

Special Districts Association of Oregon Management and Policy Resource Guide *2014 Edition*

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Accounting

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INTRODUCTION

Financial management is necessary for the control of district financial affairs. A financial management policy should be developed which includes rules for conducting all aspects of financial control and transactions. All phases of the financial management process should have documentation showing when and why money was received and disbursed.

Citizens entrust resources to you for the specific purpose of providing services. Therefore, it is not enough simply to ensure that assets are safeguarded; they also must be used efficiently and effectively to achieve their intended purpose.

ACCOUNTING SYSTEMS

A good accounting system should do the following:

- Assemble information on all finance-related transactions and events;
- Analyze all of the data collected (determine how a given transaction or event affects recorded assets and liabilities);
- Classify data in accordance with the district's chart of accounts;
- Record data in the appropriate books of accounts (journals, ledgers);
- Report data to management and to outside parties in an appropriate format and in a timely manner; and
- Maintain accountability for all of the district's assets.

The complexity of the accounting system will be determined by the needs of the individual district. A basic accounting system will include at least the following:

- A general ledger.
- Subsidiary ledgers as necessary.
- Books of original entry, such as a general journal, revenue journal (cash receipts) and expenditures (cash disbursements) journal. A payroll journal may also be part of the disbursements journal.
- Written documents supporting, authorizing and explaining individual financial transactions such as invoices, bank statements, purchase orders, and fund transfers.
- Data necessary for the preparation of financial statements.

POLICY AND PROCEDURES MANUAL

An accounting policies and procedures manual should clearly outline the specific authority and responsibility of individual employees, thus providing the essential foundation needed for establishing employee accountability. It also serves as a reference tool for employees seeking guidance on the proper handling of less frequently encountered transactions and situations. In addition, an accounting policies and procedures manual lessens the threat to continuity posed by employee turnover.

An accounting policy should state the types of funds that a district has, their definition, and where the resources and expenditures transfer to in the event the fund is dissolved.

To be effective, an accounting policies and procedures manual must be complete and up-to-date. Completeness requires that the manual state which employees are responsible for performing which functions in which manner. Being up-to-date requires that the manual be periodically revised to reflect policy changes, as well as to provide timely guidance on emerging issues facing management and employees.

It is also important that an accounting policies and procedures manual do more than simply describe the appropriate handling of transactions and events. The accounting policies and procedures manual should also clearly communicate the design and objective of the district's internal control structure. Employees are more likely to perform control procedures faithfully if they are aware of their purpose and importance.

CONTROL POLICIES AND PROCEDURES

Specific policies and procedures are needed to ensure an effective control environment and an effective accounting system.

A district's control policies and procedures should be adequate to ensure that:

- All transactions are properly authorized;
- Incompatible duties are segregated (i.e., no employee should be in a position to commit an irregularity and then conceal it);
- Accounting records and documentation are properly designed and maintained;
- Access to both assets and records is controlled; and
- Accounting data are periodically compared with the underlying items they represent.

A district's written policies and procedures should clearly state which individuals have the authority to authorize each different type of transaction (Who may authorize the "write off" of a delinquent receivable? Who may approve a purchase order?). Authorization should be obtained in advance and in writing. Finally, documentation of the authorization (including the date) should be maintained for later inspection.

SEGREGATION OF INCOMPATIBLE DUTIES

Ideally, no single individual should be able to (1) authorize a transaction, (2) record the transaction in the accounting system books and (3) ensure custody of the asset resulting from the transaction.

Duties can be segregated by department, or by individuals within a department. It may not be practicable in some instances to segregate incompatible duties. In that case, management may wish to institute a mandatory vacation policy or a policy requiring the periodic rotation of duties among employees. The idea behind such policies is to have other individuals perform an employee's duties for a while to see if there is any noticeable change. Such a change could be an indication of prior irregularities.

FRAUD DETECTION AND PREVENTION

Cash

- Check-signing procedures
 - Limited signing authorization
 - Dual signatures
 - Voucher authorization
 - Invoice attachment, review, and cancellation
 - Protectograph security
 - Pre-signed check prohibition
 - Blank check prohibition
 - Unused check security
 - Signature stamp (facsimile) security
 - Sequential check usage
- Cash handling
 - Daily cash counts
 - Daily bank deposits
 - Cash till controls and reconciliations
 - Lockboxes
- Management review of bank reconciliations of all accounts
- Review of canceled checks (vs. bank retaining checks)

Purchasing

- Phantom vendors
 - Approved vendor list
 - Document matching: P.O., invoice, receiving report
 - Vendor data
 - Vendor v. employee data match
 - Invoice criteria
 - Employee criteria
- Conflicts of interest/kickbacks
 - Bidding process
 - Change orders
 - Merchandise returns
 - Vendor data
 - Employee criteria
- Personal use/resale
 - Document matching
 - Invoice review
 - Merchandise returns, without credits or refunds
 - Employee criteria

Personnel

- Hiring Policies
 - Application form
 - Statement that false information or misrepresentation can be cause for disqualification or dismissal
 - Questions about criminal convictions (but not arrests)
 - Background checks: solicit candidate's written approval
 - References
 - Credit checks (Employers must demonstrate that the information in a credit report is "substantially job-related" AND the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.)
 - Criminal convictions
 - Various information databases
 - Hire professional to conduct background investigation
 - Checking references
 - Ask the "right" questions
 - Check more than one reference
 - Interview techniques: invite candidates to talk
 - Closely scrutinize resumes for inconsistencies, vagueness, suspicious credentials, job description euphemisms, and employment gaps
 - **WARNING:** Comply with current law and consult a qualified attorney!!!
- Written policies and procedures
- Adequate supervision and review of work
- Separation of duties
 - Opening mail/logging receipts/bank deposits/bank reconciliations
 - A/R maintenance/customer credits
 - Inventory: purchasing/paying/receiving/storing
 - Expense: authorization/paying
 - Payroll: accounting/paying/funding
- Mandatory vacations
- Rotation of duties/cross-training
- Periodic review of payroll and personnel records
- Employee counseling
- Ethical standards: communication and confirmation
- Employee fidelity coverage

Accounting

- Records safeguards
 - Pre-numbered documents (checks, purchase orders, invoices, shipping documents, sales orders, etc.)
 - Refunds and discounts
 - Trend analysis: sales, returns and allowances, gross profit
 - Documents: missing or voided checks, posting vs. deposit date comparisons, cash advances, expense vouchers, non-payroll checks to employees, cash register tapes, shipping and receiving reports, job cost sheets, material requisitions purchase orders, personnel records (vs. paychecks) etc.
 - Customer confirmations

- Spoiled documents should be voided and retained.
- Documents sent outside the district should be designed to produce automatic duplicates for the district's records.
- Documentation should be discarded only in accordance with legal requirements governing records retention.
- Employee work records should contain the detail to support the allocation of employee to specific cost centers.
- Outside
 - Financial statement audit; Generally accepted auditing standards (GAAS)
 - Operational audit
 - Specialized audit

Assets

- Physical custody of assets
- Periodic physical counts of inventory and other assets

The computer room should be environmentally secured (proper temperature and humidity). Computer records should be backed up daily, and the backup tape should be kept in a secure location offsite. A district should make arrangements to ensure that it would be able to continue functioning in the aftermath of a disaster affecting the computer system.

Periodic reviews and testing are necessary to ensure that a district's policies and procedures on documentation are followed. Internal auditors commonly perform such tasks on behalf of management.

BONDING

The governing body of a district must require a bond or an irrevocable letter of credit of any member of the governing body or any officer or employee of the district who is charged with possession and control of district funds and properties. The amount of the bond shall be fixed by the governing body of the district, and the premium shall be paid from the district funds. The letter of credit shall be issued by a commercial bank (ORS 198.220).

All board members or employees can be bonded for a minimal additional charge to the cost (premium) of bonding only one board member. It is practical and beneficial to take the necessary steps to bond all board members and the district manager.

RECORDS RETENTION

Districts are required to follow the State of Oregon's Records Retention Policy. Unless otherwise provided in the schedules, the Division recommends that records not specifically be mentioned shall be maintained for a period of not less than two years. Minutes should be maintained forever. These schedules can be obtained from the Secretary of State's Archives Division at <http://arcweb.sos.state.or.us/pages/recmgmt/sched/>.

Records typically have a four-stage life cycle:

- The period of creation, when data or information is generated.
- The period of active use, which can range from a few days to several years. During this period, users frequently reference the record and need quick access to it. Therefore, the record should be maintained in the office area.
- The period of inactivity. During this period the record is in storage or is kept either because of legal reasons or because of infrequent reference needs. Some records have no inactive period while others may remain in this stage for several years, or permanently.
- The final stage in the cycle is destruction, which occurs when the district no longer needs the record or no longer is required by law to keep it. With confidential or proprietary records, special attention must be taken to ensure destruction is total and that records can in no way be recreated.

FUND ACCOUNTING

Public accounting and budgeting is based on funds. Revenues and expenses must be kept separate by each type of fund. The main types of funds include the General Fund, Special Revenue Fund, Debt Service Fund, Enterprise Fund, Trust Fund and Reserve Funds.

- General Fund - Composed of accounts for the financial operations of the district, which are not accounted for in any other fund. The principal sources of revenue are property taxes and interest income. Primary expenditures in the General Fund are made for general district services and administration.
- Special Revenue Fund - Authorized for a specific purpose and generally operate on a year-to-year basis until the fund is discontinued or revised by proper legislative authority. In the event the fund is discontinued, any excess funds should be returned to the originating jurisdiction or the General Fund.
- Debt Service Fund - Used to account for the payment of principal and interest on all general obligation long-term debt, including that payable exclusively from revenue-producing enterprises. Resources cannot be diverted or used for any other purpose.
- Capital Projects Fund - Operate until the capital project is completed. Upon completion, any remaining cash is transferred to the Debt Service Fund, the originating source of the funds, or the General Fund.
- Internal Service Fund - Finances and accounts for services furnished by a department or agency to other departments or agencies within the district. Amounts expended from the fund are restored from either operating earnings or as operating expenditures from other funds to the Internal Service Fund.
- Enterprise Fund - Established to finance and account for acquiring, operating, and maintaining facilities and services which are self-supporting from user charges and fees (such as water and sewer).

- Trust and Agency Fund - Assets are sometimes held or revenue received by districts in a fiduciary capacity to be used for a certain specified purpose.
- Reserve Fund - Accumulates money for financing the cost of any service, project, property, or equipment that the district can legally perform or acquire. Some districts will even have a reserve fund established for debt service in the event revenues are insufficient to meet future payment obligations on long-term obligations.

INVESTMENTS

Districts should have an established and documented investment policy. Funds that are not needed for immediate cash flow should be invested in safe investments that offer the maximum yield possible. An investment policy should be adopted by the governing body and reviewed and updated periodically. The Oregon State Treasurer’s Investment Policy for Local Governments is included at the end of this chapter and available online at

<http://www.oregon.gov/treasury/Divisions/Investment/Documents/Sample%20Oregon%20%20Investment%20Policy.pdf>.

Public Funds Collateralization Program

ORS Chapter 295 governs the collateralization of Oregon public funds and provides the statutory requirements for the Public Funds Collateralization Program. Bank depositories are required to pledge collateral against any public funds deposits in excess of deposit insurance amounts. This provides additional protection for public funds in the event of a bank loss. ORS 295 sets the specific value of the collateral, as well as the types of collateral that are acceptable. ORS 295 creates a shared liability structure for participating bank depositories, better protecting public funds though still not guaranteeing that all funds are 100% protected. More information on the Collateralization Program is available at

<http://www.oregon.gov/treasury/Divisions/Finance/FinancialInstitutions/Pages/PFCP%20for%20Banks.aspx>.

AUDITS

Oregon local governments are subject to Municipal Audit Law, ORS 297.405 to 297.555. Unless otherwise specified in the Oregon Revised Statutes, all districts must be audited.

Audits and reviews must be conducted in accordance with the “Minimum Standards for Reviews of Oregon Municipal Corporations” adopted by the Secretary of State Audit’s Division. These rules prescribe the financial statements that must be included in audit or review reports, the minimum procedures that must be followed, and the standards that must be followed in an audit or review. Copies of these rules may be obtained from the Secretary of State’s Office at Division of Audits, Public Service Bldg., 255 Capital Street, NE, Suite 500, Salem, OR 97310 or on their website at: <http://www.sos.state.or.us/audits/pages/municipal/index.html>.

- A district with expenditures of less than \$150,000, and whose chief fiscal officer is bonded for the total amount of money received during the year may file unaudited financial statements with the Secretary of State’s Office within 90 days after its fiscal or calendar year ends.

- A district, other than a county or school district, with expenditures of more than \$150,000 but less than \$500,000, and whose chief officer responsible for receiving or disbursing moneys on behalf of the district was covered during the entire year by a fidelity or faithful performance bond in an amount at least equal to 10 percent of the total receipts for the year, but not less than \$10,000 and whose financial statements have been reviewed by a licensed municipal auditor may file “review reports” with the Secretary of State’s Office within 180 days after its fiscal or calendar year ends.
- A district, including counties and school districts, that must have its financial statements reviewed or audited, must contract with an accountant licensed as a municipal auditor by the Oregon Board of Accountancy. A copy of this listing may be obtained by writing them at 3218 Pringle Road SE, #110, Salem, OR 97302-6307. Phone (503) 378-4181 or visit their website at <http://www.oregon.gov/BOA/index.shtml>.

Purpose of the Audit

The auditor’s main purpose is to independently review the financial statements to attest to their fairness. In addition to this, the auditor will also:

- Comment on the compliance of the district’s financial affairs with applicable laws and budget requirements.
- Assist the district in revising its accounting system to increase efficiency and ease of function.
- Help the district institute procedures that will increase accuracy of record keeping and strengthen internal controls.

Audit Request for Proposal

Districts which must use an outside auditor to conduct their annual audit should conduct a formal *Request for Proposal* process to select an auditor. This process is designed to help districts select the most qualified and cost effective service. A sample RFP for auditing services is included at the end of this chapter.

Documents to be Audited

- General ledger and related subsidiary ledgers posted accurately and up-to-date.
- Books of original entry that provide, in an orderly manner, the summarization of transactions.
- Source documents supporting the transactions in the books of original entry filed in a neat and orderly manner. (Source documents include all revenues as well as all expenditures).
- Explanations of apparent differences between general ledger balances and source documents.
- Copies of reports required to be filed with government agencies and an explanation of any differences between amounts reported and the accounting reports.
- Specifically, the above would include such items as minutes of regular meetings, budget committee meetings, insurance forms and policies, copies of adopted resolutions that may not be included in the regular minutes, copies of the ballot title and abstracts of any bond issues,

copies of published newspaper notices of budget committee meetings and hearings, a copy of the proceeding year's budget, county tax turn over documents, right-of-way documents, and copies of lease contracts on equipment.

The Audit Report

At the conclusion of the audit examination, the auditor will issue an audit report. This report will contain:

- The financial statement of the district with appropriate notes.
- The auditor's opinion on these statements.
- The auditor's comments about the district's financial affairs and its compliance with legal requirements.

Recommendations on how the district may improve its accounting system or more effectively conduct its financial affairs.

RESOLUTION ADOPTING A FINANCIAL MANAGEMENT POLICY

Resolution No. ____

A Resolution Adopting a Financial Management Policy

WHEREAS financial management is necessary for the control of district affairs.

WHEREAS sound accounting practices and policies are necessary for ensuring the integrity of financial records and district funds.

WHEREAS the district is subject to Municipal Audit Law, ORS 297.405 to 297.555.

THEREFORE, be it resolved that the Board of Directors of _____ hereby adopts its Financial Management Policy dated this ____ day of _____, _____.

President (or Chairman)

ATTEST:

Secretary (or Clerk)

SAMPLE FINANCIAL MANAGEMENT POLICY

Objectives

- To ensure that all financial systems, functions, and controls meet generally accepted auditing standards.
- Preserve capital through prudent banking and cash management activities.
- To achieve the most productive use of cash, minimize operating costs, and to control receipts and disbursements.
- To maintain competitive and good working relations with financial institutions.
- To provide safety to employees.

Banking Services

- Banking services shall be solicited at least every five years on a competitive basis, and banks submitting proposals must meet the following minimum criteria:
 - Verify that the bank you want to use is on the list of qualified depositories on the State Treasurer's website at:
<http://www.oregon.gov/treasury/Divisions/Finance/LocalGov/Pages/Qualified-Depositories.aspx>
 - Be insured by the Federal Deposit Insurance Corporation
 - Be able to facilitate transfers to and from the Local Government Investment Pool managed by the Oregon State Treasurer.
 - Provide annual audited financial statements.
- All district bank accounts must be authorized and approved by the district manager.

Billing and Receipts

- The district will invoice all vendors for amounts due on a current basis. An accounts receivable age schedule will be prepared and monitored to ensure amounts due the district. Invoices are due within 30 days of billing date. Interest of one and one half percent (1 ½%) per month will be charged on all balances over 30 days.
- State Funds/State Grants. If stage agency/grantor is willing and it is feasible, funds will be received via the Local Government Investment Pool.

Accounts Payable

- The district will maintain a system to age accounts payable. Invoices will be analyzed to take advantage of any discounts available.
- All obligations paid to the district will be reviewed to ensure proper documentation is attached and that all district requirements are met.

Cash Forecasting

- Each fiscal year, the district manager will prepare an annual general fund cash flow budget for the district for approval by the board of directors.
- Each month the cash flow statement will be adjusted to reflect the current month's actual cash flow and revise the remaining estimated cash flow schedule.

Debt

- If feasible, the district may enter into long-term lease obligations or issue bonds to finance capital acquisitions upon approval of the board of directors.
- Before issuing any debt, the district will consult with appropriate internal and/or external financial advisors.
- All leases, as reported in the district's annual financial report, will be limited as follows.
 - Annual leases will be limited to the economic life of the equipment or facilities to be purchased, and in no case, shall be extended beyond 20 years or as otherwise authorized by Oregon Revised Statutes.
 - Lease purchases of equipment and facilities will be limited to fit within the district's stated mission, goal or government role.
 - All lease-purchase payments must be included in the originating department's approved budget.
 - The district manager or elected official shall respond in writing to all external audit reports stating what actions have been taken to address the findings contained in the audit.

Internal Controls

- Duties will be assigned to individuals in such a manner that no one individual can control all phases of collecting cash, recording cash, and processing transactions in a way that permits errors or omissions to go undetected.
- The district manager is authorized to request departments within the district to provide financial reconciliation when deemed appropriate by the district manager.
- Deposits should be received by a person other than the depositor of the funds to ensure that funds are placed in the proper district accounts.

- All accounting computer records must be kept secure. Persons authorized to edit or review the records must be given passwords which only enable them to access the system. More than one person should be trained on the system. Accounting records should be backed-up on a regular basis.
- The person that does the reconciliation of district accounts should not be the same person that writes the checks. If it is not possible to have separate functions, then the books must at least be reviewed regularly by the board of directors or someone who does not write the checks.
- All large purchases should be authorized by someone other than the signer of the checks.
- Receipts should always be verified prior to paying an invoice. Procedures should be developed for checking receipts or packing slips to determine that merchandise or services have been received before payment.
- Cash transactions should always involve more than one individual to ensure that cash is properly recorded and deposited.
- A procedure should be developed for writing off bad debts. The policy should specify the persons responsible for writing off the bad debt and their level of authority.

Example: Authorization for writing off bad debt shall be given to the accounts receivable officer, district manager, and board of directors at the following levels:

\$ 0 to 10	Accounts Receivable Officer
\$11 to 100	District Manager
\$101 and above	Board of Directors

- Petty cash funds should require full documentation, including the purpose of the expenditure and who received the petty cash funds.
- More than one district employee or board member should be required to sign checks. ORS 198.220 requires that any officer or employee of the district who is charged with the possession or control of district funds and properties be bonded or have an irrevocable letter of credit issued by a commercial bank.
- Require individuals in high-fidelity risk areas to take mandatory annual vacations of at least 10 consecutive working days. Job rotation or independent audit of function should be implemented when two-week vacations are not practical.

Authorized Personnel/Security

- The district manager or finance director is authorized to open demand deposit accounts as may be required by the district.
- Checking accounts require two manual signatures or stamps.

- Checkbooks are to be in a secure place at all times during business hours and locked in a filing cabinet during non-business hours.
- The district manager is responsible for maintaining a current signature card with the appropriate financial institution.

Investments

- The district will have a written investment policy adopted annually by the board of directors.

Audits/Auditors

- The district will conduct an annual audit on _____.
- District employees are to cooperate with all auditors, external and internal, regarding any records maintained for or by the district.
- All external and internal audit reports are to be sent to the board of directors, district auditor, and the district manager.

APPROVAL: _____

_____ District Manager	_____ Finance Manager
_____ Date	_____ Date

SAMPLE PURCHASE APPROVAL POLICY

Purpose

To provide a process for documenting approval guidelines and authorization levels for staff in making purchases. This procedure will provide an accurate method of tracking individual purchases, provide purchase approval documentation, assign accountability to individual employees, and improve staff's awareness of the district's financial position in relation to budgeted line items.

Procedure

- Analyze product availability, competitive pricing, product quality, delivery, and installation and/or service factors when considering available vendor sources.
- Review district's operating budgets to determine if item is budgeted and to determine remaining budget availability for the related expense account(s).

- If item under consideration is not specifically budgeted, or if insufficient account budget funds remain unavailable; employee will obtain prior approval from _____ in concurrence with _____ before implementing the purchase process. Capital equipment purchases over \$_____ will require prior approval. In addition, some unbudgeted items may require board approval prior to purchase. In such cases, employee should make a request using the purchase approval document. This document requires the signature of _____ and _____.

Documentation

- When a purchase decision is initiated, employee will retain ordering and/or shipping information. This documentation will be provided to the _____ for reconciliation to the item’s invoice.
- Employee responsible for the purchase will approve the invoice prior to issuance of a vendor’s payment. Approving employee will date and initial the invoice and confirm the correct expenditure account number(s) for the charge.
- The _____ or an appropriate staff member will review and approve normal on-going budgeted operating invoices such as utility, postage, or storage bills.
- Employees will follow prudent purchasing practices when utilizing procurement cards such as Visa or MasterCard. In addition to ensuring budget authorization and availability, card users will provide _____ with all receipts and/or shipping statements associated with card charges. When ordering by telephone, employee will provide _____ with accompanying credit card ordering documentation. This documentation is required by the _____ to reconcile the monthly bankcard statements and to allocate charges to the appropriate expense account(s). In addition, credit card users will note the purpose of the expenditure on the receipt submitted to _____.
- If an employee is considering the purchase of an item or service that is not budgeted or, if remaining unencumbered budget funds are insufficient, employee will obtain purchase approval prior to initiating the purchase process. This approval will be obtained through the use of the district’s purchase approval document.

APPROVAL: _____
 District Manager

 Finance Manager

 Date

 Date

SAMPLE SECURITY POLICY

Purpose: The purpose of this policy is to safeguard the District's checks, facsimile stamps, financial records, payroll records, petty cash, change funds and other District assets.

Check Stock: All general, payroll and other checks will be locked in a filing cabinet. This includes both signed and unsigned checks. Checks and cash will be locked in a drawer or safe at all times. The keys are to be kept in the possession of the assigned personnel and not left on the premises.

Outgoing payroll and accounts payable checks are not to be left in the mailroom unattended, but will be held until entrusted to the mail carrier. Payees, not personally known to District employees, who pick up checks, must show identification.

Facsimile Signature Plates and Stamps: All facsimile signature plates and stamps are to be locked in filing cabinet during non-business hours. During business hours they are to be kept in a secure location.

Petty Cash/ Change Funds: During business hours, petty cash/change funds entrusted with the accounting staff will be monitored at all times, and will not be left unattended. During non-business hours, the petty cash/change funds will be locked in a filing cabinet.

Bank Deposits: Collections received by the accounting staff will be reviewed by the District Manager or Board of Directors. Personnel making deposits and deposit times will be varied so as not to create a routine pattern.

General Security: The District office will be locked at 5 p.m. by the District Manager, Finance Director, or appointed designee.

Changes to this policy will be approved by _____.

Approval: _____	_____
District Manager	Finance Manager
_____	_____
Date	Date

SAMPLE INVESTMENT POLICY FOR LOCAL GOVERNMENTS

I. SCOPE

This policy applies to the investment of short-term operating funds and capital funds including bond proceeds and bond reserve funds. Investments of employees' retirement funds, deferred compensation plans, and other funds are not covered by this policy.

II. GENERAL OBJECTIVES

The primary objectives, in priority order, of investment activities shall be safety, liquidity, and yield:

1. Safety Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The objective will be to mitigate credit risk and interest rate risk.

- a. **Credit Risk** The [entity] will minimize credit risk, the risk of loss due to the financial failure of the security issuer or backer, by:

Limiting exposure to poor credits and concentrating the investments in the safest types of securities.

Pre-qualifying the financial institutions, broker/dealers, intermediaries, and advisers with which the [entity] will do business.

Diversifying the investment portfolio so that potential losses on individual securities will be minimized.

Actively monitoring the investment portfolio holdings for ratings changes, changing economic/market conditions, etc.

- b. **Interest Rate Risk** The [entity] will minimize the risk that the market value of securities in the portfolio will fall due to changes in general interest rates, by:

Structuring the investment portfolio so that securities mature to meet cash requirements for ongoing operations, thereby avoiding the need to sell securities on the open market prior to maturity.

Investing operating funds primarily in shorter-term securities or short-term investment pools.

2. Liquidity The investment portfolio shall remain sufficiently liquid to meet all operating requirements that may be reasonably anticipated. This is accomplished by structuring the portfolio so that securities mature concurrent with cash needs to meet anticipated demands (static liquidity). Furthermore, since all possible cash demands

cannot be anticipated, the portfolio should consist largely of securities with active secondary or resale markets (dynamic liquidity). A portion of the portfolio also may be placed in the Oregon Short-Term Fund which offers next-day liquidity for short-term funds.

3. **Yield** The investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, taking into account the investment risk constraints and liquidity needs. Return on investment is of secondary importance compared to the safety and liquidity objectives described above. The majority of the portfolio is limited to highly rated/low risk securities in anticipation of earning a fair return relative to the risk being assumed. Securities shall not be sold prior to maturity with the following exceptions:

- A security with declining credit may be sold early to minimize loss of principal.
- A security swap would improve the quality, yield, or target duration in the portfolio.
- Liquidity needs of the portfolio require that the security be sold.

III. STANDARDS OF CARE

1. **Prudence** The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

2. **Ethics and Conflicts of Interest** Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees, officers and their families shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the [entity]. Officers and employees shall, at all times, comply with the State of Oregon Ethics Commission code of ethics set forth in ORS 244.

