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the exempted the Solicitation is otherwise exempt from the advertisement requirement under these rules or pursuant to a competitive bidding exemption adopted under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, by rule or order, authorizes Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

(A) The Public Improvement project;

(B) The office or website where Contract terms, conditions and Specifications may be reviewed;

(C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;

(D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;

(E) The name, title and address of the Contracting Agency Person authorized to receive Offers;

(F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & ORS 200.035

137-049-0220

Prequalification of Offerors

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

137-049-0230

Eligibility to Bid or Propose; Registration or License

(1) **Construction Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

137-049-0240

Pre-Offer Conferences

(1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information or to conduct site inspections.

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.370

137-049-0250

Addenda to Solicitation Documents

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.** The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395 & ORS 279A.065

137-049-0260

Request for Clarification or Change; Solicitation Protests

- (1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (2) **Request for Change.**
- (a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;
- (b) **Content of Request for Change.**
- (A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
- (B) An Offeror shall mark its request for change as follows:
- (i) "Contract Provision Request for Change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & ORS 279C.365

137-049-0270

Cancellation of Solicitation Document

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(1). Such notice of cancellation shall:

- (a) Identify the Solicitation;
- (b) Briefly explain the reason for cancellation; and
- (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

(3) **Disposition of Offers.**

(a) Prior to Offer Opening. If the Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

137-049-0280

Offer Submissions

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

- (3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.
- (5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (10) **Identification of Offers**
- (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
 - (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0290

Bid or Proposal Security

- (1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
 - (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
 - (c) A cashier's check or Offeror's certified check.
- (4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or

Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

137-049-0300

Facsimile Bids and Proposals

(1) **Contracting Agency Authorization.** A Contracting Agency may authorize Offerors to submit facsimile Offers. If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency shall not authorize facsimile Offers unless the Contracting Agency has established a method for receipt of such security. Prior to authorizing the submission of facsimile Offers, the Contracting Agency shall determine that the Contracting Agency's equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, the Contracting Agency shall establish administrative procedures and controls:

- (a) To receive, identify, record and safeguard facsimile Offers;
- (b) To ensure timely delivery of Offers to the location of Opening; and
- (c) To preserve the Offers as sealed.

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

- (a) A provision substantially in the form of the following: "A 'facsimile Offer', as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine.";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document.";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of the facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer.";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) Compatibility characteristics, e.g., make and model number, receiving speed, communications protocol; and
- (f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machine;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the Offeror to properly identify the Offer documents;
 - (F) Illegibility of Offer documents; and
 - (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0310

Electronic Procurement

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C

requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

137-049-0320

Pre-Closing Modification or Withdrawal of Offers

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

(b) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(2) Withdrawals

(a) An Offeror may withdraw its Offer by Written notice submitted on the Offeror's letterhead, Signed by an authorized representative of the Offeror, delivered to the location specified in the Solicitation Document (or the place of Closing if no location is specified), and received by the Contracting Agency prior to the Closing. The Offeror or authorized representative of the Offeror may also withdraw its Offer in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority.

(b) The Contracting Agency may release an unopened Offer withdrawn under subsection 2(a) to the Offeror or its authorized representative, after voiding any date and time stamp mark.

(c) The Offeror shall mark the Written request to withdraw an Offer as follows:

(A) Bid (or Proposal) Withdrawal; and

(B) Solicitation Number (or Other Identification as specified in the Solicitation Document).

(3) **Documentation.** The Contracting Agency shall include all documents relating to the modification or withdrawal of Offers in the appropriate Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0330

Receipt, Opening and Recording of Offers; Confidentiality of Offers

(1) **Receipt.** A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer").

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but pursuant to ORS 279C.410 Proposals are not subject to disclosure until after notice of intent to award is issued. In any event Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0340

Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0350

Mistakes

(1) **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Offerors, a Contracting Agency should carefully consider whether to permit waiver, correction or withdrawal of Offers for certain mistakes.

(2) **Contracting Agency Treatment of Mistakes.** A Contracting Agency shall not allow an Offeror to correct or withdraw an Offer for an error in judgment. If the Contracting Agency discovers certain mistakes in an Offer after Opening, but before Award of the Contract, the Contracting Agency may take the following action:

(a) A Contracting Agency may waive, or permit an Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or an insignificant mistake that can be waived or corrected without prejudice to other Offerors. Examples of minor informalities include an Offeror's failure to:

(A) Return the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;

(B) Sign the Offer in the designated block, provided a Signature appears elsewhere in the Offer, evidencing an intent to be bound; and

(C) Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Offer that the Offeror received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.

(b) A Contracting Agency may correct a clerical error if the error is evident on the face of the Offer or other documents submitted with the Offer, and the Offeror confirms the Contracting Agency's correction in Writing. A clerical error is an Offeror's error in transcribing its Offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Offer). In the event of a discrepancy, unit prices shall prevail over extended prices.

(c) A Contracting Agency may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

(A) The nature of the error;

(B) That the error is not a minor informality under this subsection or an error in judgment;

(C) That the error cannot be corrected or waived under subsection (b) of this section;

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375 & ORS 279C.395

137-049-0360

First-Tier Subcontractors; Disclosure and Substitution

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

(a) Five percent of the total Contract Price, but at least \$15,000; or

(b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the Contracting Agency shall:

(a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;

(b) Open Bids publicly immediately after the Bid Closing; and

(c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is estimated by the Contracting Agency to be greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

(1) The subcontractor's name,

(2) The category of Work that the subcontractor would be performing, and

(3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

137-049-0370

Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority and jurisdiction under which the hearing will be held;

- (e) Include a reference to the particular sections of the statutes and rules involved;
 - (f) State the proposed Disqualification period; and
 - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.
- (4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
- (a) The effective date and period of Disqualification;
 - (b) The grounds for Disqualification; and
 - (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

137-049-0380

Bid or Proposal Evaluation Criteria

- (1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.
- (2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
- (a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.
- (b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 137-049-0350(2)(b).
- (3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

- (1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.
- (2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information

that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- (b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
- (d) Is legally qualified to contract with the Contracting Agency;
- (e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
- (f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;
- (g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;
- (h) Has made the disclosure required under ORS 279C.370; and
- (i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279C.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) **Nonresident Bidders.** In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
- (b) **Clarifications.** In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- (c) **Negotiation Prohibited.** The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

137-049-0395

Notice of Intent to Award

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000), intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
- (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
 - (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0400

Documentation of Award; Availability of Award Decisions

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
- (a) All submitted Bids;
 - (b) Completed Bid tabulation sheet; and
 - (c) Written justification for any rejection of lower Bids.
- (3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 137-049-0650, the Contracting Agency's record shall include:
- (a) All submitted Proposals.
 - (b) The completed evaluation of the Proposals;
 - (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
 - (d) If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.
- (5) **Bid Tabulations and Award Summaries.** Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

137-049-0410

Time for Contracting Agency Acceptance; Extension

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

(2) **Extension of Acceptance Time.** A Contracting Agency may request, orally or in Writing, that Offerors extend, in Writing, the time during which the Contracting Agency may consider and accept their Offer(s). If an Offeror agrees to such extension, the Offer shall continue as a Firm Offer, irrevocable, valid and binding on the Offeror for the agreed-upon extension period.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

137-049-0420

Negotiation With Bidders Prohibited

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

137-049-0430

Negotiation When Bids Exceed Cost Estimate

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.
- (4) **Scope of Negotiations.** Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065
Stats. Implemented: ORS 279C.340

137-049-0440

Rejection of Offers

(1) Rejection of an Offer.

- (a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
 - (B) Takes exception to terms and conditions (including Specifications);
 - (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
 - (D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
 - (E) Is late;
 - (F) Is not in substantial compliance with the Solicitation Documents;
 - (G) Is not in substantial compliance with all prescribed public Solicitation procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
 - (B) Has been Disqualified;
 - (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - (D) Is listed as not qualified by the Construction Contractors Bd, if the Contract is for a Public Improvement;
 - (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
 - (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
 - (G) Has failed to provide the certification required under section 3 of this rule;
 - (H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
- (2) **Form of Business.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 137-049-0370.
- (3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-049-0395.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

137-049-0450

Protest of Contractor Selection, Contract Award

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

(4) **Right to Protest Award.**

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

(A) Because their Offers were nonresponsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(5) **Right to Protest Competitive Range.**

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days

after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

137-049-0460

Performance and Payment Security; Waiver

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full contract price.

(4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0470

Substitute Contractor

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & ORS 279C.390

137-049-0490

Foreign Contractor

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

ALTERNATIVE CONTRACTING METHODS

137-049-0600

Purpose

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

137-049-0610

Definitions for Alternative Contracting Methods

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“Design-Build”** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

137-049-0620

Use of Alternative Contracting Methods

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. The evaluation shall address:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

137-049-0630

Findings, Notice and Hearing

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and
(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.335 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and hold a public hearing as required by ORS 279C.335(4). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

137-049-0640

General Alternative Bidding Procedures

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;
(b) Treat all Proposals equitably; and
(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

(2) **Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include any factors required by ORS 279C.337 and OAR 137-049-0690.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 137-049-0650. Terms that may be negotiated consist of details of Contract

performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that affect cost or quality.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

137-049-0650

Requests for Proposals (RFP)

(1) Generally.

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.

(c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

(6) **Negotiations**.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

- (A) Initial determination of the Competitive Range; or
- (B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.
- (b) Conducting Negotiations.
- (A) Scope. The Contracting Agency may negotiate:
 - (i) The statement of Work;
 - (ii) The Contract Price as it is affected by negotiating the statement of Work; and
 - (iii) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals.
- (c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency reasonably believes that:
 - (A) The Proposer is not discussing or negotiating in good faith; or
 - (B) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- (d) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:
 - (A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or
 - (B) Completed at least one round of negotiations with all Proposers in the Competitive Range.
- (7) **Post Project Evaluation.** For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

137-049-0660

RFP Pricing Mechanisms

- (1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract may be negotiated.
- (2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.
- (3) A Guaranteed Maximum Price (GMP) *may be used* as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.
 - (a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.
 - (b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.
- (4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0670

Design-Build Contracts

- (1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:
 - (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;

- (b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- (c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- (d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- (e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.
- (2) **Authority.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.
- (3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).
- (4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.
- (5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.
- (6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.
- (7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:
- (a) **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- (b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.
- (c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
- (d) **Warranties.** The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- (e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.
- (f) **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0680

Energy Savings Performance Contracts (ESPC)

(1) **Generally.** These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method

provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method.** The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

- (a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs, Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, Measurement and Verification (M & V) services and required documentation as a fully integrated function with a single point of responsibility;
- (b) Obtaining through an ESCO, an Energy Savings Guarantee;
- (c) Integrating the Technical Energy Audit phase and Project Development Plan phase into the design and construction phase of Work on the project;
- (d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;
- (e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;
- (f) Integrating cost-effective Energy Conservation Measures (ECMs) into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;
- (g) preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure that is being performed under a separate remodeling Contract; and
- (h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority.** Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required.** A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection.** ESPC contracts may be directly awarded or solicited via an informal or formal RFP process. ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), and (c). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, prior to award, potential awardees must identify any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable.** Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing.** If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these "design and related services" include conventional design services, commissioning services, training services for the Contracting Agency's operations and maintenance staff, and any similar Personal Services provided by the ESCO's Energy Savings Guarantee are not included in these 279C.380(1)(a) "design and related services." Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO's Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO's Energy Savings Guarantee for the project.

(B) The various phases of the ESCO's Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, which a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO's M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency's future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

137-049-0690

Construction Manager/General Contractor (CM/GC)

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.337 & ORS 279C.380(2)

CONTRACT PROVISIONS

137-049-0800

Required Contract Clauses

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

137-049-0810

Waiver of Delay Damages Against Public Policy

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

137-049-0815

BOLI Public Works Bond

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

137-049-0820

Retainage

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the contract price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when

the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

(i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

137-049-0830

Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

137-049-0840

Interest

- (1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.
- (3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570

137-049-0850

Final Inspection

- (1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.
- (2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.570(8)

137-049-0860

Public Works Contracts

- (1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.
- (2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:
- (a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).
 - (b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).
 - (c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).
 - (d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
 - (e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.
 - (f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).
- (3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:
- (a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):
 - (A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,
(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

137-049-0870

Specifications; Brand Name Products

(1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

137-049-0880

Records Maintenance; Right to Audit Records

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440

137-049-0890

Contracting Agency Payment for Unpaid Labor or Supplies

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency

chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

137-049-0900

Contract Suspension; Termination Procedures

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

137-049-0910

Changes to the Work and Contract Amendments

(1) **Definitions for Rule.** As used in this rule:

(a) **"Amendment"** means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) **"Changes to the Work"** means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

- (a) They are within the general scope of the original Procurement;
- (b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;
- (c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and
- (d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

PUBLIC CONTRACTING RULES - 2020

CLASS EXEMPTIONS

E-1 Purpose and Statutory Authority

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

E-2 Advertising Contracts

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

E-3 Equipment Repair and Overhaul

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

E-4 Contracts for Price Regulated Items

Contracting Agency may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

E-5 Copyrighted Materials

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

E-6 Investment Contracts

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

E-7 Requirements Contracts

(1) For purposes of this rule, "Requirements Contract" means a contract whereby the Contracting Agency has agreed to purchase as much of an identified Good or Service at a predetermined price as it requires to meet an anticipated need. Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

- (2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.
- (3) The term of any requirement contract, including renewals, shall not exceed five years.

E-8 Office Copier Purchases

- (1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.
- (2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

E-9 Manufacturer Direct Supplies

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

E-10 Gasoline, Diesel Fuel, Heating Oil, Lubricants and Asphalt

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

E-11 Hazardous Material Removal; Oil Cleanup

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

- (a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- (b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

E-12 Insurance, Employee Benefit

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

E-13 Medical and Laboratory Supplies

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

E-14 Concession Agreements

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

USED PERSONAL PROPERTY

E-15 Used Personal Property, Purchase of

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

E-16 Surplus Personal Property, Disposition of

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Prior to surplusing property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

PERSONAL SERVICES

E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

- (6) The following procedure shall be observed in the selection of personal service contractors:
- (a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.
 - (b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
 - (c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.
 - (d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.
- (7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.
- (8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:
- (a) Total cost of services to Contracting Agency.
 - (b) Specialized experience in the type of work to be performed.
 - (c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
 - (d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
 - (e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
 - (f) Any other factors relevant to the particular contract.
- (9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.
- (10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.
- (11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

E-18 Liability Insurance Contracts

Contracts for insurance where either the annual or aggregate premium exceeds \$10,000 must be let using one of the following procedures:

- (1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.



DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Discussion of Request for a Permanent Height Restriction

In preparation of Council discussion, I asked the City Attorney for issues for council to discuss and consider while reviewing this request.

Consideration for leaving the property as-is (without height restrictions):

Property restrictions can create unforeseen future complications. In perpetuity, can result in additional future attorney fees if the City has different needs in the future.

Considerations for moving forward with the property restriction:

Right now, the City owns this property without any height restrictions. Therefore, the City owns the real property right of height. The City is not free to give away property rights without process. The first step would be for the City to declare this property right surplus and hold a public hearing under ORS 221.725.

Then there are 2 options to accomplish the request:

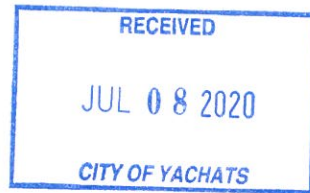
1. Addressing the wish via deed, the cleanest way would be to have the City quitclaim the property back to the donor, and then have the donor make a new donation with a new deed. The right that the donor wants to reserve (height restriction) is currently owned by the City. Rather than coming up with some mechanism to deed that right back to the donor, it would be easier to just start over. The City's preference here would be to create the deed restriction so it is personal to the owner of the donor's lot, otherwise a general deed restriction can be even more challenging to deal with.

2. Another option here would be to have the City grant a conservation easement (height restriction easement or view easement) of some kind to the donor and the future owners of the donor's parcel. This would create an easement right personal to that parcel that could be enforced by future owners of that parcel. This option seems cleaner than trying to re-do the deed as the first option contemplates.

Council Question:

Is the request in the City's future interest and upon discussion how does council wish to proceed?

July 1, 2020



Mayor John Moore and the
City Council of Yachats
PO 345
Yachats OR 97498

Dear Sirs and Madams —

Several years ago, Mira Frohnmayer and Marcia Baldwin donated to the City of Yachats a community garden at Prospect and East Second Streets, which has been wildly popular with the residents of Yachats. Of course, the original intention of the gift was in part to protect the views of the river and ocean from Mira's property as well as to benefit Yachats.

As Mira looks out from her home at 224 East Third Street, she is delighted to see residents in the garden almost all the time, planting and harvesting what they have grown and caring for the paths and plants on the property.

At the time of the transfer of ownership to the City of Yachats, Mira meant to have a height restriction put in place so that her view would be protected forever, in perpetuity. This was not part of the final agreement between the parties. At Mira's death, the property will become City property.

Mira is about to sell her home in Yachats. She requests at this time that the Council of the City of Yachats includes a permanent height restriction on this Prospect and East Second Street property, similar to what is in place for many properties west of Highway 101, of 15 feet. This would apply to any future uses the City of Yachats decides to make of the community garden property, even if it does not remain as a community garden.

Respectfully submitted,

Mira J. Frohnmayer
224 East Third Street
Yachats OR 97498
and 1084 Ironwood Court
Glenview IL 60025
847-707-6433
mirmez@gmail.co,

Sandra Sweet
1084 Ironwood Court
Glenview IL 60025
847-917-9141
necshs1@gmail.com



DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Vacation Rental Program Discussion

In preparation to address concerns about vacation renters disturbing the neighborhoods they are located in; I have inquired about other entities that have detailed short term rental programs that Council could review and bring back ideas for discussion. Many of these have been reviewed previously but in light of COVID and is again a good review. The following programs were suggested:

Lincoln City: A mix of business and land use regulations that regulate short-term rentals. Very detailed staff-intensive approach to regulation
<https://www.codepublishing.com/OR/LincolnCity/#!/LincolnCity05/LincolnCity0514.html#5.14>

Cannon Beach: Regulated within their land use code

Cannon Beach has a 14-day program and a 5-year program. Forms for each program are here: <https://www.ci.cannon-beach.or.us/forms>

Short term rentals within its land use code (Chapter 17.77), which can be accessed here: <http://www.qcode.us/codes/cannonbeach/>

Bend:

The City of Bend has a robust short-term rental program. They use both land use regulations and business licenses. Bend has a big vacation industry, and some master-planned developments that cater to vacationing. As a result, Bend even works in some short-cuts for short-term rentals within certain developments.

The Bend program is explained here:

<https://www.bendoregon.gov/government/departments/community-development/licenses-and-permits/short-term-rental-program>

Council Question:

How does the Council wish to pursue reviewing programs and scheduling a work session to discuss options from each of the programs?



**Proclamation for National Health Center Week, Aug 9-15, 2020
Acknowledging Lincoln Community Health Center**

WHEREAS, National Health Center Week offers the opportunity to recognize America's Health Centers, their dedicated staff, board members, and all those responsible for their continued success and growth since the first health centers opened their doors more than 55 years ago; and

WHEREAS, Lincoln Community Health Center, with locations across Lincoln County, is celebrating its fourteenth year of providing high quality primary care, behavioral health, immunization, and maternity case management services to members of the community; and

WHEREAS, Health Centers deserve to be recognized and supported for their efforts in expanding capacity and providing individuals in underserved communities and underserved populations with equal access to essential health care services, regardless of their ability to pay; and

WHEREAS, The Community Health Center model continues to prove an effective means of overcoming barriers to healthcare access, including geography, income and insurance status - improving health care outcomes and reducing health care system costs; and

WHEREAS, In Lincoln County, the Lincoln Community Health Center operates six sites and, in the most recent year, treated more than 5,000 individuals for primary care and mental health needs.

NOW, THEREFORE, BE IT RESOLVED that I, the Mayor and City Council declares August 9 -15, 2020, as **National Health Center Week** and, as such, I offer our Council's thanks and appreciation to the Lincoln Community Health Center for its contributions to the health and wellness of our community.

Dated this 5th day of August 2020

W. JOHN MOORE, Mayor



**CITY OF YACHATS
RESOLUTION NO. 2020-135
A RESOLUTION MEMORIALIZING A 1-HOUR LODGING HOLD**

WHEREAS, the Yachats City Council met on July 15, 2020 to discuss lifting the 24-hour lodging hold; and

WHEREAS, the Yachats City Council discussed and heard testimony on the impact of having the 24 hours hold on the lodging industry, and to lower the time to a 1-hour hold.

NOW THEREFORE, the City of Yachats resolves to lower the 24-hour hold to a 1-hour hold in between guest occupancy.

This Resolution memorializes action taken by the Council on July 15, 2020 and is effective as of that date.

CITY OF YACHATS

By: _____

W. John Moore, Mayor

ATTESTED TO BY:

Shannon Beaucaire, City Manager



**CITY OF YACHATS
RESOLUTION NO. 2020-136
A RESOLUTION MEMORIALIZING A VACATION RENTAL LOTTERY**

WHEREAS, the Yachats City Council met on July 15, 2020 to discuss the license availability for vacation rentals; and

WHEREAS, the Yachats City Council discussed the process to establish a one-time Lottery process to create an initial vacation rental license waiting list. Including articles in the city newsletters, billing statements and the city website. This process will be a 90-day open application period beginning August 1, 2020.

WHEREAS, Applicant will complete the on-line form and submit a non-refundable \$25.00 processing fee by mailing a check, or by calling City Hall to make the payment over the phone. The form includes an electronic signature to acknowledge reading and agreeing to City of Yachats Municipal Code for Vacation Rental Licenses.

NOW THEREFORE, the City of Yachats resolves to establish a lottery process to establish a waiting list for vacation rental licenses.

This Resolution memorializes action taken by the Council on July 15, 2020 and is effective as of that date.

CITY OF YACHATS

By: _____
W. John Moore, Mayor

ATTESTED TO BY:

Shannon Beaucaire, City Manager



**CITY OF YACHATS RESOLUTION NO. 2020-138
A RESOLUTION OF THE CITY OF YACHATS, OREGON REGARDING
OUTDOOR SEATING EXPANSION**

WHEREAS, the program has been established in response to the COVID-19 crisis. The program provides opportunity for restaurants and retail businesses to use private parking spaces in proximity to structures which they are located for the purpose of providing outdoor seating, queuing or shopping areas.

WHEREAS, the program allows for a temporary exemption from the parking minimums listed in Yachats Municipal Code (YMC) 9.48,

WHEREAS, a business may use private parking spaces in front of an adjacent business with consent from the neighboring business owner,

WHEREAS, restaurants and retail businesses may use parking spaces along the frontage of their existing business location on private property; not including ADA spaces,

WHEREAS, a maximum of four (4) spaces may be used under this program,

WHEREAS, if serving alcohol business owners must hold a valid liquor license and shall provide the City a signed copy of the license issued to them by the Oregon Liquor Control Commission (OLCC) if requested,

WHEREAS, the outdoor area and all things placed thereon shall at all times be maintained in a clean, safe, and orderly condition. Table umbrellas may be used and shall be placed and adequately weighted to ensure that they remain safely in place,

WHEREAS, the business owner shall delineate the perimeter of outdoor area. The barricade may be made of wood, metal, planter pots, rope or other similar materials. The outdoor area shall meet ADA passage standards,

WHEREAS, this program is temporary and shall end on September 30th, 2020, unless extended,

NOW THEREFORE, the City Council of the City of Yachats, Oregon, resolves by Council to:

- Allow private parking spaces in proximity to structures for the purpose of providing outdoor seating, queuing or shopping areas,
- The program shall end on September 30th, 2020,

This Resolution memorializes action taken by the Council on July 15, 2020 and is effective as of that date.

CITY OF YACHATS

Shannon Beaucaire, City Manager

By: _____

W. John Moore, Chair



DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Driftwood Paving Project

At the last meeting, there was a request to postpone a decision on the Driftwood Bids using Section 4: Agenda Packets for Council Meetings – “Any two Councilors may request that an item be postponed to the following meeting. Further postponement requires a majority vote of the Councilors present.”

Following the meeting, I requested legal clarification on application of this provision during a meeting. The clarification interpretation came back as this provision relates to the setting of the agenda prior to a meeting and does not apply during a meeting. Under this interpretation, this provision would be used to postpone an agenda item while the agenda is being drafted. But once the agenda is set and the meeting starts, the usual rules of parliamentary procedure would take over and tabling a discussion item would take a majority vote. It was noted as an awkward provision and would benefit from reconsideration by the Council.

Timeline:

June 2019 – Small City Grant applied for Driftwood, ODOT asked for more information. Sent pictures. Small city grants – 1 project per city per year with maximum allotment of \$100,000. The City has submitted for another street project for this 2021 process.

July 2019 – City followed up with ODOT on grant app progress. ODOT confirmed they were out, looked at the site, and grant would be reviewed to determine if it met the qualifications

October 2019 – Yachats Awarded \$100,000 for the Driftwood Project. Council notified of the award.

December 2019 – Agreement executed with project description. Includes process for project change procedures, ADA requirements, etc. Driftwood Concept proposal. Funds expire December 2, 2021.

March 2020 – Layout sent to Mayor, PW&S and P&C Chairs. C-19 hits

April 2020 – Layout with notes to PW&S, Planning, and P&C sent to Chairs. Virtual meeting suggested to move forward with project. Held May 27, 2020.

June 2020 - June 4, 2020 Council approved as presented. June 10, 2020 went out to bid. Bids came in week of July 15, 2020. July 15 - Council postponed to August 5, 2020.

Engineering Notes:

Notes from the Engineer July 16, 2020

- Bids are lump sum for 60 day construction period
- Wait to award on or around August 5, 2020, contractor won't get started until end of August. Construction September and October. October risk of wet weather which increases risk of change orders, delay, and not getting a good product. "Every dry day you wait, you are risking a wet day". Alternative, it could be just fine.
- By law, we cannot negotiate changes until the contract is awarded. Once awarded, the contractor does not have a big incentive to provide a \$1 for \$1 change. Typically get a \$0.75 for every \$1 negotiated. No incentive to give a competitive price after contract awarded.
- Small change – like dropping a sidewalk probably get 0.75 for every dollar. PCC Concrete curbs, sidewalks, ramps were bid as 1 lump sum in the bids.
- Major changes like changing the road width should just be rebid.
 - Major changes require time to redesign the project.
 - 3-4 weeks for bidding to occur and then time to begin work
- If to rebid – Should aim at rebidding in January or February of 2021 for work in summer 2021. Need to work with ODOT to change scope allowed in grant.

Notes from the Engineer July 17, 2020 – following P&C meeting I asked about removal of west sidewalk

Shannon,

The answer is no. The attached is from Oregon's contracting manual. Page 420 (6)(c) prohibits negotiation. This is for all bidders, including the low bidder.

For a practical perspective, I would add the following:

There is nearly \$30,000 price difference between the low bid and the 2nd bid.

Of that cost, roughly \$60,000 is associated with the concrete work. As a VERY rough approximation, the south side sidewalk might be about 25% of the concrete work, so you would be looking at something in the range of \$15,000 regardless of which contractor you talk to.

The total cost for the 3rd bidder is so high even if you could talk to him, there wouldn't be any way his price could become competitive.

With regard to the schedule, the concrete work is going to be done all at the same time. At best I could see removing the south sidewalk changing the total schedule by a day, maybe two, since all of the other concrete work still would get done.

Shannon and Rick,

This is just a quick follow up to make sure that ADA considerations are included in any discussions about eliminating the west side sidewalk.

The attached sketch shows a couple of possibilities.

I also thought about striping a crosswalk to the east sidewalk and adding another ramp over there.

There are a couple of concerns with that idea.

First, I don't really like the idea of crosswalks in the middle of a block unless you really need one there.

Second, I am not sure if that is OK by ADA rules.

With that said, if it is OK by ADA rules (and it might be), this is such a low traffic area that a mid block crosswalk might not be as problematic as it would in other locations.

The main point is that we need to have an ADA space somewhere, and we need to provide a path from that ADA space to some reasonable location in the existing infrastructure.

Community Input: Follows this memo

Council Question:

How does the Council wish to proceed?



2020 Small City Allotment Application

Deadline: July 31, 2019

City of: Yachats Date: 6/11/2019
Address: P.O. Box 345, Yachats OR 97498
Name: Rick McClung Phone: 541-547-3851 Email: Rick@Yachatsmail.org
SCA Funds Requested: \$ 100,000 Estimated Total Project Cost: \$ 125,000

Project Name: Driftwood Ln Improvements Project Length: 700 Ft

General Location(s)* (identify the street names and general extent of project locations): Driftwood
is located between W. 5th & W. 6th creating a loop to enter/exit
Hwy 101

Description of Need* (describe the existing capacity or safety issues): A skateboard Park, baseball Field,
Playground and an event center is located on Driftwood Ln. There are
no sidewalks for pedestrians (very unsafe) & Bad Road conditions for traffic flow

Description of Project* (describe the proposed project and how it will address the need specified above):
The project will create designated walkways, sidewalks and new asphalt
to create safety for pedestrians & smoother traffic flows

*Attach supplemental pages that can help depict Project Location, Current Conditions, and Project Description, include site maps and photos of the project area. Site Map can include Google Map with project area annotated.

Project Attributes (check all that apply)

- ☒ Roadway Overlay ☒ Sidewalk(s): if yes, then N/S/E/W (circle all that apply)
☐ Slurry Seal Estimated Daily Sidewalk Foot/Bike Traffic 50 more during events
☐ Chip Seal ☒ Curb Ramp: if yes, then N/S/E/W (circle all that apply)
☐ Bike Lane(s): if yes, then N/S/E/W (circle all that apply)
☒ Storm Sewer: if yes, Storm Sewer is: New / Repair (Circle one)
☐ Bridge Repair: if yes, Bridge Name is: _____
☐ Is funding to be used as match for an existing project?



2020 Small City Allotment Application

Deadline: July 31, 2019

Project Location (check all that apply):

- ☒ City Street
☐ County Road
☐ Abuts / crosses / runs parallel / touches a State Highway (circle all that apply)

Conditions:

Estimated Daily Traffic Volumes (select the location with the highest traffic volumes):

Motor Vehicle (cars, trucks and commercial vehicles) Traffic: Low / Medium / High (Circle One)

Low = Less than 500 vehicles Medium = 500-999 vehicles/day High = more than 1,000 vehicles/day

Gravel Road (If applicable to the project)

Gravel Road Condition		Fair	Poor	Severe
Scoring Key: SEVERE <i>(throughout the project area)</i> POOR <i>(some deterioration within the project area)</i> FAIR <i>(small segments within the project area)</i>	Potholes			
	Wash boarding			
	Rutting (vehicle weight causing ruts in lanes)			
	Missing Aggregate/Gravel			
	Dusting (aggregate decomposing to smaller particles)			
	Other (Describe): _____ _____ _____ _____			



2020 Small City Allotment Application

Deadline: July 31, 2019

Pavement (If applicable to the project)

Asphalt Road Condition		Fair	Poor	Severe
Scoring Key SEVERE <i>(throughout the project area)</i> POOR <i>(some deterioration within the project area)</i> FAIR <i>(small segments within the project area)</i>	Potholes			✓
	Cracking along the roadway (parallel)			✓
	Rutting where tires tracks are depressed			✓
	Cracking crossing (perpendicular) the roadway			✓
	Rough Pavement			✓
	Other (describe):			

Sidewalks / Bike Lanes (If applicable to the project; check all that apply):

Multi/Modal Road Condition		Fair	Poor	Severe/Missing
Scoring Key SEVERE/MISSING <i>(throughout the project area)</i> POOR <i>(some deterioration within the project area)</i> FAIR <i>(small segments within the project area)</i>	Uneven sidewalk slabs			
	Sidewalk obstructed or missing sections			
	Curb ramps needed			Y / N
	Cracking sidewalks			
	Bike lane missing			Y / N
	Sidewalk or bike lanes to connect to school, downtown, shopping or transit			Y / N
	Other (describe):			

Signature:

Shannon Beaucaire

Printed Name

Authorized Signature

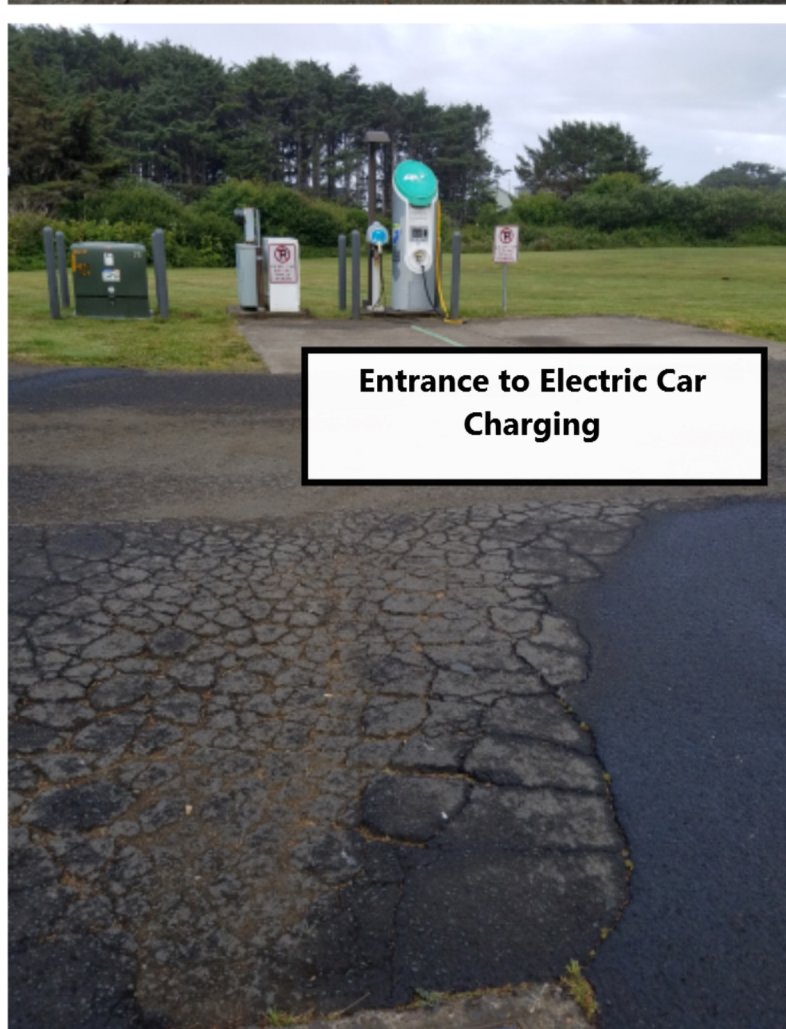
Email to: smallcityallotments@odot.state.or.us copy the ODOT Project Manager/Local Agency Liaison

Street in Yellow hi-lite



Looking South down the street







Oregon

Kate Brown, Governor

Department of Transportation
Transportation Development Division
555 13th Street NE, Suite 2
Salem, OR 97301
Phone: (503) 986-3420
Fax: (503) 986-4173

October 30, 2019

City of Yachats
500 W 7th
Yachats, OR 97498

Subject: 2020 Small City Allotments Program Awards Announcement

Project Name : DRIFTWOOD LANE - IMPROVEMENTS

In accordance with ORS 366.805 and the recommendation of the Advisory Committee, I am pleased to announce your project was one of 53 selected to be funded. ODOT received 102 eligible applications requesting a total of \$9,814,566 with funding limited to \$5,195,000 it was a very competitive selection process.

The SCA award amount for your project is \$100,000.00

Per the information provided in the application we have generated the following project description that will be inserted into the Agreement. Please review the description carefully to ensure that it reflects the intent of the application submitted. If the description does not meet the intent of the application or you find that you will be unable to perform the improvements specified you need to contact us immediately, in writing (email preferred), addressing any discrepancies. Please be advised that the Project Description is designed to cover the critical aspects of the proposed improvements rather than every detail required to facilitate that effort e.g., if you proposed an asphalt overlay we do not need to include every step of that process but would instead just point out the critical elements involved. Recognize that Project Awards were based upon the information provided in your application therefore only minor changes will be considered.

Project Description:

Project will construct walkways and overlay Driftwood Lane from West Fifth to West Sixth Street.

Your application *did not* indicate that your project will come into contact with a State Highway. If upon review you find that any portion of the project will touch a State Highway it is your responsibility to notify us immediately as additional obligations specific to ADA may be required; please refer to attachment.

In the next few weeks you will receive materials that are time sensitive and will require a prompt response. We have learned from previous experience that many small cities, eligible for these awards, have limited staff resulting in response delays or no response due to vacations, illness, staff turnover, etc. To ensure your responses are timely we ask that you complete the attached "Contact Information Form" to ensure that multiple people are receiving the materials we send and can respond in the event that the primary contact is not available. Please return the completed form no later than November 12, 2019 via email to SmallCityAllotments@odot.state.or.us . Note that though we recognize that cities may engage an outside entity to perform Project Management duties, for our purposes we request that all contact information provided is for City Staff members.

Included in the attachments please find the template for the Agreement that will be used for 2020 Small City Allotment Program awards. Take this opportunity to review the document and share it as necessary with those entities whose signature will be required. This will save time once it is presented to you for signatures.

Please be advised that only work that begins after the effective date of the executed Agreement will be eligible for reimbursement with SCA funds.

Your participation in the program is appreciated and we look forward to seeing your completed project. If you have questions regarding the SCA program, you may contact either myself at (503) 986-7202 or Deanna Edgar at (503) 986-3441.