3. **Delegation of Authority** Authority to manage the investment program is granted to [designated official], hereinafter referred to as investment officer, and derived from the following: ORS 294.035 to 294.053, 294.125 to 294.145, and 294.810. Responsibility for the operation of the investment program is hereby delegated to the investment officer who shall act in accordance with established written procedures and internal controls for the operation of the investment program consistent with this investment policy. Procedures should include references to: safekeeping, delivery vs. payment, investment accounting, repurchase agreements, wire transfer agreements, and collateral/depository agreements. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the investment officer. The investment officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

IV. SAFEKEEPING AND CUSTODY

1. **Authorized Financial Dealers and Institutions** A list will be maintained of financial institutions authorized to provide investment and safekeeping services. In addition, a list will also be maintained of approved security broker/dealers selected by credit worthiness (e.g., a minimum capital requirement of \$10,000,000 and at least five years of operation). These may include "primary" dealers or regional dealers that qualify under Securities and Exchange Commission (SEC) Rule 15C3-1 (uniform net capital rule).

All financial institutions and broker/dealers who desire to become qualified for investment transactions must supply the following, as appropriate:

- Audited financial statements
- Proof of National Association of Securities Dealers (NASD) certification
- Proof of state registration
- Completed broker/dealer questionnaire
- Certification of having read and understood the [entity's] investment policy
- Certification of agreement to comply with [entity's] investment policy

An annual review of the financial condition and registration of qualified financial institutions and broker/dealers will be conducted by the investment officer. (See the GFOA Recommended Practice on "Governmental Relationships with Securities Dealers" in Appendix 3.)

2. **Internal Controls** The investment officer is responsible for establishing and maintaining an adequate internal control structure designed to reasonably protect the assets of the [entity] from loss, theft or misuse. The concept of reasonable assurance recognizes that (1) the cost of a control should not exceed the benefits likely to be derived and (2) the valuation of costs and benefits requires estimates and judgments by management.

Accordingly, the investment officer shall establish a process for an annual independent review by an external auditor to assure compliance with policies and procedures. The internal controls shall address the following points:

- Control of collusion
 - Separation of transaction authority from accounting and record keeping
 - Custodial safekeeping
 - Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary
 - Clear delegation of authority to subordinate staff members
 - Written confirmation of transactions for investments and wire transfers.
 - Development of a wire transfer agreement with the lead bank and third-party custodian and implementation of the appropriate safeguards described in the GFOA Recommended Practice on "Electronic Transactions for State and Local Governments"
 - Compliance and oversight with investment parameters including diversification and maximum maturities
3. **Delivery vs. Payment** All trades where applicable will be executed by delivery vs. payment (DVP) to ensure that securities are deposited in an eligible financial institution prior to the release of funds.
4. **Safekeeping** Securities will be held by a third-party custodian as evidenced by safekeeping receipts.
5. **Pooling of Funds** Except for cash in certain restricted and special funds, the [entity] will consolidate cash balances from all funds to maximize investment earnings. Investment income will be allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles.

V. SUITABLE AND AUTHORIZED INVESTMENTS

1. **Investment Types** Consistent with the GFOA Policy Statement on State and Local Laws Concerning Investment Practices, the following investments will be permitted by this policy and ORS 294.035 and 294.810:
- *US Treasury securities and other lawfully issued general obligations of the United States*
 - *Oregon Short-Term Fund*
2. **Collateralization** All bank deposits, time deposits, certificates of deposit, and savings accounts, shall be held in qualified Oregon depositories in accordance with ORS Chapter

295. Such deposits are designated cash management tools and not investments under this policy or otherwise.

ORS 294.035 (11) requires repurchase agreement collateral to be limited in maturity to three years and priced according to percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short-Term Fund Board. On March 12, 1996, the OSTF Board adopted the following margins:

US Treasury Securities: 102%

US Agency Discount and Coupon Securities: 102%

Mortgage Backed and Other*: 103%

*Limited to those securities described in ORS 294.035(1)

VI. INVESTMENT PARAMETERS

1. **Diversification** The investments shall be diversified by:

- Limiting investments to avoid over-concentration in securities from a specific issuer or business sector (excluding U.S. Treasury securities),
- Limiting investment in securities that have high credit risks,
Comment: What about interest rate risk, e.g., floaters?
- Investing in securities with varying maturities, and
- Continuously investing a portion of the portfolio in readily available funds such as the Oregon Short-Term Fund.

2. **Maximum Maturities** To the extent possible, the [entity] shall attempt to match its investments with anticipated future cash flow requirements. The maximum maturity shall be the anticipated use of the cash or 18 months, whichever is shorter, unless:

- This investment policy has been submitted to the OSTF Board for comment prior to being approved by [governing body] and complies with the requirements of ORS 294.135. In this case, the maximum maturity shall be defined in policy.
- The funds are being accumulated for a specific purpose, including future construction projects, and upon approval of the [governing body], the maximum maturity date matches the anticipated use of the funds (ORS 294.135(1)(b) and 294.135(3)).

If this investment policy has been submitted for review by the OSTF Board as specified above and in accordance with ORS 294.135(1)(a), debt service reserves may be invested to a maturity date not exceeding five years. Otherwise debt service reserves shall not be invested to a maturity date exceeding one year.

3. **Maximum Percentages of Investments** Surplus funds available for investment are those funds not required for immediate expenditure, and include: investments, savings accounts, CDs and OSTF deposits. Balances in checking accounts, negotiable order of withdrawal (NOW) accounts and demand deposit accounts are not considered surplus funds.

The maximum percentages for investments of surplus funds are as follows:

<i>Security</i>	<i>Limitation</i>	<i>Maximum Maturity</i>
US Treasury	None	
OSTF Balances	None, except the maximum balance imposed by statute	N/A

Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time subsequent to the purchase of a particular security. Securities need not be liquidated to realign the portfolio, however, consideration should be given to this matter when future liquidations are made.

Because of inherent difficulties in accurately forecasting cash flow requirements, a portion of the portfolio should be continuously invested in readily available funds, such as the OSTF or overnight repurchase agreements, or held in bank balances to ensure that appropriate liquidity is maintained to meet ongoing obligations.

4. **Bond Funds** The investment of bond proceeds are restricted under bond covenants that may be more restrictive than the investment parameters included in this policy. Bond proceeds shall be invested in accordance with the most restrictive parameters of this policy and the applicable bond covenants and tax laws.
5. **Securities Lending and Reverse Repurchase Agreements** The [entity] shall not lend securities nor directly participate in a securities lending or reverse repurchase program.
6. **Bids and Offers** Before any security purchase or sale is initiated, the Investment Officer shall first determine the appropriateness of seeking competitive bids or offers. Such factors to consider include where the securities are held, the size of the transaction, and the term to maturity. In the event competitive bids or offers are not sought, the decision to do so shall be documented. Competitive bids and offers shall always be sought for security purchases and sales of bond funds, when tax laws or bond covenants require such action.

Comment: Another factor to consider should be ‘best execution.’

VII. REPORTING

1. **Methods** The investment officer shall prepare an investment report at least monthly including a management summary that provides an analysis of the status of the current investment portfolio and transactions made over the last month. This management summary will be prepared in a manner which will allow the [entity] to ascertain whether

investment activities during the reporting period have conformed to the investment policy. The report shall be provided to the [governing body] within ___ days of the period end. The report will include the following:

- Listing of transactions occurring during the reporting period.
 - Listing of individual securities held at the end of the reporting period.
 - Average weighted yield to maturity of portfolio on investments as compared to applicable benchmark(s).
 - Listing of investments by maturity date and call date.
 - Percentage of the total portfolio that each type of investment represents along with the percentages authorized in this policy.
 - Performance of the portfolio relative to benchmark(s).
2. **Performance Standards** The investment portfolio will be managed in accordance with the parameters specified within this policy. An appropriate benchmark(s) reflective of investment parameters shall be established and approved by the [governing body] against which portfolio performance shall be compared on a regular basis. It is anticipated the portfolio should attain a benchmark average rate of return over time. Factors influencing performance deviations will be described by the investment officer in [periodic, e.g. monthly, quarterly, ...] reports to the [governing body].
3. **Marking to Market** The market value of the portfolio shall be calculated at least monthly and a statement of the market value of the portfolio shall be issued at least monthly. This will ensure that review of the investment portfolio, in terms of value and price volatility, has been performed consistent with the GFOA Recommended Practice on "Mark-to-Market Practices for State and Local Government Investment Portfolios and Investment Pools." (See GFOA Recommended Practices, Appendix 3). In defining market value, considerations should be given to the GASB Statement 31 pronouncement.

VIII. POLICY ADOPTION AND RE-ADOPTION

This policy shall be reviewed on an annual basis. OSTF Board review is required only if:

1. [entity] elects to invest to maturities described under VI. 2. above; and, either
2. the policy has never been submitted to the OSTF Board for comment; or
3. any material changes have been made since the last review by the OSTF Board.

Regardless of whether the policy is submitted to the OSTF Board for comment, the policy shall be re-submitted not less than annually to the [governing body] for approval.

IX. LIST OF DOCUMENTS USED IN CONJUNCTION WITH THIS POLICY

The following documents are used in conjunction with this policy:

Listing of authorized personnel

Relevant investment statutes and ordinances
Description of benchmark(s)
Master repurchase agreements and tri-party agreements
Listing of authorized broker/dealers and financial institutions
Credit studies for securities purchased and financial institutions used
Safekeeping agreements
Wire transfer agreements
Sample investment reports
Methodology for calculating rate of return
Broker confirmations and safekeeping receipts

SAMPLE REQUEST FOR PROPOSAL FOR AUDITING SERVICES

DATE: [DATE]
TO: Invited Parties
FROM: [NAME OF OFFICIAL, TITLE]
SUBJECT: Professional Auditing Services

The [DISTRICT] is soliciting proposals from qualified firms of certified public accountants to audit the [DISTRICT]'s financial statements for the fiscal year ending [DATE], with the option of auditing the [DISTRICT]'s financial statements for the [NUMBER] subsequent fiscal years.

Your proposal should contain, but not be limited to the following considerations:

- Eligibility - authorization by the State Board of Accountants to conduct municipal audits.
- Experience of your firm in relation to the scope of audits for the District.
- A list of similar local governments or pertinent accounts served by your firm.
- Your staff assignments and availability to complete the audit on a timely basis.
 - Participation of senior audit personnel assigned to the engagement.
 - Frequency of contact with fiscal personnel.

- Availability of staff to respond to questions within the scope of the engagement and the hourly charge, if any, for services outside the scope of the audit.
- Audit firm staff stability history - what assurances can you provide the District regarding the assignment of your permanent personnel to the engagement.
- Describe capability to audit computerized accounts receivable systems and to audit during the development of a completely computerized bookkeeping system.
- Procedures used to transmit audit adjustments and the reasons for them along with management recommendations to the responsible personnel within the District structure.
- Detailed audit plan.
- Your fee proposal to conduct the basic audit function, along with your fee schedule for additional services that may be required beyond the scope of the audit engagement. The proposal should also state that any increase in the audit fee will be immediately disclosed to the District Manager. This disclosure should include an estimation of the increased fees and the reason for the increase.
- Estimated number of hours to complete the audit by classification of your employees, i.e. partners, senior, junior.
- Detail of expenses expected to be incurred, i.e. mileage, per diem, telephone, etc.
- Audit firm to produce statements and to print annual report.
- Proof that the firm is certified to conduct municipal audits by the Board of Accountancy.

Enclosed is a copy of the audit proposal information to provide you with information about the District's financial records. I have enclosed the unaudited statement from the previous fiscal period as well.

The final decision of the selection of the firm to conduct the audit will be made by the Board of Directors. The final agreement will be in the form of a written contract following the standard agreement form used by CPA firms conducting audits.

All questions and correspondence should be directed to [NAME OF OFFICIAL] in writing at the above address or by calling [TELEPHONE NUMBER]. Contact with [DISTRICT] personnel other than [NAME OF OFFICIAL] regarding this RFP may be grounds for elimination from the selection process.

We will look forward to receiving your proposals on or before [DATE].

Sincerely,

Audit Proposal Information

Sealed audit proposals will be accepted by the _____ District until _____ p.m., on _____. Please direct proposals to the attention of _____. All proposals become the property of _____ District.

All proposals will become part of the requester's files without obligation.

Nature of Services Required

- Audit period will be _____ through _____. (one year)
- Special reports, exhibits, and schedules required:
 - Accounts report.
 - Balance sheet.
 - Schedule of cash.
 - Statements of changes in financial position.
 - Notes of financial statement.
- Conferences:
 - Exit conference with _____ and District Manager.
 - Exit conference with office personnel.
- Description of Entity and Records to be Audited:
 - General ledger, fixed assets ledger, accounts receivable, general journal, accounts payable.
- Available Manuals and Information Sources:
 - Minutes of the board meetings of the District.
 - Accounting function work description of General Ledger Bookkeeper.
- Details of fixed assets are maintained. Fixed assets are based on cost when available otherwise on estimates authorized by the Board of Directors. The fixed assets ledger was constructed with historical information by the District Manager during an audit period.
- A budget is maintained and is available for examination.
- Staff members will be available to pull and reproduce documents. Legal counsel will be made available with prior staff approval.
- Work areas will be provided by the District in close proximity with the financial records on the premises.

- Report Requirements
 - The report will be addressed to the Board of Directors and will contain items listed in item #2.
 - State the scope of the examination and that the audit was performed with generally accepted accounting principles and include a statement of opinion as to whether the statements conform to generally accepted accounting principles.
 - Reports of compliance examinations must include a statement that the audit was conducted in accordance with applicable standards. The audit report must state where the examination disclosed instances of significant non-compliance with laws and generally accepted accounting principles. Findings of non-compliance and ineligible expenditures must be presented in enough detail for management to be able to understand them.
 - A management letter will be required. It should contain a statement of audit findings and recommendations affecting financial systems and statements, internal control, legality of actions, other instances of non-compliance with laws and generally accepted accounting principles, and any other material matters.

- Time Requirements
 - Proposals will be delivered to the District office at _____ not later than _____ p.m. on _____.
 - If presentations of possible finalists are necessary, no one with personal bias will interview proposers.
 - The Board of Directors has made no decision as to the date of the award of the audit. All proposers will be notified of the Board action in a timely manner.
 - Once a contract has been signed, work may begin immediately to generate the audit in a progress manner with costs to be billed to the District as the charges generated by the proposer in accordance with the original agreement.
 - Preliminary work to close accounts can begin immediately.
 - The preliminary report and exit conference will be completed prior to _____.

- Report Review Timing and Number of Copies.
 - Prior to the submission of the completed audit report the audit firm will be required to deliver and review the draft and the proposed management letter with the District Board.
 - Copies required
 - Audit report, ___ copies.
 - Management letter, ___ copies.
 - Working papers, ___ copies.

- The District Reserves the Right:
 - To reject any and all proposals submitted.
 - To request additional information from all proposers.

Standard Form of Agreement

This contract, made this _____ day of _____, 20____, in accordance with OAR162-40-010(1) of the Minimum Standards for Reviews of Oregon Municipal Corporations between (Independent Accountant), Certified Public Accountant(s) of _____, Oregon, and the (Client), Oregon, provides as follows:

It is agreed the (Independent Accountant), shall conduct a review of the accounts, financial statements, and fiscal affairs of (Client), Oregon for the period beginning _____, and ending _____, (and annually thereafter) in accordance with the Minimum Standards for Reviews of Oregon Municipal Corporations. The review shall be undertaken in order to express limited assurance upon the basic financial statements of (Client), Oregon, and that (Client) has substantially complied with appropriate legal provisions.

A review consists principally of inquiries, observations and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of opinions regarding the basic financial statements. Accordingly, no such opinions will be expressed.

A review cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations that may exist. However, we will inform you of any such matters that come to our attention.

(Independent Accountant) agrees that the services required under this agreement will be performed by or under personal supervision and that the work will be faithfully performed with care and diligence.

It is understood and agreed that, should unusual conditions arise or be encountered during the course of the review whereby the services of (Independent Accountant) are necessary beyond the extent of the work contemplated, written notification of such unusual condition shall be delivered to the (Client), Oregon, who shall instruct in writing (Independent Accountant) concerning such additional services, and that a signed copy of each such notification and instruction shall be delivered immediately to the Secretary of State by the issuing party.

The review shall be started as soon after this agreement is executed as is agreeable to the parties hereto and shall be completed and a written report thereon delivered within a reasonable time, but not later than 180 days, after the close of the period covered by this agreement. Adequate copies of such report shall be delivered to the (Client), Oregon and its form and content shall be in accordance with and not less than that required by the Minimum Standards for Reviews of Oregon Municipal Corporations.

It is understood and agreed that the (Client), Oregon, is responsible for such financial statements as may be necessary to fully disclose and fairly present the results of operations for the period under review and the financial condition at the end of that period. Should such financial statements not be prepared and presented within a reasonable period of time, it is understood that (Independent Accountant) shall draft them for (Client), Oregon. The cost of preparing such financial statements shall be the fee for conducting the review set forth in Paragraph 9 below. It is understood and agreed that either party may cancel this agreement by giving notice in writing to the other party at least (ninety days) prior to the end of any review period.

In consideration of the faithful performance of the conditions, covenants, and undertakings herein set forth, the (Client), Oregon, hereby agrees to pay (Independent Accountant) the sum of _____(a reasonable fee) and the (Client), Oregon, hereby affirms that proper provision for the payment of such fee has been or will be duly made and that funds for the payment thereof are or will be made legally available.

(Independent Accountant)

by _____

(Client)

by _____

RESOURCES

Audits of Public Funds and Financial Records (ORS Chapter 297):

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors297.html

Borrowing and Bonds of Local Governments (ORS Chapter 287): -

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors287.html

Depositories of Public Funds and Securities (ORS Chapter 295):

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors295.html

Financial Accounting Standards Board: <http://www.fasb.org/>

Government Finance Officer's Association: <http://www.gfoa.org>

Minimum Standards of Audits for Municipal Corporations (Oregon Administrative Rules 162-001-000 through 162-020-0330):

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_162/162_010.html

Oregon Board of Accountancy: <http://www.oregon.gov/BOA/Pages/index.aspx>

Oregon Local Budget Law (ORS Chapter 294):

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2011ors294.html

Oregon Municipal Finance Officers Association: <http://www.omfoa.org>

Oregon State Treasury: <http://www.oregon.gov/treasury/Pages/index.aspx>

Property Tax Rates and Amounts; Tax Limitations; Tax Reduction Programs (ORS Chapter 310): <http://www.oregon.gov/dor/rules/Chapter310.pdf>

Public Funds Collateralization Program:

<http://www.oregon.gov/treasury/Divisions/Finance/FinancialInstitutions/Pages/PFCP%20for%20Banks.aspx>

Secretary of State Archives Division (Records Retention):

<http://arcweb.sos.state.or.us/pages/recmgmt/sched/>

Secretary of State Audits Division: <http://www.sos.state.or.us/audits/pages/municipal/index.html>

Board Member Duties and Responsibilities

(Chapter 2)

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INTRODUCTION

The authority given to a special service district, except as otherwise provided shall be exercised by a board of directors. Each type of special district has its own statute and requirements for board members. Some districts refer to board members as commissioners or directors. For the purpose of this chapter, district-governing officials will be referred to as board members. Most types of districts require by law that board members are electors, or at least own property within the boundary of the district. The number of board members varies, as does the length of their terms. For specific requirements, districts should refer to the Oregon Revised Statute that governs their type of district. (See Formation chapter for list of applicable statutes.)

District board members are public officials who must act in the best interest of the public and are accountable to the public through federal, state, and local laws. Governance is a responsibility that must not be taken lightly. Public laws concerning district elections, public records and meetings, investments, and budgeting can be time consuming and frustrating. Board members can become objects of public scrutiny and criticism if district affairs are not managed properly.

DISTRICT POWERS

Districts have only those powers, which are expressed in, or necessarily implied from, Oregon Revised Statutes (ORS). Expressed powers are found primarily in each district's Principal Act (Oregon Revised Statute that governs their type of district). Implied powers are acts necessary to carry out expressed powers.

There are several types of power in addition to expressed and implied powers:

- **Intramural and Extramural powers:** Powers, which can be exercised within or outside of district boundaries. For example: owning property.
- **Governmental and Proprietary powers:** Powers exercised in the district's governmental capacity (e.g. policy making) or powers exercised like a business (e.g. operating a marina or selling water).
- **Legislative or Administrative powers:** The power to adopt policy as opposed to the power to implement policy. For example: adopting a budget is legislative; spending the money is administrative.
- **Quasi-judicial power:** The power to adjudicate. Requires a decision based on the law and the evidence presented at a hearing. Requires due process. For example: appeal of termination by an employee.

Delegation of Power

A district can delegate some types of power. Delegation is governed by the Constitution and statutes.

Powers can be delegated vertically (e.g. down to a staff person, consultant, or committee) or horizontally (over to another government agency).

Legislative power cannot be delegated; only administrative or quasi-judicial power can be delegated. Only the Board can exercise legislative power.

Administrative power can be performed either by the Board or delegated to staff, consultants, or committees. If funds permit, most administrative power should be delegated to trained or experienced staff or professionals. This is particularly true with complicated administrative duties like hiring, firing, and contracting.

Board members should use caution in exercising administrative power because of the potential of liability, workers' compensation issues, staff morale issues, and other considerations.

All delegations of power should be clear and in writing (e.g. a job description, employment contract, personnel manual, resolution, etc.).

Limitations on Powers

- Federal limitations: Federal Constitution and statutes impose limitations on a district's powers. For example, districts must afford the rights of due process, equal protection, and non-discrimination in matters such as labor, employment, ratemaking, and termination. Districts must also respect federal environmental and safety regulations.
- State limitations: The State Constitution and statutes impose the same limits as above, but also impose restrictions regarding records, meetings, land use, contracting, budgeting, borrowing money, and a myriad of other regulations.
- Judicial limitations: Districts are also limited in their exercise of power by judicial decisions, which have interpreted and applied federal, state, and local laws.

POWER AND RESPONSIBILITY OF BOARD MEMBERS

District board members have no individual powers separate from the powers of the board, and have no authority to act individually without delegation of authority from the board.

- Board members only have the right and responsibility to participate in board meetings and vote on district matters as part of the board.
- Acting without authority can cause personal and district liability.

Supervision of staff: Individual board members have no individual authority to direct district staff or administrative activities without delegation of such authority from the board.

- Delegate administration to staff, if funds permit, and require compliance with such delegation.
- The solution to poor administration is training and if training fails, administrators should be replaced. The solution is not micro-management by board members.

OFFICE HOLDING

There are several constitutional and statutory limitations and requirements governing election to public office. Some restrictions apply before election and some during the term of office.

Eligibility for Office

Each district will have in its principal act the criteria for eligibility for office in that district. In some districts, board members must be citizens and residents of the area. In other districts, board members must own property. In most districts, board members must be an elector. In addition, board members may be ineligible if they have been convicted of a felony, adjudged mentally incapacitated, convicted of making bribes, threats or unlawful rewards, or advocating the overthrow of the government.

Maintenance of Eligibility

Board members must maintain their eligibility throughout their term of office. For example, if residency is an eligibility requirement, a board member who moves out of the district during the term of office will lose his or her position.

Employees as Board Members

ORS 198.115 provides that a district can adopt an ordinance or resolution providing that employees are not eligible to serve as board members. Ordinance or resolution must take effect at least one year prior to the next regular district election.

Dual Office Holding

In Oregon, volunteer public officials are encouraged to hold as many unpaid public offices as they wish. For example, a person may be on the school board and the fire district board at the same time. Such dual office holding is not a conflict of interest. The only limitation is that a public official cannot hold two lucrative offices (i.e. the same person could not hold the position of sheriff and district attorney).

Resignation of Office

The holder of a public office may resign the office effective at a future date that is prior to the expiration of the term of the office. A resignation is binding unless withdrawn in writing by the end of the third business day after the resignation is made.

Except where an election is required by law, the appointing authority required by law to fill a vacancy may begin the process to fill the vacancy and may select a successor prior to the effective date of the resignation.

Vacancies in Office

Vacancies on a district board are to be filled by appointment by a majority of the remaining board members; and in most districts, the appointee serves until a successor can be elected at the next regular district election. If a majority of the membership of the board is vacant or cannot agree, the vacancy shall be filled promptly by the county commissioners. The regulations governing filling vacancies are found in ORS 198.320.

Compensation and Expenses

ORS 198.190 allows districts to pay board members up to \$50 per day as compensation for serving as a board member. Such compensation does not constitute the holding of a lucrative office. Districts need to withhold the appropriate taxes for any compensation given to a board member and report this compensation on quarterly payroll tax returns. W2's should also be issued at the end of the year. Districts may also reimburse board members for reasonable expenses incurred in performing official duties.

DECISION MAKING PROCESSES

District board members typically make legislative, administrative, and quasi-judicial type decisions.

- Legislative decisions constitute law or policy and are generally afforded deference by the courts.
- Administrative decisions generally carry out or implement previously adopted law or policy, and courts will be less lenient in reviewing administrative decisions to assure that they comply with the policy that they are to implement.
- Quasi-judicial decisions must comply with state and federal due process rights and courts will review such decisions rather strictly to assure that due process has been complied with.

Parliamentary Procedure

There is no statute governing the parliamentary procedure of special district boards. Therefore, boards can determine what procedural rules to employ. Some districts merely adopt Robert's Rules of Order or other model rules of procedure. Other districts draft and adopt their own procedural rules, which can be tailored to their own needs. It is recommended that boards adopt their own rules because Robert's Rules of Order is intended primarily for large legislative bodies, which need detailed rules to maintain order. Small boards, however, are generally better served by custom rules designed to meet the needs of the board and the residents of the district.

Board rules should contain the regular board meeting date, time, and place; the format of the agenda; the person responsible for preparing the agenda; and the decorum and participation obligations of the public and board members and penalties for disrupting a meeting, etc.

Forms of Action

Normally, districts take action by use of ordinances, resolutions, and motions. Districts also have the authority to adopt rules and regulations, but would normally do so by adopting either an ordinance or a resolution.

- Ordinances are generally used to adopt law or policy that applies to the residents of the district. They are subject to statutory adoption processes found in ORS 198.510 to 198.600. That statutory adoption process must be followed strictly or the ordinance may be found invalid. Ordinances are subject to initiative and referendum laws.
- Resolutions are normally used to express policy or opinion of the board or to approve an action such as a contract or major expenditure of funds. A resolution should not be used for

adoption of law or policy that applies to the residents of the district. A resolution may be used for the adoption of internal regulations such as personnel rules.

- Motions are simply devices to place a matter before the board for consideration. It is a procedural device rather than a written document. Motions should not be used to adopt or approve a matter that will have lasting effect beyond the meeting itself.

Quorums

District boards must have a quorum in order to meet. A quorum is more than fifty percent (50%) of the members of the entire board. A meeting of less than a quorum is not an official meeting nor is it governed by public meeting laws.

Voting

In Oregon, it takes a majority of the entire membership of the board to adopt a motion, resolution, ordinance, or take any other action. A majority of a quorum is insufficient.

BONDING

A district board shall require a bond or irrevocable letter of credit of any board member or employee of the district who is charged with possession and control of district funds and properties. The board shall fix the amount of the bond and the premium shall be paid from district funds. The letter of credit must be issued by a commercial bank (ORS 198.220).

All board members or employees can be bonded for a minimal additional charge to the cost (premium) of bonding only one board member. It is practical and beneficial to take the necessary steps to bond all board members and the district manager.

ETHICS AND CONFLICTS OF INTEREST

The Oregon Government Ethics Commission consists of a seven member board charged with the responsibility of enforcing and interpreting the Code of Ethics outlined in Oregon Revised Chapter 244.

State agencies and local governments may choose to adopt the Code of Ethics or adopt their own ethics policies to protect them from government ethics violations. Rules or policies interpreting the provisions of ORS 244 must be consistent with the provisions of the chapter and need to be approved by the Oregon Government Ethics Commission (OGEC).

OGEC may levy fines for ethics violations up to \$5,000 per violation. In lieu of or in conjunction with finding a violation of law or imposing a civil penalty, the commission may issue a written letter of reprimand, explanation, or education.

Special district board members are not required to file financial records with a district unless the district is a metropolitan service district or a port governed by ORS 777.005 to 777.725 or 777.915 to 777.953. To avoid problems with conflicts of interest, it may be wise to require board members to submit financial records which at least indicate their degree of investment and property ownership within the district. This can be accomplished by enacting a resolution requiring board members to disclose their financial records.

Oregon Government Ethics law identifies and defines two types of conflicts of interest: An **actual conflict of interest** and a **potential conflict of interest**. A public official is met with a conflict of interest when participating in official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated.

A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. Under Oregon's Conflict of Interest Law (ORS Chapter 244), there are two types of conflicts of interest:

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Public Employees:

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met.

Elected Officials or Appointed Members of Boards and Commissions:

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest.

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest.

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

Exceptions

Where the pecuniary benefit or detriment arises out of one of the following:

- An interest or membership in a particular business, industry, occupation, or other class required by law as a pre-requisite to the holding by the person of the office or position.
- Any action in the person's official capacity which would affect to the same degree a class consisting of inhabitants of the state or a similar class consisting of an industry, occupation, or other group including one of which or in which the person or the person's relative or business with which the person or relative is associated, is a member or is engaged.
- Membership on a private, nonprofit 501(c) corporation board.

Prohibited Regardless of Disclosure Under the Oregon Code of Ethics (ORS 244.040), the following are prohibited regardless of disclosure:

- Use of or an attempt to use official position for financial gain or to avoid financial detriment that would not otherwise be available but for the public official's holding of the official position or office.
- Use of confidential information.
- Promises of future employment.
- Receipts of gifts over \$50 in a calendar year received by a public official, relative or member of their household from anyone who has a legislative or administrative interest in the business of the district.
- A public official may not participate in any interview, discussion or debate regarding the appointment, employment, promotion, discharge, firing, or demotion of a relative or member of their household. They may however serve as a reference, provide recommendations or perform other ministerial acts that are part of their normal job functions.

GIFTS

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(6)(a):

"Gift" means something of economic value given to a public official, a candidate, or a relative or member of the household of the public official or candidate. In other words, a "gift" is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate without cost or at a discount or as forgiven debt and the same offer is not made or available to the general public who are not public officials or candidates.

- If the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year.

Exemptions from the Legal Definition of “Gifts”

- Campaign contributions as defined in ORS 260.005.
- Contributions to a legal expense trust fund established under [ORS 244.209¹](#).
- Gifts from relatives or members of the household of public officials or candidates.
- Anything of economic value received by a public official or candidate, their relatives or members of their household when:
 - The receiving is part of the usual and customary practice of the person’s business, employment, or volunteer position with any legal non-profit or for-profit entity.
 - The receiving bears no relationship to the person’s holding the official position or public office.
- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos.
- Publications, subscriptions or other informational material related to the public official’s duties.
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate.
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event.
- Entertainment for a public official, a relative of the public official or a member of the public official’s household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose.
- Cost of admission or food and beverage consumed by the public official, a member of the public official’s household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization.
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged.

- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official.
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3).
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following:
 - Officially sanctioned trade promotion or fact-finding mission;
 - Officially designated negotiation or economic development activity when receipt has been approved in advance.
- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip.
- Food and beverage when acting in an official capacity in the following circumstances:
 - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction;
 - When the office of the Treasurer is engaged in business related to proposed investment or borrowing;
 - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money.

For further clarification, please refer to Oregon Administrative Rule 199, Division 5, Gifts at http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_199/199_005.html

POLITICAL ACTIVITIES

Generally, ORS 260.432 states that a public employee (includes any public official, paid or unpaid, who is not elected) may not, while on the job during working hours, promote or oppose election petitions, candidates or ballot measures. Additionally, no person (including elected officials) may require a public employee (at any time) to do so.

Elected Officials May

- Advocate a political position - they are not considered a “public employee” for the purposes of ORS 260.432 OR ORS 260.432(4)(a).
- Vote with the other elected officials of a governing body (such as a school board, city council, or county commission) to support or oppose a ballot measure, and publicly discuss such a vote – but must not use the public employee staff time to assist in this.
- Perform campaign activity at any time, but must take caution not to involve any public employee’s work time to do so.

Notices

Public employers are required to post a notice that advises employees of the rights and duties they have regarding campaigning. The text of this notice is set forth in ORS 260.432(3).

Campaigning

Public employees have the right to express personal political views. They may wear political buttons or clothing at work as long as it does not violate the district’s policy. The district can prevent campaign buttons and stickers from being affixed to any district equipment or facilities.

The Federal Hatch Act is applicable to any state or local government employee who is funded by federal resources. The Hatch Act is even more restrictive on an employee’s political campaigning rights.

Use of Public Funds to Influence Ballot Measures

Public funds may not be used for campaigning. Public officials who authorize such expenditures are personally liable to taxpayers for their return (ORS 294.100(2)). However, public funds may be used to inform the public regarding measures.

LIABILITY AND EXPOSURE

District board members can be held liable for wrongful actions of the board. The potential for a lawsuit exists, although historically the number of governing boards found liable has been slight. Governments are no longer governed by the principal of sovereign immunity, which, in the past, protected them from liability.

Oregon Tort Claims Act (OTCA)

ORS 30.260 to 30.300 governs district tort liability, provides for defense and indemnity of public officials, and limits damages.

Tort Liability

Districts are liable for the torts of their officers, employees, and agents acting under the scope of their employment or duties. This does not include contractual or criminal liability.

Immunity

Districts and their officers, employees and agents are immune from tort liability for:

- Injuries covered by workers' compensation.
- Claims regarding assessment or collection of taxes.
- Claims based on performance or failure to perform a discretionary function, even if the discretion is abused.

Indemnity

District officials, employees, and agents must be indemnified by the district for any tort claim, groundless or otherwise, occurring in the performance of duty. Indemnity is not required for malfeasance or wanton or willful neglect of duty. Indemnity includes payment by the district or its insurer of any damages attributable to the act or omission of the official, employee, or agent.

Defense

Unless investigation demonstrates that a claim arose out of the official's or employee's malfeasance or willful or wanton neglect, the district must provide counsel to defend the claim against the official or employee. Normally, the district's insurer provides the defense.

Officials/Employees Named as Defendants

Normally, a lawsuit naming an official or an employee as defendant can be converted by motion into a claim against the district only.

Limitations on Damage Awards

Under the OTCA, damage awards against districts or their officers, employees, or agents are limited to:

- \$100,000 property damage per claim
- \$500,000 property damage per occurrence.
- \$1,266,700 for all other claims per occurrence on or after July 1, 2013 and before July 1, 2014. \$1,333,333 on or after July 1, 2014 and before July 1, 2015. (Increases per occurrence after July 1, 2015, and every year thereafter, are adjusted annually by 3% or the Portland-Salem Consumer Price Index, whichever is lower.)
- \$633,300 for all claims arising out of a single occurrence on or after July 1, 2013 and before July 1, 2014. \$666,700 for all claims arising out of a single occurrence on or after July 1, 2014 and before July 1, 2015. (Increases per occurrence after July 1, 2015, and every year thereafter, are adjusted annually by 3% or the Portland-Salem Consumer Price Index, whichever is lower.)
- No punitive damages.

Discretionary Immunity

Under Oregon law, public bodies and their officers, employees, and agents are immune from liability for “any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused” (ORS 30.265(5)(c)).

A discretionary (immune) act is an act in which a policy decision is made by the governing body, while a ministerial (non-immune) act is an act which implements a policy decision which has already been made.

Establishing that an act was discretionary allows a court to dismiss an action against the public body before trial. It is well worth some planning to create a record to prove the discretionary nature of acts of your district board.

What to Do if Sued

When the district or its officials or employees receive or are served either a tort claim notice or a summons and complaint: Immediately provide the document to the district’s counsel, insurance agent, and insurer.

- Do not discuss the matter publicly. Executive sessions may be called to discuss pending or threatened litigation with district counsel.
- Preserve attorney-client privilege.
- Gather and preserve all related documentation.

BOARD POLICIES

Every district board should have a policy manual to orient new board members and act as a guide for conducting public business, meetings, and behavior. A policy guide will help eliminate unnecessary arguments and confusion, because the rules will be specified in writing. Changes to the policies should be formally approved at a board meeting and the policies officially amended. All members should be made aware of the changes.

SAMPLE MEMBERSHIP ON THE BOARD OF DIRECTOR’S POLICY

Positions and Terms (Does not apply to all districts, check your district’s ORS for guidelines).

- The board of directors of the district shall consist of [number] members serving [number] year [staggered] terms. No person shall be eligible to be a board member who is not at the time of election or appointment a resident or property owner in the district.
- [The district’s organic act may provide for each board member to be identified by a position number. If so, position numbers shall be transferred to the successors of each board member.]
- All board members shall [serve at large] [**or**] [be nominated and elected from sub-districts.]

Election of Board Members

The election of board members shall be conducted as provided by [the district's organic act] and ORS Chapter 255.

Qualifications

No person elected or appointed to the board shall be sworn in unless such person meets the qualifications for office set forth in [the district's organic act]. If questions exist regarding the eligibility of any candidate, the board shall obtain an opinion from legal counsel prior to swearing in such person.

Oath of Office

Each newly elected or appointed board member shall take an oath of office at a board meeting prior to assuming the duties of the position.

Term of Office – Starting Date

Except where the board or the [county court] [or] [county commission] is filling a vacancy on the board, terms of office shall start on [date].

Vacancies

Vacancies on the board shall be filled by appointment by a majority of the remaining members of the board. If a majority of the membership of the board is vacant, or if a majority cannot agree, the vacancies shall be filled promptly by the [county court] [or] [county commission] of [_____] County. The period of service of a person appointed to fill a vacancy shall expire on June 30 after the next regular district election at which a successor is elected. The successor shall be elected to serve the remainder, if any, of the term of the position for which the appointment was made. If the term for which the appointment was made expires June 30 after election of the successor, the successor shall be elected to a full term. In either case, the successor shall take office July 1 following his or her election.

SAMPLE POWERS AND DUTIES OF THE BOARD POLICY

Meeting the Needs of the District

It is the policy of the board of directors to exercise those powers granted to it, and to carry out those duties assigned to it by law, in such a way as to best meet the needs of the district.

Formulation and Interpretation of District Policy

Board members only have the right and responsibility to participate in board meetings and vote on district matters as part of the board. The most important activity of the board in performing this responsibility is the formulation and interpretation of district policies. To this end, the board shall establish policy, reserving to itself all authority and responsibility not directly assigned to other district officers and personnel.

Management and Communication between Board and Staff

The primary responsibility of the Board is to make policy level decisions for the district. Management of the daily operations and staff is the responsibility of the district manager. Unless otherwise authorized by a quorum of the board, no individual board member may direct or order a staff member on any matter that relates to the daily operations or administrative activities of the district. Moreover, unless otherwise authorized by the board, no individual board member may order, direct, or conduct any review of personnel records of any staff member or any other record that is exempt under Public Records Law. Any communications relative to district business must be directed to the board chair, who will then communicate the question, request or concern to the district manager.

Board Members Authorized By Official Board Action Only

Board members have no individual powers separate from the powers of the board and have no authority to act individually without delegation of authority from a quorum of the board. Likewise, no individual board member may speak for or on behalf of the board or district, except as authorized to do so by official board action as recorded in the official minutes, guidelines, or policies of the district.

Ethical Standards

Board members act as representatives of the citizens of the district. Therefore, board members shall adhere to the highest ethical standards in the conduct of district business.

Board Member Education

In order to effectively carry out their duties, board members must be adequately informed. Members are encouraged to attend such conferences and other training programs as the board may authorize.

SAMPLE BOARD RESPONSIBILITIES POLICY

Communications

- Develop regular channels of communication with board members and staff.
- Encourage participation of staff members on appropriate committees.
- Develop procedures for bringing staff opinions and recommendations to the board, as well as board opinions and decisions to the staff.
- Invite non-board members, other local governments, and groups to board or committee meetings or other types of board sponsored assemblies to explore and develop approaches to common concerns.
- Recognize that certain information obtained at board meetings may be non-public and confidential making disclosure a breach of trust.

- Respect the opinion of other members and accept the principle of majority rule in board decisions.

Financial

- Approve the annual budget.
- Monitor district finances and the budget, setting policy or taking action to ensure the fiscal integrity of the organization.

Policies, Objectives, and Plans

- Abide by and become familiar with all laws and policies governing the operation of the district.
- Approve the annual strategic plan or plan of operations.
- Approve policies for the organization.
- Recognize that the district manager should have full administrative authority for properly discharging the duties of managing the operation within the limits of the established board policy. The board's basic function is policy making - not administrative.
- Develop and approve long-range plan of growth and development for the district.
- Approve specific important projects.
- Approve any significant departure from established plans or policy.
- Receive and pass on committee or other planning body recommendations.
- Ensure that program objectives are assigned to the proper planning or implementing subgroups.
- Where applicable, bring other local governments or community groups into the planning and decision-making process.
- Approve contracts binding the district.
- Approve major changes in the district's organization or structure.
- Approve board plans of action.
- Pass district resolutions, or adopt ordinances.

Management

- Select the district president and other officers.
- Hire the district manager.
- Define the duties and responsibilities for the president, district manager, officers, and major committee chairpersons.
- Select legal counsel and consultants for the board.
- Approve contracts for professional services required by and for the board.
- Authorize officers or board agents to enter into contracts or to sign other written instruments and to take financial actions.
- Approve the plan, form, and amount of management compensation, that is, salaries, bonuses, vacation, travel, and so on.
- Evaluate the performance of the district manager annually.
- Approve the form and amount of reimbursement for board members.
- Approve programs for management development.
- Provide advice and consultation to management on matters within the purview of the board's responsibilities.

Employee Relations

- Approve any employee benefit plans.
- Insist that personnel complaints go through a proper chain of command. If not resolved, only then should the board get involved.
- Approve contracts with and between any unions involved with the district.
- Do not allow personnel problems, other than problems with the district manager, to be brought into board considerations.

Control

- Identify types of information needed by the board to analyze effectively the district's directions and achievement. Create a process for collecting and analyzing information.
- Realize that the citizens within the boundaries of the district are the true "owners" of the district.

- Review and assess the organization's performance against objectives, resources, plans, policies, and services rendered.
- Analyze major "shortfalls" in achievement.
- Identify obstacles, sense changing needs, and propose new directions or goals.
- Ensure that the district is in compliance with all federal, state, and local laws.

Board of Directors

- Motivate board members to accept positions of leadership and responsibility.
- Appoint, change, or abolish committees of the board.
- Define powers and responsibilities of committees of the board.
- Do not make commitments on any matter that should come before the board as a whole.
- Recognize that an individual board member has no legal status to act for the entire board.
- Realize that if a quorum of the board meets to make a decision or to deliberate, then the meeting is considered a public meeting and must comply with all of the requirements of the Oregon Public Meetings Laws.
- Discussions on matters of overall policy outside of regular board meetings can violate the open meetings law.

Public Accountability

- Keep the public informed on all district matters.
- Make decisions based on the wishes and needs of the public.
- Spend the district's money with prudence and trust.
- Place the needs of the public above the ambitions of the board or the district.

SAMPLE BOARD MEMBER ORIENTATION POLICY

Cooperation with Board Candidates

The board, through its staff, shall cooperate impartially with candidates for the board and provide them with information about board policies, administrative regulations, and other aspects of the operation of the district.

Orienting New Board Members

The board and its staff shall assist each new member-elect and appointee to understand the board's functions, policies, and procedures before he/she takes office. The following methods shall be employed:

- New members shall be invited to attend and participate in public board meetings prior to being sworn in.
- The district manager shall provide material pertinent to district meetings and respond to questions regarding such material.
- New members shall be invited to meet with the district manager and other district personnel to discuss the services each performs for the district.
- The district manager shall give each new board member:
 - An updated copy of the district's policies and procedures.
 - A copy of the Attorney General's "Public Records and Meetings Manual."
 - Copies of the minutes of all board meetings, except for executive sessions, for the preceding twelve (12) months.
 - Copies of the district's last five (5) budgets.
 - Copies of the district's insurance policies.
 - Copies of all such documents as the attorney[s] for the district may recommend with respect to any pending claims or lawsuits.
 - A list of all district personnel by position.
 - Such other materials as the board may direct or the district manager deems appropriate.

SAMPLE REIMBURSEMENT OF BOARD MEMBER EXPENSES POLICY

Board Member Compensation and Reimbursement

Pursuant to ORS 198.190, board members may receive daily compensation not to exceed \$50.00 for their services on the board. Such compensation shall be set by majority vote of the board. Board compensation will be reported and the appropriate taxes will be withheld. Board members shall also be reimbursed for their actual and reasonable travel and other expenses incurred in the performance of official district duties.

Reimbursement Documentation

Board members incurring reimbursable expenses shall submit proper documentation of such expenses to the district manager or such other designee for reimbursement by the district.

SAMPLE BOARD OFFICER DUTIES POLICY

Duties of the President

- The president of the board shall preside at meetings of the board of directors. The president shall perform all of the duties prescribed by the Oregon Revised Statutes.
- The president shall consult with the clerk of the board regarding the preparation of each board meeting agenda.
- The president shall have the same right as other members of the board to discuss and to vote on questions before the board.
- The president may call special meetings of the board as described by the Oregon Public Meetings Law.
- The president of the board shall sign official district documents on behalf of the board when authorized to do so by a majority of the board.

Duties of the Vice-President

In the president's absence, or during any disability of the president, the vice-president shall have the powers and duties of the president of the board as prescribed by district policy. The vice-president shall have such other powers and duties as a majority of the board may from time to time determine.

Duties of the Secretary-Treasurer

- The secretary-treasurer of the board shall cause accurate minutes of each board meeting to be taken, transcribed, and distributed to each board member in a timely manner for review prior to approval. The secretary-treasurer shall maintain properly authenticated official minutes in chronological order. Any of the foregoing responsibilities may be delegated to staff members under the supervision of the secretary-treasurer.
- The secretary-treasurer of the board shall assure that accurate accounting and financial records are maintained by the district.
- The secretary-treasurer shall annually review the district's financial audit with district personnel prior to submitting the audit to the balance of the board. The secretary-treasurer shall send copies of the audit to state or local agencies requiring its submission.

Duties of the Clerk

The clerk of the board shall be the district manger or such other person as may be designated by the board. The duties of the clerk of the board are:

- Respond directly to routine correspondence.
- Handle correspondence of special interest to the board as follows:

- Draft replies in advance, when possible, for board consideration.
- Seek instruction for reply when necessary.
- Prepare correspondence as the board directs.
- Prepare for board meetings.
 - Prepare the agenda with the advice of the president.
 - Maintain a calendar for the board's unfinished business.
 - Call to the board's attention legal requirements and those matters for which the district is responsible.
 - Draft policy motions at the request of any board member.
- Board meeting duties:
 - Attend all board meetings or designate an alternate.
 - Make physical arrangements for board meetings.
 - Provide notice of board meetings in accordance with the Public Meetings Law.
- Maintain and update the district's policy and procedure manual.

SAMPLE PUBLIC MEETING POLICY

Preparation for Board Meetings

- Distribution of materials to board members
The agenda, chief executive officer's report, treasurer's report, and statement of bills shall be given to each member of the board of directors at least (4) days prior to any regularly scheduled board meeting.

At the same time, the chief executive officer shall provide members detailed information relative to the agenda, including existing board policy pertinent to agenda items.

- Distribution of agenda to the public
The proposed agenda will simultaneously be distributed to all district officers and other facilities, local and other news media, and posted at one or more convenient locations for review by district personnel and the public.

Board Meeting Agenda

The clerk of the board shall draft the agenda after conferring with the president of the board. The following general order shall be observed:

- Call or order; pledge of allegiance to the flag
- Roll call by secretary-treasurer or designee
- Approval of the minutes
- Audience participation (testimony from citizens)
- Secretary-treasurer's report

- Statement of bills
- Old business
- Correspondence
- New business
- Chief executive officer's report
- Items not on the agenda open to the public; board and staff participation
- Agenda suggestions for future meetings from board members and district personnel
- Adjournment

Notice and Location of Meetings

- **Application**
This policy applies to all meetings of the board of directors of the district and to any meetings of subcommittees or advisory groups appointed by the board, if such subcommittees or advisory groups normally have a quorum requirement, take votes, and form recommendations as a body for presentation to the board of directors.
- **Compliance with Law**
All meetings shall be conducted in accordance with the Oregon Public Meetings Law, ORS 192.610-192.710 and 192.990.
- **Locations of Meetings**
All meetings shall be held within the geographic boundaries of the district, except for training sessions held without any deliberative action. No meeting shall be held in any place where discrimination on the basis of race, creed, color, sex, age, national origin, sexual preference, or disability is practiced. All meetings shall be held in places accessible to the handicapped.
- **Meetings Held by Telephone**
Meetings held by telephone or other electronic communication is subject to the Public Meetings Law if they otherwise qualify by virtue of their deliberative purpose and the presence of a quorum. ORS 192.670(1). Notice and opportunity for public access shall be provided when meetings are conducted by electronic means. At least one location shall be provided where meetings held by telephone or other electronic means may be listened to by members of the public. ORS 192.670(2).
- **Regular Meetings**
The board shall hold regular monthly meetings on the [**day, e.g. the first and third Wednesday**] of each month. Such meetings shall be held at [**location**], at [**hour, a.m./p.m.**] or at such other places and times as the board may designate from time to time.
- **Special Meetings**
The board shall hold special meetings at the request of the president or any three members of the board. If the president is absent from the district, special board meetings may be held at the request of the vice-president. No special meeting shall be held upon less than 24 hours public notice.

- **Emergency Meetings**
Emergency meetings may be held at the request of persons entitled to call special meetings, upon less than 24 hours notice in situations where a true emergency exists. An emergency exists where there are objective circumstances which, in the judgment of the person or persons calling the meeting, create a real and substantial risk of harm to the district which would be substantially increased if the board were to delay in order to give 24 hours notice before conducting the meeting. The convenience of the board members is not grounds for calling an emergency meeting.

At the beginning of any emergency meeting, the director or directors calling such meeting shall recite the reasons for calling such meeting and the reasons the meeting could not have been delayed in order to give at least 24 hours notice, which reasons shall be noted in the minutes. The board shall then determine if the reasons are sufficient to hold an emergency meeting and, if not, shall immediately adjourn such meeting. Only business related directly to the emergency shall be conducted at an emergency meeting.

- **Notice of Meetings**
Notice of the time, place, and principal subjects to be considered shall be given for all meetings. For regular meetings, the notice shall be in the form of an agenda, which shall be sent to all board members, local media, and to all persons or other media representatives having requested notice in writing of every meeting. The agenda shall also be posted at the following locations with the district: **[insert locations]**.

Written notice shall also be sent to any persons who the district knows may have a special interest in a particular action, unless such notification would be unduly burdensome or expensive. For special meetings, press releases shall be issued or phone calls made to wire services and other media and interested persons shall be notified by mail or telephone. For emergency meetings, the district shall attempt to contact local media and other interested persons by telephone to inform them of the meeting.

- **Executive Sessions**
Notice for meetings called only to hold executive sessions shall be given in the same manner as notice for regular, special and emergency meetings as set forth above, except that the notice need only indicate the general subject matter to be considered at the executive session, but it shall also set forth the statutory basis for calling the executive session.

The president or other presiding officer shall announce the statutory authority for the executive session before going into closed session. Once the executive session has been convened, the president shall direct any representative of the news media who are present not to report certain specified information from the executive session. In general, the extent of the non-disclosure requirement should be no broader than the public interest requires, and the news media will ordinarily be allowed to report the general topic of discussion in the executive session. Board members, staff and other persons present shall not discuss or disclose executive session proceedings outside of the executive session without prior authorization of the board as a whole.

- **Interpreters for the Hearing Impaired**
The district shall comply with ORS 192.630(5) regarding the provision of interpreters for the hearing impaired at board meetings, in accordance with the following rules:
 - The district shall make a good faith effort to have an interpreter for hearing impaired persons provided at any regularly scheduled meeting if the person requesting the interpreter has given the district at least 48 hours notice of the request, provided the name of the requester, the requester's sign language preference, and any other relevant information which the

district may require. “Good faith efforts” shall include contacting the Oregon Disabilities Commission or other state or local agencies that maintain a list of qualified interpreters.

- If a meeting is held upon less than 48 hours notice, the District shall make reasonable efforts to have an interpreter present.
- The requirement for an interpreter does not apply to emergency meetings.
- The chief executive officer shall be responsible for developing and maintaining a list of qualified interpreters and shall have the responsibility for making the required good faith effort to arrange for attendance of an interpreter at any meeting for which an interpreter is requested.

Board Meeting Conduct

- **Presiding officer**
The president shall preside at board meetings. In the president’s absence, the vice-president shall preside. If both the president and vice-president are absent, any other member of the board may preside.
- **Authority to Conduct Meetings**
The president or other presiding officer at any board meeting shall have full authority to conduct the meeting. Meetings shall be conducted in such a manner as to provide a full and fair opportunity for discussion of the issues in an efficient and timely manner. Any decision of the president or other presiding officer at the meeting may be overridden by a majority vote of the board.
- **Public Participation**
If public participation is to be a part of the meeting, the presiding officer may regulate the order and length of appearances and limit appearances to presentations of relevant points. Persons failing to comply with the reasonable rules of conduct outlined by the presiding officer, or causing any disturbance, may be asked or required to leave. Such persons become trespassers upon failure to do so.
- **Electronic Equipment**
The authority to control the meetings of the district board extends to control over equipment such as cameras, tape recorders and microphones. The presiding officer shall inform persons attending any meeting of the district board of reasonable rules necessary to assure an orderly and safe meeting. The physical comfort and safety of members of the board and the public attending the meeting shall be of primary concern in formulating such rules.
- **Recording of Votes**
Votes shall be recorded. Any member may request that his or her vote be changed if such request is made prior to consideration of the next order of business.