Sincerely,

Alan Thompson
Small City Allotment Program Manager

Attachments: Contact Information Form
Letter to League of Oregon Cities w/ 2020 SCA Awards by City
ADA Compliance Information Sheet
Agreement Template

2020 Small City Allotment Awards by City

City	Award
Region 1	
Cascade Locks	100,000
Estacada	100,000
King City	100,000
North Plains	100,000
Total	400,000
Region 2	
Amity	100,000
Carlton	100,000
Detroit	100,000
Donald	100,000
Dundee	100,000
Falls City	100,000
Harrisburg	100,000
Hubbard	100,000
Idanha	100,000
Jefferson	100,000
Lowell	100,000
Millersburg	91,000
Monroe	100,000
Rainier	100,000
Rockaway Beach	100,000
Tillamook	100,000
Toledo	100,000
Vernonia	100,000
Wheeler	94,406
Willamina	100,000
Yachats	100,000
Total	2,085,406
Region 3	
Bandon	100,000
Coquille	100,000
Gold Beach	100,000
Gold Hill	69,400
Lakeside	100,000
Myrtle Creek	100,000
Port Orford	100,000
Rogue River	100,000
Shady Cove	78,647
Total	848,047
Region 4	
Condon	100,000

Culver	100,000
La Pine	100,000
Moro	100,000
Paisley	100,000
Wasco	100,000
Total	600,000
Region 5	
Echo	100,000
Elgin	92,128
Haines	100,000
Heppner	65,000
Hines	100,000
Huntington	100,000
Irrigon	100,000
Joseph	100,000
Nyssa	100,000
Pilot Rock	100,000
Seneca	100,000
Vale	100,000
Wallowa	100,000
Region 5 Total	1,257,128
2020 Program Total	5,190,581

GRANT AGREEMENT
OREGON DEPARTMENT OF TRANSPORTATION
2020 SMALL CITY ALLOTMENT (SCA) PROGRAM
Driftwood Lane Improvement Project
City of Yachats

This Grant Agreement ("Agreement") is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation ("ODOT"), and City of Yachats, acting by and through its Governing Body, ("Recipient"), both referred to individually or collectively as "Party" or "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law (the "Effective Date"). The availability of Grant Funds (as defined in Section 3) shall end two (2) years after the Effective Date (the "Availability Termination Date").
2. **Agreement Documents.** This Agreement consists of this document and the following documents:
 - a. Exhibit A: **Project Description**
 - b. Exhibit B: **Recipient Requirements**
 - c. Exhibit C: **Subagreement Insurance Requirements**
 - d. Exhibit D: **Documentation provided by Recipient prior to execution of the Agreement (i.e. application, Part 1 of the Project Prospectus, or similar)**

Exhibits A, B and C are attached to this Agreement. Exhibit D is incorporated by reference. In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C; Exhibit D.

3. **Project Cost; Grant Funds.** The total estimated Project cost is \$125,000. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient grant funds in a total amount not to exceed \$100,000 (the "Grant Funds"). Recipient will be responsible for all Project costs not covered by the Grant Funds.
4. **Project.**
 - a. **Use of Grant Funds.** The Grant Funds shall be used solely for the Project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless ODOT approves such changes by amendment pursuant to Section 4(c).

b. Eligible Costs. Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement ("Eligible Costs").

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

- (A) reasonable, necessary and directly used for the Project;
- (B) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by the State, to be capitalized to an asset that is part of the Project; and
- (C) eligible or permitted uses of the Grant Funds under the Oregon Constitution, the statutes and laws of the state of Oregon, and this Agreement.

ii. Eligible Costs do NOT include:

- (A) operating and working capital or operating expenditures charged to the Project by Recipient;
- (B) loans or grants to be made to third parties;
- (C) any expenditures incurred before the Effective Date or after the Availability Termination Date; or
- (D) costs associated with the Project that substantially deviate from Exhibit A, Project Description, unless such changes are approved by ODOT by amendment of this Agreement;
- (E) right of way costs; or
- (F) costs to adjust, reconstruct or relocate utilities.

c. Project Change Procedures.

- i.** If Recipient anticipates a change in scope or Availability Termination Date, Recipient shall submit a written request to their ODOT Contact. The request for change must be submitted before the change occurs.
- ii.** Recipient shall not proceed with any changes to scope or Availability Termination Date before the execution of an amendment to this Agreement executed in response to ODOT's approval of a Recipient's request for change. A request for change may be rejected at the sole discretion of ODOT.

5. Reimbursement Process.

- a.** ODOT shall reimburse Recipient for Eligible Costs up to the Grant Fund amount provided in Section 3. ODOT shall reimburse Eligible Costs within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors,

consultants and vendors before submitting a request for reimbursement to ODOT for reimbursement.

- b. On or after the Effective Date, and upon written request by Recipient, ODOT may advance to Recipient 50% of the Grant Funds to the Recipient.
- c. Each reimbursement request shall be submitted on letterhead to the ODOT Contact and include the Agreement number, the start and end date of the billing period, and itemize all expenses for which reimbursement is claimed. Upon request by ODOT, Recipient shall provide to ODOT proof of payment and backup documentation supporting Recipient's reimbursement requests.
- d. Recipient shall, no later than ninety (90) days after the completion of the Project or Availability Termination Date, whichever occurs earlier, submit a final reimbursement request for the remaining eligible costs of Project which, when added to any amount previously advanced by State, shall not exceed the actual total cost of the Project or the Grant Funds, whichever is less. Failure to submit the final request for reimbursement within ninety (90) days could result in non-payment.
- e. For any Project element described in Exhibit A, or required by law that is not constructed under this Agreement, ODOT may withhold payment until the work is completed or may reduce the final reimbursement request amount, at ODOT's discretion, in an amount commensurate with the work not performed.
- f. Upon ODOT's receipt of the final reimbursement request, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the final reimbursement request until the ODOT Contact, or designee, has completed the final review and accepted the Project as complete.
- g. ODOT's obligation to disburse Grant Funds to Recipient is subject to the satisfaction, with respect to each disbursement, of each of the following conditions precedent:
 - i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the disbursement.
 - ii. Recipient is in compliance with the terms of this Agreement.
 - iii. Recipient's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- h. Recovery of Grant Funds. Any Grant Funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement ("Misexpended Funds") must be returned to ODOT. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand.

6. Representations and Warranties of Recipient. Recipient represents and warrants to ODOT as follows:

- a. Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.
- d. No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.
- e. Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.

7. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors

complies with these requirements. ODOT, the Secretary of State of the State of Oregon (the "Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the Grant Funds, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT and the Secretary to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.

- b. Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.
- c. Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.

This Section 7 shall survive any expiration or termination of this Agreement.

8. Recipient Subagreements and Procurements

- a. Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
 - i.** All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii.** Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient's subagreement with the Contractor and to name ODOT as an additional or "dual" obligee on contractors' payment and performance bonds.
 - iii.** Recipient shall provide ODOT with a copy of any signed subagreement, as well as any other purchasing or contracting documentation, upon ODOT's request at any time. Recipient must report to ODOT any material breach of a term or condition of a subagreement within ten (10) days of Recipient discovering the breach.
- b. Subagreement indemnity; insurance.**

Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State of Oregon, the Oregon Transportation Commission and its members, the Department of Transportation, their officers, agents and employees from and against any and

all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that ODOT shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of ODOT, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.

- i. Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s), nor any attorney engaged by Recipient's subrecipient(s), contractor(s) nor subcontractor(s) shall defend any claim in the name of ODOT or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's subrecipient is prohibited from defending the State, or that Recipient's subrecipient is not adequately defending the State's interests, or that an important governmental principle is at issue or that it is in the best interests of the State to do so. The State reserves all rights to pursue claims it may have against Recipient's subrecipient if the State of Oregon elects to assume its own defense.
 - ii. If the Project or Project work is on or along a state highway, Recipient shall require its contractor(s) to meet the minimum insurance requirements provided in Exhibit C. Recipient may specify insurance requirements of its contractor(s) above the minimum insurance requirements specified in Exhibit C. Recipient shall verify its contractor(s) meet the insurance requirements in Exhibit C.
 - iii. Recipient shall determine insurance requirements, insurance types and amounts, as deemed appropriate based on the risk of the work outlined within the subagreement. Recipient shall specify insurance requirements and require its contractor(s) to meet the insurance requirements. Recipient shall obtain proof of the required insurance coverages, as applicable, from any contractor providing services related to the subagreement.
 - iv. Recipient shall require its contractor(s) to require and verify that all subcontractors carry insurance coverage that the contractor(s) deems appropriate based on the risks of the subcontracted work.
- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:
- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement; and
 - ii. all procurement transactions are conducted in a manner providing full and open competition.
- d. **Conflicts of Interest.** Recipient's public officials shall comply with Oregon's government ethics laws, ORS 244.010 *et seq.*, as those laws may be subsequently amended.

9. Termination

- a. **Mutual Termination.** This Agreement may be terminated by mutual written consent of the Parties.
- b. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, under any of the following circumstances:
 - i. If Recipient fails to perform the Project within the time specified in this Agreement, or any extension of such performance period;
 - ii. If Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required ODOT's approval;
 - iii. If Recipient fails to perform any of its other obligations under this Agreement, and that failure continues for a period of 10 calendar days after the date ODOT delivers Recipient written notice specifying such failure. ODOT may agree in writing to an extension of time if it determines Recipient instituted and has diligently pursued corrective action;
 - iv. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement;
 - v. If Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - vi. If the Project would not produce results commensurate with the further expenditure of funds.
- c. **Termination by Either Party.** Either Party may terminate this Grant Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Grant Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Grant Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Grant Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

10. GENERAL PROVISIONS

- a. **Indemnity.** RECIPIENT SHALL INDEMNIFY AND DEFEND ODOT AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER ARISING OUT OF, OR RELATING TO THE INTENTIONAL MISCONDUCT, OR RECKLESS OR NEGLIGENT ACTS OR

OMISSIONS OF RECIPIENT OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS AGREEMENT.

ODOT shall reasonably cooperate in good faith, at Recipient's reasonable expense, in the defense of a covered claim. Recipient shall select counsel reasonably acceptable to the Oregon Attorney General to defend such claim and all costs of such counsel shall be borne by Recipient. Counsel must accept appointment as a Special Assistant Attorney General under ORS Chapter 180 before such counsel may act in the name of, or represent the interests of, ODOT, its officers, employees or agents. ODOT may elect to assume its own defense with an attorney of its own choice and its own expense at any time ODOT determines important governmental interests are at stake. ODOT agrees to promptly provide Recipient with notice of any claim that may result in an indemnification obligation hereunder. Subject to the limitations noted above, Recipient may defend such claim with counsel of its own choosing provided that no settlement or compromise of any such claim shall occur without the consent of ODOT, which consent shall not be unreasonably withheld, conditioned or delayed.

b. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of

expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- c. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.
- g. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 10(g). Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this

Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- i. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- j. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- k. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- m. Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either party to enforce any provision of this Agreement shall not constitute

ODOT/City of Yachats
Agreement No. 33924

a waiver by that party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW

ODOT/City of Yachats
Agreement No. 33924

THE PARTIES, by execution of this Agreement, acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The Project was approved on October 18, 2018 by the Program Implementation and Analysis Manager.

City of Yachats, by and through its elected officials

By Rick McClung
(Legally designated representative)

Name Rick McClung
(printed)

Date 12/2/19

By Shannon Beauvais
Name (printed)

Date 12/2/19

LEGAL REVIEW APPROVAL
(If required in Recipient's process)

By _____
Recipient's Legal Counsel

Date _____

Recipient Contact:

Rick McClung, Water Plant/CIP Projects
441 Highway 101 N
Yachats, OR 97498
541-547-3565 x 123
rick@yachatsmail.org

STATE OF OREGON, by and through its Department of Transportation

By Amanda Pretz
Program Implementation and Analysis Unit Manager

Name Amanda Pretz
(printed)

Date 12/3/19

APPROVAL/RECOMMENDED

By Alan Hays
Small City Allotment Program Manager

Date 02 Dec 2019

By _____
State Traffic-Roadway Engineer

Date _____

ODOT Contact:

Shelly White Robinson
3700 SW Philomath Blvd
Corvallis, OR 97333
541-757-4199
Shelly.white-robinson@odot.state.or.us

EXHIBIT A

Project Description

Agreement No. 33924

Driftwood Lane Improvement Project

PROJECT DESCRIPTION

Project will construct walkways and overlay Driftwood Lane from West Fifth to West Sixth Street.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, Section V.

Driftwood Lane is part of the city street system under the jurisdiction and control of Recipient.

EXHIBIT B

Recipient Requirements

- I.** Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
- II.** Recipient shall notify ODOT's Contact in writing when any contact information changes during the Agreement.
- III.** Recipient shall, at its own expense, maintain and operate the Project upon completion and throughout the useful life of the Project at a minimum level that is consistent with normal depreciation or service demand or both. The Parties agree that the useful life of the Project is defined as seven (7) years from its completion date (the "Project Useful Life"). For any portion of the Project that is not within ODOT's or Recipient's jurisdiction (the "County Portion"), Recipient shall enter into a maintenance agreement with the county having jurisdiction over the County Portion (the "Maintenance Agreement"). The Maintenance Agreement must designate the entity that will maintain the County Portion for the Project Useful Life. No Grant Funds will be disbursed until ODOT receives an executed copy of the Maintenance Agreement. This paragraph shall survive any expiration of this Agreement.
- IV.** Recipient shall maintain insurance policies with responsible insurers or self-insurance programs, insuring against liability and risk of direct physical loss, damage or destruction of the Project, at least to the extent that similar insurance is customarily carried by governmental units constructing, operating and maintaining similar facilities. If the Project or any portion is destroyed, insurance proceeds will be paid to ODOT, unless Recipient has informed ODOT in writing that the insurance proceeds will be used to rebuild the Project.
- V. Americans with Disabilities Act Compliance**
 - a. State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility ("state highway"):
 - i.** Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
 - ii.** Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, "ADA"), including ensuring that all sidewalks, curb ramps, pedestrian-activated signals meet current ODOT Highway Design Manual standards;

- iii. Recipient shall follow ODOT's processes for design, construction, or alteration of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iv. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State's Project Manager for each curb ramp constructed or altered as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form and instructions are available at the following address:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
 - v. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway before acceptance of Project by Recipient and before release of any Recipient contractor.
 - vi. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, disability organizations, and ODOT at least 10 days before the start of construction.
- b. Local Roads:** For portions of the Project located on Recipient roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT's processes for design, construction, or alteration of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:

<https://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>
- Additional ODOT resources are available at the above-identified link. ODOT has made its forms, processes, and resources available for Recipient's use and convenience.
- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and

agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.

- iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Recipient, or abutting property owner, pursuant to local code provisions, performs any repair or removal of obstructions needed to maintain the Project in compliance with the ADA requirements that were in effect at the time the Project was constructed or altered,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this Section VI shall survive termination of this Agreement.

VI. Work Performed within ODOT's Right of Way

- a. Prior to the commencement of work, Recipient shall obtain, or require its contractor to obtain, permission from the appropriate ODOT District Office to work on or along the state highway. This Agreement does not provide permission to work on or along the state highway.
- b. If the Project includes traffic control devices (see ODOT's Traffic Manual, Chapter 5, for a description of traffic control devices) on or along a state highway, Recipient shall, pursuant to Oregon Administrative Rule (OAR) 734-020-0430, obtain the approval of the State Traffic Engineer prior to design or construction of any traffic control device being installed.
- c. Recipient shall enter into a separate traffic signal agreement with ODOT to cover obligations for any traffic signal being installed on a state highway.
- d. Recipient shall ensure that its electrical inspectors possess a current State Certified Traffic Signal Inspector certificate before the inspectors inspect electrical installations on state highways. The

ODOT's District Office shall verify compliance with this requirement before construction. The permit fee should also cover the State electrician's supplemental inspection.

VII. GENERAL STANDARDS

The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

EXHIBIT C

Subagreement Insurance Requirements

GENERAL.

If project is on or along a state highway, Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to ODOT. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

The insurance specified below is a minimum requirement that the contractor within the subagreement shall meet. Recipient may determine insurance types and amounts in excess to the minimum requirement as deemed appropriate based on the risks of the work outlined within the subagreement.

Recipient shall require the contractor(s) to require that all of its subcontractors carry insurance coverage that the contractor deems appropriate based on the risks of the subcontracted work. Contractor shall obtain proof of the required insurance coverages, as applicable, from any subcontractor providing Services related to the Contract.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION.

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide **Workers' Compensation Insurance** coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than \$500,000 each accident. **Contractor shall require compliance with these requirements in each of its subcontractor contracts.**

ii. COMMERCIAL GENERAL LIABILITY.

Commercial General Liability Insurance shall be issued on an occurrence basis covering bodily injury and property damage and shall include personal and advertising injury liability, products

and completed operations, and contractual liability coverage. Amounts below are a minimum requirement as determined by ODOT:

Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

iii. AUTOMOBILE Liability Insurance: Automobile Liability.

Automobile Liability Insurance covering Contractor's business-related automobile use covering all owned, non-owned, or hired vehicles for bodily injury and property. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Amount below is a minimum requirement as determined by ODOT:

Coverage shall be written with a combined single limit of not less than \$1,000,000.

iv. ADDITIONAL INSURED.

The Commercial General Liability Insurance and Automobile Liability Insurance must include the **"State of Oregon, the Oregon Transportation Commission and the Department of Transportation, and their respective officers, members, agents and employees"** as an **endorsed** Additional Insured but only with respect to the contractor's activities to be performed under the Subcontract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

v. "TAIL" COVERAGE.

If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance or pollution liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of: (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

vi. NOTICE OF CANCELLATION OR CHANGE.

The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

vii. CERTIFICATE(S) OF INSURANCE.

Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

The Recipient shall immediately notify ODOT of any change in insurance coverage.



WESTECH ENGINEERING, INC.
CONSULTING ENGINEERS & PLANNERS

December 2, 2019

Rick McClung
City of Yachats
PO Box 345
Yachats, OR 97498

RE: Driftwood Street Improvements – Conceptual Planning
J.O. 3096.2020.0

Dear Rick:

Westech Engineering is pleased to have the opportunity to serve the City of Yachats with the design of Driftwood Street between 5th Street and 6th Street. With regard to this project Westech believes that it is in both the City's and Westech's interests to have a conceptual planning phase for the street design before developing a detailed design. This proposal presents a proposed scope of services for topographic surveying followed by the development of a preliminary street layout before starting the design phase. Using this information the City would evaluate the options and provide specific guidance for development of the construction plans. Once the City has determined the preferred street layout for the Driftwood Street project, Westech will provide a proposal for the scope of services for preparation of construction drawings and specifications.

The remainder of this letter proposal is divided into the following sections.

- Project Description and Work Plan
- Proposed Work Plan
- Proposed Project Schedule
- Fee Schedule

Short discussions on these items follow.

PROJECT DESCRIPTION AND WORK PLAN

The Conceptual Design phase for the Driftwood Street Improvement Project will include the following major elements.

- The focus of design will be on the plan view layout and cross sections. The preliminary layout will be developed in coordination with City staff based on the unique conditions of the site, City standards and guidance from City staff.
- Westech will develop cost estimates for the preferred option and adjustments as necessary for revisions based on budget considerations.

December 2, 2019
Mr. Rick McClung
City of Yachats
Page 2

PROPOSED PROJECT SCHEDULE

We propose to have the topographic survey completed within 30 days of being authorized to proceed, and the preliminary layout work completed within 60 days after being authorized to proceed.

FEE SCHEDULE

Based on the estimated fees for surveying and preliminary street layout listed below, we propose to provide this Conceptual Planning Phase engineering services for a Time and Materials fee Not to Exceed **\$10,000**.

Estimated Time and Materials, Topographic Survey	\$6,500
Estimated Time and Materials, Preliminary Street Layout	\$3,500

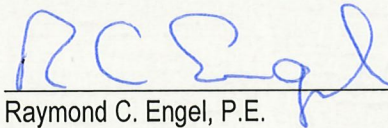
If the City decides to proceed with the work scope summarized herein, we assume that the City will authorize us to proceed with these services under our existing city engineering contract (we will provide separate invoices for this work to allow the City to accurately track costs).

Upon your authorization to proceed, we are prepared to start immediately on the project coordination and design. This proposal is valid for 6 months from today's date.

We appreciate the opportunity to present this engineering services proposal to the City. We look forward to working with the City on this important project. If you have any questions or require any additional information, please do not hesitate to contact us at (503) 585-2474.

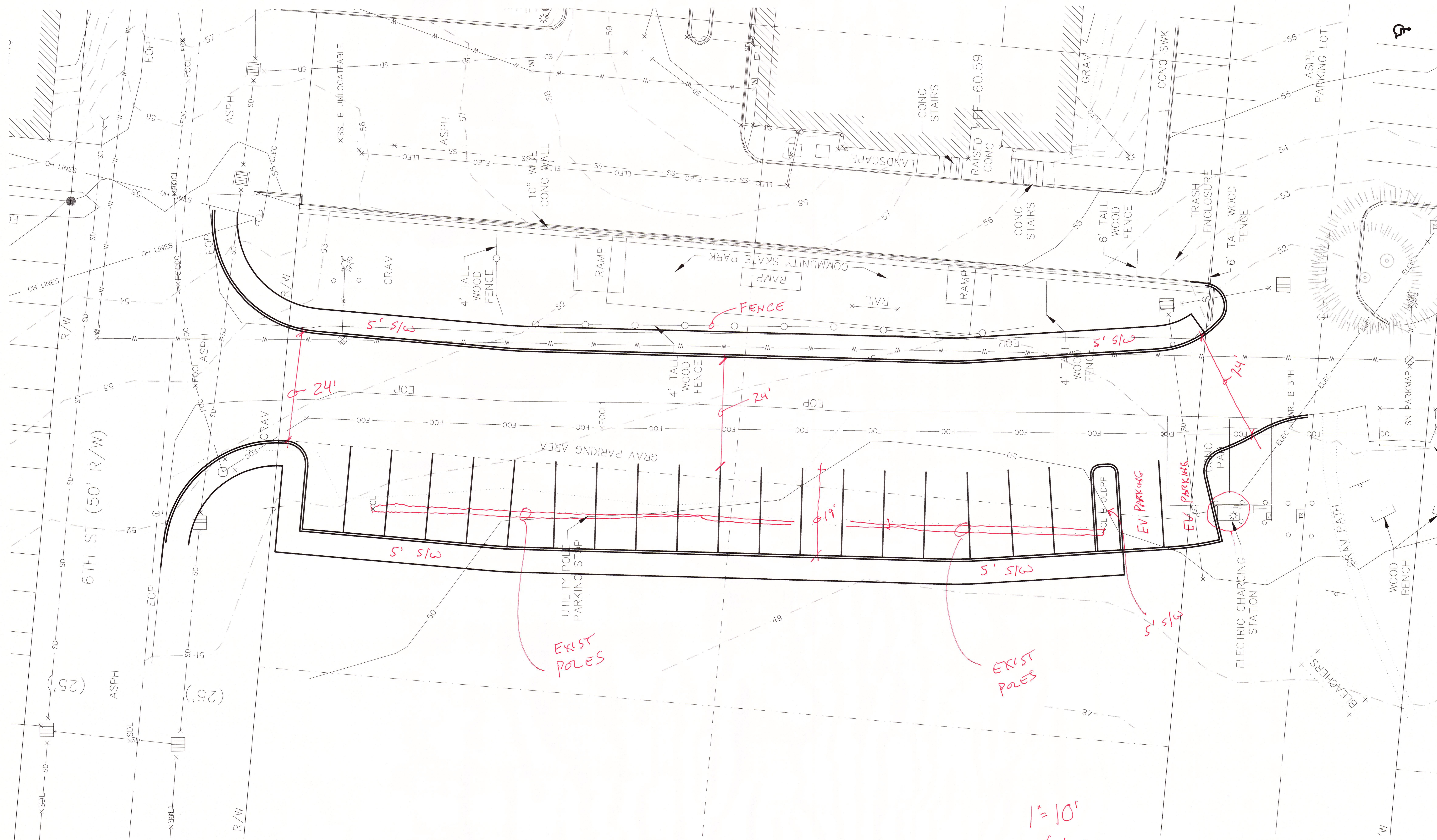
Sincerely,

WESTECH ENGINEERING, INC.



Raymond C. Engel, P.E.
Project Manager

rce



**OREGON
ATTORNEY GENERAL'S
PUBLIC CONTRACTS MANUAL**

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may sanction the entity by prohibiting it from submitting offers in response to that agency's solicitations and from participating in its contracts as a sub-contractor for a reasonable period of time commensurate with the seriousness of the misconduct.

-2- Disqualification should be used with some care by a contracting agency because it outright suspends a person's ability to participate in the agency's competitive procurement processes for a period of time. Disqualification does not constitute a punishment. It serves as a sanction imposed only for the protection of the public interest. The maximum period of disqualification is three years under ORS 279C.440(1)(c), but contracting agencies have discretion to impose shorter disqualification periods. In *Labor Ready Northwest, Inc. v. BOLI*, 208 Or App 195, 201-04,145 P3d 232 (2006), the Court of Appeals upheld the Bureau of Labor and Industries' determination of a period of debarment under a comparable statute, *former* ORS 279.361(1)⁹⁶ which authorized a debarment period of up to three years for a contractor's intentional failure to pay workers the prevailing rate of wage.

137-049-0380

Bid or Proposal Evaluation Criteria

(1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See OAR 137-049-0390, and Rules for Alternative Contracting Methods at 137-049-0600 to 137-049-0690.

(2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alter-

⁹⁶Former ORS 279.361(1) now is substantially codified as ORS 279C.860(1).

nates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See OAR 137-049-0350(2)(b).

(3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See OAR 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

(1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection

with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency; and

(e) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) Contracting Agency Evaluation. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers

nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) Evaluation of Proposals. See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, 279C.365, 279C.375 & 279C.395

COMMENTARY:

-1- Contracting Agency Must Document Its Responsibility Determination. As reflected in OAR 137-049-0390(3), the 2005 Legislative Assembly amended ORS 279C.375(3), prescribing a form a contracting agency must use to document that it has determined the responsibility of the bidder to be awarded a public improvement contract. 2005 Oregon Laws, chapter 376, §1. To comply with this requirement, the contracting agency must check the Construction Contractors Board list, maintained under ORS 701.227, of bidders who are not qualified to enter into public improvement contracts, and must determine whether the bidder has demonstrated that it

meets the responsibility criteria prescribed in ORS 279C.375(3)(b). The contracting agency must submit to the Construction Contractors Board, within 30 days after the date of contract award, the form that demonstrates the contracting agency complied with this requirement.

-2- Responsibility Determination Is an Exercise of Discretion. A contracting agency's determination of the "lowest responsible bidder" involves the exercise of broad, but not unlimited, judgment based on facts reasonably tending to support the agency's decision. See *Hanson v. Mosser*, 247 Or 1, 9-10, 427 P2d 97 (1967), *overruled in part on other grounds*, *Smith v. Cooper*, 256 Or 485, 488, 475 P2d 78 (1970). In *Hanson*, the court stated that in the absence of fraud or a gross abuse of discretion, the courts will not interfere in the exercise of discretion by administrative boards or officers in their determination of the lowest responsible bidder. 247 Or at 9, quoting *Inge v. Board of Public Works of Mobile*, 135 Ala 187, 30 So 678, 681 (1902).

-3- The Scope of Matters That Bear on a Bidder's Responsibility Is Broad. The *Hanson* court observed that the assessment of a bidder's responsibility may encompass any circumstances or history of a bidder that have a practical or logical influence on the bidder's ability to satisfy its obligations under the public contract:

All matters bearing upon the likelihood that the contract will be promptly and efficiently performed bear upon the question of responsibility of bidders and may and should be considered in determining who is the lowest responsible bidder.

247 Or at 9, quoting 43 Am Jur 784-85, Public Works and Contracts, section 42.

Because a prospective contractor's past conduct is the best indicator of future performance, the responsibility investigation embraces both the present circumstances and the past behavior of a bidder, its officers and agents.⁹⁷ ORS 279C.375(3)(b) regards not only the present capability, in

⁹⁷OAR 137-049-0390(2)(c) recognizes that a bidder may not escape responsibility scrutiny because an officer or employee, and not the firm itself, has demonstrated a lack of integrity:

* * * * A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror

terms of assets and experience, of a bidder to perform a contract, but also takes into account the bidder's past record of contract performance and integrity.

Examples of past contract performance that may count against a determination that a bidder is responsible embrace contract violations that extend beyond the outright material breach or abandonment of public or private contracts. When specified as obligations under a previous contract, these omissions can include a contractor's failure to obtain permits and other official approvals when and as required by law. The refusal to accurately complete, or delay in the submission of, test reports, samples, performance logs, quantity manifests, materials invoices, shop drawings and other documents required by a contract also can constitute evidence of irresponsible past contract performance, as well as the failure to make timely and correct payment of subcontractors, suppliers, and laborers.

A bidder's violation of applicable law in the performance of a past contract may operate as a significant indicator of non-responsibility, for that behavior implicates both the bidder's record of past performance (under ORS 279C.375(3)(b)(F) and OAR 137-049-0390(2)(b)), and its record of integrity (under ORS 279C.375(3)(b)(G) and OAR 137-049-0390(2)(c)). Adverse reflections on a bidder's record of integrity encompass unlawful or dishonest conduct that did not relate directly to a particular public contract, like attempted tax evasion. A bidder's unlawful anticompetitive conduct in seeking contracts, and involvement in official corruption or in violations of the Oregon Government Ethics Act, ORS 244.010 to 244.045 and ORS 244.120 to 244.135, also would denote an unsatisfactory record of integrity. See OAR 137-049-0390(2)(c) (permitting the use of the standards for conduct disqualification under OAR 137-049-0370, which include convictions of crimes that manifest dishonesty or a lack of business integrity).

Oregon Laws 2009, chapter 880, §§9 and 9a, modified ORS 279C.375, most significantly with respect to a bidder's records of performance and integrity under ORS 279C.375(3)(b)(F) and (G). Subsections (2)(b) and (c) of OAR 137-0349-0390 reflect these amendments.

(such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). * * * *

-4- Ineligibility of Out-of-State Education Service Districts. OAR 137-049-0390(1) reflects a restriction in ORS 279C.325, which prohibits a contracting agency from awarding a public improvement contract or a public works contract to a non-resident bidder that is an education service district.

137-049-0395

Notice of Intent to Award

(1) **Notice.** At least seven days before the Award of a Public Improvement Contract, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to 279C.410(7)), or post electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$5,000) or intermediate (informal competitive quotes) Public Improvement Contract awarded under 279C.335(1)(c) or (d).

(2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.

(3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:

(a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or

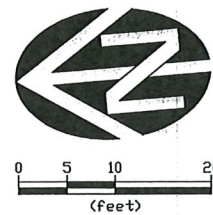
(b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.

(4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375



ELECTRIC VEHICLE CHARGING STATION NOTES

1. THE CONTRACTOR SHALL RELOCATE THE EXISTING CHARGING STATION AS SHOWN.
2. ALL SHALL BE PERFORMED BY DESIGN-BUILD BY THE CONTRACTOR.
3. THE WORK SHALL BE PERFORMED BY AN OREGON-LICENSED ELECTRICAL CONTRACTOR. ALL NECESSARY PERMITS SHALL BE PROCURED AND PAID FOR BY THE CONTRACTOR.
4. THE WORK SHALL BE PERFORMED TO MAINTAIN ACCESS TO AND USE OF THE EXISTING CHARGING STATION TO THE MAXIMUM EXTENT FEASIBLE.
5. THE RELOCATION SHALL OCCUR IN THE SHORTEST FEASIBLE TIME TO MAKE THE CHARGING STATION OPERABLE AND AVAILABLE FOR USE WITH THE SHORTEST AMOUNT OF DOWNTIME FEASIBLE.
6. REFERENCE INFORMATION CONSISTING OF THE DESIGN/CONSTRUCTION DRAWINGS FOR THE ORIGINAL INSTALLATION ARE PROVIDED IN APPENDIX A OF THE BIDDING DOCUMENTS.
7. THE CONTRACTOR SHALL COORDINATE THE WORK WITH THE CHARGING STATION OWNER, WEBASTO CHARGING SYSTEMS, INC. OF MONROVIA, CA. CONTACT: MARTY YOUNG, (626 764-9717).

ADA PARKING SIGNS & STRIPING

1. SIGNS & STRIPING SHALL BE PER FIGURE 1 OF THE OREGON TRANSPORTATION COMMISSION STANDARDS FOR ACCESSIBLE PARKING PLACES (AUGUST 2018).
2. PROVIDE ONE EACH SIGN (R7-8 AND R7-8a WHERE SHOWN AT THE HEAD OF THE ACCESSIBLE PARKING SPACE.
3. PROVIDE AN OR7-9 SIGN AT THE BACK OF THE SIDEWALK IN LINE WITH THE ACCESS AISLE.
4. INSTALL SIGNS PER DTL 2310.

#2 MOVE TO HERE
4 LEAVE THIS

#1
LEAVE THIS

Public Input

Shannon Beaucaire

From: Paul Thompson <majorstwo@yahoo.com>
Sent: Friday, July 17, 2020 8:54 AM
To: Leslie Vaaler; Mary Ellen O'Shaughnessey
Cc: Mayor; Jim Tooke; Max Glenn; Shannon Beaucaire
Subject: Driftwood Project

Leslie & Mary Ellen,

My thanks to both of you for standing up to the insanity and uselessness of this project. I have thought that the waste of the money on the old bank building from the start was terrible, and now \$165, 000 for 18 parking spaces is downright f\$\$lish.

Nothing has ever been done about the awful curbs on 101 on the west side where our numbered streets meet 101. Those road intersections are unsafe especially the intersection at 2nd St, 101 and Beach Street. Someone will be hurt or killed one day due to the city's inaction to fix this screw up by ODOT while Shannon studies the issue and waits for ODOT to make a decision first.

Also the transportation study is ridiculous. A high traffic roadway (101) runs right through our town and our side roads can't support the traffic. What else do we need to know? Just decide what to do with the existing roads and make a final decision on the one way Ocean View Dr and paint the walking lane now Don't waste money on a STUDY !..

The temporary signage on Ocean View Dr is grossly inadequate, the One Way signs blow over in the wind every few days. If you're from out of town and go west on 7th and come to Ocean View Dr Stop Sign What do you do.? According to the temporary sign you can only turn LEFT when in fact a RIGHT turn is OK.

Fix the unsafe intersections and gross, inadequate signage first then maybe other much less important things after that,

Thanks again,

Paul

Shannon Beaucaire

From: Max Glenn
Sent: Saturday, July 18, 2020 3:46 PM
To: Dana
Cc: Max Glenn
Subject: Re: Pavement of street

Hi Dana

Thank you for sharing your opinion with me. I, too, share your concern for the completion of the Ocean View Drive project. Unfortunately, that is being done by the county. Recent report is we may see progress soon.

Max

Max Glenn
max@yachatsmail.org

On Jul 18, 2020, at 3:38 PM, Dana <wooflevi@yahoo.com> wrote:

Hi Max,

We would like to express our great disappointment in hearing that you and some other council members would like to put in a very much unneeded two lane road

with sidewalks there by the skateboard park. That money, 68 thousand or so, could be much better put to use for the needed water meter system, or to help finish Yachats

share of the 804 trail along Ocean View. Such as some kind of barrier between the driving lane and pedestrians. Planter boxes?

Thank you,

Dana Bleckinger & Maryann Candito

1045 Driftwood Ln.

Shannon Beaucaire

From: Mayor
Sent: Sunday, July 19, 2020 1:05 PM
To: Judy M. Richter; Mary Ellen O'Shaughnessey; Max Glenn; Jim Tooke; Leslie Vaaler; Ruth Bass; Shannon Beaucaire
Subject: Re: paving Driftwood

Thank you, Ruth and Judy, for your comments. The Council will consider all points of view in making our final decision.

John

From: Judy M. Richter <judy@judymrichter.com>
Sent: Saturday, July 18, 2020 5:26 PM
To: Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Mayor <Mayor@YachatsMail.org>; Max Glenn <Max@YachatsMail.org>; Jim Tooke <Jim@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>
Subject: paving Driftwood

Dear Mayor and Yachats City Councilors,

I am against spending a large sum of money to use up the whole ball field--- for what???

One lane, one sidewalk, and some parking spaces are plenty. There are many other actual streets in this town that need attention way more than that area. As a resident, I don't need more parking and I'm opposed to spending \$\$\$ for more parking.

Thank you

--

Judy M. Richter
541-844-5280

Shannon Beaucaire

From: Mayor
Sent: Sunday, July 19, 2020 6:32 PM
To: Shannon Beaucaire
Subject: Fw: Pavement of street

fyi

From: Dana <wooflevi@yahoo.com>
Sent: Sunday, July 19, 2020 3:27 PM
To: Mayor <Mayor@YachatsMail.org>
Subject: Re: Pavement of street

John,

There was very little public knowledge of this project, and it's not about taking the time to read it, people didn't even know about this. I understand there are no public meeting because of covid, but then it is up to the city

to mail out updates about important issue, and not just the once a month water bill flyer. Now it seems you want to go ahead with this because of the time put into it and that Yachats will lose the grant.

Also, if your so worried about the local contractors, maybe there should be much more discussion about a project before they are involved, and if information is needed

from a contractor, they should be told upfront that Yachats has not decided weather to go ahead with the particular issue being discussed.

Everyone I have spoken to about this is very much against it!!! Yachats can not keep adding more and more parking spaces, Just a few years ago we added alot more spaces

when the sidewalks were put in along 101. Yachats needs to come up with a plan that allows people to leave there cars at The Fireside, Overleaf, Adobe, etc.and still come into town .

Perhaps it's time to think about a shuttle, which would solve the parking issue and help out with congestion, especially when trying to make a left turn back onto 101.