SAMPLE OATH OF OFFICE

I, (insert name of board member), do solemnly swear, that I will support the Constitution of the United States, the Constitution of the State of Oregon, the laws thereof, and the policies of the (insert name of District), and that I will faithfully discharge the duties of Director according to the best of my ability, so help me God.

_____ Board Member

Attest:

_____ Board Secretary

Attest:

RESOURCES

Actions and Suits (ORS Chapter 30):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors030.html

Campaign Finance Regulations (ORS Chapter 260):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors260.html

County and Municipal Finance Administration (ORS Chapter 294)

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors294.html

Oregon Government Ethics (ORS Chapter 244):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors244.html

Oregon Government Ethics Commission (OAR 199)

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_199/199_tofc.html

Oregon Government Standards and Practices Law: Guide for Public Officials

http://www.oregon.gov/OGEC/forms_publications.shtml

Restrictions on Political Campaigning for Public Employees

<http://library.state.or.us/repository/2012/201209191128043/index.pdf>

Special District Elections (ORS Chapter 255):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors255.html

Special Districts Generally (ORS Chapter 198):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors198.html

ⁱ ORS 244.209 Application to establish fund; commission review and authorization. (1) A public official may apply to establish a legal expense trust fund by filing an application with the Oregon Government Ethics Commission. The application must contain:

- (a) A copy of an executed trust agreement described in subsection (2) of this section;
- (b) A sworn affidavit described in subsection (3) of this section signed by the public official; and
- (c) A sworn affidavit described in subsection (4) of this section signed by the trustee.

(2) The trust agreement must contain the following:

- (a) A provision incorporating by reference the provisions of ORS 244.205 to 244.221; and
- (b) A designation of a trustee under ORS 244.211.

(3) The affidavit of the public official must state:

- (a) The nature of the legal proceeding that requires establishment of the trust fund;
- (b) That the public official will comply with the provisions of ORS 244.205 to 244.221; and
- (c) That the public official is responsible for the proper administration of the trust fund.

(4) The affidavit of the trustee must state that the trustee:

- (a) Has read and understands ORS 244.205 to 244.221; and
- (b) Consents to administer the trust fund in compliance with ORS 244.205 to 244.221.

(5) Upon receiving an application under this section, the commission shall review the trust agreement, the affidavits and any supporting documents or instruments filed to determine whether the application meets the requirements of ORS 244.205 to 244.221. If the commission determines that the application meets the requirements of ORS 244.205 to 244.221, the commission shall grant written authorization to the public official to establish the trust fund.

(6) The commission shall review the quarterly statements required under ORS 244.217 and shall monitor the activities of each trust fund to ensure continued compliance with ORS 244.205 to 244.221.

(7) Unless subject to the attorney-client privilege, all documents required to be filed relating to the creation and administration of a trust fund are public records subject to disclosure as provided in ORS 192.410 to 192.505.

(8) A public official may not establish a legal expense trust fund without receiving prior written authorization of the commission as described in this section.

(9) A public official may file an amendment to a trust agreement approved as part of a trust fund under this section. The commission shall approve the amendment if the commission determines the amendment meets the requirements of ORS 244.205 to 244.221. [2007 c.877 §31; 2009 c.505 §3]

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Budgeting

(Chapter 3)

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INTRODUCTION

A budget is a financial plan containing estimates of revenues and expenditures for a single fiscal year. Most local governments operate within a fiscal year beginning on July 1 and ending the following June 30. However, local governments have the option of budgeting on a 24-month budget, which is called a biennial budget. The budget must be completed by June 30 – one day before the start of the fiscal year for which the budget applies.

Besides outlining programs for the coming year, the budget controls local governments spending authority. Since the budgeting process encourages citizen input, the budget is also a vehicle for obtaining public opinion about proposed programs and fiscal policies of your district.

A local government's authority to spend money or incur debt obligations expires on June 30 of either a fiscal year or a biennial budget period. The ability to impose a property tax is also tied to the budgeting process. Districts that have property taxing authority cannot levy taxes unless their budgets have been adopted.

The Department of Revenue supervises the local budget process and has responsibility for administering and interpreting budget law. Oregon's local budget law is set out in Oregon Revised Statutes 294.305 – 294.565.

Local budget law does two important things:

- It establishes standard procedures for preparing, presenting, and administering the budget.
- It encourages citizen involvement in the preparation of the budget before it's formally adopted.
- It gives a method for estimating expenses, resources, and proposed taxes.
- It offers a way of outlining the programs and services provided by the local governments, and the fiscal policy to carry them out.

EXCEPTIONS TO LOCAL BUDGET LAW

Most local governments in Oregon prepare and adopt an annual budget. There are a few exceptions. The following districts are either totally or partially exempted from local budget law requirements (ORS 294.316):

- Drainage districts organized under ORS chapter 547;
- District improvement companies organized under ORS chapter 554;
- Highway lighting districts organized under ORS chapter 372;
- Irrigation districts organized under ORS chapter 545;
- Road districts organized under ORS chapter 371;
- Soil and water conservation districts organized under ORS chapter 568 that will not levy an ad valorem tax during the ensuing year or ensuing budget period;

- People’s utility districts organized under ORS chapter 261, operating without ad valorem tax support during the ensuing year or ensuing budget period;
- Water control districts organized under ORS chapter 553 that will not levy an ad valorem tax during the ensuing year or ensuing budget period;
- Diking districts organized under ORS chapter 551;
- Health districts organized under ORS 440.315 to 440.410; and
- Intergovernmental entities created under ORS 190.010, including councils of governments described in ORS 294.900 to 294.930, except that an intergovernmental entity or a council of governments that proposes to impose ad valorem property taxes for the ensuing year or budget period is subject to ORS 294.305 to 294.565 for the budget prepared for that year or period.

A newly formed local government is not required to prepare a budget under local budget law during the first fiscal year it is formed. If a local government is formed between March 1 and June 30, it does not have to prepare a budget for the upcoming fiscal year [ORS 294.338(10)]

THE LOCAL BUDGET LAW PROCESS

Local budget law process requires that certain, specific actions must happen as a local government prepares its annual or biennial budget.

Budget Officer Appointed

Each local government must have a budget officer, appointed by the board of directors. The budget officer does not have to live within the boundaries of the district. (ORS 294.331)

Budget Committee Appointed

The budget committee is made up of the governing body and an equal number of appointed registered voters of the local government. Members are appointed for three-year terms. Appointed members of a budget committee that prepares a biennial budget serve for four years. The terms must be staggered so that, as near as practicable, one-third or one-fourth of the terms will end each year. The appointed members cannot be officers, agents or employees of the district. All members of the budget committee have equal authority.

The budget committee has several purposes. It conducts public meetings to hear the proposed budget message and review the budget proposed by the budget officer. One of its most important purposes is to listen to comments and questions from interested citizens. It considers this public input as it deliberates on the budget. It can revise the proposed budget to reflect changes it wants to make to the local government’s fiscal policy.

Proposed Budget Prepared

The Department of Revenue’s *Local Budgeting in Oregon Manual* outlines the process for preparing the proposed budget. A link to this publication is available on the list of resources at the end of this chapter.

The budget officer is responsible for preparing or supervising preparation of the proposed budget to present to the budget committee. (ORS 294.331) A budget message is required as part of the

budget preparation. The statute requires that the budget message contain a brief description of the financial policies reflected in the proposed budget and, in connection with the financial policies, explain the important features of the budget. The budget message must also explain proposed changes from the prior year's budget and explain any major changes in financial policies.

Budget Committee Meetings

Local budget law requires that the budget committee hold at least one meeting for the purpose of:

- Receiving the budget message and budget document, and
- Providing members of the public with an opportunity to ask questions about and comment on the budget.

Prior notice must be given for all budget committee meetings. If you plan to have more than one meeting, the first meeting must be to receive the budget message and the budget documents (unless the budget document has been released before the meeting). You can also plan to hear public comments and questions at the first meeting. You also have the option of not taking public comments at the first meeting.

Some reasons why you may choose not to take public comments at the first meeting include:

- Giving the budget committee time to hear and to discuss the budget message,
- Allowing the committee time to understand the proposed fiscal policy reflected in the proposed budget, and
- Giving the committee and public time to walk through the budget document to understand how it is arranged.

If the budget committee does not invite the public to comment during the first meeting, the committee must provide that opportunity in at least one subsequent meeting. Notice of committee meetings must tell the public at which meeting comments will be taken.

Public Meeting Notice Requirements

Local budget law provides three publication methods for giving public notice:

- Printing in a newspaper of general circulation with the district's boundaries. The law defines a "newspaper" for public notices as a newspaper of general circulation, published in English for the dissemination of local or other news, or legal news. The newspaper must consist of at least four pages of at least five columns each. It must have subscribers of more than half of the number of papers distributed and be published at least once a week and have been in publication for at least 12 consecutive months before the first printing of the public notice.

If you choose to give notice in a newspaper, it must be published twice, five to 30 days before the scheduled budget committee meeting date. The notice may be published once in a newspaper (five to 30 days prior to the scheduled budget committee meeting date) as long as it is also published on the district's website at least 10 days before the meeting. The newspaper notice must contain the website address.

- If notice is hand delivered or mailed, only one notice is required not later than 10 days prior to the meeting.

Budget Committee Approves Budget

When the budget committee is satisfied with the budget it is approved. Approval of the budget and the amount or rate of ad valorem taxes for each fund receiving property tax revenue should be made by motion and be recorded in the minutes of the meeting. (ORS 294.428)

Budget Summary and Notice of Budget Hearing Published

After the budget is approved, a budget hearing must be scheduled. ORS 294.438 requires that a budget summary and notice of budget hearing five to 30 days before the scheduled hearing. This information must either appear in a newspaper of general circulation, be mailed, or be hand delivered.

If no newspaper is published in your district and estimated expenditures for the ensuing year do not exceed \$100,000, you may provide the budget summary and notice of budget hearing by posting it in three conspicuous places within the district for at least 20 days prior to the date of the hearing.

If your district is located in Multnomah County you have different publication and hearing requirements. You need to refer to the *Budget Manual for Local Governments in Multnomah County* produced by the Tax Supervising and Conservation Commission (TSCC).

You can contact TSCC by telephone at 503-988-3054 or through its web site at <http://www.tscmultco.com/>.

Budget Hearing Held

The governing body must hold the budget hearing on the date specified in the public notice. The purpose of the hearing is to listen to citizens' testimony on the approved budget. Additional hearings may be held. All hearings are open to the public. Form LB-1 notifies the public of the budget hearing date and time and where to obtain a copy of the budget. (ORS 294.453).

Adopting the Budget

To adopt the budget, the governing body must enact a resolution or ordinance to (1) formally adopt the budget, (2) make appropriations, and if needed, (3) levy, and (4) categorize any tax. The resolution or ordinance must be adopted no later than June 30. **It should not be formally adopted until the latter part of June** so that last-minute revisions to revenue or expenditure estimates can be incorporated.

The resolution (or ordinance) making appropriations gives the local government the authority to spend money and incur obligations in the coming year. The schedule of appropriations also sets limits on the amount of money that can be spent in each object classification within each fund.

During the budget year, spending cannot exceed the amounts specified in the resolution unless additional budgeting steps are taken. Exceeding appropriation authority, at the least, can result in a comment in your audit report. At the worst, it can result in litigation against the governing body under ORS 294.100. Under this statute, the officials of the local government can be held personally liable for spending money in excess of the amount authorized or for a different purpose than authorized.

Taxes Certified

Since local governments have the option of imposing no property taxes or imposing less tax than their taxing authority allows, each year they must officially state their intent to impose taxes. A resolution (or ordinance) that states this intent must accompany the notice of property tax certification form that is submitted to the assessor by July 15th.

The resolution imposing and categorizing taxes must state the taxes in an exact form and amount that the local government wants to certify to the assessor. If it is the local government's intent to impose taxes to its full permanent rate limit, then that rate must be included in the resolution.

By July 15 of each year you must give the assessor's office two copies of:

- Notice of levy and the categorization certification, and
- Budget resolution or ordinance.

If your district is subject to local budget law, but does not levy taxes, send a copy of the resolution adopting the budget and making appropriations to the Department of Revenue on or before July 15. A copy of the complete budget must also be sent to the county clerk on or before September 30.

PUBLICATION FORMS

The Department of Revenue supplies forms to be used to publish notice of the budget committee meeting and to present the budget summary and notice of budget hearing. These forms are "Notice of Budget Committee Meeting," LB-1, LB-2, and LB-3. Education districts use forms ED-1, ED-2 and ED-3. The publication forms and instructions are available at <http://www.oregon.gov/DOR/PTD/localform.shtml>.

Mistakes on the Publication Forms

Correctable errors include such things as typographical errors, failure to mail or hand deliver to each street address, math errors, errors in estimating tax revenue, and failure to publish within the required time periods. Errors can be corrected as long as you made a good faith effort to publish correctly.

If an error occurs you can correct it as follows: At the first regularly scheduled meeting of the governing body after the error is discovered, inform the governing body in writing of the error. Give testimony before the governing body about what the error was and what the correct information should have been.

It should be noted that these are errors in the published documents. You can't change the expenditures, resources, or taxes approved by the budget committee. If the committee approved an incorrect amount, the governing body can make the correction at the budget hearing.

CHANGING THE ADOPTED BUDGET

After a local government is operating within the adopted budget for the current budget period, changes in appropriated expenditures are sometimes necessary. Resolution transfers and supplemental budgets can change the adopted budget. One of these actions must be taken before money can be spent for a different purpose than appropriated in the adopted budget. It is unlawful to spend public money in excess of the amounts budgeted or for a different purpose than budgeted. Public officials can be sued for such actions if the expenditure is found to be malfeasance in office or willful or wanton neglect of duty. Creating a supplemental budget or a resolution transfer after the expenditure is made does not protect the governing body members from suit.

Appropriation Transfers

The governing body's spending authority in existing appropriations can be changed by (1) transferring amounts among existing appropriations in the same fund, (2) or transferring from an existing appropriation in one fund to an existing appropriation in another fund.

Whenever you need to transfer an appropriation, you must enact a resolution or ordinance providing for the transfer. This must be done before any over-expenditure is incurred. Once a transfer is authorized, the expenditures can be made.

You can't, however, use a resolution to transfer appropriations and resources from a special revenue fund to the general fund. A supplemental budget must be used to move resources and appropriations from a special revenue fund to the general fund.

Supplemental Budgets

A supplemental budget is a budget prepared during the fiscal or biennial year that modifies the adopted budget. Supplemental budgets are used to create new appropriations to spend increased resources. They can also be used to transfer resources and appropriations from a special revenue fund to a general fund. Additionally, they can be used to create a new appropriation category within a fund. A supplemental budget can be used to establish a category for capital outlay and transfer appropriations from another category into it. A supplemental budget can also be used to establish a new fund.

You may prepare a supplemental budget only if one or more of the following circumstances exist (ORS 294.471):

- An occurrence or condition that is not ascertained when preparing the original budget or a previous supplemental budget for the current year or current budget period and that requires a change in financial planning.
- A pressing necessity that could not reasonably be foreseen when preparing the original budget or a previous supplemental budget for the current year or current budget period and that requires prompt action.
- Funds that are made available by another unit of federal, state or local government and the availability of which could not reasonably be foreseen when preparing the original budget or a previous supplemental budget for the current year or current budget period.
- A request for services or facilities the cost of which is to be supplied by a private individual, corporation or company or by another governmental unit and the amount of which could not be accurately estimated when preparing the original budget or a previous supplemental budget for the current year or current budget period.
- Proceeds from the involuntary destruction, involuntary conversion, or sale of property that necessitates the immediate purchase, construction or acquisition of different facilities in order to carry on governmental operations.
- Ad valorem property taxes that are received during the fiscal year or budget period in an amount sufficiently greater than the amount estimated to be collected such that the difference will significantly affect the level of government operations to be funded by the taxes as provided in the original budget or a previous supplemental budget for the current year or current budget period.
- A local option tax described in ORS 294.476 that is certified for extension on the assessment and tax roll under ORS 310.060 for the fiscal year or budget period in which the local option tax measure is approved by voters.

- A reduction in available resources that requires the governing body to reduce appropriations in the original budget or a previous supplemental budget for the current year or current budget period.

A supplemental budget may not extend beyond the end of the fiscal year or budget period during which it is submitted.

Except as provided in ORS 294.476, the making of a supplemental budget does not authorize the governing body to increase the municipal corporation's total ad valorem property taxes above the amount or rate published with the regular budget and certified to the assessor under ORS 310.060 in conjunction with the regular budget for the fiscal year or for each fiscal year of the budget period to which the supplemental budget applies.

Supplemental budgets may not be prepared to deal with a situation that was known at the time the adopted budget was prepared. Also, you can't use a supplemental budget to spend money in an inappropriate ending fund balance, except when needed because of a natural disaster, civil disturbance, or involuntary conversion. Involuntary conversion happens when property is unintentionally damaged or destroyed.

Supplemental Budgeted Process for Change of Less than 10 Percent

When the change to an individual fund of the adopted budget is less than 10 percent of the expenditures of that fund, use the following process:

- The governing body adopts the supplemental budget at a regularly scheduled board meeting. The budget committee is not required.
- Notice of the regular meeting at which the supplemental budget will be adopted is published by one of the publication methods discussed earlier. The notice is published not less than five days before the meeting. The notice includes the following:
 - The name of each fund being adjusted, and
 - The amount of the change to each fund's resources and expenditures.
- At the meeting, a resolution or ordinance adopting the supplemental budget and making appropriations is approved.

Supplemental Budgeted Process for Changes of 10 Percent or Greater

When the supplemental budget will adjust a current budget fund by 10 percent or more of the expenditures of that fund or create a new fund, then a longer process must be used to adopt the supplemental budget.

- A special hearing must be held to discuss and adopt the supplemental budget. The governing body holds the hearing. The budget committee is not required to be involved. The "Notice of Supplemental Budget Hearing" can be found on the Department of Revenue's Web site at: <http://www.oregon.gov/dor/Pages/forms.aspx>.
- The governing body enacts a resolution or ordinance to adopt and appropriate the supplemental budget after the hearing.

SITUATIONS WHERE UNAPPROPRIATED MONEY CAN BE SPENT

These situations are referred to as exceptions to local budget law. The most common are:

- Receipts of grants, gifts, or bequests, or devises during the fiscal year for a specific purpose. Expenditures of these moneys can be made in the fiscal year received after enactment of a resolution or ordinance.
- Occurrence of a natural disaster or civil disturbance. Expenditure of money to deal with the damage or destruction of property can be made after adoption of a resolution or ordinance. “Emergency situation” means:
 - Involuntary conversion or destruction of the property of a municipal corporation;
 - Civil disturbance;
 - Natural disaster; or
 - Any public calamity.

SAMPLE BUDGET RESOLUTIONS

Sample Resolution Adopting the Budget

Be it resolved that the Board of Directors for Sample Water District hereby adopts the budget approved by the Budget Committee for fiscal year 20__ - 20 __ in the total amount of \$ _____. This budget is now on file at _____ in _____, Oregon.

Sample Resolution Categorizing the Tax

Be it resolved that the taxes imposed are hereby categorized for purposes of Article XI section 11b as:

Subject to the General Government Limitation

Permanent Rate Tax \$ ____ **OR** \$ ____/\$1,000
Local Option Tax \$ ____ **OR** \$ ____/\$1,000

Excluded from Limitation

General Obligation Bond Debt Service....\$ _____

Sample Resolution Making Appropriations

Be it resolved that the amounts shown below are hereby appropriated for the fiscal year beginning July 1, 20__ for the following purposes:

GENERAL FUND

Personal services	\$30,000
Materials and services	6,000
Operating contingencies	2,000
Transfers to other funds	<u>1,000</u>
 Total	 \$39,000

DEBT SERVICE FUND

Debt Service	\$5,000
Total	\$5,000
 Total Appropriations, All Funds	 \$44,000
Total Unappropriated and Reserve Amounts, All Funds	 \$0

TOTAL ADOPTED BUDGED \$44,000

Sample Resolution Imposing Taxes

Be it resolved that the following ad valorem property taxes are hereby imposed upon the assessed value of taxable property within the district for tax year 20__ - 20__:

- (1) In the amount of \$_____ **OR** at the rate of \$_____ per \$1000 of assessed value for permanent rate tax;
- (2) In the amount of \$_____ **OR** at the rate of \$_____ per \$1000 of assessed value for local option tax; and
- (3) In the amount of \$_____ for debt service on general obligation bonds.

BUDGET PROCESS CHECKLIST

Note: Local governments in Multnomah County may have a slightly different process involving the Tax Supervising and Conservation Commission. You can contact TSCC through its web site at <http://www.tscmultco.com/> or by telephone at 503-988-3054.

Administration Checklist

- √ Gather budget requests.
- √ Evaluate the budget requests and develop proposed budget.
- √ Develop estimates of revenue.
- √ Prepare budget proposal.
- √ Estimate ad valorem taxes in budget document.
- √ Prepare budget message.
- √ Publish required notices and budget summary.
- √ Provide citizens with information about approved budget.

Budget Committee Checklist

- √ Establish a meeting calendar.
- √ At first meeting, elect presiding officer (required) and vice chair (optional).
- √ At first meeting, establish budget committee procedural rules.
- √ At first meeting, receive budget message and proposed budget.
- √ Request information.
- √ Make budget documents available to any person.
- √ Provide opportunities for citizens to ask questions.
- √ Approve budget and recommend to governing body.

RESOLUTION ADOPTING DISTRICT COMPLIANCE WITH LOCAL BUDGET LAW

RESOLUTION NO. _____

A RESOLUTION ADOPTING DISTRICT COMPLIANCE WITH LOCAL BUDGET LAW

WHEREAS, in preparing and adopting its budget, the District shall be guided by the Budget Manual for Municipal Corporations, published by the Oregon Department of Revenue.

WHEREAS, compliance with Oregon's Local Budget Law set out in Oregon Revised Statutes 294.305 through 294.565, is required prior to the expenditures of any monies or the levy of any tax upon property located within the District.

THEREFORE, be it resolved by the Board of Directors of _____:

That the District shall comply with the provisions of Local Budget Law, and with the instructions and requirements of the Oregon Department of Revenue, which has been charged by the Legislature with the responsibility to interpret and administer Local Budget Law in accordance with Oregon Revised Statute 294.

ADOPTED by Board of Directors this _____ day of _____, _____.

President (or Chairman)

ATTEST:

Secretary (or Clerk)

RESOURCES

Local Budgeting in Oregon: http://www.oregon.gov/dor/PTD/Pages/ptd_localbudpubs.aspx

Department of Revenue Home Page: <http://www.oregon.gov/DOR/>

Local Budget Forms: <http://egov.oregon.gov/DOR/PTD/localform.shtml>

Local Budgeting Manual: http://www.oregon.gov/dor/PTD/Pages/ptd_localbudpubs.aspx

Oregon Local Budget Law (ORS 294):

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors294.html

Contracting

(Chapter 4)

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INTRODUCTION

Like all public agencies, Oregon special districts are required to comply with public contracting laws when purchasing goods and services, and for construction projects.

Public entities need to adopt rules that are consistent with Oregon's public contracting laws. They may adopt all or part of the Model Public Contracting Rules as the contracting rules for that entity. They also may expressly decline to adopt the Model Rules, and adopt their own rules. The Model Rules will apply, by default, to any public entity that has adopted no contracting rules. Whether a contracting agency adopts the Model Rules affirmatively or adopts its own rules, the agency must review any changes to statute or the Model Rules to determine if the agency's rules likewise need to be updated or modified.

The public contracting statutes require all public bodies to procure public contracts through a competitive bid process, with some exceptions and permitted exemptions. Local governments are given much flexibility with their contracting processes, particularly in the procurement of goods and services. However, in most cases this latitude is not available unless the governing body expressly adopts rules that grant and define the district's authority in certain areas. For example, local contracting agencies need to adopt rules that address the following:

- Contracts or classes of contracts that are exempt from competitive bidding;
- Dollar limits for contracts subject to “informal bidding requirements,” rather than formal ones;
- Definition of “personal services” and procedures for granting personal services contracts;
- Use of sole-source procurements;
- Delegation of authority for decision-making in the award of public contracts;
- Procedures for pre-qualifying bidders; and
- Procedures for disposal of surplus property.

This chapter is designed to provide a basic understanding of the laws as they pertain to special districts, and instructions for implementing them. This chapter is intended as an informational tool only. It should not be used as a substitute for assistance of qualified legal counsel.

APPLICABLE LAWS AND RULES

Chapter 279 governs public contracting, and is divided into three subparts, as follows:

- ORS 279A (General Provisions – applies to all public contracts)
- ORS 279B (Public Procurement – applies to the purchase of goods and routine services (“procurements”) and, for state agencies, to the purchase of personal services)

- ORS 279C (Public Improvements – applies to contracts for construction, reconstruction, or major renovation of real property by or for a public agency. Also applies to state contracts for services with architects, engineers, and land surveyors.)

For any public contract, a special district need look either to ORS 279A and 279B (for procurements), or ORS 279A and 279C (for public improvements). Similarly, the Model Public Contracting Rules are found in Oregon Administrative Rules Chapter 137, as follows:

- Division 46 – General Provisions (apply to all public contracts)
- Division 47 – Public Procurements for Goods and Services (implements ORS 279B)
- Division 48 – Consultant Selection: Architectural, Engineering and Land Surveying and Related Services Contracts (may adopt own rules of procedure as provided in ORS 279A.065(a).)
- Division 49 – General Provisions Related to Public Contracts for Construction Services (implements ORS 279C)

A copy of the Model Rules, and useful commentary, is available by contacting:

Model Public Contract Rules Manual

Department of Justice

Administrative Services

550 Justice Building

Salem, Oregon 97310

Phone: 503.378.4400

http://www.doj.state.or.us/ca/pages/business_transactions.aspx

CONTRACTING AUTHORITY: LOCAL CONTRACT REVIEW BOARD

ORS 279A.060 provides that if the governing body of a local contracting agency takes no action to provide otherwise, the governing body is the LCRB. The roles of the LCRB are to:

- Adopt certain rules for public contracting;
- Establish rules for carrying out its public contracting duties;
- Grant exemptions from competitive bidding;
- Hold hearings on exemptions, when necessary; and
- Hear and decide appeals of disqualified bidders.

DELEGATION OF AUTHORITY

Some portions of ORS Chapter 279 require certain authority to be exercised by the LCRB. This authority cannot be delegated because it is expressly granted in the Code. However, some portions of ORS Chapter 279 assign responsibility to the “contracting agency,” which means the district’s Board of Directors unless the Board delegates this authority to someone else. Through ORS 279A.075, certain administrative contracting responsibilities may be delegated to others, usually a district manager or purchasing officer. Therefore, every contracting agency should consider adopting a rule to this effect. See sample Delegation of Authority policy.

Finally, it is important to note that only the district's Board of Directors may contractually bind the district, though it may be able to delegate the authority to approve such contracts. Therefore, the district should adopt a policy that establishes the types of contracts, or value of contracts, that the designee is authorized to approve, and which contracts must go to the Board of Directors for approval.

THE BIDDING REQUIREMENT: EXCEPTIONS AND EXEMPTIONS

Unless an exemption is declared, most contracts for purchases other than personal services contracts are awarded through a competitive, sealed bidding process, or competitive sealed proposal process and contracts are awarded to the lowest responsive, responsible bidder.

- **Responsive Bid**

A bid or proposal that substantially complies with the invitation to bid or request for proposals and the requirements of the law.

- **Lowest Responsible Bidder**

The lowest bidder who (A) has substantially complied with all prescribed public contracting procedures and requirements; (B) Has met the standards set forth in ORS 279B.110 or 279C.375; (C) Has not been debarred or disqualified by the contracting agency under ORS 279B.130 or 279C.440; and (D) If the advertised contract is a public improvement contract, is not on the list created by the Construction Contractors Board under ORS 701.227.

Exceptions and Exemptions

Competitive bidding processes do not apply in cases of an exception or exemption to contracting laws. An *exception* to competitive bidding means that the public contracting rules do not apply at all. An *exemption* to competitive bidding means that the contract is excused from competitive bidding requirements under certain circumstances.

Exceptions Provided By Statute

The following types of contracts relevant to special districts are not required to be competitively bid, according to ORS 279A.025:

- Contracts for the purchase and sale of real estate. (Instead, see ORS Chapters 273 and 276);
- Personal services contracts. (Rules are required. See sample Personal Services Contract policy).

A contract that calls for specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment.

- Contracts made with other contracting agencies or the federal government.
- Agreements authorized under ORS 190 or by a statute or ordinance or other authority for establishing agreements between or among governmental bodies.
- Grants.

An agreement under which a contracting agency receives moneys, property or other assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the contracting agency in which no substantial involvement by the grantor is anticipated.

An agreement under which a contracting agency provides moneys, property or other assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient in which no substantial involvement by the contracting agency is anticipated.

Grant **does not include** a public contract for a public improvement, for public works, as defined in ORS 279C.800, or for emergency work, minor alterations or ordinary repair and maintenance necessary to preserve a public improvement, when under the public contract a contracting agency pays moneys that the contracting agency received under a grant.

- Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals.
- Service contracts for health insurance entered into by the State Department of Health and Human Services.
- Contracts for professional or expert witnesses in litigation.
- Sole-source expenditures when rates are set by law or ordinance for purposes of source selection.
- Procurements from an Oregon Corrections Enterprises program.
- Energy saving performance contracts.

A public contract between a contracting agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantees energy savings or performance.

- Contracts entered into pursuant to the incurring of debt or investment of funds by the public body.
- Contracts for employee benefit plans.
- Emergency Contracts. ORS 279B.080 allows the “head of a contracting agency” (i.e., the Board) or someone delegated this authority in writing, to make or authorize others to make emergency procurements of goods or services in an emergency. The emergency and the methods used to procure the goods or services must be documented. An emergency is defined as circumstances that could not have been reasonably foreseen that create a

substantial risk of loss, damage, interruption of services or threat to the public health or safety that requires prompt execution of a contract to remedy the condition.

For an emergency procurement of construction services that are not public improvements, the contracting agency shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the contracting agency shall set a solicitation time period that the contracting agency determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

Note: Although no rules are specifically required to declare the emergency or to act under emergency conditions, if the authority to act in an emergency is to be delegated by the Board, this must be done in writing. Thus, it is advisable to have the district's public contracting rules specify who is authorized to enter into emergency contracts, and under what conditions.

- Contracts between fire departments for fire protection equipment, if the following requirements are met:
 - The recipient makes a written request for the equipment;
 - The equipment is surplus to or unusable by the transferor;
 - The total fair market value of the equipment received does not exceed \$50,000 per calendar year;
 - The transferor holds a public hearing, with 14 days' written notice published in a newspaper of general statewide circulation; and
 - The transferor makes written findings that the contract is in the public interest.

Note: These requirements apply even if the recipient fire department takes the equipment at no cost.

Exceptions for Contracts of Certain Dollar Amounts

These exemptions are embodied in ORS 279B.065 and ORS 279B.070, with some modifications. They do not apply to public improvements, which are addressed in ORS Chapter 279C.

Small Procurement

A "small procurement" is defined in ORS 279B.065 as "any procurement of goods or services not exceeding \$10,000." Such contracts may be awarded in any manner provided for in the contracting agency's rules as being "practical or convenient" by the contracting agency, including direct selection. The rules also may provide for the degree to which the value of such a contract may be amended and still fall within this exception.

Intermediate Procurement

An "intermediate procurement" is defined in ORS 279B.070 as "any procurement of goods or services exceeding \$10,000 but not exceeding \$150,000." When seeking to award such a

contract, the agency must obtain at least three informally solicited quotes from prospective contractors. The contract must be awarded to the offer whose quote or proposal will “best serve the interests of the contracting agency, taking into account price as well as other considerations.” Rules adopted by the contracting agency may provide for the degree to which the value of the contract may be amended to still fall within the exception.

For procurements in excess of \$150,000, formal bidding processes (i.e., advertisement, ITB/RFP, competitive process) must be followed, unless an exemption is taken by the procedures described below.

A contracting agency can amend an intermediate procurement beyond the \$150,000 limit in accordance with OAR 137-047-0800 provided the cumulative amendments do not increase the total contract price greater than twenty-five percent (25%).

Exemptions by the Local Contract Review Board (“Special Procurement”)

There are two types of special procurements described in ORS 279B.085: A “class special procurement,” which includes an entire class of contracts, and a “contract-specific special procurement,” which includes only one contract.

Class special procurements are for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.

Contract-specific special procurements are for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods and services on a one-time basis or for a single project.

To use this process, a written request for the special procurement must be made to the LCRB, which describes the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement. A special procurement qualifies if it will:

- Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
- Result in substantial cost savings to the contracting agency or to the public; or
- Otherwise substantially promote the public interest in a manner that could not practically be realized by complying with the requirements that are applicable under ORS 279B.055 or 279B.060, 279B.065 or 279B.070 or under any other adopted rules.

A contracting agency shall give public notice of the LCRB's approval of a Special Procurement in accordance with ORS 279B.055(4) and OAR 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 such public notice of the approval of a special procurement at least seven (7) days before award of the contract.

In addition, once the special procurement is authorized by the LCRB, the contract may be awarded to the offer or “whose offer the contracting agency determines in writing to be the most advantageous to the contracting agency.” If the approval is for a class special procurement, contracts within that class may be awarded, in perpetuity, without further approvals or bidding.

Note: These provisions do not apply to public improvements, which are discussed in ORS Chapter 279C.

SOLE-SOURCE PROCUREMENTS

ORS 279B.075 permits a contracting agency to award a contract for goods or services without competition when the LCRB, or a person designated in writing by the LCRB, determines in writing, according to adopted rules, that the goods or services, or class of goods or services, are available from only one source.

The determination of a sole source must be based on written findings that *may* include:

- That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
- 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;
- That the goods or services are for use in a pilot or experimental project; *or*
- Other findings that support the conclusion that the goods or services are available from only one source.

Note: the statute *requires* findings to be adopted, but provides a list of justifications that *may* be included in the findings. It is not clear whether this means that the LCRB only may base its decision on the options listed, or whether it may base its decision on some reason not on the list. Until this ambiguity is addressed, it is recommended that the rules adopted by the public entity for sole-source procurements require the findings to, at minimum, include at least one of the criteria listed in the statute.

To the extent reasonably practical, the contracting agency must negotiate with the sole source to obtain advantageous contract terms.

SUBCONTRACTING TO EMERGING SMALL BUSINESSES OR BUSINESSES OWNED OR CONTROLLED BY DISABLED VETERANS

(1) 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 business enterprise that is certified under ORS 200.055 as an emerging small business or a business enterprise that is owned or controlled by a disabled veteran, as defined in ORS 408.225.

(2) 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 business enterprise that is certified under ORS 200.055 as an emerging small business and that, as identified by the contracting

agency, is located in or draws the business enterprise's workforce from economically distressed areas, as designated by the Oregon Business Development Department.

(3) A contracting agency may require that a public contract be awarded to a responsible bidder, as defined in ORS 200.005, who the contracting agency determines has made good faith efforts as prescribed in ORS 200.045 (3). For purposes of this subsection, "responsible bidder" includes a responsible proposer that has made good faith efforts as prescribed in ORS 200.045 (3).

CONTRACTS WITH QUALIFIED NON-PROFIT AGENCIES PROVIDING EMPLOYMENT OPPORTUNITIES FOR DISABLED INDIVIDUALS

ORS 279A.025(1)(4) requires a local contracting agency to check the list of qualified products maintained by the Department of Administrative Services before procuring any product or service. If the product or service needed is listed, and if it is of the appropriate specifications and is available when needed by the public agency, the contracting agency *must* obtain the product or service from the qualified non-profit agency. Such contracts may not be competitively bid.

QUALIFIED PRODUCTS LISTS

A contracting agency may develop and maintain a qualified products list when the testing or examination of goods before initiating a procurement is necessary or desirable to best satisfy requirements of the contracting agency.

In developing a qualified products list, a contracting agency must give public notice, in accordance with ORS 279B.055(4), of the opportunity for potential contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential contractors, sellers or suppliers to submit goods for the testing and examination. Any potential contractor, seller or supplier, even though not solicited, may offer its goods for consideration.

Inclusion of goods on a qualified products list must be based on the results of tests or examinations. Notwithstanding public records rules, a contracting agency may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier that offered the goods for testing or examination, including by using only numerical designations. Furthermore, a contracting agency may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.

The inclusion of goods on a qualified products list is not the same thing as prequalification of prospective contractors, even if they sell or supply the goods on the qualified products list.

PREQUALIFICATION OF BIDDERS

Districts have the option of prequalifying all bidders for a particular contract or type of contract.

ORS 279B.120 provides that the method of submitting prequalification applications, information required in order to be prequalified, and the forms to be used for submitting prequalification information, are determined by the contracting agency, unless otherwise prescribed by rules adopted by the LCRB.

Within 30 days of receipt of an application for prequalification (or sooner if the applicant requests it sooner, and it is practicable to do so), the contracting agency must notify the prospective bidder whether the bidder meets the standards of responsibility in ORS 279B.110(2); whether the bidder is qualified to compete for the type or nature of the contract or class of contracts; and the period of time the prequalification is in effect. If the contracting agency denies prequalification, it must state which standard(s) of responsibility were not met, or the bidder will be deemed to be prequalified. The notice also must state the applicant's right to a hearing. If the applicant is not prequalified, the applicant may demand a hearing within 3 business days after receipt of the notice that prequalification was denied.

If the contracting agency subsequently determines that the prequalified bidder is not qualified, the agency must issue reasonable notice to the bidder that the bidder is no longer qualified, or that the contracting agency has modified the prequalification, and the notice must state the reasons for the revocation or modification of prequalification. Again, the notice must state the applicant's right to a hearing, and the applicant may demand a hearing within 3 days of receipt of the notice. A revocation or revision does not apply to contracts that have already been advertised.

DEBARMENT OF BIDDERS

After providing the bidder with notice and a reasonable opportunity to be heard, a district may disqualify a bidder from bidding on district contracts for a period of up to three years, for the following reasons:

- Conviction of a criminal offense in obtaining, or attempting to obtain or perform a public or private contract or subcontract.
- 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 prospective bidder's or proposer's responsibility as a contractor.
- Conviction under state or federal anti-trust statutes.
- Violation of a contract provision, and debarment for such violation was listed in the contract terms and conditions as a potential penalty. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance, provided the failure is not caused by acts beyond the control of the contractor.
- The prospective bidder or proposer does not carry workers' compensation or unemployment insurance as required by law.

Disqualification decisions must be in writing and mailed or otherwise furnished to the disqualified person. The decision must state the reasons for disqualification and inform the bidder of their right to appeal.

Any person who wishes to appeal the debarment must, within three business days after receipt of the disqualification notice, notify the district of the appeal. Upon receipt of the notice, the district must immediately notify the LCRB, which conducts the appeal hearing.

PREFERENCE FOR OREGON PRODUCTS AND SERVICES 279A.120(2)

A “resident bidder” is a bidder that does business in Oregon – i.e., has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of the bid and has a business address in Oregon. Bidders who do not meet these criteria are “non-resident bidders.”

All things being equal—including price, fitness, availability and quality—districts must “prefer” goods or services that have been manufactured or produced in Oregon. This is done by adding to the non-resident bidder’s bid a percentage equal to the preference, if any, given to the bidder in the state where the bidder resides.

When contracts in excess of \$10,000 are awarded to a non-resident bidder – i.e., a contractor who is not located or registered to do business in Oregon—the contractor is required to report the total contract price, terms of payment, length of the contract and any other information required by the Oregon Department of Revenue. Districts must be satisfied that this requirement has been met before they issue a final payment on a contract. This can be done by requesting a copy of the required notice.

For public improvement contracts, bid documents must require bidders to state whether they are resident bidders, and indicate the percentage amount that a bid will be increased for non-resident bidders.

On or before January 1 of each year, the Oregon Department of Administrative Services is required to publish a list of states that give preference to in-state bidders, with the percent increase applied in each state. The contracting agency that relies on this document in its bidding process cannot be held liable to any bidder when determining the lowest responsible bidder.

OAR 137-046-0300 of the Model Public Contracting Rules provides procedures for determining if goods are manufactured in Oregon, determining whether bids are identical, and drawing lots to select the winning bid when bids are identical.

PERSONAL SERVICES CONTRACTS

For non-state agencies (such as special districts), “personal services” are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts, and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists, architects and engineers, and land surveyors (procured under ORS 279C.105 or 279C.110). Routine types of services typically based on price, such as janitorial, food service, or maintenance contracts, may also be included in the definition of “personal services.”

Note: The Attorney General’s Model Public Contracting Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no “default” rules for

personal services contracts. A district that legally wants to enter into personal services contracts, must adopt rules for doing so, or may not enter into these kinds of contracts. See sample Personal Services Contract policy at end of chapter.

Architects, Engineers, Photogrammetric Mapping, Transportation Planning and Land Surveying Services

Under ORS 279C.105, each contracting agency authorized (by its own rules) to enter into personal services contracts with architects, engineers, photogrammetric mapping, transportation planning and land surveying services, must adopt procedures for screening and selection under ORS 279C.110 and ORS 279C.120. ORS 279C.110(3) states that procedures for the selection of these “consultants” are “within the sole discretion of the contracting agency and may be adjusted to accommodate the contracting agency’s scope, schedule and objectives for a particular project if the estimated cost for service does not exceed \$250,000,” including providing for the direct appointment (without competition) if the value of the project does not exceed \$100,000.

Note: The requirement to establish a dollar limit for direct appointment of a contractor does NOT apply to other types of personal services contracts.) This statute also permits a contracting agency to establish procedures for breaking a tie, and permits negotiation of such things as scope of services, compensation, and contract conditions. Furthermore, ORS 279C.115 permits direct appointment of such consultants if the contract is a continuation of an existing contract, and other conditions are satisfied.

Chapter 137, Division 48 of the Model Rules deals with selection of these kinds of consultants. It’s important to note that, although under ORS 279A.065(4), the Model Rules will apply automatically to a district that has not adopted its own contracting rules, the provisions relating to architects, engineers, photogrammetric mapping, transportation services and land surveying services will *not* automatically apply.

Public improvement projects expected to exceed \$900,000, with at least 10 percent of the contract amount coming from state funds are required to use qualification-based selection (“QBS”) procedures when selecting architects, engineers, photogrammetric mapping, transportation planning and land surveying services. Essentially, this means that the agency must solicit proposals from such professionals only on the basis of qualifications for the job, and may negotiate price only after it has made its qualification-based selection. If the agency and the selected contractor cannot agree on a price for the services, the agency is free to terminate the negotiations and move on to the next qualified candidate. [ORS 279C.110(6).]

Note: QBS is not unique to state contracting. Many projects receiving federal funds may require a QBS process as well. Federal laws and regulations will “trump” state law when the two conflict. Therefore, if a special district is receiving federal funds, it must carefully review the terms of the grant or loan to ensure compliance with this and other requirements.

PURCHASING THROUGH THE STATE OF OREGON

Districts can purchase certain supplies and equipment through the State Department of Administrative Services without going through the bid process. The State Department of Administrative Services is authorized to acquire, warehouse and distribute surplus property to all eligible governmental units and certain nonprofit organizations.

To obtain information contact the Department of Administrative Services:

1225 Ferry St. SE
Salem, Oregon 97310
503.378.4642
<http://www.oregon.gov/DAS/Pages/index.aspx>

SALE OF SURPLUS PROPERTY

Under ORS 279A.185, local contracting agencies may dispose of surplus property in accordance with adopted rules. These rules will determine how the contracting agency will dispose of surplus property, including exempting such contracts from competitive bidding if desired.

Note: The Model Public Contracting Rules do not address disposition of surplus property, so no rule will apply by default if a contracting agency does not adopt its own rules. If no rules are adopted, the contracting agency has *no* authority to dispose of surplus property except through the bidding processes provided by statute. Thus, it is advisable to adopt rules addressing disposition of surplus property. See sample Surplus Property Disposal policy at the end of this chapter.

COOPERATIVE PROCUREMENTS

A contracting agency may participate in, sponsor, conduct or administer a joint cooperative procurement or interstate cooperative procurement of goods and services, but not public improvements.

Joint Cooperative Procurements

A joint cooperative procurement is a cooperative procurement in which the participating contracting agencies or the cooperative procurement group and the agencies' or groups' contract requirements for price agreements are identified.

A joint cooperative procurement is valid only if:

- The original solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in statutes for procurements of goods and services, special procurements, or public improvement contracts;
- The original solicitation and the original contract or price agreement identifies the participating group or individual agencies, and specifies the estimated contract requirements; and
- No material change is made in the terms, conditions or prices of the contract between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

A joint cooperative procurement may not be a permissive cooperative procurement.

Permissive Cooperative Procurements

A permissive cooperative procurement is a cooperative procurement in which the participating agencies are not identified. In other words, it may be subsequently used by other parties who are not known at the time the contract is entered into.

A contracting agency may establish a contract or price agreement through a permissive cooperative procurement only if:

- The original solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in statutes relating to procurement of goods and services.
 - “Substantially equivalent” means that the solicitation and award process: (1) Calls for award of a contract on the basis of a lowest responsible bidder or a lowest and best bidder determination in the case of competitive bids, or on the basis of a determination of the proposer whose proposal is most advantageous based on evaluation factors set forth in the request for proposals in the case of competitive proposals; (2) Does not permit the application of any geographic preference that is more favorable to bidders or proposers who reside in the jurisdiction or locality favored by the preference than the preferences provided in ORS 279A.120 (2); and (3) Uses reasonably clear and precise specifications that promote suitability for the purposes intended and that reasonably encourage competition.
- The administering contracting agency’s solicitation and the original contract allow other contracting agencies to establish contracts or price agreements under the terms, conditions and prices of the original contract;
- The contractor agrees to extend the terms, conditions and prices of the original contract to the purchasing contracting agency; and
- No material change is made in the terms, conditions or prices of the contract or price agreement between the contractor and the purchasing contracting agency from the terms, conditions and prices of the original contract between the contractor and the administering contracting agency.

A purchasing contracting agency must provide public notice of intent to establish a contract or price agreement through a permissive cooperative procurement if the estimated amount of the procurement exceeds \$250,000. OAR 137-046-0440 provides procedures for determining when the procurement will exceed \$250,000, which may be helpful to special districts as well.

The notice of intent must include:

- A description of the procurement;
- An estimated amount of the procurement;

- The name of the administering contracting agency; and
- A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through a permissive cooperative procurement.

The notice must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c), relating to competitive sealed bidding for goods and services.

Unless otherwise specified in the agency's rules, the purchasing contracting agency must give public notice at least seven days before the deadline for submitting comments regarding the intent to establish a contract or price agreement through a permissive cooperative agreement.

If required to provide notice, the purchasing contracting agency must provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively bid, an opportunity to comment. Vendors must submit comments within seven days after the notice of intent is published.

If comments on the permissive cooperative procurement are received, the purchasing contracting agency must make a written determination that establishing a contract or price agreement through a permissive cooperative procurement is in the best interest of the purchasing contracting agency before establishing a contract or price agreement, and must provide a copy of the written determination to any vendor who submitted comments.

Interstate Cooperative Procurements

Interstate cooperative procurement is a permissive cooperative procurement in which the administering contracting agency is authorized to enter into public contracts, and in which one or more of the participating agencies are located outside of Oregon.

A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

- The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified statutes relating to procurement of goods and services;
- The administering contracting agency's solicitation and the original contract allow other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract; and
- The administering contracting agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the purchasing contracting agency.

In addition to these requirements:

- The purchasing contracting agency, or the cooperative procurement group, of which the purchasing contracting agency is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions and prices of the original contract, and the solicitation must be advertised in Oregon; *or*
- The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, must advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

The notice of intent must include:

- A description of the procurement.
- An estimated amount of the procurement.
- The name of the administering contracting agency.
- A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c).

Unless otherwise specified in its adopted rules, the purchasing contracting agency must give public notice at least seven days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement. If required to provide such notice of intent, the purchasing contracting agency must provide vendors who would otherwise be prospective bidders or proposers if the procurement were competitively procured under ORS chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement. Vendors must submit comments within seven days after the notice of intent is published.

If the purchasing contracting agency receives comments, the agency must make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of the purchasing contracting agency before it may establish a contract or price agreement through the interstate cooperative procurement. It then must provide a copy of the written determination to any vendor who submitted comments.

For an interstate cooperative procurement, an administering contracting agency may be any governmental body, domestic or foreign, authorized under its laws, rules or regulations to enter into contracts for the procurement of goods and services for use by a governmental body.

Protests and Disputes

A protest regarding the procurement process, the contents of solicitation documents or the award or proposed award of any original contract may only be directed to the administering contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425.

A protest regarding the use of a cooperative procurement by a purchasing contracting agency after the execution of an original contract may only be directed to the purchasing contracting agency. The protest must be in accordance with the provisions of ORS 279B.400 to 279B.425 and is limited in scope to the purchasing contracting agency's authority to enter into a cooperative procurement contract.

PUBLIC PROCUREMENTS: ADVERTISING; NOTICE; AWARD OF CONTRACT

The process for advertising a bid or proposal now depends on what is being purchased. Therefore, the following section describes only the processes for advertising for procurement of goods and services. The processes for advertising for public improvements are addressed later in this chapter.

The contracting agency may choose whether to proceed using an invitation to bid (“ITB”) (ORS 279B.055), or a request for proposals (“RFP”) (ORS 279B.060). This requirement does not apply to public contracts for small procurements, intermediate procurements, emergency procurements or special procurements.

As a general rule, ITBs are likely to be most useful when the item to be procured is not particularly unique, and price will be paramount in making the award decision. RFPs may be most useful when something other than price is important to the procurement of the good or service, such as unique qualifications and experience of the proposer, or when the approach to providing the good or service can vary, and the contracting agency is open to creative solutions.

Another important factor to consider is that either process may be used to award multiple public contracts for goods or services when specified in the solicitation document. The statute does not elaborate on whether the “multiple contracts” must be for the same goods and services, or even related to each other. However, OAR 137-047-0600(4)(c) and (d) state as follows:

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 (solicitation) shall not preclude the Contracting Agency from Awarding a single Contract for such (solicitation). If the (solicitation) permits the Award of multiple Contracts, the Contracting Agency shall specify in the (solicitation) the criteria it will use to choose from the multiple Contracts when purchasing Goods or Services.”

Although no rules are specifically required for special districts to use these two types of solicitation, a district would be prudent to adopt the Model Rules relating to these processes, or similar rules of its own, to ensure fair competition in public contracting.

The following table provides a side-by-side comparison of the requirements and procedures for each process, including advertisement, notice, and award procedures. Also note that OAR 137-047-0255 and OAR 137-047-0260 may provide additional procedural requirements for competitive sealed bids and competitive sealed proposals, respectively.

Note: The Model Public Contracting Rules may interpret or elaborate on statutory requirements. See, for example, the following administrative rules regarding procurement of goods and services:

- OAR 137-047-0440: Preclosing Modification or Withdrawal of Offers
- OAR 137-047-0470: Mistakes
- OAR 137-047-0490: Extension of Time for Acceptance of Offer
- OAR 137-047-0600: Offer Evaluation and Award
- OAR 137-047-0640: Rejection of an Offer
- OAR 137-047-0650: Rejection of All Offers
- OAR 137-047-0660: Cancellation of Procurement or Solicitation
- OAR 137-047-0800: Contract Amendments

However, pursuant to ORS 279B.050, contracting agencies may choose whether to solicit competitive sealed bids using an invitation to bid (“ITB”) under ORS 279B.055, or to solicit competitive sealed proposals using a request for proposals (“RFP”) under ORS 279B.060. In both cases, the ITB or RFP spells out the requirements of the bid or proposal. However, whereas ultimately the ITB seeks to obtain the best price, the RFP seeks to obtain the best value, considering all criteria, one of which may be price. Ultimately, if the RFP process is used, the contract will be awarded to the proposer who makes the offer “most advantageous” to the contracting agency.

Note: It is important to remember that the process described above applies to procurements of goods and services, *not* public improvement contracts. The process for obtaining public improvements must follow the provisions of ORS 279C.

COMPARISON OF SOLICITATION METHODS (GOODS AND SERVICES)

Pursuant to ORS 279B.050, contracting agencies may choose whether to solicit competitive sealed bids using an invitation to bid (“ITB”) under ORS 279B.055, or to solicit competitive sealed proposals using a request for proposals (“RFP”) under ORS 279B.060. In both cases, the ITB or RFP spells out the requirements of the bid or proposal. However, whereas ultimately the ITB seeks to obtain the best price, the RFP seeks to obtain the best value, considering all criteria, one of which may be price. Ultimately, if the RFP process is used, the contract will be awarded to the proposer who makes the offer “most advantageous” to the contracting agency.