Thank you John for your time,

Dana

On Sunday, July 19, 2020, 12:23:55 PM PDT, Mayor <mayor@yachatsmail.org> wrote:

Thank you for your comments, Dana. The Public Works & Streets Commission has had this project in their plans for several years. They first went forward on East 2nd Street and West 1st Street, bringing both of those areas up to code for drainage and curbing. There has been a long term desire to pave that one block section of street, as it is in rough shape and has been for several years.

The sidewalk on the East side of the street was added to provide safety to the kids entering and leaving the skate park, so they could come out on a sidewalk instead of walking directly into the street as they have been. The sidewalk on the West side was added to provide a safe, smooth walkable way for people to go from their cars to the Commons and back without having to walk down the middle of the street.

We were able to obtain a grant from ODOT for \$100,000 to do that project. And of course, "free money" does come with conditions. ODOT requires in this case two "proper" lanes of traffic instead of a one and half lane road with two way traffic which we have had for many years. This project was unanimously recommended by the Public Works and Streets Commission for approval, and the Council agreed months ago to put it out for bid. The information has all been on our City website for several months. We did put it out for bid, received three bids on it, and now, just as we were ready to award the contract to the low bidder, all sorts of objections have come out of the woodwork at the last possible moment.

If we dropped the grant and just wanted to do an overlay over the existing pavement and pave the parking area on the west side of the street (that has been used for parking for years anyway), that would cost the city more than this project is slated to cost, thanks to the \$100,000 grant. People have been asking for more parking near the Commons and close to downtown for years. This includes 18 parking spaces. We heard our residents tell us they want more parking, we heard them tell us they wanted that street repaved, and we heard them tell us their concerns for safety, and this project was the result of hearing those concerns. Now that we're ready to go ahead with it, we're hearing loud objections. So what do we do? What's truly in the best interest of this community for this?

If we fail to proceed on this project, we do face a credibility problem with area general contractors - several months ago, we went out for bids for a library expansion, and received a number of bids for the project. After all bids were submitted, the Library Commission decided to scrap the project for now, and do a needs assessment before deciding on a future course of action. The contractors who had taken the considerable time required to submit proposals obviously were not happy to have it pulled at the last minute. Now here we are again, risking the same thing. Makes you wonder - who is going to be willing to bid the next project we would like to do here in Yachats?

All of the information I've just given you has been available to our citizens for some time, but apparently only a small number of people have taken the time to read it and be informed on this project. Now that I've recapped it all for you I would appreciate it if you would take some time to digest it, then in a few days if you wouldn't mind, I would like to hear your thoughts again once you've had some time to fully consider all the factors. Thanks again for contacting me.

Dana, I do apologize for the length of this email, but when people contact us about an issue, they usually have short, easy answers to very complex questions. The Council has to consider all of the things I noted in this email, and I hope after reading it you'll have a better understanding of why we got to where we are with the project. I do look forward to your response in a few days. Thanks, Dana.

John

From: Dana <wooflevi@yahoo.com>
Sent: Saturday, July 18, 2020 3:25 PM
To: Mayor <Mayor@YachatsMail.org>
Subject: Pavement of street

Hi John,

We would like to express our great displeasure of the city spending 68,000 dollars or so to put in an unneeded two lane road with sidewalks there by the skateboard park!!!

That money should be spend on much more pressing matters, such as the computer system for the water meters, or to help finish the 804 trail along Ocean View. We are very

disappointed in you and the others who are pushing this through.

Thank you,

Dana Bleckinger & Maryann Candito

1045 Driftwood Ln

Shannon Beaucaire

From: Rick McClung
Sent: Monday, July 20, 2020 11:40 AM
To: Ray Engel; Shannon Beaucaire
Subject: RE: Driftwood Lane Paving Project

thank you Ray.

Sent from my Samsung Galaxy , an AT&T LTE smartphone

----- Original message -----

From: Ray Engel <rengel@westech-eng.com>
Date: 7/20/20 11:34 AM (GMT-08:00)
To: Rick McClung <Rick@YachatsMail.org>
Subject: RE: Driftwood Lane Paving Project

Hi Rick,

Please see below for my comments in red.

In general, his comments are in agreement with the email I sent to you and Shannon on Friday.

Ray Engel
Raymond C. Engel, P.E.
Project Manager
WESTECH ENGINEERING, INC.
(503) 585-2474

From: Rick McClung <Rick@YachatsMail.org>
Sent: Monday, July 20, 2020 10:40 AM
To: Ray Engel <rengel@westech-eng.com>
Subject: FW: Driftwood Lane Paving Project

Hi Ray,

Shannon wants me to look into Loren's concerns (see below), he is a retired engineer. The questions might need to be answered if the council was to move forewarned an Aug. 2nd.

Thanks,
Rick

From: Shannon Beaucaire <citymanager@YachatsMail.org>
Sent: Monday, July 20, 2020 10:07 AM
To: Rick McClung <Rick@YachatsMail.org>
Subject: FW: Driftwood Lane Paving Project

This would be worth mentioning to the engineer on Driftwood

Keep Lincoln County Open

Shannon Beaucaire
City Manager
City of Yachats
Citymanager@yachatsmail.org
YachatsOregon.org
PO Box 345
Yachats, OR 97498
Phone: 541.547.3565
Fax: 541.547.3063

From: Loren Dickinson <lorendickinson@gmail.com>
Sent: Friday, July 17, 2020 2:51 PM
To: Shannon Beaucaire <citymanager@YachatsMail.org>
Subject: Driftwood Lane Paving Project

Shannon,

I am writing this email not as a representative of Trails or the Planning Commission, but as a concerned private citizen.

I attended the zoom Parks & Commons meeting yesterday. There was a motion passed to direct the City Manager to look into an alternative option to delete the west sidewalk from the current designs. I am sure you will discuss this with Rick and the design engineers, but from what I see on the plans, the west sidewalk is integral to the travel pathway for the ADA (handicap) accessible parking space. Eliminating the west sidewalk in its entirety would render the accessible parking space not in conformance with ADA standards because there would be no path of travel to the south. At a minimum, a small amount of the west sidewalk would need to be retained at the curb ramp (near the diagonally striped safety area to the north of the space itself) southward to facilitate the required path of travel.

(This is basically the same as my email on Friday. You are required to have an ADA space, and you need a path from that ADA space to somewhere.)

And, as I had called to the commission's attention before, vehicles parked in the accessible parking space and the two adjacent parking spaces to the south thereof, would overhang the curb by as much as 2 to 2.5 feet. That would cut the effective width of the (ADA) sidewalk in front of the vehicles to much less than the ADA-required 5 feet. It has been my professional experience that sidewalks in front of parking spaces where vehicles overhang the curb are usually 7 to 7.5 feet wide for that purpose.

(I have not seen 7-7.5 feet sidewalks as a typical practice when full length parking spaces are being used. However, it is a valid concern. It could easily be addressed by adding a wheel stop in the parking space to stop the wheels a couple of feet from the curb. I have used this arrangement in the past.)

Another potential issue is the west sidewalk's extension northward. A question that I am not familiar with: is that connection from the accessible parking space northward to 6th Street required by ODOT for ADA compliance?

(I think this is related to the potential for eliminating the west side sidewalk north of the ADA space. It is my understanding that the expectation is that a path is provided to somewhere. I don't think it is necessary to provide a

path directly to any possible destination. In the first place, there really isn't any specific use or activity to the north that would be a destination for this ADA space. Also, with the east side sidewalk there is a path to the north. It is a bit out of the way, but by going south and then crossing the street you can go north. In brief, I think it would be OK for the City to eliminate the west side sidewalk north of the ADA parking space.)

Again, you should consult with the engineers in these issues, as they, and the City, are ultimately responsible for the finished parking to conform to ADA requirements.

Respectfully submitted.

--

LOREN DICKINSON

Shannon Beaucaire

From: Mayor
Sent: Thursday, July 23, 2020 2:50 PM
To: Rheychol Paris
Subject: Re: Driftwood project

Thank you for your comments, Rheychol. We have received a number of comments about the project since our last council meeting, and I will share this with the rest of the council.

John

From: Rheychol Paris <rparisrealestate@gmail.com>
Sent: Thursday, July 23, 2020 2:20 PM
To: Mayor <Mayor@YachatsMail.org>
Subject: Driftwood project

John,

Please reconsider proceeding with the Driftwood project.

It does not seem economically wise or prudent at this time.

While I appreciate all of the effort that has been put into this project it is not reason enough to proceed.

Thank you for your time.

Rheychol

Rheychol Paris ~ Principal Broker - LICENSED IN OREGON

C-415-307-3559 H-541-547-5391
Office Fax: 541-547-4154
E-Fax: 206-203-3766
rparisrealestate@gmail.com
MAIL: P.O.Bx 686 Yachats, OR 97498

EMERALD COAST REALTY
360 Hwy 101, Yachats, OR

Shannon Beaucaire

From: Loren Dickinson <lorendickinson@gmail.com>
Sent: Monday, July 27, 2020 11:05 AM
To: Shannon Beaucaire; Mayor
Subject: Driftwood Lane Project
Attachments: Driftwood Lane Project - letter 7-27-2020.pdf; Driftwood-Lane-Plan.pdf

John and Shannon,

Attached is a letter from me, as a Yachats citizen, dated 7-27-20, expressing my concerns for the proposed Driftwood Lane Project. Also attached is a composited file showing the proposed Project over an aerial photo.

Please provide the letter and attachment to the City Council members for consideration.

Thank you.

--

LOREN DICKINSON
333 Jennifer Drive
Yachats, OR 97498

July 27, 2020

Yachats City Council
Yachats City Manager
Yachats Mayor

Via: email

After deliberation, I find that I, as a citizen of the Yachats community, cannot support the Driftwood Lane project in its current form. I believe that I have a sufficient understanding of the financial issues involved, and my issue with the project are not related to that. My reasons for not supporting this project are as follows:

A. I believe there has been insufficient opportunity for **input from the public**.

B. I believe there are **safety issues** with the current design:

1. Creating a two-way "street" would encourage speeding and a lack of caution by drivers for the pedestrians that will use the thoroughfare.
2. Having a "skateboard park" so close to a street would pose a danger to the young people and family members using the skateboard ramp or standing on the sidewalk nearby.
3. As currently occurs, I do not believe all pedestrians would use the sidewalk, but will continue to walk within the driveway area.

C. I take issue with the following **technical aspects** of the proposed designs:

1. As a retired architect, I have a working knowledge of ADA requirements. Work to public facilities requires ADA "path of travel" throughout a facility, and connection to a public street or right-of-way. The current design shows an ADA connection to the 6th Street right-of-way with the proposed sidewalk along the east side of the driveway. However, that extension does not in any way connect to an ADA pathway to anywhere. In addition, the ADA pathways on the south ends of both the east and west sidewalks connect to nothing. The single accessible parking space may serve the open space, but cannot provide ADA access to the rest of the Commons area. I bring it up only to point out that it furthers what the project has been perceived and called by some as "the road to nowhere". Even if this were redesigned to a parking lot (only) and not a street, the requirements for ADA would still exist, which results in a situation where there is not good answer for this concern.

2. In the current design, the west sidewalk is non-functional as an ADA pathway. Vehicles parking in those spaces adjacent to the sidewalk will overhang the 5 foot wide sidewalk by two feet or more, rendering the sidewalk not compliant with ADA requirements. There are two commonly used solutions for this: 1) to install parking bumpers within the parking spaces to hold the vehicle from overhanging the sidewalk, or 2) to make the sidewalk 7.5 feet wide so that the overhanging vehicle does not reduce the effective sidewalk width to less than the required 5 foot width. The parking bumpers within the parking spaces have proven to constitute a tripping hazard.
3. The far south end of the west sidewalk terminates much too close to the "covered area" (notification and map gazebo). I believe it would result in insufficient ADA clearances.
4. I do not see in the current design any proposed lighting for the street or parking areas. The parking obviously would be used at night. Therefore, I have a concern for the safety of people using the lot due to inadequately lighting.

D. I have the following **esthetic concerns** with the current design:

1. The entire proposed development would protrude dramatically into the existing green space (old ball field). Also sent with this letter is an overlay of the proposed designs over an aerial view. Whereas this composite is not 100% accurate, I believe it is accurate enough to show that the proposed design would protrude perhaps 15 feet beyond the existing log barrier into the green space (and that is with the current 5 foot sidewalk – it would be greater if the sidewalk were widened as noted above).
2. The green space (old ball field) is the only large open space within the City, and its existence is appreciated by many of Yachats' citizens. To further reduce it size I believe would be inappropriate.
3. Any lighting added to the the development, as noted above, would almost certainly intrude into surrounding facilities and residences.

The City's attention to these concerns is sincerely appreciated.



Loren Dickinson
333 Jennifer Drive
Yachats, OR 97498

Enclosure: Construction Plan over aerial photo

Street

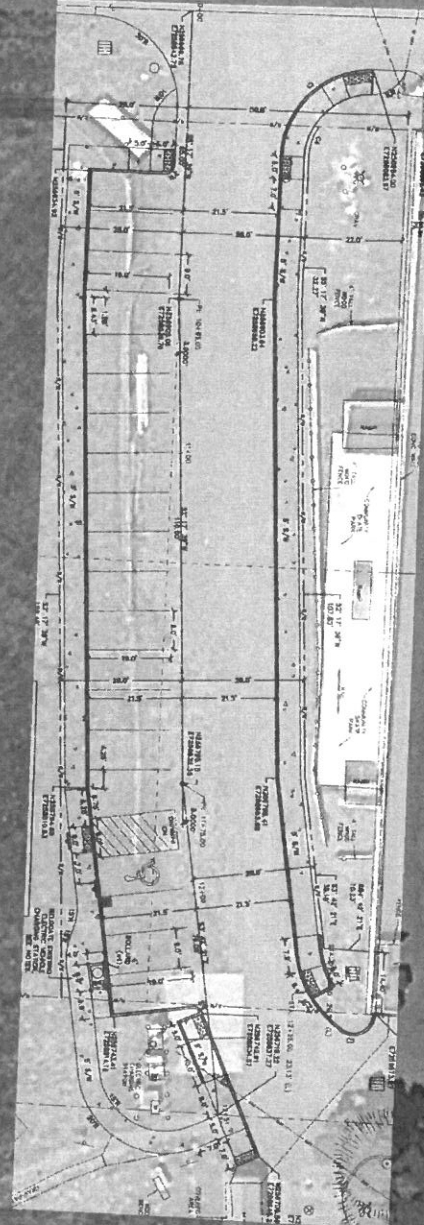
Write a description for your map.

Legend

Google Earth

© 2020 Google

100 ft



6th St

5th St



Shannon Beaucaire

From: Max Glenn <m35glenn@peak.org>
Sent: Monday, July 27, 2020 10:27 PM
To: Shannon Beaucaire
Subject: For council. - Driftwood project

Sent from my iPhone

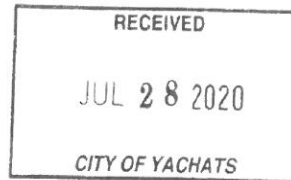
Begin forwarded message:

From: Myron Eckhardt <myneck@peak.org>
Date: July 17, 2020 at 2:24:03 PM PDT
To: Max Glenn <m35glenn@peak.org>
Subject: Promises 

Max, Just remembered I promised to let you and Fran know my lock-out outcome. Ten-mile came thru;and I got inside just minutes before a scheduled teleconference!. Thanks again for your facilitation!

While I am at it (i.e. communicating with you), I am opposed to the city plan to pave the path between YCPC parking lot and the 501. Pedestrian tranquility and safety would be significantly impacted by making it easier for cars and trucks to use that space. I stand for LESS carbon impacting. Making it easier for vehicular travel and covering over even this small patch of earth with asphalt is a move in the wrong direction.

To: The Yachats City Council



July 26, 2020

To the Council Members of the Yachats City Council,

Many thanks for taking the time to read a few of my thoughts, concerns, and suggestions regarding the Driftwood Road project. My major concern is that the city will once again develop an area whose outcome may be functional but will end up being as beautiful and appealing as the downtown curbing and sidewalk project. There, if not for the efforts of the beautification volunteers, the effect is one of being an eyesore, perhaps necessary but unfortunately less than aesthetically pleasing.

Looking at the Driftwood Project's proposed plans, my worry is similar. By paving over that much space and taking over that much of what remains of one of the last good green spaces in town, I fear that that area will be blighted for decades. As you know, many proposals have been made for that section of the city – everything from a baseball diamond to a children's playground to a dog park to... Without abiding by a master plan, I worry that the green space will be nickel-and-dimed, parceled out piecemeal, and end up looking like a disjointed and ill-planned mish-mash. By doing this, we would not come close to matching the natural beauty surrounding us with our own human constructions. It is difficult to make Yachats look ugly but by going through with this project as is currently proposed, we may very well be on our way to doing so. Functional yes, but unfortunately, ugly and unappealing.

This is why I am suggesting that the Council first look into getting an extension on the grant that has been given. I've spoken with others about this possibility and several have mentioned that other towns have been able to get a year long extension, especially during this chaotic time of the pandemic. If given a year, the Council could form a committee/task force of interested, artistic, and financially astute citizens who could dream and develop a comprehensive vision of what that central area in our town could look like and serve as. (I was so very impressed with the ideas that Jacqueline Danos expressed at a recent Council meeting.) Instead of just counting parking places as and for a short-term fix, why not think about what that area could be and how it would fit into the entire flow of the town? Driftwood would be not just a street but a gathering place that people would want to move towards and not simply escape from as a parking area. Other members of the task force could also look into additional funding sources and, of course, within a year, we should have a better idea of what the town's finances would look like given the tenuousness of the current financial situation.

This area of our town has such potential, so many possibilities for being a wonderful gathering area close to the library, the Commons and City Hall, the Farmer's Market. It would not only be sad but such a waste to see it devolve into what would be just another concrete slab.

Once again, thank you all very much for reading/hearing my concerns. I am hoping that the town can come together to create something wonderfully unique and truly beautiful.

Respectfully yours,

Joel A. Keller

873 Horizon Hill Rd.

Yachats, OR 97498



DATE: July 2, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Face Covering Proposal

One of the ideas that came out of Plan Ahead Team discussions was to create reusable face coverings with the Yachats logo and a tag line of 'Caring for the Gem' or 'Saving the Gem'.

A team member took the initiative to obtain an idea for a mock-up. The information that has initially come back are: custom sublimated logo, made from high quality dry-fit material, very comfortable to wear, washable and reusable

cost 72 @ 6.95 each 144 or more \$5.95 each

Question before Council:

Do you wish to proceed with these designs and offer them to Yachats business for resale?

Initial Design:



Driftwood Project
Public Input #2

*Jacqueline Danos & John Purcell
P.O. Box 161
Yachats, Oregon 97498*

July 29, 2020

Dear Mayor Moore and City Council Members,

I would like to take this time to put some thoughts down for your review regarding the sudden turmoil surrounding the Driftwood project as well as some expanded observations concerning the level of vitriol in our little Gem.

As you all are aware, I spoke against the current design and scope of this project, and John requested that a pause be taken. I continue to believe that a generic traffic engineer's design is not what this community needs. That being said, in light of our current situation I believe the best path forward would be to take the recommendation made by the Parks & Common Commission and move forward. We have a grant right now. If you truly want to be fiscally conscious losing a \$100,000 grant is not the way to do that. The few changes that the Parks & Commons Commission recommended can, I believe, be incorporated into the design which would allow the project to get done. The area needs to be paved, it has needed to be paved for years; let's get this done, not perfect, but done, and move on.

This project began its life as a simple repaving of an alley several years ago. Thankfully we now have a City Manager who understands finance and the workings of government grants. She has empowered city staff to find and apply for much needed grant monies in order for this community to be able to continue to provide the services the citizens of Yachats have come to demand. Finding, applying for, and meeting the requirements of grants is a lot of difficult work. There is an artform to it and we are lucky enough to have someone helping this community achieve a higher level of grant procurement. We as citizens should be cheering this development and our luck. We aren't.

In the grant application world not fulfilling grant requirements or turning down awarded grant monies because of indecision reflects back badly on the entity which has failed to fulfill the grant requirements. A red flag will thereafter be triggered when the same entity applies for future grants. If we do not move forward, we risk losing future grants, something that Yachats cannot afford to risk, especially in these uncertain economic times.

There is a lot of blame to go around for why this project has become the issue that it has. I for one will accept my part. When the engineer's design was released, I brought my thoughts and ideas to Council. Too little too late. I, like many in the community, did not pay close enough attention to the various City meetings or our website where all of this information is readily available. Since 1999 Yachats has done without a functional Citizens Involvement Committee. If

we had one perhaps citizens would be more informed. We can discuss as long we like suffice it to say we all should accept some blame.

This Council has been working diligently trying to get things done. From what I have been able to see previous councils have not been able to move Yachats into the 21st century as our current City Council has been doing. With the filling of our City Manager position we have seen our City website become a user friendly and informative site and we have seen an overhaul of the City's finances making them much more accessible and transparent to all of us. We have seen a joining of forces with Western Oregon Council of Governments which has been a benefit to this community in terms of incorporating a wide range of technical expertise that a community the size and financial base of Yachats could never have afforded on its own. The level of professionalism has been elevated, and this includes the empowering of our own City Staff in finding, applying for, and winning grants. Kudos to all of them for doing the hard work required especially during exceptionally difficult times.

For me, the larger problem at the moment is not this particular project but those people who will use the current upheaval to spread misrepresentations of reality for their own gain rather than looking at the best way forward for the entire community. Moving backwards is not the direction we need to move in. It seems to me that there is a force here trying to do exactly that and using the Driftwood Project as a mechanism to do so. What I see happening in Yachats is a microcosm of what is happening all over this country and it pains me. This isn't the Yachats that we found and fell in love with. A previous administration, under Mayor Breen, believed the best way for a community this small to function at its best and most transparent, was by hiring a professional City Manager to assist the volunteers who sit in the Mayor's seat, on the City Council and on the various commissions. That was a forward thinking and very intelligent decision. Let's not throw that away now when we are truly starting to see the benefits. Personally, as a member of the Planning Commission, I am incredibly thankful for the resources that we now have available to us; trainings, code support services, and of special importance in planning - mapping services.

Sincerely,

Jacqueline Danos & John Purcell

Shannon Beaucaire

From: Joanne Kittel <jnkittel@peak.org>
Sent: Sunday, August 2, 2020 7:06 PM
To: John Moore; Leslie Vaaler; Mary Ellen O'Shaughnessey; Jim Tooke; Max Glenn
Cc: Shannon Beaucaire
Subject: Road plan for in back of the 501 Building

Dear Mayor and Council Members, I have examined the proposed plans for the road and parking improvements. The two lanes and two side walks are completely unnecessary to improve safety and accessibility, and a poor use of city matching funds. A one-way single lane that is headed north, one handicap accessible sidewalk and the planned parking is both sufficient and will be a great improvement without unnecessarily infringing on the open space. I request you reconsideration. Thank you . Joanne Kittel, 1356 Hwy. 101 S. Yachats

Shannon Beaucaire

From: Virginia Hafner <ginnymay@peak.org>
Sent: Sunday, August 2, 2020 4:09 PM
To: Mayor; Max Glenn; Jim Tooke; Leslie Vaaler; Mary Ellen O'Shaughnessey
Cc: Shannon Beaucaire
Subject: Driftwood Paving Project

I am so in agreement with the letters that our concerned citizens have sent regarding the Driftwood Project. I had been wondering why there had been no public input that I could see. On the agenda on page 3 of the Driftwood packet it does note the community input follows this memo. Then I had to scroll down numerous pages to find it. The citizens of Yachats need to know CLEARLY what is happening in our very special village. AND, it needs to be clear about public input. I AGREE WITH THE CONCERNS IN THE LETTERS. There is a Master Plan for the Park that I strongly feel needs to be addressed and have a group of volunteers go over it and make suggestions. It is a lovely Park with many good ideas to be considered but not a two lane road with sidewalks that take up space in what could be a really lovely Park. PLEASE RECONSIDER. Ginny Hafner

August 2, 2020

To the Yachats City Council;

There are a number of cogent arguments against the development and major improvements to "Driftwood Lane".

The \$65,000+ City's portion of the project, as part of a \$100,000 ODOT Grant, with completion by December, 2021, when revenue is compromised due to COVID-19 seems to be a poor utilization of funds by both the city and the state at the present time. As the City considers increases to our water and sewer bills, due to revenue loss, the Council willingness to embark on a major fiscal project appears to be inconsistent with tightening our belts and balancing our budget. How long this downturn, due to the pandemic, will continue is unknown with some experts predicting up to 2 years.

The total green space owned and managed by the City of Yachats is minimal with options for acquisition of centrally located parks/green space limited. The present plan for a two-lane road with sidewalks on each side and 18 parking spots will negatively impact the Commons' existing green space. Making "Driftwood Lane" a major thoroughway, reduces valuable green space and elevates a 207-foot access lane with dirt parking into a major street, and a major fiscal investment which needs to have further community input. One option that could be considered is to revise the plan to a one-way, paved with parking, and a single sidewalk that is ADA accessible, should be more rigorously evaluated. The argument that making "Driftwood Lane" one-way would be confusing and create major traffic problems is mute, Ocean View Drive was made one-way and successfully implemented with proper signage and marking.

The available parking at the Commons and 501 Bldg. stand empty more often than the occasional times they are fully occupied. If accessible parking to downtown and the Commons/501 Center is the primary focus of this project, there are several alternative areas within easy walking distance and downtown that could be improved for more available parking such as 4th Street with minimal paving, marking, and signage.

As the guardians of our village, you make important and difficult decisions regarding the direction taken for development, sustainability, and livability of our city. Thus, as the City's vision statement: *"Our village is a place where natural resources are valued and protected, where diversity is celebrated, and where a vibrant economy and sense of community pride create and recreate a living spirit. Yachats cares not just for its citizens' basic needs but also supports them in their efforts to excel mentally, physically, artistically, and spiritually. It is a community with an enduring sense of itself."* This project as it relates to our City Vision Statement has the potential for far reaching negative impact and implications. Allow more input and evaluation from the citizen of our community by postponing implementation of the "Driftwood Lane" Project.

Mary F. and Kenneth G. Aebl

582 King Street

Yachats, OR 97498

From: [Katherine Arndt](#)
To: [City Hall](#); happydogs27@gmail.com; rmbenn@peak.org; [Mayor](#); [Jim Tooke](#); [Max Glenn](#); mary@yachatsmail.org; [Leslie Vaaler](#); johnpurcell49@gmail.com
Subject: Driftwood Lane Project
Date: Monday, August 3, 2020 11:21:09 AM

The community of Yachats has entrusted this body to make decisions on our behalf, but this proposal of Driftwood project is a poorly designed project for the needs of the community.

I object strongly to a minimum of \$65,000 out of our capitol funds.

I object to the relocation of the electric vehicle charger.

I object to the width of the project for the following reasons:

One lane that's 2 way is adequate, the same as used on King St., for example, that uses more traffic than Driftwood Lane.

One seven foot sidewalk for consideration of ADA guidelines, rather than 2 sidewalks of 5-7 feet widths.

Impact on wetland was not included. This is a concern; paving permeable land will create a problem to the ecosystem of this precious and irreplaceable wetland and wildlife. For the integrity of this project, state and federal agencies overseeing sites of this value should be notified for evaluation.

Parking is available at the site, across from the Lions Club and along wetland on 4th St, all locations under-utilized. It appears by the drawing that parking spaces are not increased given the extraordinary cost of funds and the open space now.

The Yachats Vision, printed on monthly Newsletters should be your guide. Beginning with "Our Village is a place where natural resources are valued and protected...", this 51 foot wide design is an unnecessary project that doesn't benefit the community as it stands.

Katherine Arndt
880 Ocean View Drive

From: [Max Glenn](#)
To: [Helen Anderson](#)
Cc: [Max Glenn](#); [Shannon Beaucaire](#)
Subject: Re: Driftwood paving project
Date: Monday, August 3, 2020 12:30:31 PM

Thank you Helen for sharing your thoughts

Max

On Aug 3, 2020, at 12:04 PM, Helen Anderson <happydogs27@gmail.com> wrote:

To: Yachats City Council
Date: August 3, 2020

I think there are many ways to greatly improve the Driftwood project by the ballfield. The current design causes more problems than it solves.

1. Safety. The project proposes a two-lane road within 6 feet of the skate park in an area that gets much pedestrian traffic during the summer and during events at the Commons. Two-lane roads tend to see higher speeds than one-lane roads. While two-lane roads are sometimes cited as being safer, that increased safety is for cars. If one looks at the data in those studies, it is clear that two-lane roads reduce the number of turns and maneuvering requirements for cars, which leads to fewer auto accidents. Driftwood is straight and short – turning is not an issue. One way is much safer for pedestrians.

2. Efficient traffic flow. There are at least two less expensive alternatives to having traffic flow in both directions in that area. One approach is to have traffic that enters on 5th Street turn right (northbound) in front of the 501 and drive around to 6th Street (see attached). You would need signage indicating the area where there is parking on the south of the 501 Building is not a through-way and is for parking only. Driftwood can be one way southbound. This plan also eliminates the concerns the Presbyterian Church has about encouraging through-traffic through their property. Another approach is to create a one-lane road (northbound) between the 501 Building and the skate park. That path is wide enough for one lane of traffic and a sidewalk. There is ample room to engineer a safe turning radius for cars to go from one direction to the other, and many cars currently do that already.

3. Meeting the grant deadline. Why would a construction company take more than eight months to build this proposed project? You manage the construction schedule through drafting a contract with payment attached to firm time deadlines and then you manage it. That is simply a management issue and not a failing on the part of construction people.

April 2021 – December 2021 is eight months. And you could actually start the grading work in March.

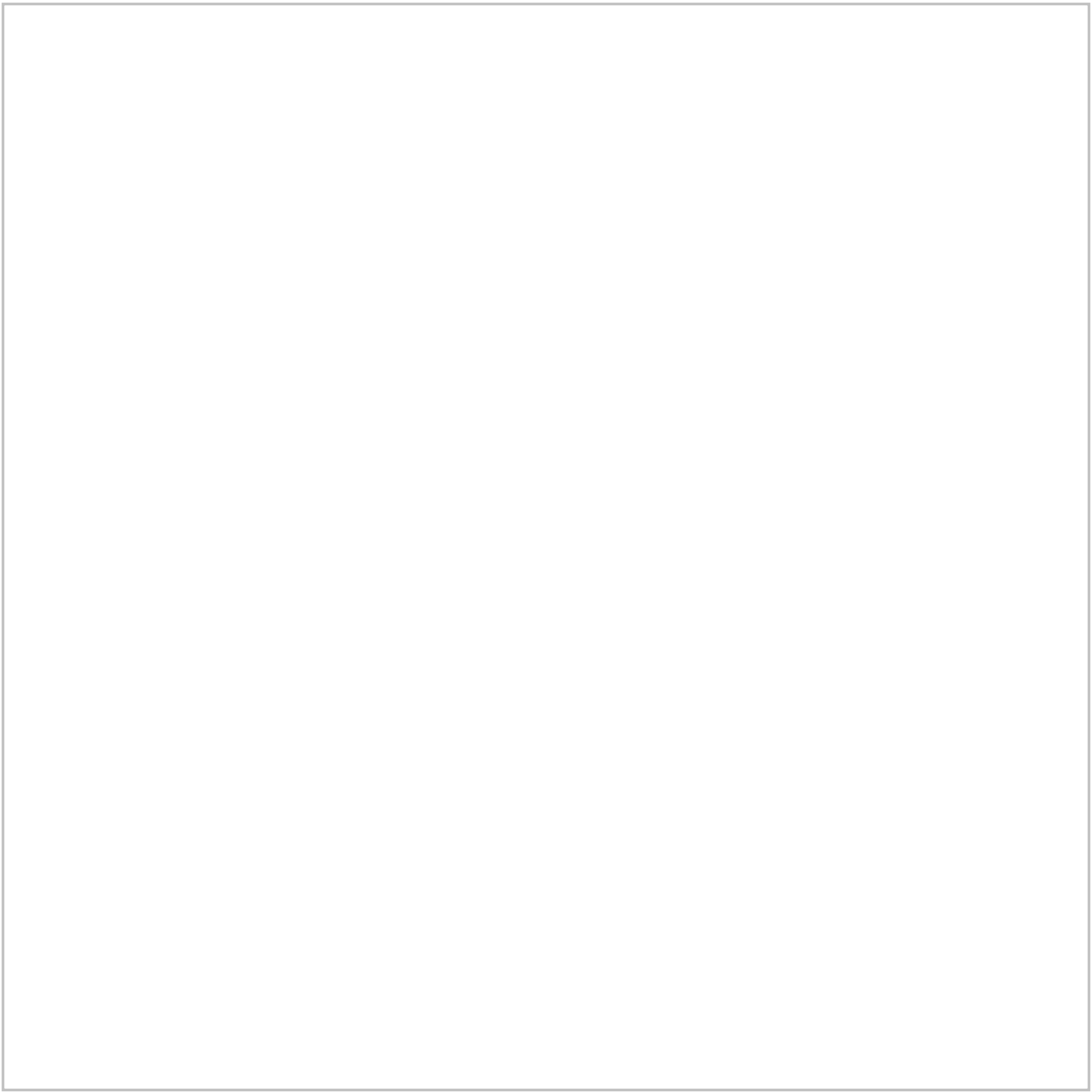
4. More parking. The project creates 16 fixed, standard-sized parking spaces and one handicap space (there are also two spaces for the charging station – not sure if those are reserved for that purpose). The project is not technically adding spaces because people already park there. The area as it is right now easily accommodates over 25 cars at events and also allows for larger rigs and vehicles with trailers to park (counted by using scaled drawings and standard parking space sizes). If you are serious about parking, install a one-lane road with angled parking on both sides (60- or 45-degree angled parking requires only 14 feet of aisle).

5. Drainage. If the plan is to add drainage, it is not clear how that collected water will be disposed of. If there is a significant increase in impervious surfaces and an alteration in water flow, I believe there needs to be some type of impact analysis to determine that the changes will not detrimentally impact the wetlands. The ballfield area is a significant feed area for water in the wetlands. Betty Bahn told me a few years ago that an impact study was required prior to paving what is there now. The proposal adds over four times the amount of pavement that is there now.

Thank you for reconsidering this plan.

Helen Anderson
77 E 8th Street

ATTACHED: diagram on traffic flow



<Driftwood Letter.pdf>

Driftwood Photos From Citizen

August 2, 2020





August 2, 2020

Dear Ms. Beaucaire:

It was good to learn that the City Council will consider the issue of fireworks in this community. In my opinion, they terrorize the town. If certain classes of fireworks are illegal in Oregon, even allowing those to be fired off on a given day is similarly illegal. As the Major opined: there must be "teeth" in any enforcement. I hope we don't crave tourist dollars so much that we'll take them under any condition, even if their car is loaded with illegal fireworks and they feel free to do anything they want in a town that is not theirs.

In my third year as a summer resident in Yachats (plus numerous summers in Newport), it always seems to be an issue of enforcement on the coast. We live in Koho across from the steps leading to the beach on the south side of the bridge. There are several signs clearly posted. "Camping is prohibited." "Fireworks are prohibited." "Pick up after your dog." And most recently: "Masks are required in this area." All of these are patently ignored, not occasionally, but quite frequently. Signs seem like a promise that certain behaviors will not be permitted, reassuring residents and visitors there is rule of law in the community. But without Park Service enforcement, the promise is hollow.

It is not comforting to have visitors camped below your house, using the bushes as a bathroom and creating noise and confusion all hours of the night. Neither is the bombardment of fireworks days before the 4th of July as well as the day itself and several nights thereafter. The noise is an assault on the environment, as is the debris that is left on the beach afterwards. The dog feces that are left on the beach are blight to nature, even when packaged and left in a plastic sack (to float out to sea at high tide). The frequency of vans and trailers that spend several consecutive nights along the Ocean Park Road dry camped or overnight tents on the beach are also a recurring issue.

At times I believe I moved to a lawless town. Or perhaps I should say, I moved to a town that has no way to enforce its law. I like to see all folks enjoying this beautiful area but I am disappointed the posted rules are simply flaunted. Thus, my feeling about disallowing fireworks is a moot issue if there is not consistent enforcement with heavy penalties. It will become another "sign" that something is promised that cannot be delivered and visitors can do whatever they want at the beach.

I am a resident of Arizona, not Oregon. Although I live here six months of the year, I am ineligible to serve on committees and commissions related to Yachats. However, if I can do anything to facilitate the adoption and rigid enforcement of a fireworks prohibition, I am willing.

Incidentally, my earlier letter about water rates for part-time residents was never addressed. I am hoping that issues that are raised, such as in this letter as well as my earlier letter, are not simply filed and never considered.

Thank you.

James P. O'Brien
26 Basalt Loop
Yachats, OR 97498

c. City Council



Assessing and Responding to Short-Term Rentals in Oregon

ENABLING THE BENEFITS OF THE SHARING ECONOMY

BY: SADIE DINATALE

COMMITTEE CHAIRS: REBECCA LEWIS, Ph.D. and ROBERT PARKER, AICP

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Abstract

Assessing and Responding to Short-Term Rentals in Oregon: Enabling the Benefits of the Sharing Economy

Local, regional, and state governments across the country struggle to manage the impacts of short-term rentals (STRs), and the sharing economy more generally. Often referred to as vacation rentals, STRs are not new to the housing market yet, in the last decade, technology has greatly influenced their prevalence. Private, web-based businesses such as Airbnb, VRBO, HomeToGo, LUXbnb, CouchSurfing, HomeAway, FlipKey, and VaCasa, have given people access to a user-friendly, global marketplace for home sharing.