Note: It is important to remember that the process described above applies to procurements of goods and services, *not* public improvement contracts. The process for obtaining public improvements must follow the provisions of ORS 279C.

Competitive Sealed Bidding	Competitive Sealed Proposals
Contents of Solicitation Document	
<p>A contracting agency may solicit and award a public contract for goods and services. The request must include:</p>	<p>A contracting agency issues an RFP, which must include:</p>
<p>(a) Specify a time and date by which the sealed bids/proposals must be received, and a place at which the bids/proposals must be submitted. The contracting agency, in the contracting agency's sole discretion, may receive bids/proposals by electronic means, or direct or permit a bidder to submit bids/proposals by electronic means;</p> <p>(b) Specify the name and title of the person designated to receive bids/proposals and the person the contracting agency designates as the contact person for the procurement, if different;</p> <p>(c) Describe the procurement. In the description, the contracting agency shall identify the scope of work included within the procurement, outline the contractor's anticipated duties and set expectations for the contractor's performance. Unless the contracting agency for good cause specifies otherwise, the scope of work shall require the contractor to meet the highest standards prevalent in the industry or business that most closely involved in providing the appropriate goods and services;</p> <p>(d) Specify a time, date and place for prequalification applications, if any, to be filed and the classes of work, if any, for which bidders must be prequalified in accordance with ORS 279B.120;</p>	

(e) State that the contracting agency may cancel the procurement or reject any or all bids/proposals in accordance with ORS 279B.100;

(f) State that “Contractors must use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document” if a state contracting agency issues the invitation to bid.

(g) Require the contractor or subcontractor to possess an asbestos abatement license, if required under ORS 468A.710; and

(h) Include all contractual terms and conditions applicable to the procurement. The contract terms and conditions shall specify clear consequences for a contractor's failure to perform the scope of work identified in the invitation to bid or the contractor's failure to meet established performance standards. The consequences may include, but are not limited to:

- A. Reducing or withholding payment;
- B. Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
- C. Declaring a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.

The request for proposals also may:

(A) Identify contractual terms or conditions that the contracting agency reserves for negotiation;

(B) Request that proposers propose contractual terms and conditions that relate to the identified subject matter;

(C) Contain or incorporate the form and content of the contract that the contracting agency will accept, or suggest contract terms and conditions that nevertheless may be the subject of negotiations with proposers;

(D) Announce the method the contracting agency will use to select the contractor, which may include, but is not limited to, negotiating with the highest ranked pro-

	<p>poser, competitive negotiations, a multiple-tiered competition that is designed to identify a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers, or a combination of methods, as authorized or prescribed by rules adopted under ORS 279A.065; and</p> <p>(E) Describe the manner in which the contracting agency evaluate proposals identifying the relative importance of price and other factors the contracting agency will use to evaluate and rate the proposals in the first tier of competition. If the contracting agency uses more than one tier of competitive evaluation, the request for proposals must describe the process the contracting agency will use to evaluate proposals in the subsequent tiers.</p>
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Bid Security	
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<p>The contracting agency may require bid security if the contracting agency determines that bid security is reasonably necessary or prudent to protect the interests of the contracting agency.</p> <p>The contracting agency must return the bid security to all bidders upon the execution of the contract.</p> <p>The contracting agency must retain the bid security if a bidder who is awarded a contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt and proper execution of the contract includes all action by a bidder that is necessary to form a contract in accordance with the invitation to bid, including posting performance security and submitting proof of insurance when the invitation to bid requires the submission.</p>	<p>The contracting agency may require proposal security in any form the contracting agency deems prudent. Proposal security must serve the same function with respect to requests for proposals as bid security serves with respect to invitations to bid under ORS 279B.055.</p> <p>The contracting agency must return the proposal security to all proposers upon the execution of the contract.</p> <p>The contracting agency must retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract. For purposes of this paragraph, prompt and proper execution of the contract includes all action by a proposer that is necessary to form a contract in accordance with the request for proposals, including posting performance security and submitting proof of insurance when the request for</p>
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	<p>proposals requires the submission. If contract negotiations or competitive negotiations are conducted, the failure, prior to award, of a contracting agency and a proposer to reach agreement does not constitute grounds for retaining proposal security.</p>
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Advertisement

The contracting agency's public contracting rules must prescribe the requirements for providing public notice of solicitations. Unless otherwise specified in the rules, the contracting agency must give public notice at least 7 days before the solicitation closing date.

Invitations to bid must be made available to prospective bidders.

A public notice must be published at least once in at least one newspaper of general circulation in the area where the contract is to be performed.

A local contract review board may, by rule or order, authorize public notice of bids or proposals to be published electronically instead of in a newspaper of general circulation if the board determines that electronically providing public notice of bids or proposals is likely to be cost-effective.

In addition, the contracting agency may use any other medium reasonably calculated to reach prospective bidders or proposers.

Rules adopted under 279A.065 must prescribe the requirements for providing public notice of solicitations.

Unless otherwise specified in rules adopted under ORS 279A.065, the contracting agency shall give public notice at least seven days before the solicitation closing date.

Bid or Proposal Opening

The contracting agency must open bids publicly at the time, date and place designated in the invitation to bid. When authorized by, and in accordance with, rules adopted under ORS 279A.065, bids may be submitted, received and opened through electronic means.

The contracting agency shall record the amount of a bid, the name of the bidder and other relevant information specified by rule adopted under ORS 279A.065. The record must be open to public inspection.

Notwithstanding ORS 192.410 to 192.505, proposals may be opened in a manner to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation, but the contracting agency must record and make available the identity of all proposers as part of the contracting agency's public records after the proposals are opened.

Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued. The fact that proposals are opened at a meeting, as defined

<p>Notwithstanding a requirement to make bids open to public inspection after the contracting agency issues notice of intent to award a contract, a contracting agency may withhold from disclosure to the public trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a bid.</p>	<p>in ORS 192.610, does not make the contents of the proposals subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals.</p> <p>Notwithstanding a requirement to make proposals open to public inspection after the contracting agency issues notice of intent to award a contract, a contracting agency may withhold from disclosure to the public materials included in a proposal that are exempt or conditionally exempt from disclosure under ORS 192.501 or 192.502.</p> <p>If an RFP is canceled under ORS 279B.100 after proposals are received or if a proposal is rejected, the contracting agency may return a proposal to the proposer that made the proposal. The contracting agency must keep a list of returned proposals in the file for the solicitation.</p> <p>As provided in the request for proposals or in written addenda, the contracting agency may conduct site tours, demonstrations, individual or group discussions and other informational activities with proposers before or after the opening of proposals for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements or to consider and respond to requests for modifications of the proposal requirements. The contracting agency must use procedures designed to accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals.</p>
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Bid or Proposal Evaluation

The contracting agency must evaluate all bids that are received before the time and date indicated for bid opening in the invitation to bid, based on the requirements set forth in the invitation to bid.

The requirements may include, in addition to the information described earlier in this section, criteria to determine minimum acceptability, such as inspection, testing, quality and suitability for intended use or purpose. Criteria that will affect the bid price and will be considered in evaluation for award including, but not limited to, discounts, transportation costs and total costs of ownership or operation of a product over the life of the product must be objectively measurable.

The invitation to bid must set forth the evaluation criteria to be used. No criteria may be used in a bid evaluation that are not set forth in the invitation to bid or in a qualified products list maintained under ORS 279B.115.

The contracting agency may not consider for award bids received after the time and date indicated for bid opening in the invitation to bid. The contracting agency may retain bids or copies of bids received after the bid time and date indicated in the invitation to bid.

The contracting agency must, for the purpose of evaluating bids, apply any applicable preference described in ORS 279A.120, 279A.125 or 282.210.

For purposes of evaluation, when provided for in the request for proposals, the contracting agency may employ methods of contractor selection that include, but are not limited to:

- An award or awards based solely on the ranking of proposals;
- Discussions leading to best and final offers, in which the contracting agency may not disclose private discussions leading to best and final offers;
- Discussions leading to best and final offers, in which the contracting agency may not disclose information derived from proposals submitted by competing proposers;
- Serial negotiations, beginning with the highest ranked proposer;
- Competitive simultaneous negotiations;
- Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers;
- A multi-step request for proposals requesting the submission of unpriced technical submittals, and then later issuing an RFP limited to the proposers whose technical submittals the contracting agency had determined to be qualified under the criteria set forth in the initial request for proposals; or
- Any combination of methods described in this subsection, as authorized or prescribed by rules adopted under ORS 279A.065.

Mistakes, Modifications

Adopted rules must provide for and regulate the correction and withdrawal of bids before and after bid opening and the cancellation of awards or contracts based on bid mistakes.

After bid opening, changes in bids prejudicial to the interests of the public or fair competition are not permitted. A contracting agency that permits a bidder to correct or withdraw a bid or that cancels an award or a contract based on bid mistakes, must support the decision with a written determination by the contracting agency that states the reasons for the action taken.

Revisions of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

After the opening of proposals, a contracting agency may issue or electronically post an addendum to the request for proposals that modifies the criteria, rating process and procedure for any tier of competition before the start of the tier to which the addendum applies. The contracting agency must send an addendum that is issued by a method other than electronic posting to all proposers who are eligible to compete under the addendum. The contracting agency must issue or post the addendum at least five days before the start of the subject tier of competition or as the contracting agency otherwise determines is adequate to allow eligible proposers to prepare for the competition in accordance with rules adopted under ORS 279A.065.

Cancellation of Solicitation

The cancellation of the solicitation and the rejection of bids or proposals must be in accordance with ORS 279B.100, which provides that any solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the contracting agency as determined by the contracting agency. The reasons for the cancellation or rejection must be made part of the solicitation file. A contracting agency is not liable to any bidder or proposer for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation, bid, proposal or award.

Any solicitation or procurement described in a solicitation may be delayed or suspended when the delay or suspension is in the best interest of the contracting agency as determined by the contracting agency. The contracting agency must make the reasons for the delay or suspension part of the solicitation file. A contracting agency is not liable to any bidder or proposer for any loss or expense caused by or resulting from the delay or suspension of a solicitation, bid, proposal or award.

Notice to Bidders and Proposers; Contract Award

The contracting agency must, in accordance with ORS 279B.135, issue to each bidder or must post, electronically or otherwise, a notice of intent to award.

If a contracting agency awards a contract the contracting agency shall award the contract:

- To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or
- If the invitation to bid specifies or authorizes the award of multiple contracts, to the responsible bidders:
 - Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and
 - Who qualifies for the award of a public contract under the terms of the invitation to bid.

The successful bidder must promptly execute a contract. The successful bidder's duty to promptly execute a contract includes the duty to take all action that is necessary to form a contract in accordance with the invitation to bid, including posting performance security and submitting proof of insurance when the invitation to bid requires the submission and agreeing to perform the scope of work and meet the performance standards set forth in the invitation to bid.

In the request for proposals, the contracting agency must describe the methods by which the agency will make the results of each tier of competitive evaluation available to the proposers who competed in the tier. The contracting agency must include a description of the manner in which the proposers who are eliminated from further competition may protest or otherwise object to the contracting agency's decision.

The contracting agency must issue or electronically post the notice of intent to award described in ORS 279B.135 to each proposer who was evaluated in the final competitive tier.

If the contracting agency awards a contract, the contracting agency must award the contract to the responsible proposer whose proposal the contracting agency determines in writing to be the most advantageous to the contracting agency based on the evaluation process and evaluation factors described in the request for proposals, any applicable preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the request for proposals. Other factors may not be used in the evaluation. When the request for proposals specifies or authorizes awarding multiple public contracts, the contracting agency must award public contracts to the responsible proposers who qualify for the award of a contract under the terms of the request for proposals.

PUBLIC IMPROVEMENT CONTRACTS

A public improvement is “a project for construction, reconstruction or major renovation on real property by or for a contracting agency.” Public improvements do not include emergency work, minor alterations, or ordinary repair and maintenance needed to preserve the public improvement.

The definition also specifically excludes projects for which no funds of a contracting agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspections are excluded. This clearly addresses situations such as whether a public entity may receive a donation of construction services, or whether it must put contracts out to bid when they are being entirely funded by a private source, as in a public-private partnership agreement.

Contracts for construction projects that are not public improvements must be competitively bid like a public procurement of goods and services under ORS 279B (ORS 279C.320). However, other aspects of laws that apply to public improvements – such as payment of prevailing wage – may apply.

As a reminder, ORS 279C applies to public improvements only. The entirety of OAR Chapter 137, Section 49, applies to public contracts for construction services. ORS Chapter 279A applies to all public contracts, therefore, it also applies to public improvement contracts.

Minor Alterations, Ordinary Repair or Maintenance

These types of projects are not included in the definition of “public improvement.” They may be awarded according to the processes for obtaining goods and services under ORS 279B.

BOLI Filing

On an annual basis, districts must prepare and file with the Commissioner of the Bureau of Labor and Industries (BOLI) a list of every public improvement that the district plans to fund in the upcoming budget year. For each project, the district must indicate whether it intends to do the work itself, or hire a private contractor.

If the district intends to do its own work on a project estimated to cost over \$125,000, it must show that the decision to perform the construction using district personnel and equipment is the least cost to the district.

The information must be filed 30 days prior to adoption of the district’s budget and should include a description of the improvement and an estimate of the total on-site construction costs.

Current law requires that public agencies awarding public works contracts pay a fee to BOLI to cover the costs of surveys, administration, and education relating to prevailing wage laws. The fee is 0.1% of each contract, with a minimum of \$250 and a maximum of \$7,500.

Filings should be made with the Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 N.E. Oregon Street #1045, Portland, Oregon 97232. Forms are available for providing this information (WH-118 and WH-119); they can be found in the back

of every PWR rate book and on BOLI's website at www.oregon.gov/BOLI. ORS 279C.305; OAR 839-025-0008

PREVAILING WAGE

For "public works" of \$50,000 or more, the prevailing wage rate must be paid by all contractors and subcontractors. "Public work" is defined substantially similarly to "public improvement." Public works includes, but is not limited to:

- Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting which is carried on or contracted for by a public agency to serve the public interest;
- A project for the construction, reconstruction, major renovation or painting of a privately owned road, highway, building structure or improvement of any type that uses funds of a private entity and \$750,000 or more funds of a public agency; or
- A project for the construction of a privately owned road, highway, building structure or improvement of any type that uses funds of a private entity and in which 25 percent or more of the square footage of the completed project will be occupied or used by a public agency.

Prevailing wages on public works is addressed in ORS 279C.800 through 279C.870, and are enforced by the Bureau of Labor and Industries (BOLI).

Compliance with prevailing wage requirements is the responsibility of the contractor or subcontractor. However, public agencies are required to include this requirement in both the solicitation document and the ensuing contract. When the prevailing wage rates are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

If a public agency is required to include state and federal prevailing wage rates in the bid specifications, they must also include information showing which prevailing wage rate is higher for workers in each trade or occupation in each locality (ORS 279C.815(2)(a)).

Public agencies also are required to notify BOLI – on forms provided by BOLI – within 30 days of awarding a contract subject to prevailing wage. Subcontractor disclosure forms must be included. (ORS 279C.835.)

EXEMPTIONS FROM COMPETITIVE BIDDING

Exemptions from competitive bidding for public improvement contracts include:

- Contracts under \$5,000;
- Contracts between \$5,000 and \$100,000 (or \$50,000 for transportation projects) if the process for obtaining competitive quotes for intermediate procurements (see ORS 279B.070) are followed;

- Contracts with qualified non-profit agencies providing employment for the disabled;
- Contracts or a class of public improvement contracts for which an exemption has been adopted after making findings that doing so is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition, and that the awarding of public improvement contracts under the exemption will result in substantial cost savings to the public agency. A public hearing is required for an exemption for a public improvement contract.

In making findings for a class exemption for public improvement contracts the contracting agency must clearly identify characteristics of the class, using some combination of project descriptions, locations, time periods, contract values, or other factors that the class has in common. Classes may not be identified solely based on their funding source (such as "all grant-funded projects").

- Certain projects for the Department of Veterans Affairs under ORS 407.135 and 407.145(1).

An exemption of a public improvement contract requires a public hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of 14 days before the hearing. The notice shall state that the public hearing is for the purpose of taking comments on the contracting agency's draft findings for an exemption from the competitive bidding requirement. (ORS 279C.335(5)(c).

“IN-HOUSE” PROJECTS

It is a common misconception that public entities are required to contract out public improvement contracts. They're not. If a special district has qualified personnel who can complete the improvement, it may use them, provided the following requirements are met:

- If the cost of the work exceeds \$5,000, the district must adopt and apply a cost accounting system that complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services.
- If the project is estimated to cost more than \$125,000, the district must demonstrate that doing the work itself is the least costly alternative. To this end, the district must prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost must include a reasonable allowance for the cost, including investment cost, of any equipment used. In this context, “adequate” plans and specifications are those “sufficient to control the performance of the work and to assure satisfactory quality of construction by the public district personnel.”
- Districts must keep an accurate account of the costs of performing the work, including all engineering and administration expenses and costs, including investment costs, of any equipment used.
- The above rules do not apply to improvements for the distribution or transmission of electric power.

ADVERTISEMENTS

Advertisements for bids must be published at least once in a newspaper of general circulation in the area where the contract is to be performed. The LCRB may, by rule or order, authorize advertisements for public improvement contracts to be published electronically instead of in a newspaper of general circulation, if the LCRB determines that doing so is likely to be cost-effective.

However, if the contract has an estimated cost in excess of \$125,000, the advertisement *must* be published in a trade journal or newspaper of statewide circulation. The LCRB may, by rule, require an advertisement to be published more than once or in one or more additional publications.

At minimum, all advertisements for public bids must contain the following information:

- A description of the project;
- The office where the specifications for the work, material or things may be reviewed.
- If the contract requires prequalification of bidders, a date must be specified under which all prequalification applications must be filed and the class or classes of work for which bidders must be prequalified.
- The date and time by which all bids must be received in order to be eligible for the project. The date and time must not be set less than five days from the date the advertisement is published, and may permit bidders to submit bids by electronic means.
- The name and title of the person who is to receive the bids.
- The date, time and place that the district will publicly open the bids.
- If the contract is for a public works project subject to ORS 279C.800 to 279C.870 or the Davis Bacon Act (40 U.S.C. 3141 et. seq.) [prevailing wage laws].

SOLICITATION DOCUMENTS

A contracting agency preparing solicitation documents for a public improvement contract shall, at a minimum, include:

- A description of the project.
- The office where the specifications for the work, material or things may be reviewed.
- If the contract requires prequalification of bidders, the date when all prequalification applications must be filed and the class or classes of work for which bidders must be pre-qualified.
- The date and time by which all bids must be received in order to be eligible for the project. The date and time must not be set less than five days from the date the advertisement is published.

- The name and title of the person who is to receive the bids.
- The date, time and place that the district will publicly open the bids.
- A statement that if the contract is for a public works project subject to ORS 279C.800 to 279C.850, the federal prevailing wage rates under the Davis Bacon Act (40 U.S.C. 3141 et. seq.) or both the state and federal prevailing wage rates, no bid will be received or considered unless the bid contains a statement by the bidder that ORS 279C.838 or 279C.840 or USC 3141 et. seq. will be complied with. [prevailing wage laws].
- A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120.
- A statement that the public contracting agency may reject any bid not in compliance with all public bidding procedures and requirements, and may reject for good cause any or all bids upon a finding that it is in the public interest to do so.
- Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720 (asbestos removal).
- A statement that no bid for a construction contract shall be received or considered by the public contracting district unless the bidder is registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board as required by ORS 671.530.
- Bid or proposal security requirements, if any.
- The method by which the district will provide addenda to the Solicitation Document.

SOLE SOURCE PRODUCTS

According to ORS 279C.345, specifications for a public improvement contract may not expressly or implicitly require any product by brand name or make, nor the product of any particular manufacturer or seller, unless the LCRB has adopted an exemption to permit this. The exemption must be based on findings that:

- It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts, or substantially diminish competition for public improvement contracts;
- The specification of the product would result in substantial cost savings to the contracting agency;
- There is only one manufacturer or seller of the product of the quality required; or
- Efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment and supplies.

BID OPENING

All bids submitted to the district must comply with all requirements of the Invitation to Bid, and also must be:

- In writing.
- Filed with the person designated by the district to receive the bids.
- Opened publicly by the contracting agency at the specific time designated in the advertisement for the bid.
- Filed for public inspection after they have been opened.
- Attached to a surety bond, cashier's check, or certified check for bid security unless the contract has been exempted from the requirement. Such security must not exceed 10 percent of the amount bid for the contract.

Note: The Model Public Contracting Rules may interpret or elaborate on statutory requirements. See, for example, the following administrative rules relating to solicitation for public improvement contracts:

- OAR 137-049-0250: Addenda to Solicitation Documents
- OAR 137-049-0260: Request for Clarification or Change; Solicitation Protests
- OAR 137-049-0270: Cancellation of Solicitation Document
- OAR 137-049-0320: Pre-Closing Modification or Withdrawal of Offers
- OAR 137-049-0340: Late Bids, Late Withdrawals, and Late Modifications
- OAR 137-049-0350: Mistakes
- OAR 137-049-0380: Bid or Proposal Evaluation Criteria
- OAR 137-049-0390: Offer Evaluation and Award; Determination of Responsibility
- OAR 137-049-0440: Rejection of Offers

DISCLOSURE OF SUBCONTRACTORS

Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract of more than \$100,000, a "responsive" bidder must disclose its first-tier subcontractors. The disclosure must be provided for each first-tier subcontractor who will be furnishing labor, or labor and materials, in connection with the contract and whose contract value is equal to or greater than 5 percent of the total project bid, or \$15,000, whichever is larger; or \$350,000, regardless of the percentage of the total bid.

The contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday, or Thursday and a time between 2 p.m. and 5 p.m. except for public improvement projects for maintenance or construction of highways, bridges or other transportation facilities.

The disclosure of the first-tier sub-contractors must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract.

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Project Name: _____ Bid #: _____
 Bid Closing: Date: _____ Time: _____

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

Name	Dollar Value	Category of Work
1) _____	\$ _____	_____
2) _____	\$ _____	_____
3) _____	\$ _____	_____
4) _____	\$ _____	_____
5) _____	\$ _____	_____
6) _____	\$ _____	_____

Failure to submit this form by the disclosure deadline will result in a non-responsive bid. A non-responsive bid will not be considered for award.

Form submitted by (bidder name): _____
 Contact name: _____ Phone no.: _____

(1) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a non-responsive bid and may not award the contract to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(2) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(3) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(4) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116; 2005 c.103 §16]

SUBSTITUTION OF FIRST-TIER SUBCONTRACTORS

A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed by submitting the name of the new subcontractor and the reason for the substitution in

writing to the contracting agency. Substitutions of first-tier subcontractors are permitted in the following circumstances:

- When the disclosed subcontractor fails or refuses to execute a written contract after having had a reasonable opportunity to do so.
- When the disclosed subcontractor becomes bankrupt or insolvent.
- When the disclosed subcontractor fails or refuses to perform the subcontract.
- When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.
- When the contractor demonstrates to the public contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.
- When the disclosed subcontractor does not hold a license from the Construction Contractors Board, and is required to be licensed by the board.
- When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the subcontractor is substantially delaying or disrupting the progress of the work.
- When the disclosed subcontractor is ineligible to work on a public improvement pursuant to the applicable statutory provisions.
- When the substitution is for good cause. The Construction Contractors Board defines “good cause” in OAR 812-002-0325 as follows: “Good cause” includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.
- When the substitution is reasonably based on the contract alternates chosen by the contracting agency.

After bids are opened, the subcontractor disclosures must be made available for public inspection.

NON-RESIDENT BIDDERS

When determining the low bidder, the district must add a percentage increase on the bids of nonresidents equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides. A “resident bidder” means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid and has a business address in this state. Each year the Oregon State Department of Administrative Services publishes a list of states that give preference to in-state bidders, with the percent increase applied in each state.

REJECTION OF BIDS

The district may reject any bid not in compliance with all public bidding procedures and requirements. The district also may reject all bids for good cause if it makes written findings showing that it is in the public interest to do so. If all of the bids are rejected and the contract is not abandoned, the district may call for new bids.

NEGOTIATION WITH LOWEST BIDDER

As a general rule, the district may not negotiate with the low bidder in a public improvement contract. However, according to ORS 279C.340, if all bids exceed the district's estimate of what the contract will cost, the district may, according to its adopted rules, negotiate with the lowest responsive, responsible bidder prior to awarding the contract, in order to attempt to bring the price within the district's estimate. However, the negotiation may not result in a significant change in the scope of work. Bidder records used in negotiating the contract are not subject to public inspection until after the contract has been awarded or the negotiation process terminated.

AWARDING THE CONTRACT

The general rule in awarding public contracts is that they must be awarded to the *responsible* bidder who submits the lowest *responsive* bid or proposal. An unresponsive bid from a responsible bidder must be rejected. Similarly, a responsive bid must be rejected if the bidder is determined to be not responsible.

“Responsive Bid”

ORS 279B.005(1)(e) defines “responsive bid” or “responsive proposal” as a bid or proposal that substantially complies with the invitation to bid or request for proposals, and all prescribed procurement procedures and requirements.

“Responsible Bidder”

ORS 279B.110 defines responsibility of bidders and proposers. In determining whether a bidder or proposer has met the standards of responsibility, the contracting agency must consider whether a bidder or proposer:

- Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- Has completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency must document the bidder's or proposer's record of performance if the contracting agency finds under this paragraph that the bidder or proposer is not responsible.
- Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's or proposer's record of integrity may consider, among other things, whether the bidder or

proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's performance of a contract or subcontract. The contracting agency must document the bidder's or proposer's record of integrity if the contracting agency finds under this paragraph that the bidder or proposer is not responsible.

- Is legally qualified to contract with the contracting agency.
- Has supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency must determine the bidder's or proposer's responsibility based upon available information or may find that the bidder or proposer is not responsible; and
- Was not debarred by the contracting agency under ORS 279B.130. The contracting agency must prepare a written determination of non-responsibility if the bidder or proposer does not meet the standards of responsibility.

After a contracting agency has opened and determined that the contracting agency will award a public improvement contract, the contracting agency shall award the contract to the lowest responsible bidder.

Notice of Intent to Award Contract

At least seven days before awarding a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post electronically or otherwise, a note of the contracting agency's intent to award a contract. This subsection does not apply to a contract to which competitive bidding does not apply under ORS 279C.335(1)(c) or (d). The notice and the manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

In determining the lowest responsible bidder, the contracting agency shall:

- Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.
- Determine whether the bidder is responsible. A responsible bidder must demonstrate to the contracting agency that the bidder:
 - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise necessary to meet all contractual requirements.
 - Holds current licenses that businesses or service professionals operating in the state must hold in order to undertake or perform the work specified in the contract.
 - Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents

- Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
 - Has made the disclosure required under ORS 279C.370.
 - Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder's record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.
 - Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's performance of a contract or a subcontract. The contracting agency must document the bidder's record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible.
 - Is legally qualified to contract with the contracting agency.
 - Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency must determine the bidder's responsibility based on available information, or may find that the bidder is not responsible.
- Document the contracting agency's compliance with the requirements of paragraphs (a) and (b) of this subsection by completing a Responsibility Determination Form (see below).
 - Submit the Responsibility Determination Form, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

RESPONSIBILITY DETERMINATION FORM

Project Name: _____
Bid Number: _____
Business Entity Name: _____
CCB License Number: _____
Form Submitted By (Contracting Agency): _____
Form Submitted By (Contracting Agency Representative's Name): _____
Title: _____
Date: _____

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

- Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

- Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency found that the bidder demonstrated that the bidder:
 - Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.
 - Holds current licenses that businesses or service professionals operating in the state must hold in order to undertake or perform the work specified in the contract.
 - Is covered by liability insurance and other insurance in amounts required in the solicitation documents.
 - Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
 - Has disclosed the bidder's first-tier subcontractors in accordance with ORS 279C.370.
 - Has a satisfactory record of performance.
 - Has a satisfactory record of integrity.
 - Is legally qualified to contract with the contracting agency.
 - Has supplied all necessary information in connection with the inquiry concerning responsibility.

- Determined the bidder to be (check one of the following):
 - Responsible under ORS 279C.375(3)(a) and (b).
 - Not responsible under ORS 279C.375(3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

The successful bidder shall:

- Promptly execute a formal contract; and
- Execute and deliver to the contracting agency a performance bond and a payment bond when required by ORS 279C.380. This requirement is for public improvement contracts that exceed \$100,000 or \$50,000 for highways, bridges and other transportation contracts.

PERFORMANCE AND PAYMENT BONDS

Performance Bonds

Performance bonds are for the protection of the contracting agency that awarded the contract and any public agency or agencies for whose benefit the contract was awarded. The contracting agency may also require a performance bond and payment bond on a class of public improvement projects that have been exempted by the LCRB.

The performance bond must be in an amount equal to the full contract price. A contracting agency may waive the requirement of a performance bond and permit the successful bidder to submit a cashier's check or certified check in lieu of all or a portion of the required performance bond.

Each performance bond and each payment bond must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in Oregon. The performance and payment bonds must be payable to the contracting agency or to the public agency or agencies for whose benefit the contract was awarded and be in a form approved by the contracting agency.

Performance and payment bonds may be excused in cases of an emergency, or when the interest or property of the contracting agency would suffer material injury or delay or other cause. A declaration of the emergency must be made in accordance with ORS 279A.065.

A local contract review board can exempt certain contracts or classes of contracts from all or a portion of the requirement that good and sufficient bonds be furnished to ensure performance of the contract and payment of obligations incurred in the performance of the contract.

Payment Bonds

Payment bonds ensure that laborers, subcontractors and suppliers on the project are paid in the event the contractor doesn't pay them what is owed. Requiring a payment bond protects the district by enabling unpaid persons to bring a claim against the bond, rather than pursuing a claim against the district as the owner of the project. The amount of the payment bond must be equal to the full contract price.

RFPS/COMPETITIVE PROPOSALS

When authorized or required by an exemption granted under ORS 279C.335 after proper findings, a contracting agency may award a public improvement contract by competitive proposals instead of by traditional invitation to bid. A contract awarded under this section may

be amended only in accordance with rules adopted by the contracting agency in accordance with ORS 279A065.

With limited exceptions, competitive proposals are subject to the following requirements of competitive bidding:

- Advertisement under ORS 279C.360.
- Requirements for solicitation documents under ORS 279C.365.
- Disqualification due to a Construction Contractors Board listing as described in ORS 279C.375(3)(a).
- Contract execution and bonding requirements under ORS 279C.375 and 279C.380.
- Determination of responsibility under ORS 279C.375 (3)(b).
- Rejection of bids under ORS 279C.395; and
- Disqualification and prequalification under ORS 279C.430, 279C.435 and 279C.440.

However, competitive proposals are not subject to the following requirements of competitive bidding:

- First-tier subcontractor disclosure under ORS 279C.370; and
- Reciprocal preference under ORS 279A.120.

If the award of a public improvement contract advertised by the issuance of an RFP may be made without negotiation, the contracting agency may require proposal security as follows:

- In a form and amount determined to be reasonably necessary or prudent to protect the interests of the contracting agency.
- The contracting agency must retain the proposal security if a proposer who is awarded a contract fails to promptly and properly execute the contract and provide any required bonds or insurance.
- The contracting agency must return the proposal security to all proposers upon the execution of the contract, or earlier in the selection process.

A contracting agency may not be required to award a contract advertised by RFP based on price, but may award the contract to the responsible proposer whose proposal “is determined in writing to be the most advantageous to the contracting agency based on the evaluation factors set forth in the request for proposals and, when applicable, the outcome of any negotiations authorized by the request for proposals.” Other factors may not be used in the evaluation. For each RFP, the contracting agency must prepare a list of proposals received.

Notwithstanding the public records law, proposals may be opened so as to avoid disclosure of contents to competing proposers during, when applicable, the process of negotiation. Proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

However, a contracting agency may withhold from disclosure to the public any trade secrets, as defined in ORS 192.501, and information submitted to a public body in confidence, as described in ORS 192.502, that are contained in a proposal. The fact that proposals are opened at a public meeting, as defined in ORS 192.610, does not make their contents subject to disclosure, regardless of whether the public body opening the proposals fails to give notice of or provide for an executive session for the purpose of opening proposals.

If an RFP is canceled after proposals are received, the contracting agency may return a proposal to the proposer. The contracting agency must keep a list of returned proposals in the file for the solicitation.

As provided in the RFP, a contracting agency may conduct discussions with proposers who submit proposals that the agency has determined to be closely competitive, or to have a reasonable chance of being selected for award. The discussions may be conducted for the purpose of clarification, to ensure full understanding of, and responsiveness to, the solicitation requirements. The contracting agency must accord proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions of proposals may be permitted after the submission of proposals and before award for the purpose of obtaining best and final offers. In conducting discussions, the contracting agency may not disclose information derived from proposals submitted by competing proposers.

When provided for in the RFP, the contracting agency may employ methods of contractor selection including, but not limited to, award based solely on the ranking of proposals, negotiation with the highest ranked proposer, competitive negotiations, multiple-tiered competition designed to 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 methods, as authorized or prescribed by rules adopted under ORS 279A.065. When applicable, in any instance in which the contracting agency determines that impasse has been reached in negotiations with a highest ranked proposer, the contracting agency may terminate negotiations with that proposer and commence negotiations with the next highest ranked proposer.

The process for cancellation of RFPs and the rejection of proposals are the same as for ITBs (279C.395).

At least seven days before the award of a public contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency must issue to each proposer or post, electronically or otherwise, a notice of intent to award.

DISQUALIFIED BIDDERS

A contracting agency may disqualify a person from consideration for award of the agency's public improvement contracts and may also petition the Construction Contractor's Board to disqualify a person for reasons listed under ORS 279C.440(2). Under either circumstance, the person must be provided with notice and a reasonable opportunity to be heard.

The contracting agency or the Construction Contractor's Board must issue a written decision to disqualify a person that shall:

- State the reason for the action taken.
- Inform the disqualified person of the appeal right under ORS 279C.445 and 279C.450 if the decision to disqualify was issued by the contracting agency or ORS Chapter 183 if the decision to disqualify was issued by the Construction Contractors Board.
- A copy of the decision must be mailed or otherwise furnished immediately to the disqualified person.

LEGAL REMEDIES

Legal remedies for violations of public contracting laws are provided in the following statutes:

- ORS 279A.225 Protests and disputes regarding cooperative procurements
- ORS 279B.400 Judicial review of approvals of special procurements
- ORS 279B.405 Protests and judicial review of solicitations
- ORS 279B.410 Protests of contract award
- ORS 279B.415 Judicial review of protests of contract award
- ORS 279B.420 Judicial review of other violations
- ORS 279B.425 Review of prequalification and debarment decisions (procurements)
- ORS 279C.350 Appeal of exemption decision
- ORS 279C.450 Appeal of prequalification and disqualification decisions (public improvements)
- ORS 279C.460 Suit by or on behalf of adversely affected bidder or proposer
- ORS 279C.465 Action against successful bidder
- ORS 279C.470 Compensation for contractor when contract declared void

APPENDIX A: PUBLIC CONTRACT LAWS ATTACHMENT

Section I. Licensing and Registration.

The Contractor and all Subcontractors who perform construction Work on the Project must be registered with the Construction Contractors Board pursuant to ORS 701.035 to 701.055.

Any landscape Contractor who performs Work on the Project, as described in ORS 671.502(2), must hold a valid landscape Contractor's license issued under ORS 671.510 to 671.710.

Section II. Payment of Prevailing Rates of Wages.

The Contractor and Subcontractors engaged in the Work shall comply with all applicable requirements of ORS 279C.800 to 279C.870. The Contractor and Subcontractor shall pay to each Worker employed by the Contractor or Subcontractor the prevailing wage established by the Commissioner of the Bureau of Labor and Industries for Worker's trade or occupation. The current prevailing rates of wage are incorporated in the Contract Documents. Prevailing wages are not required to be paid to inmates employed through prison work programs. OR Const. Art. I, Section 41(8).

Pursuant to ORS 279C.825, the public agency shall pay a fee to the Bureau of Labor and Industries equal to one-tenth of one percent of the Contract Price, but not less than \$250 or more than \$7,500. The fee shall be paid at the time the public agency enters into a public works project.

The Contractor is urged to review the applicable statutes prior to commencement of the Work. This requirement to pay the prevailing wage rate will apply to all workers employed on the project by the prime contractor, subcontractors, subcontractors at every tier, and other persons doing or contracting to do the whole or any part of the Work required for the Project. The Contractor shall incorporate this provision in all subcontracts for the Work.

The Contractor and any Subcontractor engaged in the Work shall keep the prevailing wage rates for the Work posted in a conspicuous and accessible place in or about the Work Site. [ORS 279C.840(4)]

The Contractor or the Contractor's surety and every Subcontractor or the Subcontractor's surety shall file certified statements with the Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each Worker which the Contractor or the Subcontractor has employed for performance of the Work and further certifying that no Worker employed on the Work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents. A true copy of each certified statement must also be filed with the Commissioner of the Bureau of Labor and Industries. The certified statement must comply with all applicable provisions of ORS 279C.845.

There is no representation on the part of the Owner or the Architect that labor can be obtained at the hourly rates required by this contract. It is the responsibility of the Contractor to inform itself

as to local labor conditions and perspective changes or adjustments of wages rates. No increase in the Contract Sum will be allowed or authorized on account of a payment of wage rates in excess of the prevailing wage rates.

Each Subcontract shall include the provisions of this section and wages rates applicable to the Work performed under the Subcontract.

Section III. Contractor Requirements.

Pursuant to ORS 279C.505, the Contractor shall:

- Make payment promptly, as due, to all persons providing to the Contractor labor or material for the Work.
- Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any Subcontractor incurred in the performance of the Work.
- Not permit any lien or claim to be filed or prosecuted against the public agency on account of any labor or material furnished.
- Pay to the Department of Revenue all sums withheld from employees' wages pursuant to ORS 316.167.

Section IV. Hours of Work; Overtime Pay.

Pursuant to ORS 279C.520 and 279C.540, unless the Contractor is a party to a valid, existing collective bargaining agreement with a labor organization which provides otherwise, no person shall be employed for the Work for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires and in such cases, except for persons who provide personal services defined in ORS 279A.055, the employee shall be paid at least time and a half pay for:

- All overtime in excess of eight hours a day or 40 hours in any one week when the Work week is five consecutive days, Monday through Friday;
- All overtime in excess of 10 hours a day or 40 hours in any one week when the Work week is four consecutive days, Monday through Friday; and
- All Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Section V. Contractor's Relations with Subcontractors.

Pursuant to ORS 279A.110, the Contractor shall not discriminate against minority- or woman-owned or emerging small business enterprises in the awarding of subcontracts.

Pursuant to ORS 279C.580, the Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

- A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner under such contract; and
- An interest penalty clause that obligates the Contractor, if payment is not made within 30 days after receipt of payment from the public contracting agency, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. A Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from the public contracting agency or Contractor when payment was due.

The interest penalty shall be:

- For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and
- Computed at the rate specified in ORS 279C.515(2).

The Contractor shall include in each of its subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this section in each of its subcontracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor or supplier. [ORS 279C.580(4).]

These clauses are not intended to impair the right of a Contractor or a Subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

- Permit the Contractor or a Subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a Subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a Subcontractor to furnish a performance bond and a payment bond;
- Permit the Contractor or Subcontractor to make a determination that part or all of the Subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and
- Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:
 - A written notice of any withholding is issued to a subcontractor with a copy to the contracting agency specifying the amount to be withheld and specific causes for the

withholding under the terms of the contract, and actions to be taken by the Subcontractor in order to receive payment of the amounts withheld ; and

- A copy of any notice issued by a Contractor pursuant to sub-subparagraph (i) of this subparagraph has been furnished to the public contracting agency.
[ORS 279C.580(5)(c)]

For purposes of this contract, a “good faith dispute” means a documented dispute concerning:

- Unsatisfactory job progress.
- Defective Work not remedied.
- Third party claims filed or reasonable evidence that claims will be filed.
- Failure to make timely payments for labor, equipment and materials.
- Damage to prime Contractor or Subcontractor.
- Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum. [ORS 279C.580(5)(b)]

Section VI. Payment of Third-Party Claim.

Pursuant to ORS 279C.515(1), the following shall apply to this contract:

- If the Contractor fails, neglects, or refuses to make prompt payment of any Third-Party Claim for Work furnished to the Contractor or a Subcontractor by any person in connection with this Contract when due, the Owner may pay such Third-Party Claim to the person furnishing the Work and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The Owner may make payments by check or warrant naming both the Contractor and the person or entity entitled to payment under ORS 279.314. The payment to a Third-Party Claim in the manner authorized in this subsection will not relieve the Contractor or the Contractor’s surety from the Contractor’s obligations with respect to any unpaid Third-Party Claims.
- If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a Contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of the interest may not be waived. [ORS 279C.515(2)]
- If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. [ORS 279C.515(4)]

Section VII. Payment for Medical Services.

Pursuant to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person or entity that furnishes medical, surgical, or hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

Payment of a claim in the manner described in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

Section VIII. Workers Compensation.

All employers Working under this contract are subject employers that will comply with ORS 656.017 (Workers Compensation), or employers that are exempt under ORS 656.126. [ORS 279C.530]

Section XIX. Oregon Products.

Pursuant to ORS 279A.120(2)(a), the Contractor shall use products that have been manufactured in Oregon, provided that price, fitness, availability, and quality are otherwise equal.

Section VX. Recycling Requirements.

Pursuant to ORS 279C.510(1), the Contractor shall salvage or recycle construction and demolition debris if feasible and cost-effective.

Pursuant to ORS 279C.510(2), if any lawn or landscape maintenance is required, Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

Except as provided in the Specifications, the Contractor shall use recycled Materials to the extent required by ORS 279A.125.

Section VXI. Reports to Department of Revenue.

If the Contractor is not domiciled or registered to do business in the State of Oregon, and the Contract Price exceeds \$10,000, the Contractor shall submit reports to the Oregon Department of Revenue as required by ORS 279A.120(3).

Section VXII. Drug-Testing Program.

Pursuant to ORS 279C.505(2), it is a condition to this contract that the Contractor shall demonstrate that an employee drug testing program is in place.

Section VXIII. Miscellaneous Provisions.

The Contractor shall not provide or offer to provide, in connection with this contract, any appreciable pecuniary or material benefit to any officer or employee of the Owner in violation of ORS Chapter 244.

The contract may include a provision stating terms of compensation to a contractor when the contract is terminated for reasons considered to be in the public interest.

RESOLUTION ADOPTING PUBLIC CONTRACTING RULES

WHEREAS, _____ District (“District”) is an Oregon special district which is subject to Oregon’s public contracting rules; and

WHEREAS, the District is required to adopt public contracting rules consistent with the Public Contracting Code; and

WHEREAS, ORS 279A.065(5) provides that a local contracting agency may adopt its own rules of procedure for public contract that:

(A) Specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency; and

(B) Prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General;

NOW, THEREFORE, BE IT RESOLVED:

1. That, except as otherwise provided herein, the District hereby adopts the provisions of ORS 279A, 279B, and 279C, and the Oregon Attorney General’s Model Public Contracting Rules (“Model Rules”) as the contracting rules for the District, as such Model Rules now exist or are later modified.
2. That the District affirmatively adopts the public contracting rules described in Exhibit A, which is attached to this Resolution and incorporated herein by reference. The Rules described in Exhibit A shall be in addition to, and shall supersede any conflicting provisions in, the Model Rules.
3. That the District shall regularly review changes in the Public Contracting Code and the Model Rules to ensure that the Rules adopted in Exhibit A are consistent with current law.

APPROVED AND ADOPTED on _____, 20__.

Board President

ATTEST: _____
Board Secretary

SAMPLE ADVERTISEMENT FOR BIDS

Great Western Park District is requesting bids for the construction of a year-round hot tub facility in the Happy Times Park, located in No Place Like Home, Oregon. The hot tub facility is anticipated to accommodate 300 bathers, and includes changing rooms and shower facilities; outdoor hot tubs; a gazebo or other shade structure; a patio area; and adjacent horseshoe pit. The contract is for a public work project subject to ORS 279C.800 to 279C.850.

A complete solicitation document, including scope of work, sample contract, and design specifications, may be obtained at the District office, located at 777 Lucky Lane, in No Place Like Home, Oregon, or by calling (503) 777-7777.

Bids must be addressed to Bob Blather, Public Facilities Manager. Bids must be received by 3 p.m. on Thursday, June 23, 2010, at the District office, 777 Lucky Lane, No Place Like Home, Oregon. Bids will be publicly opened in the Administration conference room immediately following the bid deadline.

SAMPLE DELEGATION OF AUTHORITY POLICY

Except when otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the public agency's Board of Directors.

Unless otherwise limited by the Local Contract Review Board or these Rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by _____ or his/her designee, including the authority to enter into emergency contract pursuant to ORS 279B.080 and 279C.320(1).

SAMPLE PERSONAL SERVICES POLICY

Personal services shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The _____ or his/her designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

Personal service contracts do not require a competitive bidding process. When screening or selecting a personal service contractor, the District will consider qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment. The selection is based primarily on these factors rather than price.

Contracts with architectural, engineering, photogrammetric mapping, transportation planning or land surveying services. Unless otherwise provided in this Section, contracts for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services shall be awarded according to ORS 279C.110(3). A contract for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services may be entered into by direct appointment if such contract is estimated not to exceed _____ in a calendar year, or if the project described in the contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded under these Rules, and the new contract is a continuation of that project.

SAMPLE DISPOSAL OF SURPLUS PROPERTY POLICY

Surplus property is defined as any personal property of the District that has been determined by the _____ or designee as being of no use or value to the District.

The _____ or designee may dispose of surplus property as follows: The _____ shall submit a request to the Board of Directors for a declaration that certain property is of no further use or value to the District. The Board of Directors shall, by resolution, declare such property "surplus" and authorize the means by which the _____ may dispose of the property, including granting the _____ discretion to dispose of the property in any appropriate manner. The Board of Directors may require the _____ to obtain an appraisal of the property prior to disposition.

Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large, including, but not limited to, the following:

- (a) Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the District may purchase surplus property from the District only at an advertised auction, and only if the employee submits the highest bid for the property.
- (b) Donation. Surplus property may be donated or sold to any nonprofit organization, and any other local government, or any state or federal program created to dispose of surplus property.
- (c) Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

SAMPLE EMERGENCY CONTRACT POLICY

Emergency shall be defined as follows: Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.

The _____ along with the Board of Directors shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor shall be documented.

Emergency contracts may be awarded as follows:

- (a) Goods and Services. Emergency contracts for procurements of goods and services may be awarded pursuant to ORS 279B.080 and the Delegation of Authority Policy of these Rules.
- (b) Public Improvements. The Board of Directors hereby adopts OAR 137-049-0150 as its contracting rules for awarding a public improvement contract under emergency conditions.

SAMPLE SPECIAL PROCUREMENTS AND EXEMPTIONS POLICY

The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.

The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS

279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

SAMPLE SOLE SOURCE PROCUREMENT POLICY

When necessary, the District's Local Contract Review Board, or _____, or designee may enter into a sole source procurement pursuant to ORS 279B.075.

SAMPLE PUBLIC CONTRACTING RULES AND PROCEDURES POLICY

The _____ Contract Review Board has adopted as its public contracting rules ORS 279, A, B and C and the Attorney General's Model Public Contracting Rules, OAR Chapter 137, Division 46 (General Provisions Related to Public Contracting), Division 47 (Public Procurements For Goods or Services), Division 48 (Consultant Selection: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services), Division 49 (General Provisions Related to Public Contracts for Construction Services), subject to the exceptions provided in this document.

Definitions

“Award” means the selection of a person to provide goods, services or public improvements for a specified price or prices.

“Bid” means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.

“Bidder” means a person that submits a bid in response to an invitation to bid.

“Contracting agency,” means a public body authorized by law to conduct procurement.

“Contract Review Board” means the Board of Directors for _____.

“Days” means calendar days.

“District” means the _____, a political subdivision of the State of Oregon.

“Exemptions” mean exemptions from the formal competitive selection procedures for **public improvement** contracts and **personal service** contracts for architects, engineers, land surveyors,

and related services, as well as contracts and classes of contracts designated as “special procurements” under ORS 279B.085.

“Person” means a natural person capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a for profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a public body.

“Personal Services” means services described as follows:

- A. Personal services shall mean services that call for specialized skills, knowledge and resources in the application of highly technical or scientific expertise or the exercise of professional, artistic or management discretion or judgment. Qualifications and performance history, expertise, knowledge and creativity and the ability to exercise sound professional judgment are typically the primary considerations when selecting a personal services contractor, with price being secondary. In addition to the general description of personal service contracts, the following classes of contracts are personal service contracts: Contracts for services performed as an independent contractor in a professional capacity, including but not limited to: the services of an accountant, attorney, architect, architectural or land use planning consultant, construction manager, information technology consultant, registered professional engineer, financial/investment/insurance advisor, underwriter, appraiser or surveyor, data processing consultant.
- B. Personal Services Contracts Do Not Include: Contracts primarily for equipment, supplies or materials. For example, a contract to supply all hardware and standard software is not a Personal Services Contract, but a contract with a technology consultant to design or develop a new computer system is a Personal Services Contract.

“Public Improvement” means projects for construction, reconstruction, or major renovation on real property by or for the District. “Public Improvements include emergency work, minor alteration, ordinary repair, maintenance necessary in order to preserve a public improvement.

“Public Contract” means any purchase, lease, or sale by the District of personal property, public improvements, or services other than agreements, which are for personal and professional services.

“Proposal” means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on evaluation of factors other than, or in addition to, price. A proposal may be made in response to a request for proposals or an informal solicitation.

“Quote” means a price offer made in response to an informal solicitation to provide goods, services or public improvements.

“Request for Proposal” (RFP) means the solicitation of written competitive proposals, or offers, to be used as a basis for making an acquisition, or entering into a contract when specifications and price will not necessarily be predominant award criteria.

1) **Personal Services.**

- A) **Definition.** “Personal Services” shall be defined to include those services that require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects; engineers; surveyors, attorneys; accountants; auditors; agent of record; computer programmers; proper managers; artists; designers; performers; and consultants. The Board Chairman or designee shall have the authority to determine whether a particular service is a “personal service” under this definition.
- B) **Contracts for Personal Services under \$25,000.** Except as provided in Paragraph D, below, non-exempt personal services contracts, including contracts, including contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, for a contract amount of less than \$25,000 may be awarded from proposals that are solicited informally, either orally or in writing. If it is practicable, proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than three (3) qualified proposers submit proposals. If fewer than three (3) qualified proposes submit proposals, the efforts made to solicit proposals shall be documented in the District’s files. The Selection may be based on criteria including but not limited to, each proposer’s:
- (a) Particular capability to perform the services required;
 - (b) Experienced staff available to perform the services required, including each proposer’s recent, current and projected workloads;
 - (c) Performance history;
 - (d) Approach and philosophy used in providing services;
 - (e) Fees or costs; and
 - (f) Geographic proximity to the project or the area where the services are to be performed.

Price may be considered, but not be the determining factor. Proposals may Also be solicited in using a written request for proposal, at the District’s discretion.

- C) **Contracts for Personal Services of \$25,000 and over.** Except as provided in Paragraph D, below, non-exempt personal services contracts,

for a contract amount of \$25,000 or greater shall be awarded according to the procedures described in ORS 279B.060 and OAR 137-047-0260.

- D) **Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.** Contracts for Architectural, Engineering and Surveying Services, and Related Services, shall be awarded in accordance with the procedures described in ORS 279C. 110 and OAR 137-048.
- E) **Exempt Personal Services Contracts.** Personal Services contracts existing on the effective date of these Rules are exempt and hereby extended by direct appointment. Contracts for accounting, legal, underwriting, and investments, financial and insurance advising services are exempt.

2) **Delegation.**

- A) Except as otherwise provided in these rules, the powers and duties of the Local Contract Review Board under the Public Contracting Code must be exercised and performed by the Board of Directors.
- B) Unless expressly limited by the Local Contract Review Board or these rules, all powers and duties given or assigned to contract agencies by the Public Contracting Code may be exercised or performed by the Board Chairman or the Chairmen's designee, including the authority to enter into emergency contracts pursuant to ORS 279B.080.
- C) All public contracts estimated to cost \$150,000 or more in a calendar year must be approved by the Board of Directors.
- D) All public contracts estimated to cost less than \$150,000 in a calendar year may be entered into by the Board Chairman or designee without Board approval. However, either the Board or the Board Chairman may enter into emergency contracts or designee pursuant to Paragraph 7 of these Rules, regardless of dollar limits, subject to ORS 294.481.