As the sharing economy proliferates, STRs have often flown under the radar of government taxation and regulation. Accordingly, many perceived negative impacts of STRs exist including the loss of tax revenue and impacts on traditional lodging businesses, neighborhoods, housing affordability, and housing availability. Still, the widespread use of these platforms show evidence of many localized benefits. Some of these benefits include allowing property owners to earn income by renting out their unused space, offering tourists an experience that is more unique, and among others, driving visitors to places not conventionally accessible for tourists (spurring economic activity in new areas and communities).

Because this economic activity, as it used today, is a relatively new phenomenon, existing research is sparse and tends to focus on large/mega cities. Thus, this research fills an important gap by focusing on small, tourism-oriented towns in Oregon. We address the following research questions in this paper: 1) What is the prevalence and characteristics of short-term rentals in Oregon? 2) What is the revenue potential of short-term rentals in Oregon? 3) What are the existing perceptions around short-term rentals in Oregon? 4) How are short-term rentals currently being regulated in Oregon? 5) To what extent do short-term rentals compete with long-term rentals?

To examine the prevalence of short-term rentals, we rely on city-level data from AirBnB and property-specific data from AirDnA, for cities under 100,000 in population. We also use American Community Survey data to examine the share of total housing units and vacant units with short-term rentals. To understand the positive and negative impacts and the regulatory environment, we rely on a survey administered to city managers and city planners.

This work provides timely and valuable information to small and mid-sized cities regarding a recent trend affecting housing. Planners and city staff need to understand how short-term rentals are affecting their communities and respond with appropriate regulatory controls.

Acknowledgments

A sincere thank you to Rebecca Lewis, PhD and Robert Parker, AICP for providing guidance and direction on this project as committee chairs. In addition, thank you to Beth Goodman for your generous consultation.

Moreover, I would like to thank the University of Oregon's Department of Planning, Public Policy and Management for providing financial support.

Thank you to the many individuals who provided input with survey responses and thank you to AirBnB who has supported this research by providing valuable data.

Questions of More Information?

Oregon communities interested in short-term rental data for their community, county, or region (or who have questions about this report) can contact Sadie DiNatale at Sadie.dinatale@gmail.com.

Executive Summary

This summary briefly outlines the purpose of this project, delineates key findings, and concludes with ways to respond to the impacts of short-term rentals (STRs) in smaller cities.

Introduction

Short-term rentals (STRs) are often defined as housing units that are rented or leased for less than 30 days, although they are not officially defined by state or federal authorities. Part of the sharing economy, STRs are representative of a phenomenon in which people are increasingly choosing to share access to goods and services via a lateral or hierarchical exchange (which often includes a monetary exchange as well). This trend has been understood to offer both benefits and costs to communities across the country.

Accordingly, this project uses Airbnb property data for the state of Oregon to understand how this sharing economy activity influences cities with populations fewer than 100,000. Case studies are used to delve deeper into this analysis. A survey sent to Oregon city managers and planning directors complements this research by gauging the existing policy frameworks for STRs in Oregon. This survey provides insight into how cities view STRs and assists in the development of regulatory best practices for responding to STR impacts.

Key Findings

What is the prevalence and characteristics of short-term rentals in Oregon cities with <100,000 people?

- Airbnbs account for more than 5% of total housing in only 16 cities, indicating that short-term rentals are not prevalent in most jurisdictions. Still, we must qualify this statement with the fact that not all short-term rentals are equivalent to one dwelling unit.
- Airbnbs are most prevalent in Central Oregon and the North Coast.
- From 2014 to 2016, the number of new STRs created increased by roughly 180%.
- Short-term rentals tend to be in lower income neighborhoods more commonly.
- Most Airbnb hosts operate a single STR. Of approximately 4,400 hosts, 22% operate more than one STR.
- Approximately 70% of Airbnb hosts rent out their entire home/apartment (either primary or second home) and another 30% of STRs are listed or rented out as a private room (the remaining 1% is listed as a shared room).
- Most STRs are traditional property types. Approximately 60% of all listed properties are houses and another 13% are apartments.

What is the revenue potential of short-term rentals in Oregon cities with <100,000 people?

- Short-term rentals generate substantial revenue in Oregon. Hosts have earned an aggregated \$82 million in the last year.
- Nine of the 15 cities with the highest grossing revenue are in the North Coast.
- Eight of the 15 cities with the highest revenue per capita are also located in the North Coast.

- Approximately 70% of Airbnb hosts generate less than \$10,000/year in gross revenue for operating their short-term rental(s).
- Transient lodging taxes (TLT) imposed on Airbnbs by the state generate substantial fiscal revenue. The state, imposing a 1.8% TLT on an estimated \$82 million, earned approximately \$1.5 million from Airbnb STRs in the last year.

To what extent do short-term rentals constrain the supply of housing in Oregon cities with <100,000 people?

- Half of all STRs are reserved for less than 30 days (36% are reserved for 10 or fewer days).
- In more urbanized regions such as Portland Metro and Willamette Valley, STRs are operated as private rooms slightly more than as entire homes.
- Perhaps a more accurate determination of housing supply constraints is the ratio of STRs (entire homes, rented for more than 30 days per year) to total housing units. Using this ratio to measure supply constraints, STRs account for approximately 2% of total housing in the North Coast and approximately 1.8% in Central Oregon.
- For most case study cities, data suggests that STRs are constraining the supply of long-term housing.
 - In case study cities, new STR growth is increasing at a faster rate than newly constructed total housing units.
 - Property owners in resort communities (case studies) can generate more annual revenue off STRs than they can off standard long-term rental units.

What are the existing perceptions around short-term rentals in Oregon?

- In general, survey respondents indicated that while residents shared mixed perceptions about STRs, local elected officials and businesses within the accommodation sector viewed STRs as less problematic.
- STRs provide great benefits including their ability to provide transient lodging tax revenue, to support tourism activities, and to support communities that rely on tourism.
- STRs economically weaken communities by impacting resources such as the availability of housing (especially affordable and rental housing) and police and city staff time who deal with complaints from neighbors/business owners.
- Respondents who agreed or strongly agreed with that statement that STRs evaded policies and regulations in their communities (26%), surprisingly did not all agree that their policies were ineffective.
- Communities who do not see the need to regulate STRs indicated that STRs are either not a problem in their community (e.g. there are no STRs or not enough STRs to regulate) or that STRs fit in with the character of their community and therefore regulation was not necessary.
- Most communities who will potentially develop ordinances to regulate STRs in the next five years will do so primarily to formalize the process and rules associated with it, legitimize existing situations, develop clear and objective standards, and promote fairness.

How are short-term rentals currently being regulated in Oregon?

- STRs are commonly referred to as short-term rentals, transient rentals, or vacation rentals.
- STRs are most commonly defined as units rented for less than 30 days.

- Most regulations for STR require that operators have a license and/or permit (92%) and 81% of respondents also indicated that their community imposes a transient lodging tax (or similar tax) on STRs.
- Respondents also commonly regulate STRs by relying on concentration caps or occupancy requirements.
- Most respondents (60%) find their regulations for STRs, or lack thereof, to be neither effective nor ineffective in managing the economic benefits or negative impacts of short-term rentals.
- STR ordinances were most commonly enforced by issuances of administrative citations (62%) and fines (58%).

Conclusion

We know that the solution to STRs will be different for every city. What is true for Oregon is true for communities across the United States: STRs affect cities dissimilarly and in turn, view STRs diversely. Accordingly, many communities have taken the experimental and incremental approach, not knowing if their policy will truly mitigate the impacts and/or enable the benefits hoped for but needing to trial something.

In the response to short-term rentals, communities should **construct regulations in conjunction with both a local, community conversation and a regional conversation.** This inclusivity aspect is key to construct equitable regulations less likely to be evaded and more likely to mitigate the negative externalities created by STRs and these policies themselves.

Additional best practices are as follows. More information on these practices can be found in Chapter 3.

- Define Short-Term Rentals and Codify Regulations in City Ordinances
- Distinguish Between Short-Term Rentals
- Restrict Use or Incentivize Moderate Use (rather than banning STRs)
- Normalize STRs as a Residential Activity (with Caveats)
- Permit STRs in Premium Areas with Monitoring
- Develop Appropriate Regulatory Standards
- Require STRs to Get a Permit or License
- Require STR Operators to Pay Fees and Taxes

Regarding enforcement, it is difficult for governments to regulate something they do not have complete control over. Initiating community conversations to educate and encourage appropriate use of STRs can, however, induce a culture of self-regulation and compliance.

Recommendations

The following sections break recommendations into minimum requirements and ancillary requirements for cities. Next, I provide recommendations for counties/regions and the State.

Minimum Regulatory Recommendations for All Cities

Whether a city has STRs or not, communities should establish the following regulations, even as a precautionary measure:

1. Legally define STRs as “short-term rentals” and establish a fair frequency of use standard that is complimentary of regional standards.
2. Codify regulations in local ordinance. Impose a guest capacity limit and require inspections.
3. Levy a transient lodging tax (if not imposed at the county level).
4. Require that STR operators register their unit(s) on an annual basis.

Ancillary Regulatory Recommendation with Thresholds for Cities

Variations in number and concentration of STRs should influence policy choices. The following recommendations provide thresholds for ancillary regulations as a starting point. In that, thresholds may vary between communities.

1. Restrict (cap/limit) STRs or incentivize moderate use if STRs account for more than 4% of total housing stock.
2. Impose a clause that revokes a STR permit for properties that receive more than five nuisance complaints in a calendar year.
3. Limit STRs in proximity to other STRs (deconcentrate) when city-wide/area-specific nuisance complaints exceed 25 complaints in a calendar year. Communities should establish a fair distance (e.g. 50 to 200 feet buffer between STRs), weigh equity implications, and re-evaluate buffer distance every two to five years.
 - a. Before establishing a buffer distance, cities should increase regulatory standards and evaluate whether nuisance complaints reduce (e.g. establishing minimum parking standards may mitigate parking complaints).

Recommendations for Counties and Regions

Smaller jurisdictions may have difficulties managing STRs. That said, counties/regions should help facilitate proper management of STRs.

1. Levy a transient lodging tax at the county level if barriers exist for cities to impose their own (due to population size, low prevalence of STRs in individual communities, administrative limitations, etc.).
2. Establish a regional representative or liaison to attend Sharing Economy Committee meetings (see first “Recommendation for Oregon”). Regional liaisons should represent multiple counties.

Recommendations for Oregon

Oregon can and should become a leader in the management of STRs. This will require the state to become a leader in sharing economy affairs.

1. Establish a Sharing Economy Committee to facilitate research (including analysis of STR trends) and to assist communities across the state dealing with various issues. The objective of this committee should be one in support of sharing economy activities.

2. Hire a state employee to work directly in sharing economy affairs. Responsibilities should include:
 - Analyze sharing economy trends across the state, country, and globe
 - Communicate initiatives, information, and best practices to governments across the state
 - Provide government assistance in STR management
 - Collaborate with sharing-economy platforms
 - Collect data
 - Participate in global sharing economy networks
 - Coordinate state Sharing Economy Committee meetings, trainings, and workshops
 - Launch policy demonstration studies to pilot regulatory frameworks and options
3. Maintain a neutral Transient Lodging Tax at 1.8% to allow regions and cities to use their tax rates to manage STR growth.
4. Establish a pool of funding to help small communities amend land use ordinances for STRs.

Chapter 1: Introduction

While not officially defined by state or federal authorities, a short-term rental (STR) can be generally characterized as a housing unit that is leased or rented for less than 30 days. It is an arrangement that involves the trade of the temporary, but not future use, of a full or partial housing unit (Flath 1980). Sometimes referred to as vacation rentals, they are not new commodities of the housing market.

In recent years however, technology has greatly influenced the STR and vacation rental market (Varma 2016, Fleetwood 2012). Internet-based businesses such as Airbnb, VRBO, HomeToGo, LUXbnb, CouchSurfing, HomeAway, FlipKey, and VaCasa have given people access to a user-friendly, global marketplace (i.e. Airbnb alone reaches 191 countries). These companies cater to the exchange of short-term rentals under the coordination of a web-interface. Today, with STRs remaining relatively unregulated, just about anyone can rent out a room, their home, or their apartment by following a simple, streamlined process.

Tech-based platforms (i.e. Airbnb; VRBO) that provide a market to short-term rentals are taking advantage of the sharing economy phenomenon. The prevalence of access based services (that employ pay-per-use models rather than ownership of certain goods) has increased in recent years. Technological advances coupled with individuals placing higher value on experiences (rather than possessions) have also aided in this market shift. This phenomenon has allowed businesses and individuals under this access/sharing economy umbrella to cash in on the new opportunities this phenomenon brings. For instance, Airbnb claims approximately 100 million users with 500,000 bookings/night (Smith, 2017) and is expected to earn upwards of \$3.5 million/year by 2020 (Gallagher, 2017). With that said, in a survey of Airbnb users, respondents were “nine times more likely to be more satisfied with Airbnb than their hotel stay” (Dillow, 2016).

With the introduction of new, sharing economy, business models came debate about how existing regulations address these new activities. Debate has considered whether the companies that market short-term rentals have also been able to reap greater financial returns by taking advantage of regulatory loop holes (allowing property owners to market their STRs through their site despite not being registered with the appropriate jurisdiction or despite these properties not having permits or paying tax, if applicable).

TERMS

Short-Term Rental (STR): A housing unit, rented or leased for less than 30 days; not officially defined by state or federal authorities

Sharing Economy:
An economic and social activity that mutualizes access to goods/services; tech-based and grown out of the open-source community; involves a peer-to-peer exchange (lateral exchange)

“a sharing economy is a blueprint of a future business idea that explains how to link economic, environmental and social issues”
(Daunorienè et al. 2015)

Access Economy: Suggested term for sharing economy activities which are market-mediated by a tech-based, intermediary company between suppliers and consumers (hierarchical exchange)

Impact:
The measurable effect a specific activity has on a defined area or people

The widespread use of these web-based platforms show evidence of many localized benefits, advertised to include: increasing tourism in local communities, helping property owners earn income by renting out their unused space, offering tourists and visitors the experience of living like a local,

“On the one hand, there are those who see the sharing economy as a tool for addressing pressing social justice or environmental issues — such as people establishing time banks, food sharing schemes or those pursuing alternative, low carbon lifestyles. At the other end of the spectrum, there are many entrepreneurs who stand to make millions of dollars from their new sharing platforms, mainly by encouraging people to rent out the underutilized goods they own”. (Makwana, 2013)

and driving visitors to areas tourists did not traditionally flock to.

Still, these companies often face criticism for negative impacts (such as nuisance issues or constraining the availability of housing) or for allowing its users to evade local policy. Because of these real and perceived negative impacts, cities have sought to regulate short-term rentals to

recoup lodging taxes, prevent impacts on housing affordability, and address neighborhood concerns around noise, traffic, and parking. Accordingly, short-term rentals have gained a reputation of both satisfying a cultural, social, and economic need while not being completely without social and economic consequence.

Purpose

The purpose of the research project is to assess how short-term rentals, as part of the sharing economy, directly impact small and mid-sized cities in Oregon via revenue generation and fiscal revenue potential. This study also looks at ways in which demand for STRs influence the supply of long-term housing. Better understanding these impacts will fill a gap in existing literature, as most studies have focused on how short-term rentals impact large cities or mega-cities. Moreover, the purpose of this project is to gauge existing perceptions and policy frameworks of STRs in Oregon cities as to better understand the political and social climate around this activity. This policy analysis is intended to assist planners and policy makers of small communities respond to and better manage STRs in order to enable the benefits of the sharing economy.

Methodology

This study uses a mixed-method-approach. Data analysis used secondary sources including:

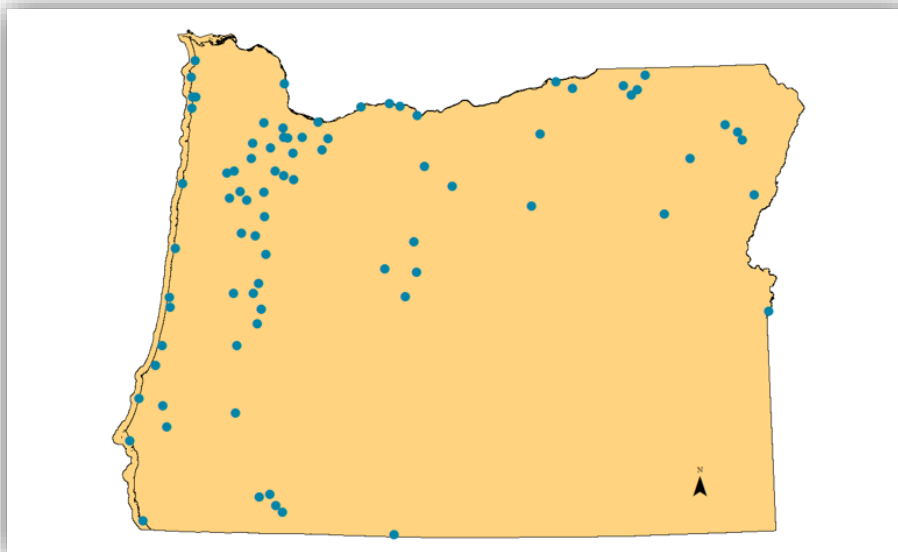
- **AirDnA:** market summary and property performance reports
- **AirBnB:** aggregated industry data by city
- **American Community Survey:** Housing and Population characteristics

Data analysis is used to answer the questions: What is the prevalence and characteristics of short-term rentals in Oregon? What is the revenue potential of short-term rentals in Oregon? And, to what extent do STRs constrain the supply of housing? This analysis specifically looks at cities with a

population of less than 100,000 (communities that have been mostly excluded from existing studies on this topic).

In addition, we created an innovative survey, developed on Qualtrics, to get information about policies and perceptions of city administrators and planners across Oregon. The survey had 32 questions and asked City managers and planners to comment on the ways in which STRs impact their community. Questions also asked City staff to comment on the ways in which various actors perceive STRs in their community. Finally, the survey asked City staff to comment on their existing or potential policy framework for STRs. The survey received 103 responses out of a possible 294 yielding a response rate of 35%.

Map 1.1. Location of Survey Respondents



Source: Responding to Short Term Rentals in Oregon Survey, Q27, 2017.

Further, using a series of selected case studies, I dig deeper into the connection between regulatory frameworks, perceptions of STRs, and the actual impact they create in small to mid-sized cities. Criteria for selection was that the city possess elevated levels of Airbnb rentals as compared to other Oregon cities and/or possess a high percentage of Airbnb rentals as compared to the community's total housing units. Additionally, I ensure that case studies represented a range of city sizes (with populations of under 100,000) and that selected cities came from a range of geographic regions in Oregon. Predominantly, these cities are tourist destinations. A description of the case studies and applicable data is in Appendix B. Case studies are: Ashland, Bend, Depoe Bay, Hood River, Joseph, Lincoln City, Manzanita, Rockaway Beach, Seaside, and Sisters.

Limitations

As in most analyses, several limitations exist. To enable transparency, this study presents the following limitations:

- AirDnA data was heavily relied on for this analysis. While the data set was very useful in explaining both the nature of short-term rentals and their impact in Oregon, margins of error are unknown and thus, its accuracy is questionable. I did compare AirDnA data (presented at the property level) with Airbnb data (limited to the city level) as a sensitivity test in Appendix D and found similarities. AirDnA data was also slightly manipulated by the researcher to remove fake and test listings.
- All STRs are not advertised or listed through the Airbnb platform. For instance, some property owners may use VRBO, HomeAway, and other platforms to market their STRs. Thus, communities may have more STRs than what was documented in this study.
- A limitation to the ‘Responding to Short-Term Rentals in Oregon’ survey is that not all cities in Oregon participated, meaning these results are not entirely comprehensive. Some communities indicated that they did not take the survey because they do not have any STRs (real and perceived) which may have limited learning about the perspectives of communities who are not currently concerned about this component of contemporary housing discussions.
- A final limitation was time. The researcher was unable to conduct interviews with city administrators or staff planners in each of the case studies cities (or with regional/state housing experts). This restricted the ability to fully compare findings with perceptions and to discuss potential future actions. As a result, full reliance was placed on the applicable city’s survey responses (apart from Depoe Bay which was not received) and code review.

Chapter 2: Key Findings

The organization of this chapter¹ is as follows:

- 1) What is the prevalence and characteristics of STRs in Oregon?
- 2) What is the revenue potential of STRs in Oregon?
- 3) What are the existing perceptions around STRs in Oregon?
- 4) How are STRs currently being regulated in Oregon?
- 5) To what extent do STRs constrain the supply of housing in Oregon?

Overarchingly, this chapter conveys findings only for cities in Oregon with populations less than 100,000 (unless otherwise specified). ***In that, Portland, Eugene, Salem, and Gresham were excluded from analysis as to focus in on how STRs affect smaller cities in Oregon. Also, excluded from analysis are STRs in census-designated places or towns (as of 2015).***

What is the prevalence and characteristics of short-term rentals in Oregon?

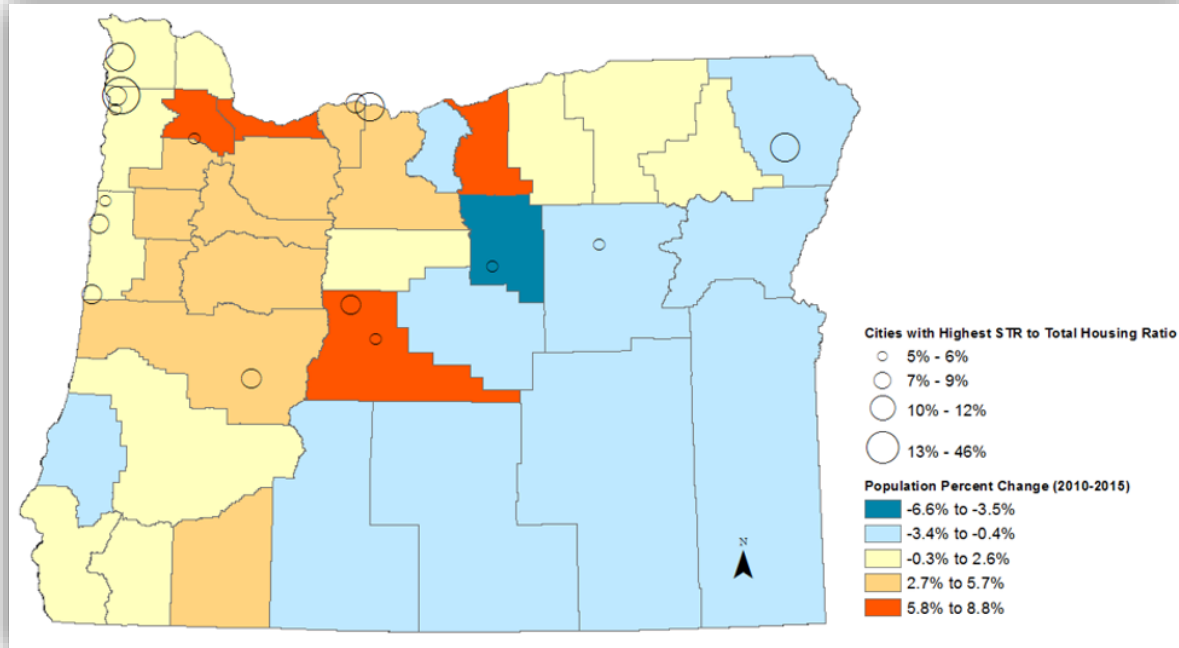
Oregon's four largest cities (Portland, Eugene, Salem, and Gresham) encompass approximately 10,000 AirBnBs (56% of the state's AirBnB short-term rental stock). Cities with less than 100,000 people (from this point further: cities) encompass approximately 8,000 Airbnb STRs; roughly 44% of total Airbnbs for the state. As a note, Airbnb are located within every county and in 75% of the state's total cities.

Assessing the approximate number of STRs (as well as their location and property characteristics) enables conceptualization of the industry. Use of existing studies provides additional context for findings.

- **Airbnbs account for more than 5% of total housing in only 16 cities, indicating that short-term rentals are not prevalent in most jurisdictions (see Map 2.1).** Still, we must qualify this statement with the fact that not all short-term rentals are equivalent to one dwelling unit. Nevertheless, for these 15 jurisdictions (Bend, Depoe Bay, Gaston, Hood River, Joseph, Lincoln City, Long Creek, Manzanita, Mitchell, Mosier, Nehalem, Rockaway Beach, Seaside, Sisters, Westfir, and Yachats), the ratio of AirBnBs to housing units could suggest a potential housing supply constraint. This concern will be further addressed later in this report.

¹ This chapter uses AirDnA data as well as information from the American Community Survey to paint a picture of the nature of STRs in Oregon as well as their impact. The Responding to Short-Term Rentals in Oregon Survey was also used to understand existing policy frameworks and perceptions of STRs.

Map 2.1. Indication of Potential Housing Supply Constraint for Cities with Higher Portion of STRs

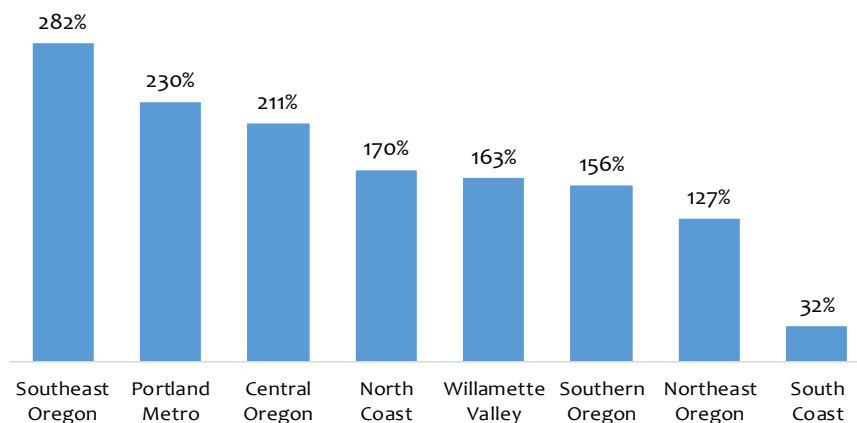


Source: AirDnA Property Data, Retrieved 2017. United States Census, American Community Survey, Population Data, 2011-2015. Excludes Portland, Eugene, Salem, and Gresham.

- **Airbnbs are most prevalent in Central Oregon and the North Coast.** In Central Oregon, AirBnBs account for approximately 4% of the region's total housing stock. In the North Coast, Airbnbs account for 5% of the region's total housing stock. Again, this is not a precise equivalency; rather it is an opportunity for conceptualization. For cities in the remaining six regions, Airbnbs account for approximately 1% of the total housing stock. As "the top five activities engaged in by travelers on overnight trips to Oregon were shopping, visiting a beach/waterfront, visiting a national/state park, visiting a landmark/historic site, and hiking/backing," it is understandable why these two regions attract so many tourists and visitors and further explains why there is such a demand for STRs.²
- **From 2014 to 2016, the number of new STRs created increased by roughly 180%.** In this same time, but by region, the number of new STRs created increased most drastically for Southeast Oregon (282%), Portland Metro (230%), and Central Oregon (211%), see Figure 2.2.

² Longwoods, International, USA. (2015). Oregon 2015 Visitor Report.
<http://industry.traveloregon.com/content/uploads/2016/11/Oregon-2015-Visitor-Final-Report.pdf>

Figure 2.2. Growth of Newly Created Short-Term Rentals by Region, 2014 to 2016



Source: AirDnA Property Data, Retrieved 2017. Excludes Portland, Eugene, Salem, and Gresham.

- **Short-term rentals tend to be in lower income neighborhoods more commonly.** To measure, neighborhood is defined as the properties' census tract and lower income as median household income of census tract divided by the county's median household income. In areas like the South Coast, North Coast, and Central Oregon, I find more than half of the regions' properties are geographically located in lower income neighborhoods, see Table 2.9.

Table 2.9. Properties in Tracts with Higher/Lower Median Household Incomes than County, 2015

Region	Less Than County	Equal to/More Than County	Total
South Coast Oregon	66%	34%	309
Central Oregon	65%	35%	2,887
North Coast Oregon	64%	36%	1,720
Southern Oregon	42%	58%	769
Willamette Valley	40%	60%	961
Northeast Oregon	37%	63%	177
Portland Metro	35%	65%	1,052
Southeast Oregon	27%	73%	142
Total	54%	46%	8,017

Source: AirDnA Property Data, Retrieved 2017. ACS 2011-2015, Median Household Income. Excludes Portland, Eugene, Salem, and Gresham.

- **Most Airbnb hosts operate a single STR listed as the entire home.** Approximately, 4,400 hosts operate an Airbnb in small to mid-sized Oregon cities. Of these, 970 hosts (22%), operate more than one STR. Approximately 70% of Airbnb hosts rent out their entire home/apartment (either primary or vacation home) and another 30% are listed or rented out as a private room (the remaining 1% is listed as a shared room). This data reveals a bit about STR hosts. For instance, while most hosts are renting out their entire housing unit, a substantial portion of hosts (approximately 1/3) appear to be interested in making supplementary income solely off some of their extra space. This is an important distinction about the use of short-term rentals. To explain, as of 2015, the average household size for

owner/renter-occupied housing units was approximately 2.5 people while almost 60% of housing units had 3 or more bedrooms.³ Accordingly, despite actual motives, many short-term rental operators are capitalizing on the efficient use of space, driving sustainable practices.

- **Most STRs are traditional property types.** Approximately 60% of all listed properties are houses and another 13% are apartments. Other common STR property types also remain more traditional, to include: condominiums, bed and breakfasts, cabins, and townhouses (see Table 2.3). Larger cities tend to encompass a larger percentage of apartment buildings, indicative of more urbanized areas.

Table 2.3. Airbnb Property Types (using all cities for added context)

Property Types	Cities with Pop. < 100,000		All Cities		Property Types	Cities with Pop. < 100,000		All Cities	
House	4,877	60.0%	10,927	59.4%	Timeshare	10	0.1%	10	0.1%
Apartment	1,068	13.1%	4,000	21.7%	Hostel	8	0.1%	12	0.1%
Other	470	5.8%	639	3.5%	Castle	6	0.1%	13	0.1%
Condominium	426	5.2%	638	3.5%	Boat	5	0.1%	27	0.1%
Bed & Breakfast	316	3.9%	465	2.5%	Dorm	5	0.1%	16	0.1%
Cabin	244	3.0%	322	1.8%	Nature Lodge	5	0.1%	5	0.0%
Townhouse	181	2.2%	321	1.7%	Treehouse	5	0.1%	8	0.0%
Camper/RV	116	1.4%	201	1.1%	Train	3	0.0%	3	0.0%
Guesthouse	76	0.9%	195	1.1%	Hut	1	0.0%	6	0.0%
Villa	69	0.8%	104	0.6%	Island	1	0.0%	1	0.0%
Bungalow	61	0.8%	124	0.7%	Lighthouse	1	0.0%	1	0.0%
Loft	57	0.7%	162	0.9%	Entire Floor	-	-	7	0.0%
Boutique Hotel	38	0.5%	43	0.2%	Earth House	-	-	5	0.0%
Tent	37	0.5%	73	0.4%	Igloo	-	-	2	0.0%
Chalet	20	0.2%	24	0.1%	Cave	-	-	1	0.0%
Yurt	14	0.2%	23	0.1%	Van	-	-	1	0.0%
Tipi	12	0.1%	13	0.1%	Total	8,132	100%	18,392	100%

Source: AirDnA property data, 2017. Excludes Portland, Eugene, Salem, and Gresham.

What is the revenue potential of short-term rentals in Oregon?

Analysis of the financial details of STRs allows one to understand the profitability of these units (for hosts and municipalities) as well as the potential economic development opportunity they can bring.

- **Short-term rentals generate substantial revenue in Oregon.** Hosts have earned an aggregated \$82 million in the last year. This indicates potential positive gains to local economies assuming hosts reinvest locally. After discounting larger cities, Central Oregon and the North Coast far out earn other regions. These two regions also charge a higher daily rate/Airbnb on average and receive more annual bookings (Table 2.4).

³ United States Census. American Community Survey, 2011-2015, Selected Housing Characteristics for Oregon (DP04).

Table 2.4. Annual Revenue Earned by Hosts and State Tax Revenue Earned (estimate)

Regions	Average Daily Rate per Property	Total Bookings Annual	Annual Revenue	State Levy (1.8%) Annual Earnings
Central Oregon	\$ 209	46,391	\$ 37,539,776	\$ 675,716
North Coast	\$ 206	38,927	\$ 24,875,499	\$ 447,759
Willamette Valley	\$ 97	14,026	\$ 5,315,475	\$ 95,679
Portland Metro	\$ 72	11,172	\$ 4,937,697	\$ 88,879
Southern Oregon	\$ 98	13,209	\$ 4,886,800	\$ 87,962
South Coast	\$ 132	5,710	\$ 2,335,541	\$ 42,040
Northeast Oregon	\$ 129	3,307	\$ 1,738,663	\$ 31,296
Southeast Oregon	\$ 125	2,977	\$ 1,143,628	\$ 20,585
Total	\$ 134	135,719	\$ 82,773,079	\$ 1,489,915

Source: AirDnA. Airbnb property level data. Retrieved 2017. Excludes Portland, Eugene, Salem, and Gresham.

- **Nine of the 15 cities with the highest grossing revenue are in the North Coast.** Still, Table 2.5 shows that Bend receives a far more substantial amount of revenue (accounting for approximately 86% of all revenue from Central Oregon). Additionally, of these highest grossing cities, nine have Airbnbs that account for at least 5% of its housing stock (Bend, Depoe Bay, Hood River, Joseph, Lincoln City, Manzanita, Rockaway Beach, Seaside, and Yachats).

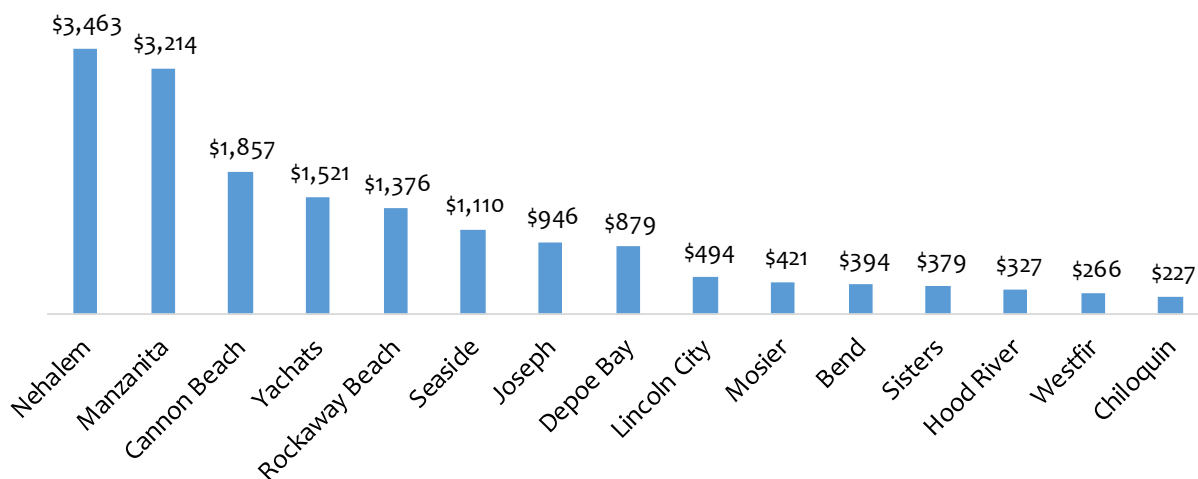
Table 2.5. Annual Revenue Generated with Frequency Data for Highest Grossing Cities

Cities	Region	Annual Revenue	Annual Revenue per Property (Max)	Annual Revenue per Property (Mean)	Annual Revenue Per Property (Std Dev)
Bend	Central Oregon	\$32,207,439	\$157,773	\$14,801	\$18,642
Seaside	North Coast	\$7,198,080	\$198,425	\$16,285	\$27,235
Lincoln City	North Coast	\$4,145,729	\$117,250	\$12,265	\$14,601
Cannon Beach	North Coast	\$2,876,320	\$203,617	\$35,077	\$39,131
Hood River	Central Oregon	\$2,426,970	\$81,215	\$7,537	\$10,428
Ashland	Southern Oregon	\$2,160,243	\$59,876	\$8,309	\$10,923
Rockaway Beach	North Coast	\$1,688,036	\$98,481	\$15,925	\$16,170
Depoe Bay	North Coast	\$1,650,062	\$59,288	\$13,866	\$16,207
Beaverton	Portland Metro	\$1,620,761	\$64,717	\$4,739	\$7,833
Manzanita	North Coast	\$1,368,957	\$90,051	\$16,105	\$16,773
Newport	North Coast	\$1,322,513	\$63,141	\$9,380	\$11,142
Redmond	Central Oregon	\$1,036,179	\$42,518	\$6,642	\$8,796
Tillamook	North Coast	\$1,014,970	\$69,780	\$11,941	\$13,862
Yachats	North Coast	\$1,000,579	\$62,675	\$14,714	\$11,232
Joseph	Northeast Oregon	\$996,192	\$64,836	\$17,176	\$13,523

Source: AirDnA Property Data, 2017. Excludes Portland, Eugene, Salem, and Gresham.

- **Eight of the 15 cities with the highest revenue per capita are also located in the North Coast (see Figure 2.6).** Revenue per capita for the state, excluding cities over 100,000 and using ACS population data for 2015, is approximately \$54 dollars per person in the last year.

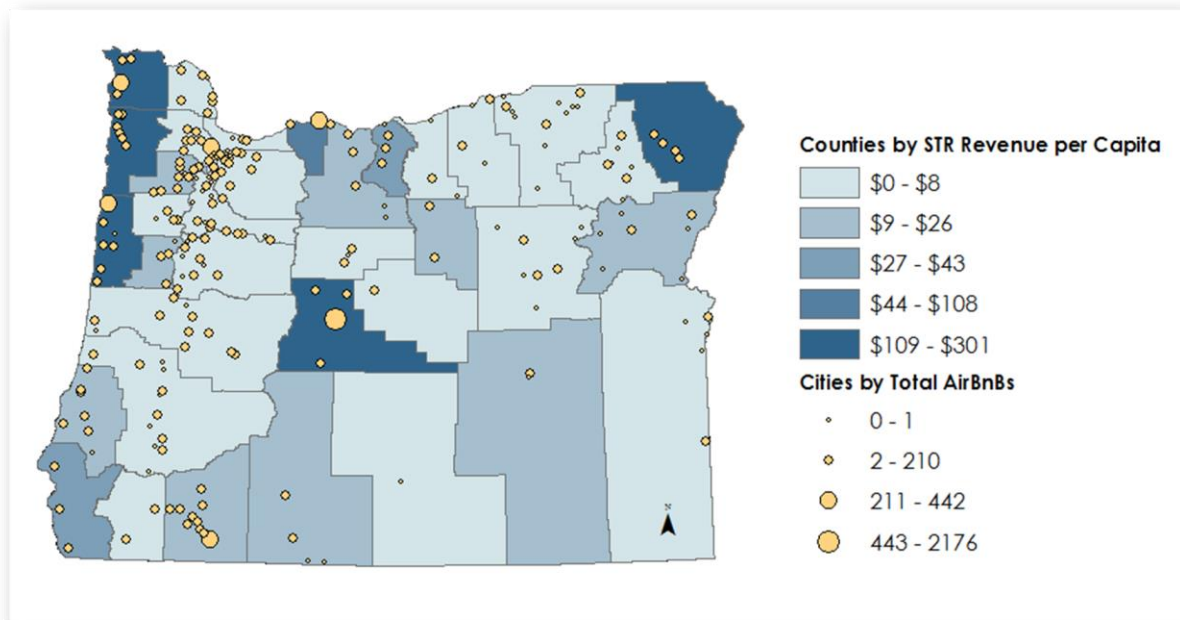
Figure 2.6. Cities with highest revenue generated per capita, 2015 population



Source: AirDnA Property Data, 2017. U.S. American Community Survey, 2011-2015 Population. Excludes Portland, Eugene, Salem, and Gresham.

Displayed in another way, Figure 2.7 shows STR revenue per capita by county with an Airbnb property dot density layer.

Figure 2.7. Counties with STR Revenue per Capita

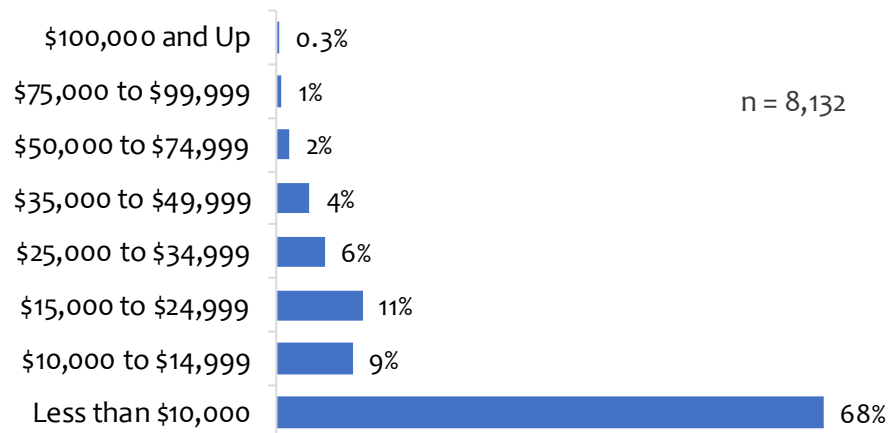


Source: AirDnA Property Data, 2017. Excludes Portland, Eugene, Salem, and Gresham.

- **Approximately 70% of Airbnb hosts generate less than \$10,000/year in gross revenue for operating their short-term rental(s), see Figure 2.8.** Of those hosts, 30% generate less than \$600/year. As independent contractors are expected to report income earned to the IRS after

\$600 (via a 1099-MISC form), a large majority of hosts may be outside the law. In that, Airbnb only issues 1099-K tax forms to hosts who “earn over \$20,000 and have 200+ transactions in the calendar year”.⁴ Outside of submitting 1099-K form to select operators, Airbnb passes on responsibility to hosts to report any income earned suggesting they consult a tax professional for income reporting assistance.

Figure 2.8. Percent of Hosts by Annual Revenue Earned



Source: AirDnA, Property Data, Retrieved 2017. Excludes Portland, Eugene, Salem, and Gresham.

- **Transient lodging taxes (TLT) imposed on Airbnbs by the state generate substantial fiscal revenue.** The state, imposing a 1.8% TLT on an estimated \$82 million, earned approximately \$1.5 million from Airbnb STRs in the last year. Still, Oregon’s TLT rate is much lower as compared to other state levied taxes on this same lodging type. Of the states which levy one or more state taxes on Airbnbs, rates range from 1.8% to 14.5% and average about 8%.⁵
- **Many cities do not levy TLTs on STRs.** Airbnb indicates that nine cities⁶ levy a tax on STRs marketed through their site, averaging 8.5% and ranging from 4% to 10.4%.⁷ If all remaining cities levied just a 5% local option levy/TLT on STRs, an additional, aggregated \$2 million could be earned (estimate). This would be in addition to the \$4 million already being earned by cities who do charge a TLT or similar tax on STRs. I note the discrepancy that while Airbnb indicates that nine cities levy a tax on STRs, the Responding to Short Term Rentals in Oregon Survey found that 21 communities levy a tax on STRs. This suggests that many communities

⁴ AirBnB. Should I expect to receive a tax form from Airbnb? Retrieved May 2017.

<https://www.airbnb.com/help/article/414/should-i-expect-to-receive-a-tax-form-from-airbnb>

⁵ AirBnB. In what areas is occupancy tax collection and remittance by Airbnb available? Retrieved May 5, 2017. <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available>

⁶ Cities are: Beaverton, Bend, Cottage Grove, Eugene, Florence, Lincoln City, Newport, Portland, Springfield. Counties were Lane, Multnomah, Tillamook, and Washington.

⁷ AirBnB. In what areas is occupancy tax collection and remittance by Airbnb available? Retrieved May 5, 2017. <https://www.airbnb.com/help/article/653/in-what-areas-is-occupancy-tax-collection-and-remittance-by-airbnb-available>

imposing a STR/TLT tax have not communicated this information to STR web-based platforms like Airbnb.

To what extent do short-term rentals constrain the supply of housing?

Communities across Oregon are concerned whether STRs constrain the supply of housing (long-term rentals, owner-occupied units, workforce or affordable housing, etc.). This section provides some evidence to get us closer to understanding this impact.

- **Half of all STRs are reserved for less than 30 days (36% are reserved for 10 or fewer days).** As Table 2.12 on the following page shows, 28% of STRs are reserved for 30 to 90 days, 17% are reserved for 91 to 180 days, and 5% are reserved for 180 days or more. The average reservation day across the state is 52 days in a calendar year.
- **In more urbanized regions such as Portland Metro and Willamette Valley, STRs are operated as private rooms slightly more than as entire homes.** In Central Oregon and the North Coast, STRs are being operated more commonly as entire homes, providing some indication of the type of space available (e.g. more second homes, vacation houses, etc.), see Table 2.12.

Table 2.12. Airbnbs Organized by Listing Type, Days Reserved, and Region

Reservation Days	Entire Home/Apt.	Private Room	Shared Room	Total
Central Oregon	2,264	624	17	2,905
Less than 30 Days	35%	11%	1%	46%
30 to 90 Days	26%	5%	0%	32%
91 to 180 Days	13%	4%	0%	17%
181 Days or More	4%	1%	0%	5%
North Coast Oregon	1,483	228	9	1,720
Less than 30 Days	38%	6%	0%	44%
30 to 90 Days	24%	3%	0%	27%
91 to 180 Days	18%	3%	0%	21%
181 Days or More	6%	1%	0%	7%
Northeast Oregon	150	80	3	233
Less than 30 Days	29%	25%	1%	55%
30 to 90 Days	21%	6%	0%	27%
91 to 180 Days	12%	3%	0%	16%
181 Days or More	3%	0%	0%	3%
Portland Metro	434	591	27	1,052
Less than 30 Days	21%	34%	2%	57%
30 to 90 Days	9%	15%	1%	25%
91 to 180 Days	8%	5%	0%	13%
181 Days or More	3%	2%	0%	5%
South Coast Oregon	232	76	1	309
Less than 30 Days	36%	12%	0%	48%
30 to 90 Days	23%	8%	0%	31%
91 to 180 Days	13%	4%	0%	16%
181 Days or More	4%	1%	0%	5%
Southeast Oregon	135	34	1	170
Less than 30 Days	41%	11%	1%	52%
30 to 90 Days	25%	3%	0%	28%
91 to 180 Days	12%	6%	0%	19%
181 Days or More	1%	0%	0%	1%
Southern Oregon	441	318	10	769
Less than 30 Days	28%	24%	1%	52%
30 to 90 Days	14%	9%	0%	23%
91 to 180 Days	12%	7%	0%	19%
181 Days or More	4%	2%	0%	6%
Willamette Valley	476	484	14	974
Less than 30 Days	23%	28%	1%	53%
30 to 90 Days	14%	13%	0%	27%
91 to 180 Days	9%	7%	0%	17%
181 Days or More	2%	1%	0%	3%
Total	69%	30%	1%	8,132
Less than 30 Days	32%	17%	1%	49%
30 to 90 Days	21%	7%	0%	28%
91 to 180 Days	13%	5%	0%	17%
181 Days or More	4%	1%	0%	5%

Source: AirDnA. Airbnb property level data. Retrieved 2017. Excludes Portland, Eugene, Salem, and Gresham.

- Perhaps a more accurate determination of housing supply constraints is the ratio of STRs (entire homes, rented for more than 30 days per year) to total housing units. Using this ratio to measure supply constraints, STRs account for approximately 2% of total housing in the North Coast and approximately 1.8% in Central Oregon. Remaining regions attribute to less than 1%.
- For most case study cities, data suggests that STRs are constraining the supply of long-term housing. Hood River, Joseph, and Seaside's housing stock are particularly influenced by STRs (see Table 2.13 or Appendix A, Table B.7).

Table 2.13. Indication of STRs Potentially Constraining Housing Supply

Case Studies	Airbnbs (Entire Home, Rented for 30+ Days)	% of Total Housing Units	Airbnbs (Entire Home, Rented for 91+ Days)	% of Total Housing Units
Ashland	92	1%	59	1%
Bend	997	3%	370	1%
Depoe Bay	56	4%	28	2%
Hood River	108	34%	47	15%
Joseph	41	7%	21	4%
Lincoln City	154	2%	65	1%
Manzanita	45	4%	20	2%
Rockaway Beach	63	3%	38	2%
Seaside	215	5%	18	0%
Sisters	43	3%	43	3%
Total	1,814	3%	709	1%

Source: AirDnA Property Data, Retrieved 2017.

- In case study cities, STR growth is increasing at a faster rate than total housing units are (see Appendix B, Table B.5). In some of these communities, household formation is also increasing at a faster rate than the construction of new housing units, indicating housing supply constraints (Bend, Depoe Bay, Joseph, and Manzanita).
- Property owners in resort communities (see Appendix B, Table B.6) can generate more annual revenue off STRs than they can off standard long-term rental units. Therefore, in these communities, there may be more of a motive for property owners to operate STRs (although the differential in time and cost of maintenance for long-term vs short-term rentals is unknown).

What are the existing perceptions around short-term rentals in Oregon?

Using the Responding to Short-Term Rental Survey, analysis can delve into the existing perceptions that communities hold over STRs.

- In general, survey respondents indicated that while residents shared mixed perceptions about STRs, local elected officials and businesses within the accommodation sector viewed

STRs as less problematic. Still, respondents who indicated that STRs may be more problematic in their own community than in other Oregon communities or comparable communities across the U.S., tended to agree or strongly agree that STRs impacted the availability of affordable and workforce housing (78%), long-term rental housing (78%), and owner-occupied housing (56%).

- **STRs provide great benefits including their ability to provide transient lodging tax revenue, to support tourism activities, and to support communities that rely on tourism.** For instance, they serve a market need by providing additional lodging options (especially for communities without any traditional accommodation types) and thus, they bring in tourists that might not have otherwise visited. Furthermore, they provide income and employment opportunities, allowing homeowners to get extra use out of their properties (thereby making homes more affordable).
- **STRs economically weaken communities by impacting resources such as the availability of housing (especially affordable and rental housing) and police and city staff time who deal with complaints from neighbors/business owners.** On the latter point, slightly over half of survey respondents indicated that residents have raised nuisance issues within the last five years. Among the cited nuisance complaints include: parking concerns (78%), noise concerns (67%), garbage and outdoor clutter concerns (56%), high occupancy levels (48%), and excessive parking (45%). Furthermore, respondents indicated concern over the possibility that hosts could be individuals or companies from out of the state that take their revenue with them. Finally, respondents indicated that STRs can economically weaken communities in that they tend to be operated seasonally creating periods of no economic stimulation followed by a community that falters in the off-season.
- **Respondents who agreed or strongly agreed with that statement that STRs evaded policies and regulations in their communities (26%) still did not all agree that their policies were ineffective.** In that, of that 26%, approximately 20% indicated their policy was somewhat effective, 44% indicated their policy was neither effective nor ineffective, and 36% indicated their policy was somewhat (16%) or very ineffective (20%).
- **Communities who do not see the need to regulate indicated that STRs are either not a problem in their community (e.g. there are no STRs or not enough STRs to regulate) or that STRs fit in with the character of their community and therefore regulation is not necessary.** Other reasons why communities have not pursued regulation was the issue has not been raised by community members or that staff resources and time was preventing them from adopting policies.
- **Most communities who will potentially develop ordinances to regulate STRs in the next five years will do so primarily to formalize the process and rules associated with it, legitimize existing situations, develop clear and objective standards, and promote fairness.** Still, some respondents indicated wanting regulations as the STR trend is increasing and they want to mitigate impact before STRs become a burden, or because they do not want to be overrun by STRs. The desire to reap transient tax revenue was also a common motivation for regulation.

How are short-term rentals currently being regulated in Oregon?

The Responding to Short-Term Rentals in Oregon Survey also provided information about existing ways STRs are being regulated in the state. The following provides some information about prevailing policy frameworks.

- **STRs are commonly referred to as transient rental or vacation rentals.** Less commonly, some refer to STRs as traveler/accessory traveler accommodations, bed and breakfasts, motels, or RV parks. Some of these less common terms (e.g. RV parks) are used in lieu of a term specific to STRs as policies have not caught up to this housing trend.
- **STRs are most commonly defined as units rented for less than 30 days.** Some policies indicate that they must be rented for a certain number of days before qualifying as a STR (e.g. at least 10 days in a calendar year). Lease type (e.g. less than a month-to-month basis) was also found to be used.
- **Most regulations for STR require that operators have a license and/or permit (92%) and 81% of respondents also indicated that their community imposes a transient lodging tax (or similar tax).** While fees vary widely, by cost and by type (e.g. conditional use permit, short-term rental licenses, business license, etc.) tax rates tend to remain more consistent (see Table 2.10). The following table provides some data on fees and tax rates.

Table 2.10. Frequency for Fee and Tax Rates

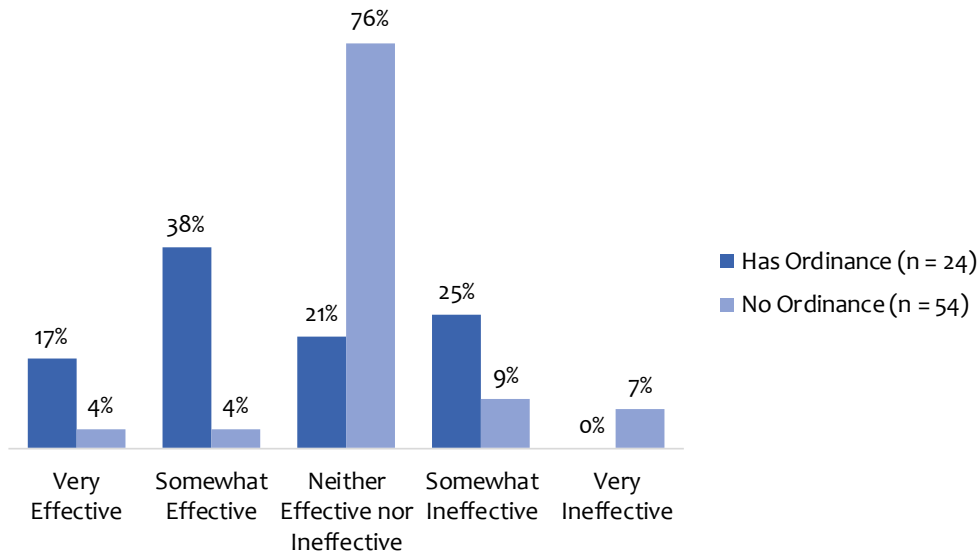
Fee Rate Frequency			Tax Rate Frequency	
Mean	\$	498	Mean	7.4%
Median	\$	358	Median	7.5%
Standard Deviation	\$	554	Standard Deviation	2.3%
Range	\$	2,150	Range	8.6%
Min	\$	50	Min	1.8%
Max	\$	2,200	Max	10.4%

Source: Responding to Short-Term Rentals in Oregon Survey, y-Q20 and y- Q21, 2017.

- **Respondents also commonly regulate STRs by relying on concentration caps/limits or occupancy requirements.** Restricting STRs to certain zones, adopting guest behavior standards, or making properties subject to review and inspection (making determinations on case-by-case basis) have also been put into place to mitigate nuisance and promote health, safety, and wellbeing.
- **Most respondents (60%) find their regulations for STRs, or lack thereof, to be neither effective nor ineffective in managing the economic benefits or negative impacts of short-term rentals.** Approximately 21% found their regulations, or lack thereof, to be very or somewhat effective and 18% found them very or somewhat ineffective. Still, we note that a generous portion of those that found their policies/lack of policies to be neither effective or ineffective did not actually have any regulatory framework. This can be explained in that many smaller communities in Oregon still do not have many STRS (if any) and thus, do not have many of the same concerns as other communities (e.g. around nuisance issues or

housing supply concerns), see Figure 2.11. Noting that STRs are uncharted territory for many cities, it may take time to adopt the appropriate regulatory framework that works best for each community.

Figure 2.11. Effectiveness of Short-Term Rental Ordinance or Lack of Ordinance



Source: Responding to Short-Term Rentals in Oregon Survey, Q25, 2017.

- **STR ordinances were most commonly enforced by issuances of administrative citations (62%) and fines (58%).** In addition, many respondents commented on the fact that enforcement was a challenge.

Chapter 3: Conclusions

This chapter deliberates the findings discussed in chapter 2 and uses the literature review in Appendix A to provide some theoretical underpinnings. Primarily, this chapter discusses best ways Oregon planners and policy makers can respond to STRs, should they want to. Examples are provided throughout to enhance understanding or to provide those interested with more information. However, explicit recommendations are laid out in the following chapter. Smaller jurisdictions outside of Oregon and across the United States may also find use out of these best practices. Finally, this chapter outlines possible, future steps for continued research on this topic to ensure more accurate policy responses.

How should policy makers and planners in Oregon respond to short-term rentals?

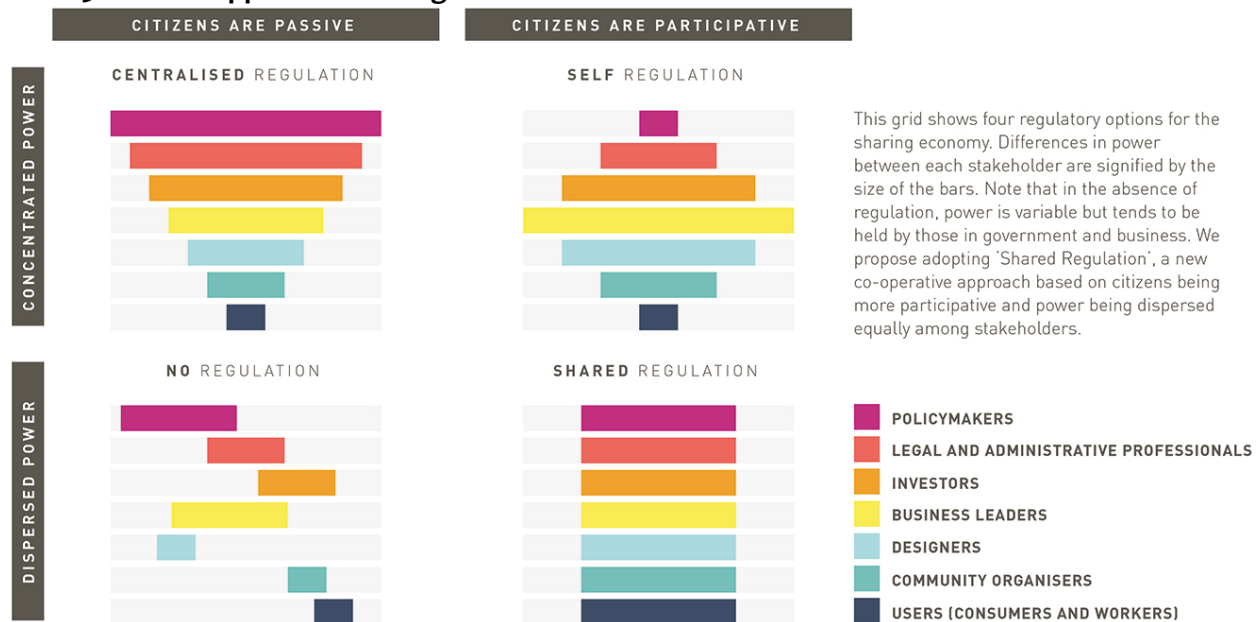
We know that the solution to STRs will be different for every city. What is true for Oregon is true for communities across the United States: STRs affect cities dissimilarly and, in turn, they view STRs diversely. Accordingly, many communities have taken the experimental and incremental approach, not knowing if their policy will truly mitigate the impacts and/or enable the benefits hoped for but needing to trial something. Performance of STR policies are still unknown. We need more data and rigorous statistical research to measure the impacts and policy treatments given. In the meantime, and while much is still unknown, following some general best practices to manage STRs may prove fruitful.

In Oregon, I find that when linking existing policy to perceptions, in general, policy reactions have met community reactions. In that, communities unchallenged by STRs (or where STRs are not a community concern) tend to be undaunted by the need to regulate, as an existing practice or as a future precaution. Communities, who are challenged by STRs (at any extreme) and/or where community members (residents, local elected officials, etc.) have raised the issue, have generally adopted or amended their regulations recently (since 2000) or are planning to in the next five years.

Inclusivity is the key to construct equitable regulations that are less likely to be evaded and more likely to mitigate the negative externalities created by these policies. Research has already posited four broad approaches to regulation: centralized regulation, self-regulation, no regulation, and shared regulation (see Figure 3.1 on the following page). Shared regulation, deemed the most effective approach, is intuitive to regulatory best practices generally, in which policies for STRs should be no different. Including local community members and business stakeholders in discussions about regulation is valuable. Not only will this approach generate stronger regulations but policy makers can also learn the ways in which people in their community want take part in this sharing economy activity.

“Users in particular should be at the centre [sic] of the regulatory process because they could play a greater role in compliance”
(Balaram, 2016).

Table 3.1. Broad Approaches to Regulate Short-Term Rentals



Source: Balaram, Brhmie (2016). <https://www.thersa.org/discover/publications-and-articles/rsa-blogs/2016/07/how-do-we-collaboratively-regulate-the-sharing-economy>

Accordingly, regulation should be a part of a community conversation as it is necessary to understand the true impacts that STRs have on hosts, accommodation sector businesses, and residents. Regulation should be a part of a regional conversation as most areas in Oregon receive regional tourism, and therefore regulatory frameworks in one community (e.g. the option of banning outright) can have unintended consequences on nearby jurisdictions (e.g. increasing STRs usage potentially affecting their housing availability more than otherwise). Ideally, sharing economy platforms should be involved too. For instance, policy makers and policy monitors need big data to construct useful regulatory frameworks and these platforms have this missing piece. Jurisdictions having access to audited, databases or summary data will help improve the way local governments manage STRs (Sundararajan, 2016).⁸

Thus, while community and regional conversations should be a given, additional approaches are more variable. Compiled below are several, general, best practices. Jurisdictions should consider these practices by reviewing them in context of their community.

Define Short-Term Rentals Codify Regulations in City Ordinances

The first step in attempting to respond to STRs is to have it defined in an ordinance. Many communities have no framework in place to address STRs which has presented challenges in mitigating issues that arise. Some communities, lacking an appropriate definition have relied on similar lodging terminology, such as temporary living accommodations (e.g. hotels, motels, extended-stay hotels, etc.), to address issues that arise but this is not an adequate practice for the

⁸ STRs data is becoming increasingly easy to access free of charge or for predetermined prices. Collaborating with academic institutions can help reduce the cost of data, and if purchased on a state or regional level, can reduce the price on a per capita basis.

long term. STRs are different than traditional lodging and should be regulated accordingly. The best approach is to define the use as “short-term rentals.” Terminology such as vacation rental should also be reconsidered as it implies that these units are only used for tourism or recreational purposes. In actuality, STRs are used by those on prolonged business trips or by existing or potential residents who are in the process of looking for housing in a particular community and therefore uninterested in a long-term lease.

In addition to terminology, a frequency of use standard should be determined. The common standard is less than 30 days in a calendar year or less than 30 consecutive days but this can vary and allow for more flexibility. As best practice, generate official designation in conjunction with a local, community conversation and a regional conversation. Communities where STRs are not highly prevalent may fair well with a looser standard (e.g. less than 120 days in a calendar year) while other communities may enforce a stricter standard (e.g. less than 15 days in a calendar year).

Once defined, this activity will become easier to classify and regulate usage. It also legitimizes STRs so residents who want to operate a STR can do so legally. Equally important, this becomes the only way for communities to collect taxes on STRs. Despite commentary of communities that lack any STRs (in reality or as perceived) indicating there is no need to regulate, any community with residencies can, at any time—be affected by STRs. Therefore, the growing trend of STRs requires communities to take precaution and be proactive.

The following are examples of definitions for local, Oregon ordinances:

- City of Gearhart: “Vacation Rental Dwelling. Any structure, or any portion of any structure, which is occupied or offered or designed for transient occupancy for less than 30 days for dwelling, lodging or sleeping purposes; and includes houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy, provided such occupancy is less than a 30-day period.”
- City of McMinnville: “Vacation Home Rental. The Use of a dwelling unit by any person or group of persons entitled to occupy for rent for a period of less than 21 (twenty-one) consecutive days.”
- City of Manzanita: “Short Term Rental. A dwelling unit that is rented to any person on a day to day basis or for a period of less than thirty (30) consecutive nights.”

Distinguish Between Short-Term Rentals

While all STRs function similarly, they are not all the same. STRs can be an entire home, or a shared/private room. They can be located in the main house/apartment or be located in a secondary dwelling on the property. Further, some STRs are used for a single night or a weekend while others can be reserved for several weeks to a month at a time. In addition to duration, frequency also distinguishes STRs in that a neighbor may not notice a single tourist or family who have rented out a house for a weekend but may notice when there are new visitors every week or more than 30 visitors/new families in a single year.

Thus, policies that differentiate between types of STRs will promote fairness and equitability. Tiered restrictions can be used to make it less financially burdensome on property owners who are interested in renting out their home for less than 10 days in a calendar year compared to high volume owners (someone who rents their home out two to three times for 30 consecutive days in a calendar year). Per example, “raising the cost for high volume listings of short-term apartments to the point where long-term residential leases become more profitable” can be considered a useful strategy to discourage “hotelization” (Katz, 2015). With that, more lenient requirement for those renting out a single room can encourage property efficiency. For communities with affordable housing issues, higher fees for STRs in accessory/secondary dwelling units may incentivize property owners to use that valuable space for full-time residents as opposed to visitors. There should also be a distinction between certain STRs and second homes⁹.

For an example, visit the City of Ashland’s Development code which differentiates between “Travelers’ Accommodations” and “Accessory Travelers’ Accommodations.”

- http://www.ashland.or.us/SIB/files/AMC_Chpt_18_current.pdf (18.2.3.200)

Restrict Use or Incentivize Moderate Use

Literature attests that the ‘banning STR outright’ policy response will not likely fix housing availability or affordability issues due the amount of STRs there are in most cities (small portion, comparatively). Further, literature hypothesizes that banning outright can have more unintended, negative repercussions by preventing the positive aspects that the sharing economy brings to residents and local economies via this tourism niche (Short Term Rental Advocacy Center). This is not to say that banning is not a legitimate policy approach particularly in areas in a housing crisis. However, in smaller jurisdictions, where neighborhoods are less dense and where housing tends to have larger footprints, banning outright can also disallow efficient uses of individual properties. Accordingly, I provide two alternative options that may better enable the benefits of STRs while still allowing proper management of STRs (see Figure 3.2). Regulatory paths for each option are laid out in the following chapter.

⁹ Hood River, Oregon makes this distinction in their 2015 Housing Needs Assessment. This STR/second home distinction is valuable as their uses have different sets of implications. With that said, a second home has more impact on the availability of housing than does a STR in a room of somebody’s primary dwelling.

Figure 3.2. Alternatives to the Policy Option of Banning Short-Term Rentals

Restrict Use	Incentivize Moderate Use
Purpose: to limit the number of short-term rentals in a community or in particular areas of a community Advantages: systematically controls the prevalence and influence of short-term rentals Disadvantages: potential for policy evasion; concerns over fairness (who is allowed to participate) Example: In Manzanita, Oregon short-term rentals are allowed outright with a percentage cap on the number of short-term rentals permitted in some areas. A waiting list is used for eligible homeowners who would otherwise be eligible for a license to operate. More information: Manzanita, Oregon. Ordinance No. 10-03 (As amended by Ord. No. 16-05 12/7/16), "An Ordinance Establishing Rules and Regulations Relating to Short Term Rentals"	Purpose: to encourage property owners to responsibly limit how they use their properties as short-term rentals Advantages: preserves property rights; permits efficient use of participating properties Disadvantages: potential for property owners to choose not to moderate use (especially those with higher-incomes) Example: In Portland, Maine, annual registration fees for non-owner occupied short-term rentals are twice as expensive than those for owner occupied units. In addition, fees increase for each unit (e.g. ranging from \$100 for the first unit to \$2,000 for the fifth unit for owner-occupied units and \$200 for the first unit to \$4,000 for the fifth unit for non-owner occupied units). More information: Portland, Maine. Amendment to Portland City Code Chapter 6 and Chapter 14, Re: Short Term Rentals. http://portlandmaine.gov/Document-Center/Home/View/15848

Source: DiNatale, Sadie (2017). Assessing and Responding to Short-Term Rentals: Enabling the Benefits of the Sharing Economy.

These progressive options help to “ensure that people only occasionally rent out their house whilst away (sharing economy), rather than run a permanent, unregulated hotel (not sharing economy)” by regulating “the rental of homes in such a way that it becomes part of the sharing economy as previously defined” (Frenken, et al. 2015). Determination about what route local government should take is contingent upon the way in which property owners operate STRs in that community as well as the perceptions community members have for STRs. Either option, will require evaluation to ensure that the intended outcome has been achieved.

It may be that STRs are not an existing problem, or that STRs receive praise for providing lodging opportunities where no traditional lodging options were available (etc.). In community situations like these, there may be no need to restrict use or incentive moderate use.

Normalize STRs as a Residential Activity (with Caveats)

Another point of controversy and debate is whether to classify STRs as a residential or commercial use. This determination will have huge implications in how STRs are used, and who can use them. On one end, STRs provides a property owner with employment while technically using their home as a small, business venture (though not to the degree of a hotel or motel). On the other hand, STRs are located in residencies, function residentially (e.g. used for eating, sleeping, hanging out), and the rental units maintain their residential character. Normalizing STRs as a residential activity, with regulatory caveats that ensures property owners maintain the properties' residential character (see subsection, "Develop Appropriate Regulatory Standards") can ensure that those who use STRs moderately and within legal parameters can continue to do so.

The following outlines some court cases in which STRs were determined a residential activity:

- *"Short-term rentals of lakefront house are not commercial use in violation of residential zoning laws, for the purpose that residential referred to activities on the property and not the owners' intent to make a profit, there was never more than on family occupying the house, and the renters engaged in residential activities."*
 - *Siwinski v. Town of Ogden Dunes*, Court of Appeals of Indiana [intermediate court], Decided March 16, 2010, 922 N.E.2d 751. (Judicial Decision: 62 PEL 210, Indiana.)
- *Short-term rental determined predominately residential* for the reasons that "the property was designed for use predominately as a residence, the site was purchased and the home was built for personal use, the intent was to use the property as a second home, the decision to allow short-term rentals was made to offset expenses and to share the outdoor experience with visitors, most of the rental activity occurred during the summer months, [the property owners] used the property when possible." Further, "the receipt of income does not transform residential use of property into commercial use" (*Farny v. Board of Equalization*). Finally, the intent was not to generate profit (as is the case of hotels, motels, and bed and breakfasts) but to assist with the cost of maintenance.
 - *O'Neil v. Conejos County Board of Commissions*, Court of Appeals of Colorado, Decided March 9, 2017.
- Piece of a condominium declaration "affirming that no business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the property was not intended to restrict the right of any condominium unit owner to rent or lease his condominium unit from time to time." In addition to restrictive covenants not being favored in Missouri, "the covenant was interpreted narrowly in favor of the free use of the property and that nightly rentals did not violate the R-3 multiple-family dwellings statute."
 - *Mullin v. Silvercreek Condominium Owner's*, 195 S.W.3d 484 (Mo. Ct. App. 2006):

Still, depending on the political climate and level of controversy in a given community, limiting STRs to specific zones (e.g. mixed-use, neighborhood commercial, higher or lower density residential areas) may prove to be a useful compromise or solution (also see next subsection "Permit STRs in Premium Areas with Monitoring"). Further, in some situations restrictive covenants (in Home Owners Associations, for example) may view STRs as a breach of rules and landlords may still prohibit their tenants from operating short-term rentals in the same way they may prohibit sub-leasing. Accordingly, some management of STRs can occur outside of municipal control.

Permit STRs in Premium Areas with Monitoring

If community conversations come to the conclusion that STRs are to be limited to certain areas of a community, consider permitting the use of STRs in premium areas. In this sense, premium areas can be considered areas of city with abundant natural resources: places tourists and visitors flock to where STRs tend to be most prevalent. Allowing STRs in these areas are in line with sharing economy values. In that, more people are given access to homes in superior locations.

Still, as communities with these premium areas (e.g. resort communities) are facing greater challenges than non-resort communities, paying attention to the number and use of STRs in these areas is important as allowing them without management may disrupt the character of those neighborhoods (see next subsection, “Develop Appropriate Regulatory Standards”).

Develop Appropriate Regulatory Standards

In considering STRs as a residential use, it is important to set specific standards on these units to ensure they are not overly burdensome to the neighborhood. For instance, limiting guest capacity to the family/household capacity, quantifying the frequency and duration of visitor stays, and fining property owners for created nuisances are some options for maintaining the character of neighborhoods. In respects to the quantification of frequency and duration of visitors, one can equate the number of days the property is rented to the number of days the property is owner-occupied. In areas with constrained housing availability, requiring that property owners live in their dwelling unit for six to nine months out of the year, for example, can disincentive the hotelization of neighborhoods.

Finally, requiring that STR units receive inspections should also be a minimum to promote the health, safety, and wellbeing of both residents and visitors. Inspections could include a general home inspection or a fire inspection.

Require a Permit or License

Requiring STR operators to register their units or get a permit/license can help communities stay on top of where these rentals are located and can help manage how many there are. It will also allow communities to collect data (aiding in the chance to measure the benefits/costs that STRs could have on neighborhoods, hosts, and/or residents). Collecting fees from these permits/licenses can be low (solely used to cover the administrative cost of processing permits/licenses) or higher if excess revenue is needed for other initiatives (STR education, outreach, inspection services or complaint follow-up, etc.). Requiring STR operators to register for a business permit (as opposed to getting a permit specially designated for STRs) may also prove to be less administratively burdensome.

An example of language for requiring a short-term rental license is as follows:

- City of Bend (7.16.030): “Annual Short-Term Rental Operating License Required. No owner of property within the Bend City limits may advertise, offer, operate, rent, or otherwise make available or allow any other person to make available for occupancy or use a short-term rental without a short-term rental operating license. Advertise or offer includes through any media, whether written, electronic, web-based, digital, mobile or otherwise. [Ord. NS-2239, 2015]”

Require STR Operators to Pay Fees and Taxes

Tourism often puts a strain on services. Collecting fees and taxes should be used to mitigate negative externalities of this activity. Fees, as mentioned briefly above, should cover the cost of administrator time and resources needed to regulate and enforce STRs as well as cover outreach activities.

Transient lodging taxes should be levied in all communities using a rate that makes sense for the community (e.g. higher if there are too many STRs or lower if the community does not have sufficient lodging opportunities/wants to encourage STRs). There are also precedents for alleviating costs for lower-income households that may be impacted by these rates dissimilarly; for instance, a fee exemption or reduced fee rate. Higher fee rates for property owners with more than one STR in a single community may also help to disincentive “hotelization.”¹⁰

How should planners and policy makers enforce short-term rentals?

While not all jurisdictions in Oregon have to deal with enforcement issues, those that do understand that enforcement of STR policies is difficult at best and traditional methods such as administrative citations, fines, revoking permits, or court mandates have only been slightly effective overall in curbing code evasion.

Still, opportunities for enforcement exist, however, they may not be in line with traditional best practices. For instance, while more time intensive, providing outreach to community members is one opportunity to ensure that residents and possible hosts understand their rights when it comes to STRs. Reaching out to community members about what existing regulatory frameworks are and

“What’s striking about the shared economy is not the technology that has made it possible, but the vast changes it has triggered in society.”
(Stan, 2016).

what they are intended to accomplish can help inform residents and potential hosts of the standard operating procedures for the area. Teaching them of the negative externalities (specific to the community) may help with compliance. Additionally, with “community” and “trust” as cornerstones of the sharing economy, using these values to frame community discussions may also prove to be more effective than addressing this activity from a strictly legal and economic agenda. Outreach to educate operators about

the hazards of being an absentee property owner and the danger of allowing visitors to stay longer than 30 consecutive days (e.g. risks visitors gaining tenant’s rights) should also occur.

Using regional outreach methods may help ease administrative burden, especially in areas with smaller populations. Alternatively, local governments can offset some of this outreach onto property owners by requiring them to reach out to their neighbors before registering their STRs (e.g. potentially requesting neighbor approval or confirmation that hosts at least speak to their neighbors about their new venture). This option can give property owners and neighbors a chance to talk

¹⁰ Recently, Paris triples its vacant home tax to 60% to mitigate artificial shortages in their housing stock. <http://www.zerohedge.com/news/2017-03-07/vacant-homes-are-global-epidemic-and-paris-fighting-it-60-tax>

about concerns before the opportunity for nuisances to occur arises. This will enable trust and transparency.

Along the lines of trust and transparency, the sharing economy has become effective at self-regulation. In general, web-based platforms that utilize customer review and rating systems can allow property owners to be more selective of who they let into their homes and neighborhoods. Again, educating hosts in some of the dangers that could occur through home-sharing may make the hosts more perceptive to these review/rating systems. Further, if these hosts have previously talked to their neighbors about their primary concerns, hosts will be able to read through potential visitor's reviews to better select individuals less likely to create the nuisances sure to annoy neighbors.

In summation, it is difficult for governments to regulate something they do not have complete control over. Using community members to encourage and expect appropriate use of STRs as well as educating STR operators on what is suitable can induce a culture of self-regulated compliance.

The Need for Continuous Evaluation

Not just a best practice but a necessity, jurisdictions should continue to monitor STRs in their community so that appropriate evaluation of their policies can occur. Particularly, many cities have found their regulations, or lack thereof, to be neither effective nor ineffective, which makes continued evaluation that much more important.

Potential opportunities to inaugurate monitoring and evaluation into existing administrative and planning activities includes: inventorying STRs when participating in buildable lands inventories or conducting housing needs assessments, considering STRs when developing regional plans or new master plans (particularly for downtowns and tourism-based districts), and incorporating STRs into relevant strategic plans (e.g. Travel Oregon) and state-wide tourism research. Further, using town halls, neighborhood association meetings, existing community newsletters, polls on governmental Facebook pages, and the like can streamline outreach activities just as easily as it can assist in gauging community perspectives about STRs. Longitudinal studies will be essential to truly gauge the effectiveness of STR policies.

Future Research

As other studies on the topic conclude, there is still much research needed regarding the topics of STRs and the sharing economy to understand their impact on communities and local economies. The following questions were unable to be addressed in this report but should be considered moving forward (see Table 3.3):

Table 3.3. Opportunities for Continued Study

Research Questions	Potential Method(s)	Potential Data Sources
Do short-term rentals affect the availability of long-term rentals, owner-occupied housing, or affordable housing? If so, to what extent?	Regression Analysis	American Community Survey and Housing Survey Data
Do short-term rentals affect property values or inflate rental costs?	Regression Analysis	American Community Survey and Housing Survey Data
What is the land use efficiency of short-term rentals vs. hotel/motel accommodations?	Geographic Information Systems; Static and Dynamic Analysis	Historical rates of land consumption, Residential and accommodation sector employment growth rates/trends of land utilization, Characteristics of land and tax lot information
In allowing STRs to support additional tourism, do the benefits derived from an increase in tourism outweigh the costs of increased tourism?	Cost-Benefit Analysis	Government spending and tax revenue; Economic, social, and environmental indicators
How can web-based, sharing economy businesses, governments, and community members collaborate in the response to short-term rentals?	Surveys, Interviews, Focus Groups	Residents, Businesses within the accommodation sector, Elected officials, Government representatives, Sharing economy platforms
How do community members perceive short-term rentals in their community?	Surveys (e.g. chi-square), Interviews, Focus Groups	Residents, Businesses within the accommodation sector, Elected officials
To what extent do community members value home-sharing? In what ways do values differ amongst various groups?	Surveys (e.g. chi-square), Interviews, Focus Groups	Residents and Community members
What are the motives of property owners who operate a short-term rental(s)? How do motives rank amongst each other?	Surveys, Interviews, Focus Groups	Short-term rental operators

Source: DiNatale, Sadie. (2017). Assessing and Responding to Short-Term Rentals in Oregon: Enabling the Benefits of the Sharing Economy.

Additionally, many survey respondents indicated the following summarized tools would be helpful for them to better respond to STRs¹¹:

- Construction of a model code or sample ordinance¹²
- Easier access to Transient Lodging Tax rolls to establish whether STRs exist in certain locations or are contributing taxes
- Access to housing data (e.g. spatial data of housing stock)
- Funding to amend land use codes

¹¹ Responding to Short-Term Rentals in Oregon Survey, n-Q24, 2017.

¹² Two potential sample codes are located here: <http://stradvocacy.org/category/sample-ordinances/>. Many cities in Oregon have also adopted codes that could be used as a resource. When developing code language, looking at samples from a range of comparable jurisdictions is important.

Chapter 4: Policy Recommendations

The purpose of this chapter is not to recommend a precise recipe for how various communities should manage STRs; this would be inefficient given all the nuances between cities. Rather, this chapter presents general recommendations for cities (with populations less than 100,000), regions, and Oregon. Lastly, delineated in a typology (based-off previously cited best practice) are specific regulatory options that communities can consider.

Regulatory Recommendations

The following sections break recommendations into minimum requirements and ancillary requirements for cities. Next, I provide recommendations for regions and the State.

Minimum Regulatory Recommendations for All Cities

Whether a city has STRs or not, communities should establish the following regulations, even as a precautionary measure:

1. Legally define STRs as “short-term rentals” and establish a fair frequency of use standard that is complimentary of regional standards.
2. Codify regulations in local ordinance. Impose a guest capacity limit and require inspections.
3. Levy a transient lodging tax (if not imposed at the county level).
4. Require that STR operators register their unit(s) on an annual basis.

Ancillary Regulatory Recommendation with Thresholds for Cities

Variations in number and concentration of STRs should influence policy choices. The following recommendations provide thresholds for ancillary regulations as a starting point. In that, thresholds may vary between communities.

1. Restrict (cap/limit) STRs or incentivize moderate use if STRs account for more than 4% of total housing stock.
2. Impose a clause that revokes a STR permit for properties that receive more than five nuisance complaints in a calendar year.
3. Limit STRs in proximity to other STRs (deconcentrate) when city-wide/area-specific nuisance complaints exceed 25 complaints in a calendar year. Communities should establish a fair distance (e.g. 50 to 200 feet buffer between STRs), weigh equity implications, and re-evaluate buffer distance every two to five years.
 - a. Before establishing a buffer distance, cities should increase regulatory standards and evaluate whether nuisance complaints reduce (e.g. establishing minimum parking standards may mitigate parking complaints).

Recommendations for Counties and Regions

Smaller jurisdictions may have difficulties managing STRs. That said, counties/regions should help facilitate proper management of STRs.

1. Levy a transient lodging tax at the county level if barriers exist for cities to impose their own (due to population size, low prevalence of STRs in individual communities, administrative limitations, etc.).
2. Establish a regional representative or liaison to attend Sharing Economy Committee meetings (see first “Recommendation for Oregon”). Regional liaisons should represent multiple counties.

Recommendations for Oregon

Oregon can and should become a leader in the management of STRs. This will require the state to become a leader in sharing economy affairs.

1. Establish a Sharing Economy Committee to facilitate research on the sharing economy generally (to include analysis of STR trends) and to assist communities across the state deal with new issues. The objective of this committee should be one in support of sharing economy activities.
2. Hire a state employee to work directly in sharing economy affairs. Responsibilities should include:
 - Analyze sharing economy trends across the state, country, and globe
 - Communicate initiatives, information, and best practices to governments across the state
 - Provide government assistance in STR management
 - Collaborate with sharing-economy platforms
 - Collect data
 - Participate in global sharing economy networks
 - Coordinate state Sharing Economy Committee meetings, trainings, and workshops
 - Launch policy demonstration studies to pilot regulatory frameworks and options
3. Maintain a neutral Transient Lodging Tax at 1.8% to allow regions and cities to use their tax rates to manage STR growth.
4. Establish a pool of funding to help small communities amend land use ordinances for STRs.

Legislative Approaches: A Typology for Smaller Jurisdictions

The following policy options represent common legislative approaches for smaller jurisdictions. Communities must consider the viability of each approach/regulatory option within context of their community. A community may adopt some or none of these options. “Grade,” intends to provide a starting point for a community conversation around equitability of regulatory frameworks. Communities are encouraged to develop their own metrics or expand the following.

Table 4.1. Legislation Approaches and Regulatory Options

Legislative Approaches	Regulatory Options	Equity Consideration	Grade
Definitions	Terms	-	-
	Vacation Rental	Not an all-encompassing term; assumes use is tourism-based only.	Poor
	Transient Rental	Inclusive term.	Good
	Short-Term Rental	More inclusive term and observed globally.	Best
	Frequency of Use	-	-
	Unspecified	Not specifying the number of days STRs can be reserved for could create hotelization.	Poor to Adequate
	Less than 183 days in a calendar year; Less than 30 consecutive days	For communities unchallenged by housing availability, the use of second homes as STRs may be acceptable, for others, this could create artificial housing supply constraints.	Adequate
	Less than 90 days in a calendar year; Less than 30 consecutive days	Allowing STRs to be reserved for a total of 3 months in a calendar year enables property owners who may travel (or function with a more nomadic lifestyle) to get better use out of their primary properties while away.	Good
	Less than 30 days in a calendar year	More commonly used by local governments as a way to balance the benefits and negative externalities of STRs while continuing to learn from and evolve with the sharing economy.	Good
	Listing Types	-	-
	Accessory/Secondary Dwelling	Allowing STRs in ADUs can allow property owners to use their lots more efficiently. However, for communities with housing supply constraints, this may inhibit long-term housing options.	Adequate
	Entire House/Apartment	STRs as entire homes and apartments are efficient but frequent use could generate artificial housing shortages in some communities.	Good
	Shared/Private Room	Enabling STRs as shared/private rooms can make it easier for property owners to use their excess space.	Best

Legislative Approaches	Regulatory Options	Equity Consideration	Grade
Restrictive Zoning	Cap/Limit	-	-
	STRs in Proximity to Another	Mitigate nuisance issues and ensures certain areas of a community does not become overrun by STRs.	Good
	the Number of STRs in a City	Limiting STRs allows benefits to be reaped and greater flexibility. Using a lottery system or waiting list can promote fairness.	Good
	the Number of STRs in a Neighborhood or District	Allows for more accurate and fair management of STRs in areas that are more heavily influenced by STRs than others. Using a lottery system or waiting list can promote fairness.	Good
	Rentals per Property Owner	Reduces threat of hotelization in neighborhoods and better ensures an adequate supply of housing for residents.	Best
	Land Use Classes	-	-
	Banning Outright	Banning outright will likely lead to policy evasion and missing out on the many benefits the sharing economy brings.	Poor
	Permit Outright	Many communities may find it acceptable to allow STRs outright as long as appropriate regulatory standards mitigate concerns and promote fairness.	Good
	Permit in Some Districts/Zones	Being selective of where STRs are able to locate is important for most communities where STRs are creating issues. A cost-benefit analysis weighing the benefits/drawbacks of sharing economy activities in various areas is necessary to make informed decisions on behalf of the entire community.	Best
Incentive-Based Provisions	Higher Fee Rate	-	-
	for Second Permit or More	Making STR operators pay higher rates for STR permits, after their initial permit, can discourage property owners from operating more than one STR in a given community.	Good
	Reduced Fee Rate	-	-
	Property Owner's Primary Residence	Allowing reduced fares for STRs in operator's primary home can discourage people from purchasing residential units solely for the purpose of operating STRs.	Best
	Fee Exemptions	-	-
	for Hardship	Exempting residents experiencing financial hardship from fee requirements can ensure that lower-income residents can still operate a STR legally to earn extra income, if they want.	Best
	Use for less than 10 days in calendar year	Exempting operators from permit fees who operate STRs infrequently can ensure residents are not financially discouraged from use their properties more efficiently.	Best

Legislative Approaches	Regulatory Options	Equity Consideration	Grade
Permitting	Conditional Use Permit	High rates of standard conditional use permits may reduce STRs financial viability discouraging use, which may or may not be the intention. For moderate users this may induce concerns over fairness.	Adequate to Good
	Business License	Requiring STR operators to get a business license can streamline administrative efforts.	Good
	Short-Term Rental License	A separate license, specifically for short-term rentals, may allow more flexibility in treating this activity and in setting fee rates at more appropriate levels.	Best
Taxation	No Transient Lodging Tax	For some communities, levying a TLT may discourage STRs in areas where STRs' other benefits of STRs may outweigh the additional fiscal revenue.	Poor to Adequate
	Transient Lodging Tax Imposed by County	Counties where aggregated STRs in each city are too low to be administratively efficient to levy at a city level, may benefit from a tax levied at a regional level. Imposing a transient tax maintains fairness across the accommodation sector.	Good
	Transient Lodging Tax Imposed by City	Tourists put a strain on city services and cities should levy a tax to offset financial burden on residents. Imposing a transient tax maintains fairness across the accommodation sector.	Good
Registration	No Registration	Not requiring STRs to register may have long-term effects on the character of neighborhoods, on housing availability or affordability, and may make enforcement more difficult.	Poor
	Renewal Every 3 to 5 Years	Ensures process is not overly burdensome but less frequent monitoring may create opportunities for policy evasion and neighborhood nuisances.	Adequate
	Annual Renewal	Most appropriate way to track STRs on a regular basis.	Good
Review Processes	No Review Process	Not having any kind of review process may negatively influence the health, safety, or wellbeing of residents or the character of neighborhoods.	Poor
	Site/Design Review	While necessary depending on other regulatory options selected (e.g. conditional use permit) for other communities, a site/design review process may be overly burdensome to both staff and potential STR operators.	Adequate to Good
	Neighbor Consent	Some form of consent process with neighbors (not official hearing) can improve neighborhood relationships and increase transparency. Some nuisance issues may be mitigated with open dialogue.	Good
	Performance/Behavior Measures	Policies that revoke STR privileges for nuisance issues or complaints is a useful clause to ensure neighbors are not negatively impacted by STRs in nearby properties.	Good
	Health, Fire, Building Inspections	More of a necessity, there should be some checks and balances to ensure that STR properties are up to code, ensuring the safety of visitors.	Best

Legislative Approaches	Regulatory Options	Equity Consideration	Grade
Standards	Minimum Parking Requirements	Requiring that STR operators adhere to parking requirements may mitigate nuisance issues in some areas or be unnecessary and overly burdensome in others.	Poor to Adequate
	Vehicle Limits	Limiting guest vehicles can mitigate neighborhood concerns and nuisance issues.	Good
	Minimum Aesthetic Code Requirements	Some aesthetic requirements (e.g. limiting signage) can mitigate degradation of neighborhood character in primarily residential areas.	Good
	Proof of Owner-Occupancy	Requiring a property owner to use their property for a certain number of days out of a calendar year can discourage absentee property owners and hotelization.	Best
	Guest Capacity	Maintaining a guest capacity at level of family/household can mitigate nuisance issues and ensure that STRs in traditionally, residential areas are not overly disruptive to the existing character of neighborhoods.	Best

Source: Information was derived from Appendix A and B of this report as well as from the Responding to Short-Term Rentals in Oregon Survey.

Appendix A: Literature Review

This chapter organizes findings of existing studies and current literature on the topic of short-term rentals.

Impact of Short-Term Rentals

STRs are understood to impact, or potentially impact the cost and availability of housing, local economies, and the sharing economy generally.

Impact on Housing

A scan of applicable literature quickly returns results of short-term rentals (STRs) impact on housing. First however, most reports comment on the fact that there are very clear limitations in the availability of data to fully understand the impact STRs have on housing markets or housing stock (ECONorthwest 2016, Rees Consulting 2016, and accessorydwellings.org 2016). Speculation and inherent assumptions are widespread, though, academics and practitioners are eager to learn about the true effects. Being that there is no standard or agreed upon definition for STRs, the ability to draw clear conclusions on causality across space becomes especially difficult (ECONorthwest, 2016).

In a study that analyzed the impact that HomeAway rentals had in Seattle, it was found that STRs did not have a significant impact on home values, that properties were generally not on the STR market for long, and that STRs were generally located in traditionally higher income areas (ECONorthwest 2016). Yet, in a study of STRs in New York City and New Orleans, STRs were associated with increased property values (Sheppard, et al. 2016 and Kindel, et al. 2016). Thus, we can conclude that STRs' impact on housing will differ between geographic regions and local economy types.

Some reports looked at the impact STRs had on specific housing types. In a white paper looking at four cities in Colorado, with populations under 7,000, it was found that STRs did lead to the reduction of homes and bedrooms previously used by employees increasing the demand for workforce housing and reducing its supply (Rees Consulting 2016). Another analysis showed that in Portland, banning short-term accessory dwelling unit rentals did not increase long-term accessory dwelling rentals (accessorydwellings.org 2016).

Economic Impacts

Impacts to the Government and Local Economies: Short-term rentals have the potential to positively affect municipalities through production of fiscal revenue. In a report assessing the impact of STRs in San Diego, Los Angeles, Monterey County, Santa Barbara, and St. Joseph (Michigan) it was found that taxing the STR industry generates substantial revenue for the municipality and it does support job growth (NUSI 2015; TXP, Inc. 2014; and TXP, Inc. 2015). In addition, literature attests that “with proper regulation and enforcement, citizens and communities can benefit from the increased tourism” that short-term rentals bring (Binzer, 2017).

Impacts to Short-Term Rental Hosts: A primary reason property owners operate STRs is the income operators' can earn. Still, in a study of HomeAway rentals in Seattle, ECONorthwest found that STRs did not generate significant incomes for owners (2016) —potentially unveiling other value-drivers for operating STRs beside purely economic gains. For instance, social and sustainability benefits may

also motivate property owners to continue operating these rentals. Nevertheless, in an assessment of Airbnb hosts, it was found that the annual expected profit is approximately \$20,000, but “‘hands-off’ Airbnb hosts can expect occupancy rates (and revenue) at least 15% lower” than more involved hosts (Wallace, 2016).

Impacts to Businesses within the Accommodation Sector: Despite localized economic benefits, the STR industry can disrupt formal industries in the accommodation sector by attracting visitors away from conventional lodging and accommodation companies (Guttentag 2013, Fang 2015). This disruption becomes exacerbated in that many STRs marketed through web-based platforms are often illegal (e.g. being operated without a license/permit, without paying proper taxes/fees, or without having proper inspections). This gives traditional, regulated lodging businesses an economic disadvantage (Guttentag 2013). Continued studies evaluating occupancy rates, revenues per available room, rates of use and rental price, estimated non-lodging spending from short-term renters, and estimates on potential revenue earnings for municipalities will assist in the development of knowledge in this area (NUSI 2015).

Impact on Sharing Economy

STRs often operate by property owners leasing their unused space to tourists and visitors. We characterize activities as sharing economy activities when they use a distribution process to balance the availability of resources and needs of consumers (Daunoriene, et al. 2015). The ways in which STRs influence the sharing economy is still open to interpretation however. I speculate that growth of STRs offered through web-based platforms indicates that there is at least additional capacity in existing housing stock and that these property owners are willing to share their excess space in exchange for monetary compensation (Ellen 2015). Outside of this reality, debate about whether home sharing, through web-based platforms, negatively or positively influences the sharing economy finds a range of perspectives.

In theoretical debates, policy makers have considered adapting the Airbnb home-sharing model to house lower income individuals as a new form of housing assistance (Ellen 2015). The idea that people are interested in providing access to their space to strangers, initiates the conversation that sharing economy activities can be operated in many capacities (outside of corporate co-options), providing different social and economic benefits therein (Martin 2015). STR hosts can also reap economic benefits by participating in the sharing economy, reinforcing their desire to participate in that economy. Specifically, hosts can distribute their assets to supplement their income which has the added benefit of materializing the collaborative use of resources (Lazarouiu 2014, Daunoriene, et al. 2015). Social impacts are realized from public relations perspectives in which, the incremental shift towards home-sharing “has engendered visions of renewed forms of collective urban life” involving sustainability, symbolic interaction, and communication that empowers trust (Gregory et al. 2016).

Other perspectives debate how STRs and home-sharing through web-based platforms bring detrimental impacts on the sharing economy, or at least diminish its reputation. For instance, intermediary businesses that “provide the infrastructure necessary to sustain the sharing community” (Gregory et al. 2016) often enables, or intensifies, the evasion of local laws and regulations (Interian 2016). These businesses can also displace companies that are regulated, and often, do not hold themselves accountable to the negative externalities their business models can create (Interian 2016).

Summary of Impacts of Short-Term Rentals

There is limited data on the impact that short-term rentals have on governments and local economies, hosts and residents, and accommodation sector businesses. Certainly, however, positive and negative impacts will vary across space and time (particularly in regards to housing supply and affordability). Additionally, STRs have and will likely continue to disrupt traditional, lodging options but likely will not replace these businesses altogether. In general, there are also mixed perceptions about how home sharing will affect the sharing economy at large which has created a dichotomy around the topic (expected to remain until more research can occur).

Short-Term Rental Policy

This section first discusses STR policy frameworks and the impact they can have.

Policy Approaches

Integrating STRs into the formal sector through regulations and enforcement has been cited as an important next step to correct some of the negative impacts of STRs (Guttentag 2013). However, policy makers continue to grapple with the rationales, process, and practices of how to best regulate STRs. In a time of economic recession, many wonder if it is beneficial to regulate the STR market at all—in the chance it inhibits homeowners from making ends meet on their mortgages or housing payments (Gottlieb 2013). In general, however, the literature seems to agree on the fact that STRs should be regulated in some fashion, the extent to which is unclear and controversial (Gottlieb 2013, Goodman 2016, and Hood River County 2016).

There appears to be no best way to regulate the STR market that fits the needs of all communities across space. One report suggested a three-part solution:

1. Launch a standard of safety and accountability (strengthening nuisance laws, ensuring hosts have appropriate insurance, etc.);
2. Move past a yes or no debate on short-term rentals (consider the nuances of individual communities and tailor regulations to those nuances); and
3. Enforce what is on the ground and online (to cut down on opportunities to evade laws) (Goodman 2016). Another report articulated several alternatives: develop public nuisance abatement ordinances, ban short-term rentals outright, enact time restrictions (i.e. allowing short-term rentals for a period of 30 days or less), or enact performance based standards (Gottlieb 2013).

The American Planning Association suggests that jurisdictions require licenses, fees and taxes, and insurance; they also suggest consistency with their land use controls and to determine whether inspections are necessary (Sullivan, 2017). In a guidebook on the equitable regulation of short-term rentals, suggestions include clear definitions, active record keeping, protections for housing (supply and affordability), protections for guests, procedures for oversight, protections for neighborhood preservation, and imposition of taxes (Sustainable Economies Law Center 2016). Others argue that STRs, as part of the sharing economy, need special or “innovative” regulatory treatments “precisely because the business model is so new” (Katz 2015).

Transient Lodging Tax

Transient lodging taxes (TLT) are a local option tax levied on lodging facilities (hotels, motels, bed and breakfasts, etc.). While all jurisdictions do not levy a tax of this kind, “taxing tourism is an appealing option for governments facing budgetary constraints and pressures to decrease reliance on a variety of taxes” (Gooroochurn and Sinclair 2005). For instance, taxes levied to hotels offset burden onto tourists, which is especially advantageous in areas with “superior or unique natural resources” as to “capture the ‘rent’ of these resources through taxation” (Oakland and Testa n.d.).

TLTs, and other tourism taxes, are further considered efficient relative to taxing other sectors (Gooroochurn and Sinclair 2005). TLTs are useful to discourage certain businesses, curb negative impacts of certain businesses, or improve fairness (recover service costs from those who benefit from those services) (Oakland and Testa n.d.).

Policy Impacts

Pros and cons exist for all routes and systems of regulation. Overarchingly, we are not fully aware of the impacts alternate policies will have on residents, the local economy, or housing in the long-term. In jurisdictions where STR policies are already established, we still lack a complete awareness on the affect short-term rentals have on residents (Hood River County 2016). Accordingly, because the regulation of STR could affects community members differently, developing policies becomes a challenge and a discussion of equitability. Thus, communities “should arrive at an appropriate and equitable policy through open dialogue with the diversity of stakeholders involved” (Sustainable Economies Law Center 2016).

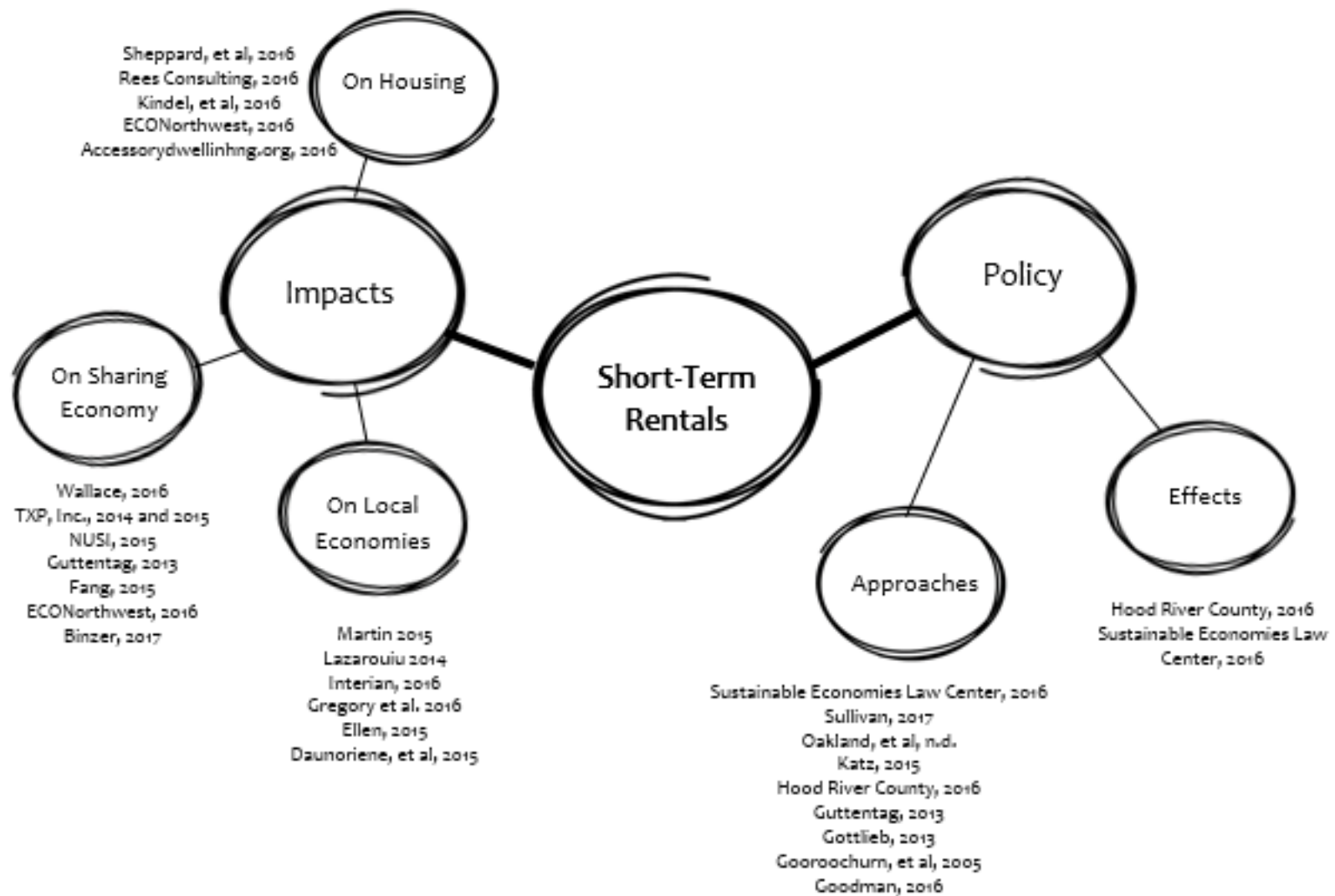
Summary of Impacts of Policy and Regulation

The establishment of policies for STRs in communities across the country is relatively new. Policies imposed can and likely will disproportionately affect residents. Thus, it is important to establish rules in accordance with best practices and community conversations. As a follow-up to regulations imposed, communities should evaluation the impact their policies have had on residents, neighborhoods, the economy, and housing. Communities should modify policies when deemed necessary.

Summary

Short-term rentals refer to housing units leased or rented for less than 30 days. It is an arrangement that involves the trade of the temporary, but not future use, of a full or partial housing unit (Flath 1980). STRs can provide benefits and/or costs to communities (which will vary across time and space), but appropriate regulations can manage these impacts. The concept map on the following page visually displays the connection between STR subtopics.

Concept Map



Appendix B: Case Studies

This appendix conveys key findings on 10 Oregon cities, selected as case studies (see Table C.1). Case studies are used to delve into the details of STRS in smaller cities (cities with <100,000 people).

Table B.1. Selected Case Studies with Descriptors, 2015

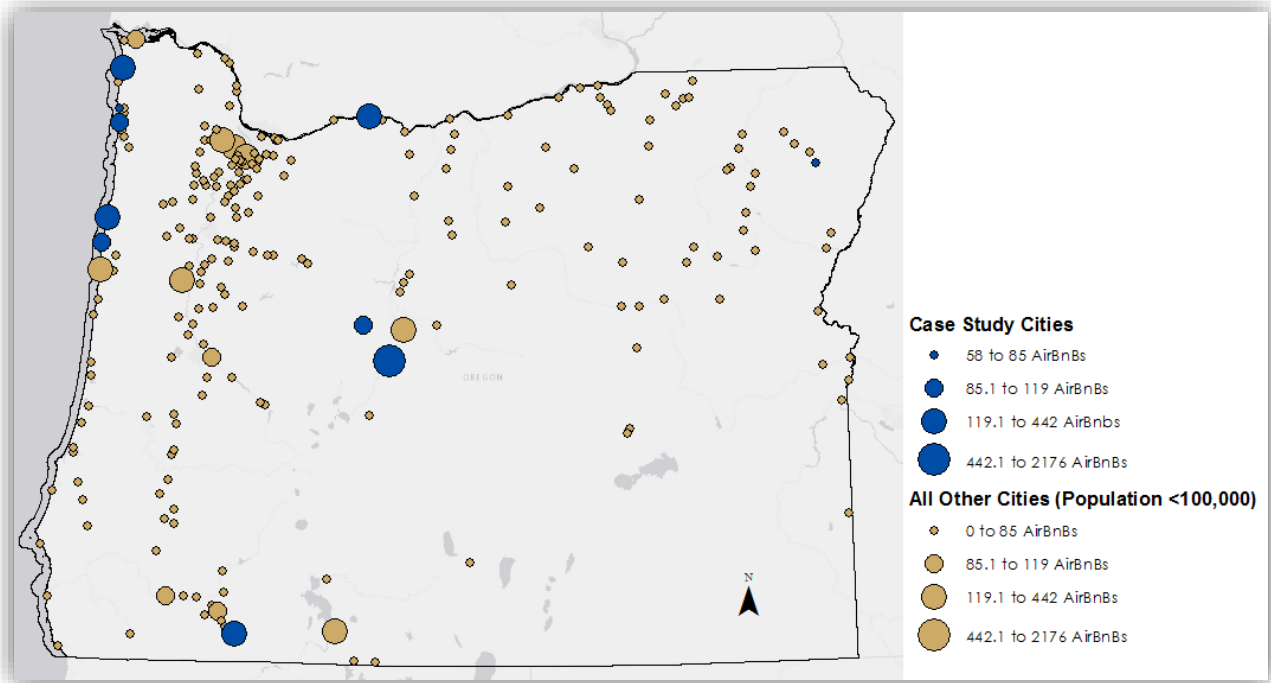
Case Studies	Total Population	City Size Class	City Size Class Legend	Region	Coastal City
Manzanita	426	1	Less than 1,000	North Coast	Yes
Joseph	1,053	2	1,000 to 5,000	Northeast Oregon	No
Rockaway Beach	1,227	2	1,000 to 5,000	North Coast	Yes
Depoe Bay	1,877	2	1,000 to 5,000	North Coast	Yes
Sisters	2,596	2	1,000 to 5,000	Central Oregon	No
Seaside	6,483	3	5,001 to 20,000	North Coast	Yes
Hood River	7,412	3	5,001 to 20,000	Central Oregon	No
Lincoln City	8,386	3	5,001 to 20,000	North Coast	Yes
Ashland	29,556	4	20,001 to 50,000	Southern Oregon	No
Bend	81,780	5	50,001 to 100,000	Central Oregon	No
Total	140,796	-	-	-	-

Source: Population was derived from the American Community Survey, 5-year estimates 2011-2015.

Case studies were chosen as they possess 1) higher levels of Airbnbs (total number) as compared to other Oregon cities and/or 2) they possess a high percentage of Airbnbs as compared to the community's total housing units. All case studies rank within the top 25 cities in either of those two categories; most case studies (except Ashland and Joseph) rank within the top 25 cities of both categories.

The case studies chosen represent 49% of the Airbnbs in cities under 100,000 and 22% of the Airbnbs in all Oregon cities. These 10 cities generate approximately \$54.8 million annually which is 66% of all revenue generated from Airbnbs in cities under 100,000 and 35% of the revenue generated from Airbnbs in all Oregon cities.

Map B.2. Number of Airbnb's by City using Proportional Symbols



Source: AirDnA. Property Data, Retrieved 2017. Oregon Spatial Data. *This map excludes cities with populations greater than 100,000 (Portland, Eugene, Salem, and Gresham). Cities are only showcased in this map that have at least one Airbnb short-term rental.*

Summary Facts

Our case study cities are highly influenced by STRs.

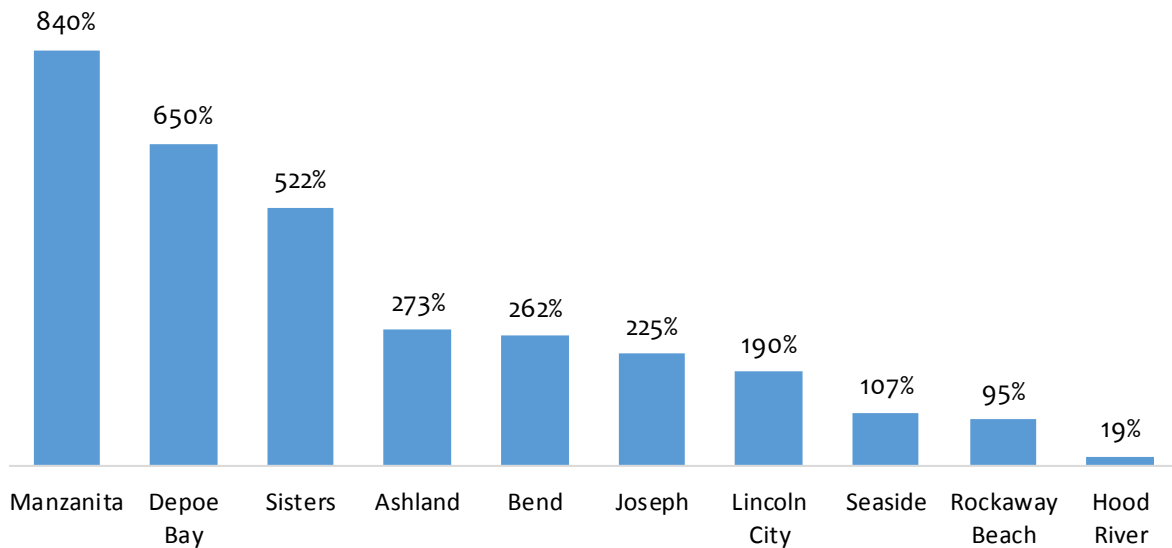
Table B.3. Quick Facts, 2011-2015 Estimates

Case Studies	Population (2015)	Total Housing Units (2015)	Median Household Income (2015)	AirBnBs as % of Total Housing
Ashland	20,556	10,372	\$ 45,704	3%
Bend	81,780	36,579	\$ 52,989	6%
Depoe Bay	1,877	1,469	\$ 46,853	8%
Hood River	7,412	3,504	\$ 47,310	9%
Joseph	1,053	595	\$ 37,216	10%
Lincoln City	8,386	6,439	\$ 37,894	5%
Manzanita	426	1,263	\$ 51,429	7%
Rockaway Beach	1,227	2,105	\$ 37,227	5%
Seaside	6,483	4,602	\$ 37,887	10%
Sisters	2,596	1,331	\$ 50,324	8%

Source: American Community Survey, 2011-2015. AirDnA Property Data, 2017.

Newly created STRs in our case study cities continues to grow. Future, longitudinal studies will help to understand how recent policies effect the amount of STRs entering the market in these communities.

Figure B.4. Percent Change of Newly Created Short-Term Rentals, 2014 to 2016



Source: AirDnA Property Data, Retrieved 2017.

In the following case study cities, STR growth is increasing at a faster rate than total housing units are. In some of these communities, household formation is also increasing at a faster rate than the construction of new housing units, indicating housing supply constraints (Bend, Depoe Bay, Joseph, and Manzanita).

Table B.5. Indication of Possible Housing Supply Constraints

Cities in Oregon	Household Formations			Vacation/Seasonal/ Occasional Use Housing Vacancy			Housing Units			Short-Term Rentals		
	2010	2015	Change	2010	2015	Change	2010	2015	Change	2014	2015	Change
Ashland	9,339	9,446	1%	291	317	9%	10,230	10,372	1%	76	127	67%
Bend	31,596	33,396	6%	1,224	1,414	16%	35,610	36,579	3%	434	1,066	146%
Depoe Bay	618	870	41%	431	446	3%	1,125	1,469	31%	22	66	200%
Hood River	2,764	3,005	9%	247	313	27%	3,214	3,504	9%	127	232	83%
Joseph	435	533	23%	70	40	-43%	556	595	7%	6	45	650%
Lincoln City	3,831	3,876	1%	1,432	2,138	49%	5,731	6,439	12%	125	191	53%
Manzanita	207	200	-3%	1,062	993	-6%	1,320	1,263	-4%	15	36	140%
Rockaway Beach	670	565	-16%	1,026	1,387	35%	1,750	2,105	20%	39	65	67%
Seaside	2,839	2,897	2%	1,221	920	-25%	4,428	4,602	4%	134	255	90%
Sisters	765	949	24%	46	187	307%	956	1,331	39%	17	48	182%
Total	53,064	55,737	5%	9,060	10,170	12%	64,920	68,259	5%	995	2,131	114%

Source: AirDnA Property Data. Retrieved 2017. U.S. Census, American Community Survey, 2010 and 2015.

The following table shows that in some situations, property owners can generate more annual revenue off STRs than they could off standard long-term rental units. This suggests that in resort communities, there may be more of a motive for property owners to operate STRs.

Table B.6. Indication of Competition between Short and Long-Term Housing

Cities in Oregon	Average Annual Revenue (STRs)	Max of Annual Revenue (STRs)	Average Annualized Rent (ACS)	Average Annualized Mortgage (ACS)
Ashland	\$8,309	\$59,876	\$12,456	\$20,208
Bend	\$14,801	\$157,773	\$12,972	\$18,648
Depoe Bay	\$13,866	\$59,288	\$12,264	\$18,636
Hood River	\$7,537	\$81,215	\$13,488	\$20,016
Joseph	\$17,176	\$64,836	\$7,980	\$14,232
Lincoln City	\$12,265	\$117,250	\$10,080	\$18,804
Manzanita	\$16,105	\$90,051	\$10,548	\$24,432
Rockaway Beach	\$15,925	\$98,481	\$8,316	\$14,556
Seaside	\$16,285	\$198,425	\$10,704	\$19,356
Sisters	\$9,196	\$48,000	\$12,312	\$19,068
Total	\$13,662	\$198,425	\$11,112	\$18,796

Source: AirDnA Property Data, Retrieved 2017. U.S. Census, American Community Survey, 2010 and 2015.

Table B.7. Airbnbs Organized by Listing Type and Days Reserved

	Entire home/apt	Private room	Shared room	Total
Ashland	180	79	1	260
Less than 30 Days	34%	21%	0.4%	55%
30 to 90 Days	13%	4%	-	17%
91 to 180 Days	17%	5%	-	22%
181 Days or More	6%	1%	-	7%
Bend	1,765	407	4	2,176
Less than 30 Days	35%	9%	0.1%	45%
30 to 90 Days	29%	5%	0.0%	34%
91 to 180 Days	13%	3%	0.0%	16%
181 Days or More	4%	2%	-	6%
Depoe Bay	113	6	-	119
Less than 30 Days	48%	4%	-	52%
30 to 90 Days	24%	-	-	24%
91 to 180 Days	20%	1%	-	21%
181 Days or More	3%	-	-	3%
Hood River	211	99	12	322
Less than 30 Days	32%	17%	4%	52%
30 to 90 Days	19%	6%	-	25%
91 to 180 Days	11%	7%	-	17%
181 Days or More	4%	1%	-	5%
Joseph	51	6	1	58
Less than 30 Days	17%	3%	-	21%
30 to 90 Days	34%	3%	-	38%
91 to 180 Days	29%	3%	2%	34%
181 Days or More	7%	-	-	7%
Lincoln City	319	19	-	338
Less than 30 Days	49%	2%	-	51%
30 to 90 Days	26%	1%	-	27%
91 to 180 Days	17%	2%	-	19%
181 Days or More	2%	1%	-	3%
Manzanita	77	8	-	85
Less than 30 Days	38%	5%	-	42%
30 to 90 Days	29%	5%	-	34%
91 to 180 Days	20%	-	-	20%
181 Days or More	4%	-	-	4%
Rockaway Beach	99	6	1	106
Less than 30 Days	34%	2%	1%	37%
30 to 90 Days	24%	1%	-	25%
91 to 180 Days	28%	2%	-	30%
181 Days or More	8%	1%	-	8%
Seaside	393	46	3	442
Less than 30 Days	40%	6%	-	46%
30 to 90 Days	26%	3%	0.2%	29%
91 to 180 Days	16%	1%	0.5%	18%
181 Days or More	7%	0%	-	7%
Sisters	78	29	-	107
Less than 30 Days	33%	15%	-	48%
30 to 90 Days	23%	8%	-	32%
91 to 180 Days	15%	3%	-	18%
181 Days or More	2%	1%	-	3%
Total	3,286	705	22	4,013

Legislative Approaches

Table c.4. Case Study City Legislative Approaches

Case Study	Defined	Adopted	Requirements & Standards	Indication of Effectiveness	Ordinance Link
Ashland	Travelers' Accommodations (TA) or Accessory Travelers' Accommodations (ATA), for one or more occasions for a period less than 30 consecutive days	2015	<u>TA and ATA Requirements:</u> Conditional Use Permit; Subject to Site Design Review; Subject to inspection by fire department and Jackson County Health Department; City business license; Register for and pay transient occupancy tax <u>TA Standards:</u> Located within 200 feet of boulevard, avenue, or neighborhood collector; Property must be primary residence of the business-owner or person entered into a lease agreement with the property owner permitting use of property for the accommodation; Primary resident on site must be 20 years old; Minimum lot and GSF standards; Parking standard (one off-street parking space per accommodation and business-owner's unit must have two parking spaces) <u>ATA Standards:</u> Limit to one accommodation unit per property (no more than two bedrooms with two people per room); No signs; Property must have two off-street parking spaces; Guest vehicles must not exceed one; Meals and kitchen cooking facilities are not permitted	Somewhat Effective	http://www.ashland.or.us/SIB/files/AMC_Chpt_18_current.pdf (Section 18.2.3.220)
Bend	Use of a dwelling unit by any person or group of persons entitled to occupy for rent for a period of less than 30 consecutive days	2006, Updated 2015	Short term rental permit, Subject to review dependent on location and days available; Annual operation license; Concentration limits (250 feet between properties); Less than 30 days and owner-occupied allows exemption from concentration limits; Occupancy limited to two persons per bedroom plus two additional people; One parking space per bedroom; Subject to inspection	Very Effective to Somewhat Effective	http://www.codepublishing.com/OR/Bend/Section 3.6.500
Depoe Bay	Less than 30 successive calendar days	-	Prohibited except as permitted under the zoning code; 8% Transient Room Tax, City business license; Registration; Four year amortized period	-	http://www.cityofdepobay.org/pdf/ordinances/zoning24codifiedNov2011.pdf (Section 4.650)

Case Study	Defined	Adopted	Requirements & Standards	Indication of Effectiveness	Ordinance Link
Hood River	Transient Rental: a dwelling unit or room(s) rented for compensation on less than a month-to-month basis	2016	3% transient room tax; Short-term rental operating license; Maximum occupancy two persons per bedroom plus two additional persons; One off-street parking space for every two bedrooms; Dwelling must be primary residence of the property owner	Too Soon to Tell	http://ci.hood-river.or.us/pageview.aspx?id=20524 (Section 17.04.115)
Joseph	Travelers accomodation: any primary residence, which is not a hotel or motel, having rooms, apartments or sleeping facilities rented or kept for rent on a daily or weekly basis to travelers or transients for a fee; Occupancy for less than 30 days	2016	3% transient lodging tax; Licence and/or permit; Facility is subject to review during first three years of operation after which time a permanent permit for the facility as accredited travelers' accomodation will be issued; One off-street parking space with owner's unit having two spaces; One sign of six sf maximum with no more than 150 watts of illumination; Annual inspection by the County Health Department	Somewhat Ineffective	https://drive.google.com/file/d/0B6NISJljv4gad3NoR3BHTjIZODg/edit
Lincoln City	Vacation rental dwelling: a dwelling unit that is used, rented or occupied on a daily or weekly basis, or is available for use, rent, or occupancy on a daily or weekly basis, or is advertised, or listed by an agent, as available for use, rent, or occupancy on a daily or weekly basis.	Initially in 1996, updated 2016	\$350 land use approval application fee, plus \$100 license fee, plus \$150 occupational tax permit; Transient lodging tax at 9.5% of rental charge	Somewhat Effective	http://www.codepublishing.com/OR/LincolnCity/(section.17.80.050.and.at.Chapter.5.1).amendments.are.found.at http://www.lincolncity.org/index.asp?SEC=55A859F7-5E25-4659-B7BE-B0445F128F08&Type=B_BASICin Ordinances 2016-14, 2016-20, and 2016-26
Manzanita	Short Term Rental: A dwelling unit that is rented for a period not to exceed 29 days.	1994; current policies adopted 2010, amended 2016	\$250 permit (annual), 9% transient room tax; Advertisement must contain licensing number; Subject to inspection and periodic reinspection; Some areas subject to cap; Off-street parking for two vehicles; Signage no larger than 90 square inches; Occupancy capacity of two persons per sleeping room plus an additional four persons	Somewhat Ineffective	http://www.ci.manzanita.or.us/_docs/ordinances/STR/Ordinance%2010%2003%20STR%20regulations%20amend%2016%2005%20120716.pdf

Case Study	Defined	Adopted	Requirements & Standards	Indication of Effectiveness	Ordinance Link
Rockaway Beach	Under 30 nights stay	Prior to 2003	Business license; 9% transient room tax	Somewhat Effective	http://library.amlegal.com/nxt/gateway.dll/Oregon/rockawaybeach_or/thecityofrockawaybeachoregoncodeofordina?f=templates\$fn=default.htm\$3.0\$vid=amlegal:rockawaybeach_or
Seaside	Less than 30 day		Conditional Use Permit subject to public hearing; Subject to inspection; Transient room tax provisions; Permit will be reviewed if two complaints are received by different residencies claiming adverse impact; Minimum of two off street parking spaces plus one additional for each bedroom over two	-	http://www.cityofseaside.us/sites/default/files/vrd_checklist2016.pdf ; http://www.cityofseaside.us/sites/default/files/vrd_checklist2016.pdf
Sisters	Vacation rental: The use of a residential dwelling unit by any person or group of persons entitled to occupy for rent for a period of less than 30 consecutive days per month and that is rented in such a manner for more than 10 days in a calendar year	2010	Business license, Transient room tax, Subject to inspection, Complaints can revoke permit, Subject to type 1 review process	Somewhat Effective	http://sistersoregon.gelfuzion.net/pdf/development-code/Chapter%202.15%20Special%20Provisions%2011.23.14.pdf

Source: Responding to Short-Term Rentals Survey, 2017 and code review (see links in table).

Appendix C: Industry Summary for Cities with Airbnbs

The following table provides industry data for all cities in Oregon with Airbnb.

Table D.1. Industry Summary by Region

City by Region	AirBnBs as % of Total Housing	Avg. Daily Rate per Property	% of Properties Reserved >30 Days	% of Properties (Entire Home)	% of Properties (Private/Shared Room)	Annual Revenue
Central Oregon	4%	\$209	53%	78%	22%	\$37,539,776
Bend	6%	\$238	55%	81%	19%	\$32,207,439
Cascade Locks	1%	\$75	57%	57%	43%	\$20,557
Culver	0%	\$0	0%	100%	0%	\$0
Dufur	1%	\$150	75%	50%	50%	\$19,189
Hood River	9%	\$129	47%	66%	34%	\$2,426,970
La Pine	3%	\$95	65%	81%	19%	\$214,018
Madras	0%	\$49	0%	73%	27%	\$4,635
Maupin	1%	\$216	100%	100%	0%	\$57,672
Mosier	12%	\$100	42%	81%	19%	\$200,261
Prineville	1%	\$93	54%	50%	50%	\$171,475
Redmond	1%	\$115	49%	74%	26%	\$1,036,179
Sisters	8%	\$153	51%	73%	27%	\$983,947
The Dalles	0%	\$108	53%	43%	57%	\$197,434
North Coastal Oregon	5%	\$206	53%	86%	14%	\$24,875,499
Astoria	2%	\$101	61%	52%	48%	\$890,097
Bay City	2%	\$133	57%	93%	7%	\$111,417
Cannon Beach	4%	\$322	71%	95%	5%	\$2,876,320
Depoe Bay	8%	\$207	47%	95%	5%	\$1,650,062
Garibaldi	0%	\$199	0%	100%	0%	\$4,575
Lincoln City	5%	\$237	48%	94%	6%	\$4,145,729
Manzanita	7%	\$271	56%	91%	9%	\$1,368,957
Nehalem	46%	\$168	58%	60%	40%	\$879,648
Newport	2%	\$185	46%	79%	21%	\$1,322,513
Rockaway Beach	5%	\$192	63%	93%	7%	\$1,688,036
Seaside	10%	\$216	49%	89%	11%	\$7,198,080
Tillamook	4%	\$156	55%	89%	11%	\$1,014,970
Toledo	0%	\$25	50%	0%	100%	\$6,134
Waldport	4%	\$145	57%	76%	24%	\$435,804
Warrenton	1%	\$168	55%	95%	5%	\$282,578
Wheeler	0%	\$0	0%	100%	0%	\$0
Yachats	8%	\$158	78%	78%	22%	\$1,000,579
Northeast Oregon	1%	\$129	45%	64%	36%	\$1,738,663
Baker City	0%	\$115	55%	60%	40%	\$158,813
Condon	1%	\$89	0%	50%	50%	\$1,091
Elgin	1%	\$86	43%	43%	57%	\$22,840
Enterprise	3%	\$127	48%	52%	48%	\$217,418
Fossil	4%	\$134	30%	30%	70%	\$24,072
Grass Valley	3%	\$127	50%	100%	0%	\$7,355
Haines	0%	\$85	0%	0%	100%	\$1,615
Halfway	2%	\$75	25%	75%	25%	\$8,595

City by Region	AirBnBs as % of Total Housing	Avg. Daily Rate per Property	% of Properties Reserved >30 Days	% of Properties (Entire Home)	% of Properties (Private/Shared Room)	Annual Revenue
Northeast Oregon Continued...						
Heppner	0%	\$0	0%	100%	0%	\$0
Hermiston	0%	\$15	0%	75%	25%	\$120
Ione	4%	\$67	0%	50%	50%	\$1,200
Irrigon	0%	\$0	0%	0%	100%	\$0
John Day	1%	\$85	14%	100%	0%	\$13,905
Joseph	10%	\$205	79%	88%	12%	\$996,192
La Grande	0%	\$86	25%	55%	45%	\$44,465
Long Creek	5%	\$86	0%	0%	100%	\$344
Lostine	4%	\$89	60%	100%	0%	\$45,525
Milton Freewater	0%	\$95	20%	60%	40%	\$23,925
Mitchell	6%	\$147	0%	83%	17%	\$11,222
Moro	3%	\$76	0%	0%	100%	\$2,490
Pendleton	0%	\$140	27%	67%	33%	\$49,041
Prairie City	1%	\$120	60%	100%	0%	\$31,464
Richland	1%	\$72	100%	100%	0%	\$5,495
Umatilla	0%	\$198	0%	100%	0%	\$792
Union	0%	\$133	0%	100%	0%	\$5,319
Unity	2%	\$105	0%	100%	0%	\$2,200
Wallowa	0%	\$48	50%	50%	50%	\$9,690
Wasco	4%	\$91	88%	13%	88%	\$53,475
Portland Metro	2%	\$82	48%	57%	43%	\$69,880,529
Beaverton	1%	\$61	49%	37%	63%	\$1,620,761
Cornelius	0%	\$146	100%	50%	50%	\$15,402
Damascus	0%	\$48	44%	33%	67%	\$35,011
Fairview	0%	\$75	61%	61%	39%	\$86,018
Forest Grove	0%	\$65	42%	33%	67%	\$90,651
Gladstone	0%	\$62	33%	56%	44%	\$30,761
Gresham	0%	\$78	35%	39%	61%	\$196,700
Happy Valley	1%	\$79	26%	46%	54%	\$197,404
Hillsboro	1%	\$75	37%	37%	63%	\$757,834
Lake Oswego	1%	\$98	41%	55%	45%	\$993,534
Oregon City	1%	\$57	36%	38%	62%	\$373,295
Portland	3%	\$83	49%	60%	40%	\$64,746,132
Sherwood	0%	\$104	48%	52%	48%	\$197,885
Troutdale	0%	\$50	33%	43%	57%	\$71,959
West Linn	1%	\$71	38%	45%	55%	\$383,343
Wilsonville	0%	\$49	28%	24%	76%	\$83,839
South Coastal Oregon	1%	\$132	52%	75%	25%	\$2,335,541
Bandon	2%	\$227	52%	63%	38%	\$423,053
Brookings	2%	\$124	40%	65%	35%	\$447,365

City by Region	AirBnBs as % of Total Housing	Avg. Daily Rate per Property	% of Properties Reserved >30 Days	% of Properties (Entire Home)	% of Properties (Private/Shared Room)	Annual Revenue
South Coastal Oregon Continued...						
Coos Bay	1%	\$109	74%	74%	26%	\$393,664
Coquille	0%	\$67	67%	0%	100%	\$9,600
Florence	1%	\$103	58%	80%	20%	\$342,405
Gold Beach	3%	\$136	51%	88%	12%	\$310,273
Lakeside	0%	\$58	33%	100%	0%	\$12,625
North Bend	0%	\$93	72%	89%	11%	\$122,735
Port Orford	4%	\$137	32%	97%	3%	\$208,399
Reedsport	1%	\$73	35%	53%	47%	\$65,422
Southeast Oregon	1%	\$125	48%	79%	21%	\$1,143,628
Burns	1%	\$42	30%	40%	60%	\$60,935
Chiloquin	1%	\$130	74%	89%	11%	\$185,222
Jordan Valley	1%	\$2	50%	50%	50%	\$161
Klamath Falls	1%	\$135	46%	82%	18%	\$880,611
Ontario	0%	\$53	50%	50%	50%	\$7,709
Paisley	1%	\$145	100%	100%	0%	\$8,990
Southern Oregon	1%	\$98	47%	57%	43%	\$4,886,800
Ashland	3%	\$119	45%	69%	31%	\$2,160,243
Canyonville	0%	\$180	0%	20%	80%	\$1,052
Cave Junction	2%	\$69	50%	36%	64%	\$57,470
Central Point	0%	\$91	63%	43%	57%	\$180,830
Eagle Point	0%	\$98	50%	40%	60%	\$49,303
Elkton	3%	\$44	33%	100%	0%	\$26,213
Gold Hill	1%	\$141	63%	100%	0%	\$57,729
Grants Pass	1%	\$76	41%	52%	48%	\$449,096
Jacksonville	4%	\$97	45%	52%	48%	\$318,241
Medford	0%	\$85	53%	59%	41%	\$728,615
Myrtle Creek	1%	\$55	25%	63%	38%	\$15,248
Myrtle Point	0%	\$63	100%	0%	100%	\$25,257
Oakland	1%	\$123	50%	25%	75%	\$41,461
Phoenix	1%	\$59	33%	33%	67%	\$50,563
Riddle	0%	\$0	0%	100%	0%	\$0
Rogue River	0%	\$122	100%	100%	0%	\$33,902
Roseburg	0%	\$88	37%	44%	56%	\$180,605
Sandy	0%	\$182	85%	77%	23%	\$140,041
Shady Cove	0%	\$179	0%	100%	0%	\$4,015
Talent	3%	\$69	53%	39%	61%	\$366,916
Winston	0%	\$0	0%	100%	0%	\$0
Yoncalla	0%	\$0	0%	100%	0%	\$0
Willamette Valley	1%	\$109	45%	53%	47%	\$14,333,540
Albany	0%	\$42	50%	33%	67%	\$142,465

City by Region	AirBnBs as % of Total Housing	Avg. Daily Rate per Property	% of Properties Reserved >30 Days	% of Properties (Entire Home)	% of Properties (Private/Shared Room)	Annual Revenue
Willamette Valley Continued...						
Amity	1%	\$147	86%	86%	14%	\$98,095
Aumsville	0%	\$80	0%	100%	0%	\$80
Aurora	2%	\$99	71%	71%	29%	\$63,928
Banks	1%	\$114	43%	29%	71%	\$43,118
Brownsville	1%	\$107	80%	70%	30%	\$59,008
Canby	0%	\$50	52%	24%	76%	\$67,515
Carlton	3%	\$158	28%	83%	17%	\$155,952
Clatskanie	0%	\$53	33%	33%	67%	\$12,001
Columbia City	0%	\$0	0%	50%	50%	\$0
Corvallis	1%	\$78	46%	32%	68%	\$994,099
Cottage Grove	1%	\$40	26%	43%	57%	\$81,810
Creswell	1%	\$68	55%	55%	45%	\$36,876
Dallas	0%	\$78	40%	60%	40%	\$26,238
Dayton	4%	\$138	45%	79%	21%	\$199,324
Detroit	0%	\$187	0%	100%	0%	\$5,050
Dundee	3%	\$216	57%	67%	33%	\$341,089
Estacada	0%	\$32	50%	50%	50%	\$11,879
Eugene	2%	\$124	43%	59%	41%	\$8,284,555
Falls City	0%	\$0	0%	100%	0%	\$0
Gaston	5%	\$126	55%	82%	18%	\$112,446
Gates	2%	\$113	25%	100%	0%	\$18,485
Harrisburg	0%	\$180	0%	100%	0%	\$6,030
Hubbard	0%	\$51	0%	0%	100%	\$760
Idanha	4%	\$219	40%	40%	60%	\$32,812
Independence	1%	\$82	41%	59%	41%	\$71,170
Jefferson	0%	\$46	40%	60%	40%	\$11,738
Junction City	1%	\$97	50%	56%	44%	\$68,555
Lafayette	0%	\$0	0%	100%	0%	\$0
Lebanon	0%	\$51	50%	50%	50%	\$15,787
Lowell	1%	\$153	67%	100%	0%	\$49,060
Lyons	1%	\$115	67%	50%	50%	\$67,071
Mcminnville	1%	\$133	62%	58%	42%	\$647,527
Mill City	0%	\$118	50%	0%	100%	\$2,490
Molalla	0%	\$68	0%	40%	60%	\$5,161
Monmouth	0%	\$54	29%	29%	71%	\$33,461
Monroe	1%	\$112	50%	0%	100%	\$8,536
Newberg	1%	\$151	47%	64%	36%	\$594,929
North Plains	0%	\$35	0%	50%	50%	\$1,341
Oakridge	0%	\$46	22%	78%	22%	\$24,837
Philomath	1%	\$71	53%	67%	33%	\$78,164

City by Region	AirBnBs as % of Total Housing	Avg. Daily Rate per Property	% of Properties Reserved >30 Days	% of Properties (Entire Home)	% of Properties (Private/Shared Room)	Annual Revenue
Willamette Valley Continued...						
Rainier	0%	\$0	0%	50%	50%	\$0
Saint Helens	0%	\$45	25%	25%	75%	\$12,493
Saint Paul	1%	\$0	0%	100%	0%	\$0
Salem	0%	\$60	46%	32%	68%	\$733,510
Scappoose	0%	\$53	50%	25%	75%	\$55,434
Scio	2%	\$93	67%	50%	50%	\$55,987
Scotts Mills	2%	\$157	67%	100%	0%	\$19,789
Sheridan	1%	\$101	50%	60%	40%	\$38,935
Silverton	1%	\$98	59%	41%	59%	\$179,167
Springfield	0%	\$98	45%	46%	54%	\$454,422
Stayton	0%	\$85	67%	67%	33%	\$50,039
Sublimity	0%	\$77	67%	0%	100%	\$10,425
Sweet Home	0%	\$24	0%	67%	33%	\$648
Tangent	0%	\$124	100%	100%	0%	\$4,451
Turner	0%	\$49	50%	50%	50%	\$1,472
Veneta	1%	\$92	20%	45%	55%	\$54,950
Vernonia	1%	\$79	29%	14%	86%	\$15,236
Westfir	8%	\$96	33%	50%	50%	\$74,176
Willamina	0%	\$108	100%	100%	0%	\$14,133
Woodburn	0%	\$61	56%	11%	89%	\$21,562
Yamhill	3%	\$104	42%	58%	42%	\$63,269
Total	2%	\$120	49%	63%	37%	\$156,733,976

Source: AirDnA. Property Data. *Airbnbs as % of total housing units* uses American Community Survey data (2011-2015).

Appendix D: Sensitivity Test, AirDnA vs Airbnb Data

Sensitivity testing suggests similarities between both datasets. Note, Airbnb data was pulled in January of 2017, while AirDnA data was pulled in March of 2017. This may have created slight discrepancies for indicators. Still, proportion of entire homes and private/shared rooms are within +/- 3% on average. Host incomes were within +/- \$5,000 (removing Cannon Beach as the outlier). Average nights hosted/reserved days were within +68/-42 days and the average difference between monthly rates was \$72.

Table E.1. Sensitivity Testing of AirDnA and Airbnb Data using Various Indicators

City	Proportion of Entire Home Listings		Proportion of Private/Shared Room Listings		Typical Host Income		Typical Nights Hosted/Reservation Days		Average Nightly Rate	
	AirBnB	AirDnA	AirBnB	AirDnA	AirBnB (Groomed)	AirDnA	AirBnB (Groomed)	AirDnA	AirBnb (2016)	AirDnA
Ashland	77%	69%	23%	31%	\$10,550	\$8,309	71	53	\$131	\$189
Astoria	55%	52%	45%	48%	\$8,080	\$9,176	67	75	\$132	\$136
Bandon	67%	63%	33%	38%	-	\$8,814	-	-	\$162	\$294
Beaverton	44%	37%	56%	63%	\$6,290	\$4,739	94	52	\$92	\$120
Bend	75%	81%	25%	19%	\$10,280	\$14,801	46	56	\$154	\$354
Brookings	78%	65%	22%	35%	-	\$7,849	-	49	\$145	\$197
Cannon Beach	97%	95%	3%	5%	\$9,930	\$35,077	28	96	\$255	\$426
Corvallis	43%	32%	57%	68%	\$5,760	\$5,178	40	50	\$98	\$109
Cottage Grove	42%	43%	58%	57%	-	\$2,337	-	32	\$67	\$85
Depoe Bay	99%	95%	1%	5%	-	\$13,866	-	50	\$311	\$347
Florence	81%	80%	19%	20%	-	\$8,560	-	69	\$119	\$153
Gearhart	97%	-	3%	-	-	-	-	-	\$294	-
Gold Beach	90%	88%	10%	12%	-	\$7,216	-	42	\$183	\$290
Grants Pass	68%	52%	32%	48%	\$7,560	\$4,491	69	38	\$111	\$141
Hillsboro	41%	37%	59%	63%	\$5,240	\$3,609	49	35	\$80	\$115
Hood River	66%	66%	34%	34%	\$7,400	\$7,537	36	50	\$150	\$186
Jacksonville	58%	52%	42%	48%	\$6,170	\$4,750	45	39	\$118	\$141
Jordan Valley	68%	50%	32%	50%	-	\$81	12	17	-	\$75

City	Proportion of Entire Home Listings		Proportion of Private/Shared Room Listings		Typical Host Income		Typical Nights Hosted/Reservation Days		Average Nightly Rate	
	AirBnB	AirDnA	AirBnB	AirDnA	AirBnB (Groomed)	AirDnA	AirBnB (Groomed)	AirDnA	AirBnB (2016)	AirDnA
Joseph	87%	88%	13%	12%	-	\$17,176	-	78	\$181	\$240
Klamath Falls	85%	82%	15%	18%	\$3,220	\$6,572	21	43	\$142	\$178
La Pine	83%	81%	17%	19%	-	\$6,904	-	59	\$139	\$438
Lake Oswego	63%	55%	37%	45%	\$8,930	\$6,759	57	42	\$136	\$211
Lincoln City	94%	94%	6%	6%	\$14,170	\$12,265	32	51	\$182	\$386
Manzanita	95%	91%	5%	9%	\$16,160	\$16,105	57	60	\$269	\$362
McMinnville	55%	58%	45%	42%	\$8,850	\$8,750	58	61	\$149	\$190
Medford	63%	59%	37%	41%	\$10,410	\$6,809	60	65	\$109	\$159
Milwaukie	49%	-	51%	-	\$9,790	-	170	-	\$71	-
Nehalem	45%	60%	55%	40%	-	\$12,217	-	76	\$153	\$214
Newberg	62%	64%	38%	36%	\$4,980	\$7,345	59	44	\$152	\$234
Newport	82%	79%	18%	21%	\$10,730	\$9,380	60	47	\$167	\$343
Oregon City	53%	38%	47%	62%	-	\$4,912	-	48	\$87	\$104
Redmond	76%	74%	24%	26%	\$9,090	\$6,642	49	50	\$107	\$171
Rockaway Beach	94%	93%	6%	7%	\$18,800	\$15,925	94	76	\$225	\$314
Seaside	85%	89%	15%	11%	\$11,170	\$16,285	24	56	\$203	\$309
Sisters	71%	73%	29%	27%	\$8,010	\$9,196	58	47	\$185	\$246
Springfield	51%	46%	49%	54%	\$3,720	\$4,057	61	44	\$79	\$137
Talent	34%	39%	66%	61%	\$5,850	\$4,892	100	64	\$77	\$98
The Dalles	41%	43%	59%	57%	-	\$6,581	-	63	\$108	\$146
Tigard	35%	-	65%	-	\$3,140	-	55	-	\$91	-
Tillamook	92%	89%	8%	11%	-	\$11,941	-	64	\$189	\$243
Waldport	83%	76%	17%	24%	\$15,290	\$9,474	51	55	\$189	\$258
West Linn	50%	45%	50%	55%	\$4,670	\$4,675	62	42	\$106	\$115
Yachats	76%	78%	24%	22%	\$13,520	\$14,714	122	115	\$130	\$200

Source: AirDnA, Property Data, Retrieved March 2017. Airbnb Property Data, as of January 1, 2017.

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DATE: August 5, 2020

TO: W. John Moore, Mayor
Yachats City Council

FROM: Shannon Beaucaire, City Manager

SUBJECT: Memo 2 - Driftwood Paving Project

This memorandum should be read in conjunction with the first memorandum. This is a snapshot of information and the conversations I have had with ODOT regarding the grant and the City engineers. I will provide as much detail as I have received to date during the Council discussion. Pending discussion at the Council meeting I will get additional details, answers, or meetings scheduled based upon Council decisions.

ODOT Small City Allotment Grant:

- Grants are awarded annually on a competitive basis;
- Changes in scope will be reviewed by the selection committee. A review of points awarded for the original scope of work, compared to other awards, will be conducted to determine if the proposed scope of work change to determine if the project is still competitive enough against the other proposals or if the project loses awarded points and is no longer a competitive award.
 - Examples that were given as awards of points:
 - Walkways for multi-modal transportation
 - Paving

Information & Engineering Notes:

- Costs expended to date (prior to last payroll): FY20: \$18,287.10; FY21: \$336.84 (FY21 is staff costs)
- Re-design, re-bidding, advertising, staff time: approximately \$10,000

- Current Measurements
 - 17' 7" Pavement
 - 23' 7" from pavement to east side of telephone pole parking barrier
 - 41' 2" TOTAL

- Project Measurements
 - **Original Design w/ West Side Sidewalk**
 - 5 sidewalk
 - 0.5 curb
 - 24 drive lanes
 - 19 parking
 - 0.5 curb
 - 5 sidewalk
 - 54 TOTAL WIDTH
 - 16 TOTAL non-ADA parking spaces

 - **Original Design w/o West Side Sidewalk**
 - 5 sidewalk
 - 0.5 curb
 - 24 drive lanes
 - 19 parking
 - 0.5 curb
 - 49 TOTAL WIDTH

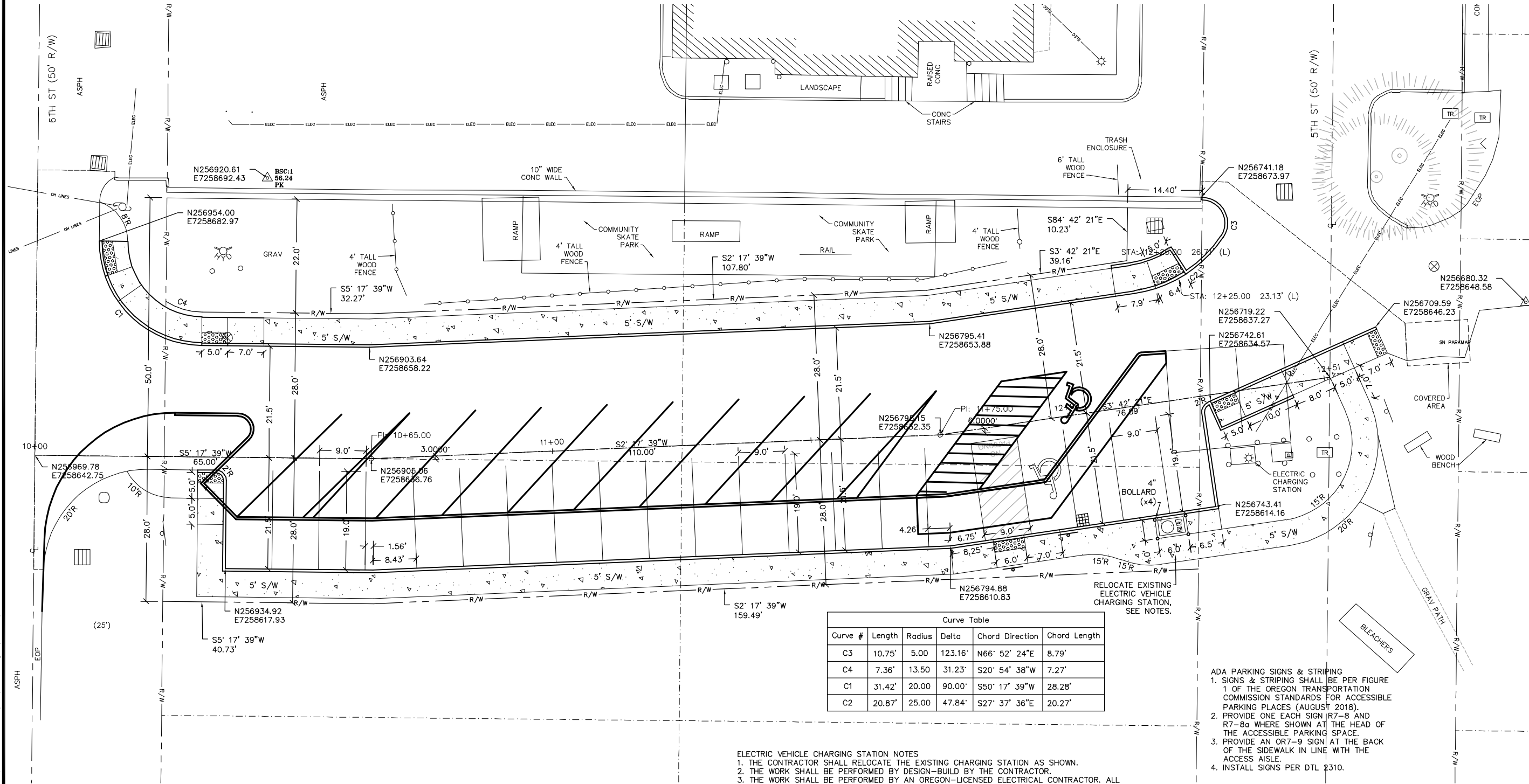
 - **1 Way Traffic w/o West Side Sidewalk**
 - 5 sidewalk
 - 0.5 curb
 - 13 drive lane
 - 20 parking
 - 0.5 curb
 - 39 TOTAL WIDTH
 - 11 TOTAL non-ADA parking spaces

- Due to the Counter-clockwise design of the bank parking lot, coupled with the non-angled parking along the south side of the building North traffic flows – allowing 2 way on south side of building to EV Charging station and circling bank building (easier to visualize and discuss than write)
 - The Engineer provided a quick overlay on the existing drawing of 1 way North and 1 way South Traffic flow – modifications would still need to be made to adjust to the awkward

- Parking spaces are 9' wide x 19' long. 8 feet wide is becoming to narrow with larger vehicles
 - As drawn angled parking is at 45 degrees which is the most space efficient for one-way traffic. The width of a one-way is determined by the angle of the parking (detail attached).
 - One-way drawings, drive lane is 13 feet and parking area is 19.8 feet wide from lane to curb
- Experience from 2nd street project last year – 4-5 extra parking spaces two-way allows can have long-term value to the community/businesses for the life of the street. Two-way traffic pattern also may have long-term value with visitors finding parking and their way around.
- 24 feet behind full-size parking spaces common/standard
- Drainage and Permeable paving and bioretention to reduce runoff and pollutants information
 - <https://www.mass.gov/service-details/demonstration-3-permeable-paving-materials-and-bioretention-in-a-parking-lot>
 - https://www.google.com/search?q=permeable%20parking%20surface%20in%20sand&tbm=isch&tbs=rimg%3ACdc92DyT2u_1UYeARZY-QTrtD&rlz=1C1GCEU_enUS820US820&hl=en&sa=X&ved=0CAIQrnZqFwoTCLCR_OqKgusCFQAAAAAdAAAAABAJ&biw=1903&bih=937#imgsrc=NI4sU0HP-DSgJM
 - All drainage (sidewalks included) go to storm water catchment system and into City storm drainage
 - Maintenance – silt/sand needs to be removed to ensure permeability remains.
 - Pavers tend to be more expensive
 - Effectiveness depends on infiltration capacity of soils in the area
 - Pond near south end if there is area west of the pavement that is OK to use. Can become debris collectors and require maintenance for function and appearance.
 - Stormwater treatment – filter catch basin. Cost approximately \$10,000 + maintenance.

Community Input #3: Follows this memo

8/3/2020 2:56:20 PM
C:\Users\engineer\Desktop\2020 Driftwood St\Plot\06 Site.dwg (Plot tab)

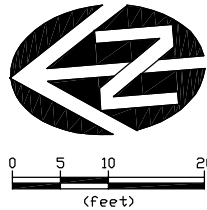


ELECTRIC VEHICLE CHARGING STATION NOTES

1. THE CONTRACTOR SHALL RELOCATE THE EXISTING CHARGING STATION AS SHOWN.
2. THE WORK SHALL BE PERFORMED BY DESIGN-BUILD BY THE CONTRACTOR.
3. THE WORK SHALL BE PERFORMED BY AN OREGON-LICENSED ELECTRICAL CONTRACTOR. ALL NECESSARY PERMITS SHALL BE PROCURED AND PAID FOR BY THE CONTRACTOR.
4. THE WORK SHALL BE PERFORMED TO MAINTAIN ACCESS TO AND USE OF THE EXISTING CHARGING STATION TO THE MAXIMUM EXTENT FEASIBLE.
5. THE RELOCATION SHALL OCCUR IN THE SHORTEST FEASIBLE TIME TO MAKE THE CHARGING STATION OPERABLE AND AVAILABLE FOR USE WITH THE SHORTEST AMOUNT OF DOWN TIME FEASIBLE.
6. REFERENCE INFORMATION CONSISTING OF THE DESIGN/CONSTRUCTION DRAWINGS FOR THE ORIGINAL INSTALLATION ARE PROVIDED IN APPENDIX A OF THE BIDDING DOCUMENTS.
7. THE CONTRACTOR SHALL COORDINATE THE WORK WITH THE CHARGING STATION OWNER, WEBASTO CHARGING SYSTEMS, INC. OF MONROVIA, CA. CONTACT: MARTY YOUNG, (626 764-9717).

Curve Table				
Curve #	Length	Radius	Delta	Chord Length
C3	10.75'	5.00	123.16°	N66° 52' 24"E 8.79'
C4	7.36'	13.50	31.23°	S20° 54' 38"W 7.27'
C1	31.42'	20.00	90.00°	S50° 17' 39"W 28.28'
C2	20.87'	25.00	47.84°	S27° 37' 36"E 20.27'

- ADA PARKING SIGNS & STRIPING
1. SIGNS & STRIPING SHALL BE PER FIGURE 1 OF THE OREGON TRANSPORTATION COMMISSION STANDARDS FOR ACCESSIBLE PARKING PLACES (AUGUST 2018).
 2. PROVIDE ONE EACH SIGN R7-8 AND R7-8a WHERE SHOWN AT THE HEAD OF THE ACCESSIBLE PARKING SPACE.
 3. PROVIDE AN OR7-9 SIGN AT THE BACK OF THE SIDEWALK IN LINE WITH THE ACCESS AISLE.
 4. INSTALL SIGNS PER DTL 2310.



City of Yachats, Oregon

Driftwood Lane Street Improvements

Driftwood Lane
Site Plan

DRAWING

6

JOB NUMBER

3096.2021.0

VERIFY SCALE
BAR IS ONE INCH ON
ORIGINAL DRAWING
DO NOT SCALE
DIMENSIONS
ACCURATELY

1"

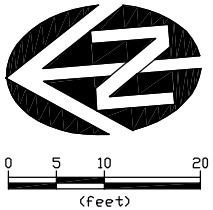
DSN. RCE
DRN. RCE
CKD. RCE

NO. 1
DATE: JUN 2020

West R: Blocks\STAMPS\ENGINEER\Verdict

WESTTECH ENGINEERING, INC.
CONSULTING ENGINEERS AND PLANNERS

3841 Fairview Industrial Dr. S.E., Suite 100, Salem, OR 97302
Phone: (503) 585-2474 Fax: (503) 585-3986
E-mail: westtech@westtech-eng.com



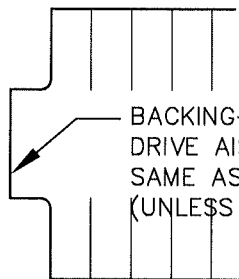
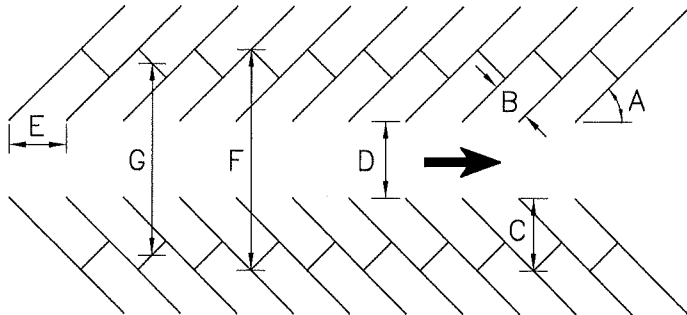
Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C3	10.75'	5.00	123.16"	N66° 52' 24"E	8.79'
C4	7.36'	13.50	31.23"	S20° 54' 38"W	7.27'
C1	21.42'	20.00	90.00"	S50° 17' 39"W	28.28'
C2	20.87'	25.00	47.84"	S27° 37' 36"E	20.27'

- ELECTRIC VEHICLE CHARGING STATION NOTES
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 3. THE WORK SHALL BE PERFORMED BY AN OREGON-LICENSED ELECTRICAL CONTRACTOR. ALL NECESSARY PERMITS SHALL BE PROCURED AND PAID FOR BY THE CONTRACTOR.
 4. THE RELOCATION SHALL BE PERFORMED TO MAINTAIN ACCESS TO AND USE OF THE EXISTING CHARGING STATION TO THE MAXIMUM EXTENT POSSIBLE.
 5. THE RELOCATION SHALL OCCUR IN THE SHORTEST FEASIBLE TIME TO MAKE THE CHARGING STATION OPERABLE AND AVAILABLE FOR USE WITH THE SHORTEST AMOUNT OF DOWNTIME FEASIBLE.
 6. REFERENCE INFORMATION CONSISTING OF THE DESIGN/CONSTRUCTION DRAWINGS FOR THE ORIGINAL INSTALLATION ARE PROVIDED IN APPENDIX A OF THE BIDDING DOCUMENTS.
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 2. PROVIDE ONE EACH SIGN R7-8 AND R7-8a WHERE SHOWN AT THE HEAD OF THE ACCESSIBLE PARKING SPACE.
 3. PROVIDE AN OR7-9 SIGN AT THE BACK OF THE SIDEWALK IN LINE WITH THE ACCESS AISLE.
 4. INSTALL SIGNS PER DTL 2310.

OFF-STREET PARKING DIMENSIONS

STALLS WITHIN EACH PARKING LOT MAY BE DISTRIBUTED AS FOLLOWS:
60% STANDARD SPACES, 40% MAXIMUM COMPACT SPACES. ALL
COMPACT SPACES SHALL BE PERMANENTLY LABELED.



BACKING-POCKET FOR HEAD-IN PARKING WITHOUT
DRIVE AISLE EXIT (MIN BACKING-POCKET WIDTH IS
SAME AS WIDTH FOR STANDARD PARKING STALL).
(UNLESS OTHERWISE SHOWN ON APPROVED PLAN).

- A- PARKING ANGLE
- B- STALL WIDTH
- C- STALL TO CURB DEPTH
- D- DRIVE AISLE WIDTH BETWEEN
STALL LINES (SEE NOTE 1&2)
- E- STALL WIDTH PARALLEL TO
AISLE
- F- MODULE WIDTH (FRONT OF
STALL TO FRONT OF STALL)
- G- MODULE WIDTH (FRONT OF
STALL TO FRONT OF STALL
AT BUMPER MIDPOINT)

OFF-STREET PARKING MATRIX

MINIMUM PARKING SPACE AND AISLE DIMENSIONS (FT)
ONE WAY TRAFFIC FLOW

COMPACT (8.5' x 16')							STANDARD (9' x 19')					
A	B	C	D	E	F	G	B	C	D	E	F	G
0°	8.0	8.0	12.0	19.0	28.0	—	8.0	8.0	12.0	22.0	28.0	—
30°	8.5	15.4	12.0	17.0	41.7	34.4	9.0	17.3	12.0	18.0	45.6	37.8
45°	8.5	17.3	13.0	12.0	47.6	41.6	9.0	19.8	13.0	12.7	52.6	46.2
60°	8.5	18.1	18.0	9.8	54.2	50.0	9.0	21.0	18.0	10.4	60.0	55.7
70°	8.5	17.9	19.0	9.0	54.9	52.0	9.0	21.0	19.0	9.6	61.0	57.8
90°	8.5	16.0	24.0	8.5	56.0	56.0	9.0	19.0	24.0	9.0	62.0	62.0

NOTES:

- WHERE PARKING LOT DRIVE AISLE IS A FIRE LANE, WIDTHS SHALL CONFORM WITH THE OREGON FIRE CODE MINIMUMS OF 20 FEET IN ALL CASES (26 FOOT MINIMUM FOR 20 FEET EACH WAY FROM FIRE HYDRANTS), PER OFC 503.2.1 & D103.1.
- DRIVE AISLE WIDTH "D" IS REQUIRED FOR DRIVING / BACKING / TURNING MOVEMENTS ON BOTH SINGLE LOADED AND DOUBLE LOADED DRIVE AISLES.

LAST REVISION DATE: AUG 2019	JO # STANDARD
OFFSTREET PARKING DIMENSIONS ONE WAY TRAFFIC FLOW (NTS)	
WESTECH ENG.	DETAIL NO. 2350

Driftwood

Public Comment 3

*Comments may have been received after publication

August 2, 2020

To Members of City Council:

Concerning the Driftwood Lane Project, I would first like to say that the City has several long-range planning documents that have been vetted and well-conceived. Was this project included in the "Transportation Plan" or part of the CIP? Long range planning is designed to keep us on a steady course and to eliminate knee-jerk reactions. Those plans should also be updated and vetted as needed.

I am writing to express my disapproval of the proposed paving project behind the 101 building based on the following points:

- In this time of economic uncertainty because of the pandemic, the City can ill afford spending \$65,000 to chase a \$100,000 grant. Just because you can get a grant does not make it a good idea to spend the money.
- A two-way "street" with parking and sidewalks on both sides for a distance of less than 300' that really goes nowhere is overkill.
- Head-in perpendicular parking on one side is dangerous. Cars backing out to go north would have to back across traffic coming south. Perpendicular parking invites damage to vehicles as car doors would open opposite doors of adjacent vehicles resulting in dings.
- If this project has been "studied to death" where is the data that indicates we need more parking? The highway 101 project added 54 spaces to the parking inventory in town. The Presbyterian Church has made their lot available except on Sundays during services or special events. It wouldn't hurt the public to walk a little bit.
- If data does suggest that more parking is needed, then a one lane road with angled parking would be preferable.
- The City has very little public green space and paving over 19' of the former ball field goes against the friendly village atmosphere of the town.
- It took years, thousands of dollars, and several grants to build the small skate park for young people who have very few places to enjoy activities. Encouraging traffic right next to it is a bad idea.
- Two-way traffic is likely to encourage a short cut through the Presbyterian Church parking lot to avoid 101 and get to 7th street and the north side of Driftwood Lane. The parking lot is not designed for that kind of traffic. The private lane going to 7th street is narrow and goes close by the front door where elderly and children enter and exit.

I respectfully ask that the Council reconsider this project and do what is best for our village.

Nan Scott

Nan Scott
480 Combs Circle
Yachats, OR

August 2, 2020

To the Yachats City Council;

There are a number of cogent arguments against the development and major improvements to "Driftwood Lane".

The \$65,000+ City's portion of the project, as part of a \$100,000 ODOT Grant, with completion by December, 2021, when revenue is compromised due to COVID-19 seems to be a poor utilization of funds by both the city and the state at the present time. As the City considers increases to our water and sewer bills, due to revenue loss, the Council willingness to embark on a major fiscal project appears to be inconsistent with tightening our belts and balancing our budget. How long this downturn, due to the pandemic, will continue is unknown with some experts predicting up to 2 years.

The total green space owned and managed by the City of Yachats is minimal with options for acquisition of centrally located parks/green space limited. The present plan for a two-lane road with sidewalks on each side and 18 parking spots will negatively impact the Commons' existing green space. Making "Driftwood Lane" a major thoroughway, reduces valuable green space and elevates a 207-foot access lane with dirt parking into a major street, and a major fiscal investment which needs to have further community input. One option that could be considered is to revise the plan to a one-way, paved with parking, and a single sidewalk that is ADA accessible, should be more rigorously evaluated. The argument that making "Driftwood Lane" one-way would be confusing and create major traffic problems is mute, Ocean View Drive was made one-way and successfully implemented with proper signage and marking.

The available parking at the Commons and 501 Bldg. stand empty more often than the occasional times they are fully occupied. If accessible parking to downtown and the Commons/501 Center is the primary focus of this project, there are several alternative areas within easy walking distance and downtown that could be improved for more available parking such as 4th Street with minimal paving, marking, and signage.

As the guardians of our village, you make important and difficult decisions regarding the direction taken for development, sustainability, and livability of our city. Thus, as the City's vision statement: *"Our village is a place where natural resources are valued and protected, where diversity is celebrated, and where a vibrant economy and sense of community pride create and recreate a living spirit. Yachats cares not just for its citizens' basic needs but also supports them in their efforts to excel mentally, physically, artistically, and spiritually. It is a community with an enduring sense of itself."* This project as it relates to our City Vision Statement has the potential for far reaching negative impact and implications. Allow more input and evaluation from the citizen of our community by postponing implementation of the "Driftwood Lane" Project.

Mary F. and Kenneth G. Aeby

582 King Street

Yachats, OR 97498

To: Yachats City Council
Date: August 3, 2020

I think there are many ways to greatly improve the Driftwood project by the ballfield. The current design causes more problems than it solves.

1. Safety. The project proposes a two-lane road within 6 feet of the skate park in an area that gets much pedestrian traffic during the summer and during events at the Commons. Two-lane roads tend to see higher speeds than one-lane roads. While two-lane roads are sometimes cited as being safer, that increased safety is for cars. If one looks at the data in those studies, it is clear that two-lane roads reduce the number of turns and maneuvering requirements for cars, which leads to fewer auto accidents. Driftwood is straight and short – turning is not an issue. One way is much safer for pedestrians.

2. Efficient traffic flow. There are at least two less expensive alternatives to having traffic flow in both directions in that area. One approach is to have traffic that enters on 5th Street turn right (northbound) in front of the 501 and drive around to 6th Street (see attached). You would need signage indicating the area where there is parking on the south of the 501 Building is not a through-way and is for parking only. Driftwood can be one way southbound. This plan also eliminates the concerns the Presbyterian Church has about encouraging through-traffic through their property. Another approach is to create a one-lane road (northbound) between the 501 Building and the skate park. That path is wide enough for one lane of traffic and a sidewalk. There is ample room to engineer a safe turning radius for cars to go from one direction to the other, and many cars currently do that already.

3. Meeting the grant deadline. Why would a construction company take more than eight months to build this proposed project? You manage the construction schedule through drafting a contract with payment attached to firm time deadlines and then you manage it. That is simply a management issue and not a failing on the part of construction people. April 2021 – December 2021 is eight months. And you could actually start the grading work in March.

4. More parking. The project creates 16 fixed, standard-sized parking spaces and one handicap space (there are also two spaces for the charging station – not sure if those are reserved for that purpose). The project is not technically adding spaces because people already park there. The area as it is right now easily accommodates over 25 cars at events and also allows for larger rigs and vehicles with trailers to park (counted by using scaled drawings and standard parking space sizes). If you are serious about parking, install a one-lane road with angled parking on both sides (60- or 45-degree angled parking requires only 14 feet of aisle).

5. Drainage. If the plan is to add drainage, it is not clear how that collected water will be disposed of. If there is a significant increase in impervious surfaces and an alteration in water flow, I believe there needs to be some type of impact analysis to determine that the changes will not detrimentally impact the wetlands. The ballfield area is a significant feed area for water in the wetlands. Betty Bahn told me a few years ago that an impact

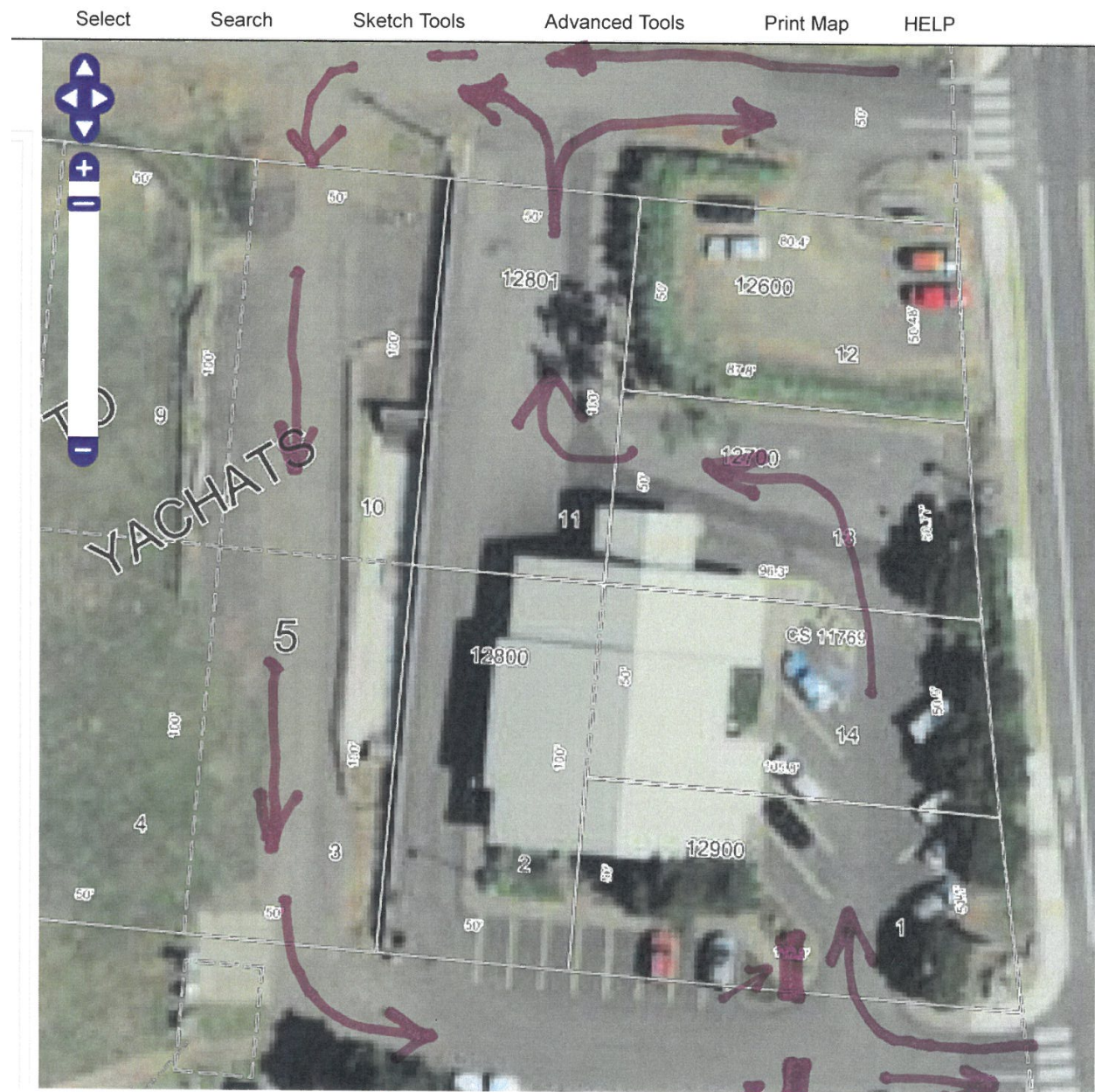
study was required prior to paving what is there now. The proposal adds over four times the amount of pavement that is there now.

Thank you for reconsidering this plan.

Helen Anderson
77 E 8th Street

ATTACHED: diagram on traffic flow

GON WEBMAPS



From: [Leslie Vaaler](#)
To: [Shannon Beaucaire](#)
Subject: Fw: "Road" between church and Commons
Date: Monday, August 3, 2020 3:39:22 PM

From: Adam Altson <stormwatcher42@gmail.com>
Sent: Tuesday, July 21, 2020 9:06 AM
To: Mayor <Mayor@YachatsMail.org>; Max Glenn <Max@YachatsMail.org>; Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>; Jim Tooke <Jim@YachatsMail.org>
Subject: "Road" between church and Commons

Greetings,

I just wanted to express my displeasure with the plans for a "road" connecting the Commons to the Church. This harkens back to the famous "Road to Nowhere" in Alaska a few years back.

Do we need to pave that driveway? Probably, and that would be fine. Does the city need more parking? Of course, although if we could somehow make visitors aware of some of our additional parking a block or two away that would help the situation. I'm referring to the parking spots along 4th and Pontiac that don't get much use other than during major events at the Commons or Lions Club, or the Farmer's Market.

But that said, the project plans for that lane seems to be extreme overkill. The Wetlands and that field are great resources for the city, and even if we aren't taking advantage of the field at the moment, once we pave over part of it, we'll lose that land forever. I fail to see a reason to create a "road" between two driveways. Many people walk along that stretch of pavement, and as soon as you turn it into a road, it won't be safe for all the pedestrians and dogs that use that strip every day. And why turn it into a road? It doesn't go anywhere. It literally just connects two driveways – the Presbyterian Church and the Commons.

This doesn't even begin to touch on the costs involved. I understand some of the money is coming from a grant. But we're still spending a fair amount on this project. And let's face it, this year our tourism dollars are going to be extremely low, spending money on an un-necessary project does not seem wise. Surely there must be projects around town that would be better use of our limited budget?

I would suggest we reduce the scope of the project to simply repaving that strip and maybe striping some parking spots along the side. But please do not take any of the field, I would hate to lose that for any potential future use.

Adam Altson

586 Ocean View Drive

[Stormwatcher's Retreat](#)

There is really no such thing as bad weather, only different kinds of good weather. ~John Ruskin

From: [Leslie Vaaler](#)
To: [Shannon Beaucaire](#)
Subject: Fw: Driftwood paving project
Date: Monday, August 3, 2020 3:41:03 PM

From: Just Local <justlocal@peak.org>
Sent: Friday, July 24, 2020 12:13 PM
To: Mayor <Mayor@YachatsMail.org>; Max Glenn <max@maxglenn.com>; Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>; Jim Tooke <Jim@YachatsMail.org>
Subject: Driftwood paving project

As a business owner in Yachats, I would like to have a bit of input on this matter. I believe that it would be prudent to reconsider the design put forth for paving, sidewalks and parking. Yes, it does need to be repaved, and a sidewalk would be nice. But I fail to see how making it two lane is going to improve traffic flow. There are two separate entry/exit points off of Hwy 101, so it's certainly not going to "enhance" the flow. If the two lane, two sidewalk plan is part of a larger long range improvement plan for the bank building and the Commons, then it should be stated as such. I also question the prudence of putting out \$65,000 at this point. Businesses are struggling, vacationers are less, and all of this has an impact on the city coffers. Again, I think there needs to be more public input on this matter.

Yvonne Erickson
Just Local

Sent from [Mail](#) for Windows 10

From: [Leslie Vaaler](#)
To: [Shannon Beaucaire](#)
Subject: Fw: Driftwood Project
Date: Monday, August 3, 2020 3:40:33 PM

From: Coastalcat <coastalcat3@yahoo.com>
Sent: Friday, July 24, 2020 12:38 PM
To: Jim Tooke <Jim@YachatsMail.org>; Max Glenn <Max@YachatsMail.org>; Mayor <Mayor@YachatsMail.org>; Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>
Subject: Driftwood Project

To Yachats city council members,

Linda Johnson here. I am writing to express my concern and frustration with the Driftwood project. This feels like it is being pushed through without citizen input under the guise of the pandemic. Ideally, the project should be put on hold until we know more about the pandemic restrictions and the health of our local businesses. The grass area behind the commons/501 building is the only large grassy area in Yachats.

I don't understand why we need two lanes when very busy roads such as Yachats Ocean Road and King Street are only one lane, even though there is two way traffic. My understanding is that the ODOT grant is for \$100,000 and does not require the city to contribute unless the cost exceeds that amount. I propose that the project be downsized and any additional available money be put to better use. How about this:

1. Patch and resurface the existing road into one wide lane.
2. Make one 6-8 foot wide sidewalk along the skate park side (safety for skaters as well as those walking/parking).
3. 18 or so parking spaces along the park green space, leaving the telephone polls where they currently reside.
4. Leave the electric charging station where it is now located.

I would think all that could be done within the grant funding limit. We don't need to spend an additional \$65,000 on 300 feet of road. I walk our little village daily. I have yet to hear anyone say the PW&S proposal is a good idea. Everyone, and I mean every single one I have talked with or who sought me out, thinks this is a huge waste of money and overkill! We don't need 300 feet of two lanes! If this was not a pandemic situation, we could hold a public meeting and I know a large number of citizens would attend and tell you that this project is way off base. We are a small town! A town that is suffering from businesses that have closed and lots of folks who are without jobs. It is fiscally irresponsible to spend \$65,000 in this way, especially when city revenues are uncertain. The excuse that you already paid for plans is weak at best. So what if it costs a few weeks and more money to get the new plans for a scaled down project. Even if redoing the plans costs \$10,000-\$15,000, in the end, saving \$50,000 or more would be worth it and the revised project would better fit the citizens and the village that we call home.

I feel so strongly that this is wrong. Please reconsider making this a better plan for Yachats.

Thank you,
Linda Johnson

From: [Leslie Vaaler](#)
To: [Shannon Beaucaire](#)
Subject: Fw: new road
Date: Monday, August 3, 2020 3:42:26 PM

From: "Pam Luderitz" <paml@peak.org>
To: "mayor" <mayor@yachatsmail.org>
Sent: Monday, July 20, 2020 2:37:15 PM
Subject: new road

Please DO NOT put a wider road next to the ball field. The kids play there between the skate park and the field. They play there from the YYFAP program and they play there because it is the only grassy area. . We do not need to endanger our children by putting a street next to a play area. Please reconsider this plan.

Pamela Luderitz
59 8th Street
Yachats

From: [Leslie Vaaler](#)
To: [Shannon Beaucaire](#)
Subject: Fw: Paving Driftwood
Date: Monday, August 3, 2020 3:38:58 PM

From: Ruth Bass <ruth@ruthmbass.com>
Sent: Saturday, July 18, 2020 5:30 PM
To: Mary Ellen O'Shaughnessey <MaryEllen@YachatsMail.org>; Leslie Vaaler <Leslie@YachatsMail.org>; Max Glenn <Max@YachatsMail.org>; Jim Tooke <Jim@YachatsMail.org>; Mayor <Mayor@YachatsMail.org>
Subject: Paving Driftwood

My stance on paving Driftwood.
Too expensive.
Stupid design.

Spending money on Driftwood at this time is spending money that should be kept in reserves!

A design with two sidewalks is ludicrous. (Who is walking here???)
Putting in a 4' fence at the end of the skate park is a waste of money.
Think BEFORE you SPEND!

Ruth Bass
60 E 7th Street
Yachats, OR 97498

Date: August 2, 2020

To: Members of the Yachats City Council

The July 16th issue of *YachatsNews* summarized the long-standing discussions among members of various city commissions and the city council about the proposed “Driftwood Lane” project. Reportedly, the city council is again considering this proposal on August 5th.

I have many concerns about the evolution of a simple one-lane paving project, perhaps with one sidewalk, into the elaborate \$165,000 proposal. Others have spoken to their concerns about the details of the proposed project, suggesting that, at the very least, the city council should proactively seek well-publicized input from members of the community before any decision is made. This can easily be done before the end of the 2021 grant deadline.

But, in addition to my concerns about the specifics of this grant proposal, I wish to raise questions about the wisdom of any non-essential spending by the city at this time.

We are in the midst of a devastating pandemic that is likely to continue for months, perhaps even much longer. The effect on our national economy is already very severe. How will the national economic depression continue to be felt statewide and locally? We don’t know but the outlook is not good.

I strongly suspect that the city of Yachats has had but a taste of what is likely to come as the virus is easily spread, particularly given the influx of many, many visitors. There is no question but that the economic vitality of the city is dependent in large part on visitors, but with that comes increased exposure to the virus.

Revenue for Yachats is greatly dependent upon the tax income from restaurants and the many places of visitor lodging. As the spread of the virus remains uncontrolled nationally, it is likely that this source of income for the city will continue to remain low for an indefinite period.

In summary, we have little idea of the effect of the economy on the city of Yachats, its businesses and residents in the foreseeable future. The \$65,000 required for the receiving of the grant as presently purposed is money that the city may well need for essential services and maintenance. In other words, I believe this is not the time for elective spending.

Signed: Mari G. Irvin, 187 Jennifer Drive, Yachats (marigirvin@aol.com)

July 22, 2020

Dear Councilor Vaaler,

I was pleased to see that you and Councilor O'Shaughnessey slowed the Driftwood Lane project. I feel that the current plan designed by the engineering company could be improved and not be so costly.

I don't think that the skate ramp is being utilized like it once was. The youth that it was built for have grown up and moved away. Skating is no longer the fad that it once was. I have yet to see anyone currently using the ramp. It has become an eye sore with broken slats on the fencing and the ramp looks unsafe.

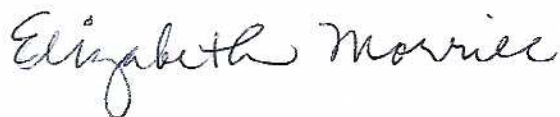
My suggestion would be to remove it and place the needed parking spaces on that side of the road. The side with the green park could be separated from the road with a nice cement sidewalk and curb - all similar to the visitor parking at the new Fire Station. (See attached revision plan.)

I would like to see the green park (old baseball field) be retained in its entirety. A large green area is needed in any town for community activities – a safe place for the youth of the community to run and play, catch and kick balls, play tag, fly kites. It would also be a safe place for the children in the YYFP programs of Preschool, Kindergarten, Afterschool care and Homeschoolers – an asset to the programs.

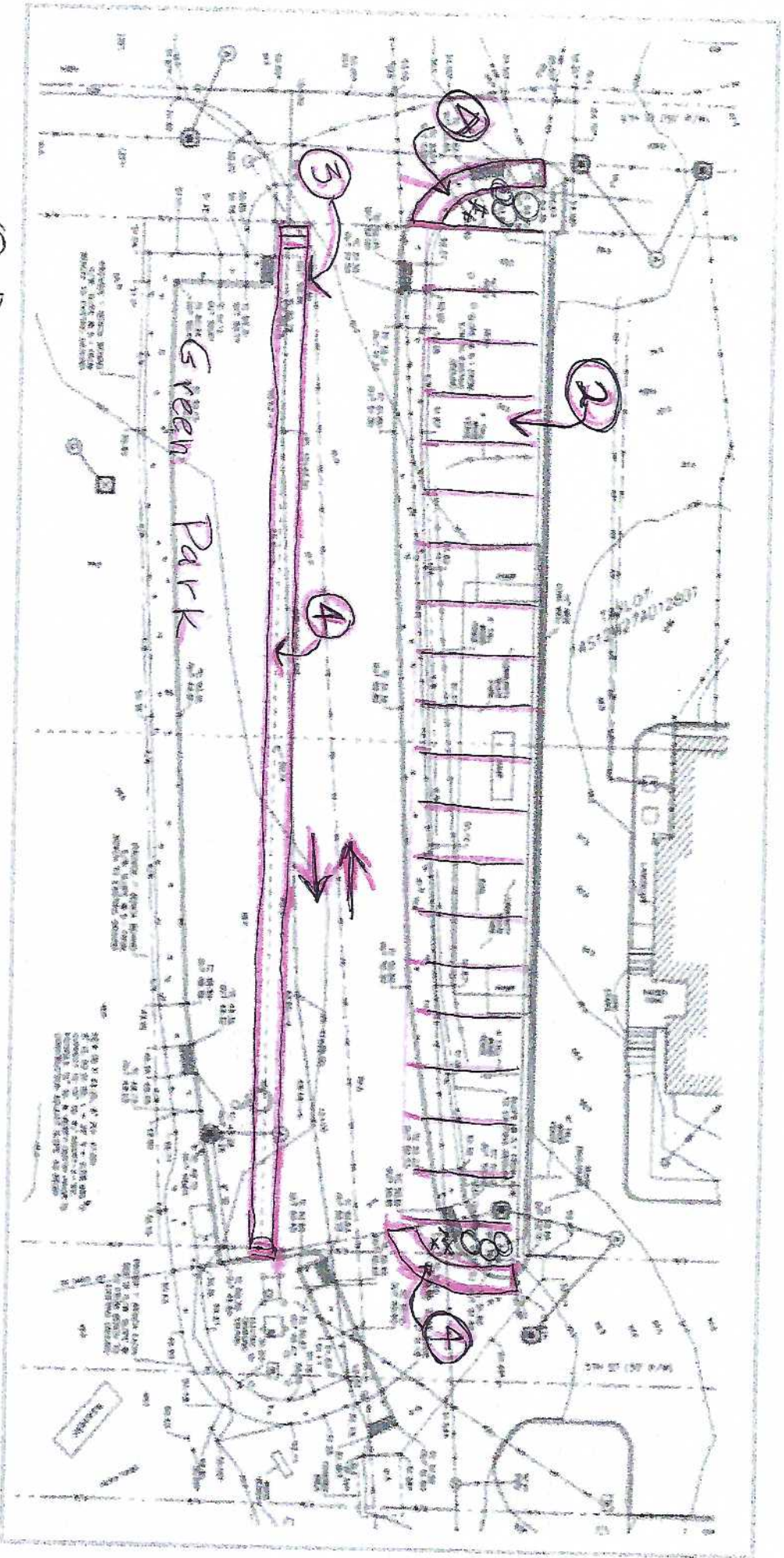
I have talked to several neighbors and friends of Yachats and they have agreed with my ideas. I hope that you will review them and perhaps use them to improve the project.

Sincerely,

Elizabeth Morrill elizabethrmorrill@gmail.com

A handwritten signature in cursive script that reads "Elizabeth Morrill". The ink is dark and the signature is fluid, with a large loop on the "M" and a trailing flourish.

Revision Plans for parking to replace current Driftwood Lane plan



- ① Remove skate ramp
- ② Parking spaces
- ③ curb
- ④ cement sidewalk

↔ two way street

80 bushes

* ground cover

or flowers

From: [Scott, Greg](#)
To: [Shannon Beaucaire](#)
Cc: [Mayor](#); [Max Glenn](#); [Jim Tooke](#); [Mary Ellen O'Shaughnessey](#); [Leslie Vaaler](#)
Subject: proposed road project
Date: Tuesday, August 4, 2020 9:04:30 AM
Attachments: [Scott Geographic B&W \(Transparent\) black 75px.png](#)

Several people have been asking me for my opinion about the proposed street project. My first thought was to try and put this question in perspective by looking at the 2008 Comprehensive Plan survey which is the only public document that records public input on this question that I know about. The transportation questions occur in the middle of the survey and are all numbered #22, The specific question is “how important is more parking?”. For comparison I have also included the graph for public safety. By rushing the discussion and decision about this work, the council and commissions miss the opportunity to properly assess community opinions about this project.

The survey data can be found under the link on my election web site. Click on 2008 Comprehensive Plan. Survey is at the bottom. Look at question #22. I have included a link below.

https://election.yachats.me/yachats_comprehensive_land_use_plan_2008_red/

You have to look at the entire survey to gain a perspective about how people voted. On the X axis, 1 is a low priority. 5 is a high priority. The total is the number of people that responded to this question. Relative to the other questions, more parking is a fairly low priority. Keep in mind that this was before more than 60 parking spaces were added in the downtown area.

Missing from the current conversation is the question, “what do our citizens want”. This is a more complex perspective because it takes into account that the community values walking and nature and relative to other city needs, paving is low on the priority need. Paving over more open area is moving in the wrong direction. So why aren't we talking about the other things over 300 people said are important?

Summary from All Surveys

Q22. - parking	Median	Mean	Freq:	1	2	3	4	5	Total
	3	3.1		35	50	99	68	46	298



Summary from All Surveys

Q22. - pedestrian	Median	Mean	Freq:	1	2	3	4	5	Total
n	4	3.9		17	18	62	93	116	306



I understand that the data is old but it is the only example we have of a comprehensive look at what the people want Yachats to look like in the future. What we should be doing is a fresh snapshot of these questions at least every 10 years so we have a basis of comparison. This type of survey is useful because it distills a good deal of information down to an easy to understand view for people to read and understand. It is also the single best guide for city decision making based on what the people of Yachats have said they want.

It is worth noting that the only place I could find this copy of the 2008 Yachats Comprehensive Plan was on a University of Oregon archive site.

Greg Scott



Skatepark Pictures

July 5, 2020