3) **Special Procurements and Exemptions.**

- A) The Local Contract Review Board may exempt from competitive bidding certain contracts or classes of contracts for procurement of goods and services according to the procedures described in ORS 279B.085.
- B) The Local Contract Review Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Local Contract Review Board

may authorize the contract to be awarded using a Request for Proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

4) **Small Procurements (Under \$10,000).**

- A) Public contracts under \$10,000 are not subject to competitive bidding requirements. The Board Chairman or designee shall make a reasonable effort to obtain competitive quotes in order to ensure the best value for the District.
- B) The District may amend a public contract awarded as a small procurement beyond the \$10,000 limit in accordance with OAR 137-047-0800

5) **Intermediate Procurements.**

- A) A contract for procurement of goods and services estimated to cost between \$5,000 and \$150,000 in a calendar year, or a public improvement that is estimated to cost between \$5,000 and \$150,000 in a calendar year, may be awarded according to the processes for intermediate procurements described in ORS 279B.070.
- B) The District may amend a public contract awarded as an intermediate procurement beyond the stated limitations in accordance with OAR 137-047-0800, provided the cumulative amendments shall not increase the total contract price to a sum that is greater than 25% of the original contract price.

6) **Electronic Advertising.**

- A) Pursuant to ORS 279C.360 and ORS 279B.055C(4c) , electronic advertisement of public contracts in lieu of newspaper publication is authorized when it is cost-effective to do so. The Board Chairman or designee shall have the authority determine when electronic publication is appropriate, and consistent with the District's public contracting policies (OAR 137-47-0270(3)).

7) **Emergency Contracts.**

- A) Emergency shall be defined as follows: “Circumstances that (a) could not have reasonably been foreseen; (b) create a substantial risk of loss, damage, or interruption of services or a substantial treat to property, public health, welfare or safety; and (c) require prompt execution of a contract to remedy the condition.”
- B) The Board Chair, or designee shall have authority to determine when emergency conditions exist sufficient to warrant an emergency contract.

The nature of the emergency and the method used for the selection of the contractor shall be documented.

- C) Emergency contract may be awarded as follows:
 - I) Good and Services. Emergency contracts for procurement of goods and services may be awarded pursuant to ORS 279B.080 and Paragraph 2, “Delegation” of these Rules.
 - II) Public improvements. The District hereby adopts OAR 137-049-0150 as its contacting rules for awarding a public improvement contract under emergency conditions.

8) **Disposal of Surplus Property.**

- A) “Surplus Property” is defined as any personal property of the District that has been determined by the Board Chairman as being of no value to the District.
- B) The Board Chairman may dispose or surplus property as follows:
 - 1) For surplus property deemed to have an estimated salvage value of \$50,000 or less, the Board Chairman may authorize the property to be sold, donated or to be destroyed.
 - 11) For surplus property deemed to have an estimated salvage value of more than \$50,000, the Board of Directors may authorize the Board Chairman to dispose of the property in any appropriate manner.
- C) Surplus property may be disposed of in the manner that is most advantageous to the District or the community at large, including, but not limited to, the following:
 - 1) Public Auction. Auctions must be sufficiently advertised in the manner that is most likely to obtain a competitive bidding pool for the property. Employees of the District may purchase surplus property from the District only at an advertised auction, and only if the employee submits the highest bid for such property.
 - 11) Donations. Surplus property may be donated or sold to any non-profit organization, any other local government, or any state or federal program created to dispose of surplus property.
 - 111) Disposal. Surplus property determined to be of insufficient value to merit auction or donation may be disposed of in any appropriate manner.

9) **Appeals of Prequalification Decisions and Debarment Decisions.**

- A) Review of the District's prequalification and debarment decisions shall be as set forth in ORS 279B.425. The following additions procedures shall apply to hearing on such decisions by the LCRB:
- 1) Notice shall be submitted in writing to the Board Chairman. Appeals filed after the filing period stated in ORS 279B.425 shall not be heard.
 - 11) Upon opening the hearing, District staff shall explain the District's decision being appealed and the justification thereof. The Appellant shall then be heard. Time for the appellant's testimony shall be established by the Board Chair. The appellant may submit any testimony or evidence relevant to the decision or the appeal. Any party requesting time to testify in support of the appeal shall then be heard, subject to time limits established by the Board Chair.
 - 111) Once all testimony and evidence in support of the appeal is heard, any party requesting time to testify in support of the District's decision shall be provided time to be heard, with time limits established by the Board Chair. Any party testifying in opposition to the appeal may submit any testimony or evidence relevant to the decision or the appeal. Once all testimony in opposition to the appeal has been heard, the appellant may request time to provide rebuttal testimony. At the conclusion of the rebuttal testimony, if any, the Board Chair shall close the hearing.
 - 1V) When issued in writing according to the requirements of ORS 279B.425, the LCRB's decision and order shall be final.

10) **Purchases from Federal Catalogs.**

- A. Subject to applicable Board approval requirements stated in the District's Contracting Rules, the District may purchase goods from federal catalogues without competitive bidding when the procurement is pursuant to 10 USC 381, the Electronic Government Act of 2002 (Public Law 107-347). Purchases under other federal laws will be permitted upon a finding by the Local Contract Review Board that the law is similar to such Act in effectuating or promoting transfers of property to contracting agencies.

Type of Procurement	Oregon Statutes
<u>Direct Selection (Small Procurements):</u> Procurements of Products, services or supplies Are exempt from competitive bidding when their value is less than a specified amount.	Exempt when less than \$10,000 ORS 279B.065 OAR 137.047.0265
<u>Informal Competitive Quotes (Intermediate Procurement):</u>	Required for procurements between \$5,000 and \$150,000 ORS 279B.070 OAR 137.047.0270
<u>Formal Competitive Sealed Bids:</u> Procurement of products, services or supplies requires formal written competitive proposals when their value exceeds a specified amount.	Required when value exceeds \$150,000. Local Contract Board sets amount based on upper limits established for Informal Quotes ORS 279B.055 & .060 OAR 137.047.0260-0263
<u>Sole Source:</u> Allows agencies to award a contract for goods or services without competition.	If value is \$50,000 or less, approval may be given by Board Chair. Written findings and public notice required for sole source purchases greater than \$50,000. Requires Board to determine its own rules. ORS 279B.075 OAR 137.047.0275
<u>Emergency Procurement:</u> May enter into public contracts without competitive bid under emergency situations.	Allows head of agency or designee to authorize a defined emergency procurement in writing. ORS 279B.080 OAR 137.047.0280

<u>Type of Procurement</u>	<u>Oregon Statutes</u>
<u>Disposal of surplus and abandoned property</u>	Requires Board to determine its own procedure. ORS 279A.280
<u>Personal Services Contracts</u>	Requires agencies to define “personal services” and establish procedures for contracting. ORS 279A.070
<u>Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying and Related Services</u>	Must adopt procedures for screening and selection. Requires selection be determined based on qualifications for the type of professional service. 279C.105
<u>Notice of Intent to Award a Contract</u>	Requires notice to be given seven (7) days Before the award of a public improvement contract to each bidder or proposer. ORS 279C.375 OAR 137.049.0395
<u>Pre-Qualification Process</u>	Agency may require Pre-Qualification for contracts to provide particular types of goods and services. ORS 279B.120 OAR 137.047.0550 ORS 279C.430 OAR 137.049.0220

SAMPLE PURCHASING OF GOODS AND SERVICES POLICY

Purpose

The purpose of this policy is to establish guidelines regarding the purchasing of goods and non-personal services, governed by State statute, primarily ORS 279A and 279B, as modified and adopted by the Board of Directors, _____.

Policy

_____ is subject to the Model Rules adopted by the Attorney General under ORS 279A, 279B, and 279C, which includes Divisions 46, 47, 48, and 49 in the Attorney General's Public Contracts Manual for contracting activities. Division 47 is applicable to public procurement of goods and services contracts specifically.

1. Competitive Quotes

a. Small Procurements

When the actual amount of the contract does not exceed \$10,000. The District is exempt from competitive procurement, pursuant to ORS 279B.065: however the District shall, when practical, obtain competitive quotes; less than \$500, quotes are not necessary.

b. Intermediate Procurements

When the actual amount of the contract is more than \$5,000, but not more than \$150,000, the District shall, at a minimum, obtain three (3) complete quotes based on written specifications. A written record of the sources of the quotes or proposals received shall be kept. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

2. Competitive Bids

When the actual Contract amount exceeds \$150,000, the District shall proceed with a formal competitive bidding procedure, which includes budget authority, developing specifications, advertising, formal bid opening, bid analysis and bid award to the lowest responsible bidder. Note: Upon completion of competitive procurement procedures, refer to Policy for Purchasing Authority procedures.

3. Special Procurements

The District's Board of Directors, acting as the Local Contract Review Board may exempt certain contracts or classes of contract for procurement of goods and services from competitive bidding requirements.

4. Purchasing Through Government Agency Contracts (Cooperative Procurements ORS 279A.205)

Whenever feasible, the District may purchase from contracts available through governmental agencies, which includes, but is not limited to State, City, County, and Special Districts. Contracts between agencies utilizing an existing solicitation or current requirement requires that:

- a. The original contract meets competitive procurement requirements.
- b. The original contract identifies the cooperative procurement group or each participating purchasing contracting agency and specifies the estimated contract requirements, and
- c. No material change is made in the terms, conditions or prices of the contract from the original contract.

Procedures

1. Obtaining Competitive Quotes (for contracts under \$150,000)

- a. Budget Authority - The item or contract contemplated for purchase must be funded in the current adopted budget (including transfers and supplemental budget adoptions).
- b. Specifications - Specifications must be developed and reflect all necessary attributes desired in the item being requested. It is important that specifications be written so as not to expressly or implicitly require any product of any particular manufacturer or seller.
- c. Public Notice - All rules related to public notice must be followed, and the bid must be advertised in a publication of general circulation.
- d. Obtaining Quotes - Quotes may be obtained by phone calls, mail, e-mail or faxing **written specifications** to specific vendors, or by advertising that quotes are being sought. The objective of obtaining quotes is to obtain the desired product at the lowest cost to the District without incurring the cost and time involved in the competitive bid process. The method of obtaining quotes is therefore determined by the situation. Whichever method of obtaining is selected, all efforts should be made to obtain a sufficient number of quotes, three to five in most cases, to encourage competition among vendors and to secure the lowest price for the District.
- e. Documentation - All quotes must be clearly documented on the Request for Quote Worksheet. The rationale for the method of obtaining quotes must also be clearly explained in writing. If at least three quotes cannot be obtained, the effort to obtain the quotes must be included in the documentation.

- f. Bid Closing - A deadline for submission of bids will be set at least seven days after public notice has been given.
- g. Bid Opening - The bid opening will take place immediately after the deadline for submission of bids. The objective of the bid opening is to document the bids of each vendor and to determine the apparent low bidder who is responsive and responsible.
- h. Bid Analysis - The department requesting the purchase is responsible for evaluating the submitted bids in order to recommend the award of a contract to the Board of Directors.
- i. Bid Award - When the contract amount exceeds \$150,000, only the Board of Directors has the authority to award a contract for goods or services.
- j. Notice of Intent - At least seven (7) days before the award of a public contract for goods or services, the District shall post or provide to each bidder notice of the District's intent to award a contract.

Goods & Non-Personal Services Procedures

Purchase Amount	Procedure
\$500	No quotes or bids required
> \$ 500 and < \$ 10,000	Informally Solicited Quotes
> \$ 10,000 Up to \$150,000	Formally Solicited Quotes 1. Written specifications required for quotes 2. Attempt to obtain at least 3 quotes 3. Document attempts and quotes 4. Board Approval when over \$150,000
> \$150,000	Competitive Bidding required 1. Board Approval

**Goods & Non-Personal Services Procedures
Selection Procedure**

Budget Authority	Develop Written Specifications	Board Approval to Advertise
Less than \$10,000	Less than \$150,000	Advertise
Yes	Yes	Bid Opening
Obtain Quotes Where Practical	Obtain Quotes	Bid Analysis
Award	Documentation of Quotes	7 day Notice of Intent to Award

Board Approval
If Award is over
\$150,000

Board Approval
to Award

Award

Award

Note: Must advertise in a publication of general circulation or electronically if over \$150,000 in accordance with OAR 137-047-0300.

Purchasing of Goods or Services

General Origin of Rules

The following table shows the statutory or other legal basis for each public contracting rule that are relevant to District operations:

Rule	Origin
Definitions	137-047-0100
Methods of Source Selection	137-047-0250
Competitive Sealed Bidding	137-047-0255
Multi-step Sealed Bids	137-047-0257
Competitive Sealed Bidding	137-047-0260
Procedures for Competitive Range and Multi-step	137-047-0261
Competitive Range, Discussions and Negotiations	137-047-0262
Multi-step Sealed Proposals	137-047-0263
Small Procurements	137-047-0265
Intermediate Procurements	137-047-0270
Sole Source Procurements	137-047-0275
Emergency Procurements	137-047-0280
Special Procurements	137-047-0285
Cooperative Procurements	137-047-0290
Public Notice	137-047-0300
Bids or Proposals are Offers	137-047-0310
Facsimile Bids and Proposals	137-047-0320
Electronic Procurement	137-047-0330
Offer Preparation	137-047-0400
Offer Submission	137-047-0410
Pre-Offer Conferences	137-047-0420
Addenda to Solicitation Documents	137-047-0430
Pre-Closing Modifications or Withdrawal of Offers	137-047-0440
Receipts, Opening, and Recording Offers	137-047-0450
Late Offers, Withdrawals and Modifications	137-047-0460
Mistakes	137-047-0470
Time for Agency Acceptance	137-047-0480
Extension of Time for Agency Acceptance	137-047-0490

Purchasing of Goods or Services

Rule	Origin
Responsibility of Bidder or Propers	137-047-0500
Qualified List of Products	137-047-0525
Prequalification of Prospective Offers	137-047-0550
Debarment of Prospective Offer	137-047-0575
Offer Evaluation and Award	137-047-0600
Notice of Intent to Award	137-047-0610
Documentation of Award	137-047-0620
Availability of Award Decisions	137-047-0630
Rejection of Offer	137-047-0640
Rejection of all Offers	137-047-0650
Cancellation of Procurement or Solicitation	137-047-0660
Disposition of Offers	137-047-0670
Protests and Judicial Review of Special Procurements	137-047-0700
Protests and Judicial Review of Sole Source	137-047-0710
Protests and Judicial Review of Multi-Tier & Multi-Step Solicitations	137-047-0720
Protests and Judicial Review of Solicitations	137-047-0730
Protests and Judicial Review of Contract Award	137-047-0740
Protests and Judicial Review of Qualified Products	137-047-0745
Judicial Review of Other Violations	137-047-0750
Review of Prequalification and Debarment Decisions	137-047-0760
Contract Amendments	137-047-0800
Termination of Price Agreements	137-047-0810

SAMPLE PUBLIC IMPROVEMENT PROJECTS POLICY

Purpose

The purpose of this policy is to establish guidelines regarding contracting for public improvement projects, governed by State statute, primarily ORS 279A and 279C, as modified and adopted by the Board of Directors, _____. Policies and procedures regarding architectural and engineering services are addressed in personal services contracts.

Policy

_____ District is subject to the Model Rules adopted by the Attorney General under ORS 279A, 279B, and 279C, which includes Division 46, 47, 48, and 49 in the Attorney General's Public Contracts Manual for contracting activities. Division 49 applies to public improvement projects specifically. The following policy governs public improvement contracts.

“Public Improvement” refers to the construction, reconstruction, major renovation or painting carried on or contracted for by a public agency. “Public Improvement” does not include emergency work and ordinary repair necessary in order to preserve a public improvement.

1. **Competitive Quotes**

a. Small Procurements

When the actual amount of the public improvement contract does not exceed \$10,000 the District is exempt from competitive bidding, pursuant to ORS 279B.065: however the District shall, when practical, obtain competitive quotes.

b. Intermediate Procurements

When the actual amount of the public improvement contract is more than \$10,000, but not more than \$150,000, the District shall, at a minimum, obtain three (3) competitive quotes from written specifications. A written record of the sources of the quotes or proposals received shall be kept. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

2. **Competitive Bids**

When the actual contract amount exceeds \$100,000, the District shall proceed with a formal competitive bidding procedure, which includes budget authority, developing specifications, advertising, formal bid opening, bid analysis and bid award to the lowest responsive, responsible bidder.

3. **Public Improvement Requirements**

a. Performance and Payment Bonds - Public Improvement Contracts require the Contractor to execute and deliver to the agency a Performance and Payment Bond in a sum equal to the Contract Price, unless waived under ORS 279C.380(4), or exempt from the required performance bond pursuant to ORS 279C.390.

b. Prevailing Wages - Public Improvement Contracts in excess of \$50,000 require that the hourly rate of a wage paid by the contractor or subcontractor to a worker shall not be less than the prevailing rate of a wage for an hour's work in the same trade or occupation in the locality where the labor is performed.

c. First-Tier Subcontractor Disclosure - Public improvements with a contract value of more than \$100,000, require that a bidder shall submit a disclosure of any first-tier subcontractors that will be furnishing labor or materials in connection with the public improvement (ORS 279C.370), within two working hours of the date and time of the deadline when bids are due.

4. **Special Procurements**

The Board of Directors, acting as the Local Contract Review Board, may exempt certain public improvement contracts from competitive bidding requirements.

Procedures

1. **Obtaining Competitive Quotes** (For contracts under \$100,000)

a. Budget Authority - The project must be funded in the current adopted budget (including transfers and supplemental budget adoptions).

- b. Specifications - Specifications must be developed and reflect all necessary attributes desired in the item being requested. It is important that specifications be written so as not to expressly or implicitly require any product of any particular manufacturer or seller.
 - c. Obtaining Quotes - Quotes may be obtained by phone calls, mail, e-mail or faxing **written specifications** to specific vendors, or by advertising that quotes are being sought. The objective of obtaining quotes is to obtain the desired product at the lowest cost to the District without incurring the cost and time involved in the competitive bid process. The method of obtaining quotes is therefore determined by the situation. Whichever method of obtaining quotes is selected, all efforts should be made to obtain a sufficient number of quotes, three to five in most cases, to encourage competition among vendors and to secure the lowest price for the District.
 - d. Documentation - All quotes must be clearly documented on the Request for Quote Worksheet. The rationale for the method of obtaining quotes must also be clearly explained in writing. If at least three quotes cannot be obtained, the effort to obtain, the quotes must be included in the documentation.
 - e. Award - Once a sufficient number of quotes have been obtained, the purchase may be awarded to the vendor with the lowest price quote, provided that the quote is responsible to the purchase specifications.
2. **Obtaining Competitive Bids (For Contracts over \$100,000)**
- a. Budget Authority - The contract project must be funded in the current adopted budget.
 - b. Specifications - Specifications must be developed and should reflect all necessary attributes desired in the item being requested. It is important that specifications be written so as not to preclude any name brands or manufacturers of similar or competing products.
 - c. Advertising - All rules related to advertising must be followed, and the bid must be advertised in a publication of statewide circulation.
 - d. Bid Closing & First Tier Subcontractor Disclosure - The deadline for submission of bids will be set at 2:00 pm on Tuesday, Wednesday, or Thursday. Within two (2) working hours of the Bid Closing for a Public Improvement Contract greater than \$100,000, all bidders shall submit a disclosure form, identifying any first-tier subcontractors that will be furnishing labor or materials on the Contract.

- e. Bid Opening - The bid opening will take place immediately after the deadline for submission of bids. The objective of the bid opening is to document the bids of each vendor and to determine the apparent low bidder who is reasonable and responsive (ORS 279C.375 (3)).
- f. Bid Analysis - The department requesting the purchase is responsible for evaluating the submitted bids in order to recommend the award of a contract to the Board of Directors.
- g. Bid Award - In the competitive bidding process, only the Board of Directors has the authority to award a contract for services.
- h. Notice of Intent - At least seven (7) days before the award of a public improvement contract, the District shall post or provide to each bidder notice of the District's intent to award a contract. The notice and the manner in which the notice is posted or issued must conform with rules adopted under ORS 279A.065.

Public Improvement Projects

Selection Procedures

Budget Authority	Develop Written Specifications	Board Approval To Advertise
		Advertise See Note "A"
Less than \$5,000	Less than \$100,000	Bid Opening See Note "B"
Yes	Yes	
Obtain Quotes Where Practical	Obtain Quotes	Bid Analysis
Award	Documentation of Quotes	7 day Notice of Intent to Award
	Award	Board Approval To Award
		Award

Note: A) Must advertise in a publication of statewide circulation if over \$100,000.

B) Public Improvement contracts with a contract value of more than \$100,000 require that a bidder shall submit a disclosure form of any first-tier subcontractor that will be furnishing labor or materials in connection with a public improvement, within two hours of the date and time of the deadline when bids are due.

Public Improvement Projects

General Origin of Rules

The following table shows the statutory or other legal basis for each public contracting rule contained within this Policy and Procedure Manual that are relevant to District operations:

RULE	Origin
Application	137-049-0100
Policies	137-049-0110
Definitions	137-049-0120
Competitive Bidding Requirement	137-049-0130
Contracts Construction Other than Public Improvements	137-049-0140
Emergency Contracts	137-049-0150
Intermediate Procurement--Competitive Quotes	137-049-0160
Solicitation Documents; Required Provisions	137-049-0200
Notice of Advertising Requirements	137-049-0210
Prequalification of Offers	137-049-0220
Eligibility to Bid or Propose: Registration or License	137-049-0230
Pre-Offer Conferences	137-049-0240
Addenda to Solicitation Documents	137-049-0250
Request for Clarification or Change; Protests	137-049-0260
Cancellation of Solicitation Documents	137-049-0270
Offer Submissions	137-049-0280
Bid or Proposal Security	137-049-0290
Facsimile Bids and Proposals	137-049-0300
Electronic Procurement	137-049-0310
Pre-Closing Modification or Withdrawal	137-049-0320
Receipt Opening and Recording Offers	137-049-0330
Late Bids, Late Withdrawals and Late Modifications	137-049-0340
Mistakes	137-049-0350
First-Tier Subcontractors; Disclosure and Substitution	137-049-0360
Disqualification of Persons	137-049-0370
Did or Proposal Evaluation Criteria	137-049-0380
Offer Evaluation and Award	137-049-0390
Notice of Intent to Award	137-049-0395
Documentation of Award	137-049-0400
Time for Contracting Agency Acceptance	137-049-0410
RULE	Origin

Negotiation with Bidders Prohibited	137-049-0420
Negotiations When Bids Exceed Cost Estimate	137-049-0430
Rejection of Offers	137-049-0440
Protest of Contract Selection/Award	137-049-0450
Performance and Payment Security	137-049-0460
Substitute Contractor	137-049-0470
Foreign Contractor	137-049-0490
Alternative Contracting Methods	137-049-0600 to 137-049-0690
Contract Provisions	137-049-0800 to 137-049-0910

SAMPLE PERSON SERVICE CONTRACT POLICY

For non-state agencies (such as special districts), “personal services” are whatever the governing body decides they will be, by rule or legislative act. [See ORS 279A.055.] ORS 279A.070 permits a local contracting agency to adopt rules governing personal services contracts, and requires them to create procedures for screening and selection. Typical examples of personal services contracts are those with accountants, attorneys, consultants, physicians, artists, architects, engineers, land surveying and related services (procured under ORS 279C.105 or 279C.110).

Note: The Attorney General’s Public Contracting Code and Model Rules for personal services contracts expressly do not apply to local contracting agencies. Thus, there are no “default” rules for personal services contracts. A district that wants to enter into personal services contracts without competitively bidding those contracts, must adopt rules for doing so.

Purpose

The purpose of this policy is to establish guidelines for authorization regarding personal services contracts, governed by State statutes, primarily ORS 279A and 279C, as modified and adopted by the Board of Directors.

Policy

_____ District is subject to the Model Rules adopted by the Attorney General under ORS 279A, 279B, and 279C, which includes Division 46, 47, 48 and 49 in the Attorney General’s Public Model Rules for contracting activities. Division 46 and 47 are applicable to Personal Services contracts, while Division 48 rules are limited to professional services to be performed by a licensed Architect or a Registered Professional Engineer (A&E). The following policy governs all personal services contracts; subset apply only to A&E Contracts, and are identified as such.

Definition

Personal services shall be defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects, engineers, surveyors, attorneys, accountants, auditors, computer programmers, artists, designers, performers, and consultants. The District Manager or his/her designee shall have the authority to determine whether a particular service is a "personal service" under this definition.

Personal service contracts do not require a competitive bidding process. When screening or selecting a personal service contractor, the District will consider qualifications, performance history, expertise, knowledge and creativity, and the ability to exercise sound judgment. The selection is based primarily on these factors rather than price.

Selection Process for Personal Service Contracts other than A&E

a. Informal Selection Process (Under \$_____)

When the estimated cost of Consultant Services is not expected to exceed \$_____, proposals may be awarded that are solicited informally, either orally or in writing. If it is practicable, proposals shall be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than three qualified proposers submit proposals. If fewer than three qualified proposers submit proposals, the efforts made to solicit proposals shall be documented in the District's files. The selection may be based on criteria including, but not limited to, each proposer's:

- i. Particular capability to perform the services required;
- ii. Experienced staff available to perform the services required, including each proposer's recent, current and projected workloads;
- iii. Performance history;
- iv. Approach and philosophy used in providing services;
- v. Fees or costs; and
- vi. Geographic proximity to the project or the area where the services are to be performed.

Price may be considered, but need not be the determining factor. Proposals may also be solicited using a written request for proposal, at the District's discretion.

b. Formal Selecting Process (Over \$_____)

The formal procedure shall be used whenever the estimated cost of Consultant exceeds \$_____. Consultation Services may be obtained using the formal selection procedure set forth in OAR 137-047-0255 or 137-047-0260.

Architect, Engineer, and related Services are a special class of Personal Services Contracts, which are defined by ORS 279C.100 and are subject to special provisions of these rules.

Selection Process for A&E Consultants

a. Direct Appointment Process (Under \$50,000)

Consulting Services may be entered into a contract directly, when the estimated cost does not exceed \$50,000, as set forth in OAR 137-048-0200.

b. Informal Selection Process (Under \$150,000)

When the estimated cost of Consultant Services is not expected to exceed \$150,000, the informal selection procedure set forth in OAR 137-048-0210; shall be used.

c. Formal Selecting Process (Over \$150,000)

The formal procedure shall be used whenever the estimated cost of Consultant Services exceeds \$150,000, using the formal selection procedure set forth in OAR 137-048-0220.

Procedures

The following procedures must be used for solicitation of A&E contracts:

Competitive Procurement

a. Direct Appointment Process

A&E Consultation Services may be appointed directly without completing the competitive procurement process if the contract is under \$50,000. The appointment can include, but not be limited to: District's current list of consultants (OAR 137-048-0120); or another public contracting agency's current list of consultants, pursuant to an interagency or intergovernmental agreement.

b. Informal Selection Process

When the estimated cost is equal to or less than \$150,000 the following informal selection process should be used:

i. Written Solicitation - Solicitations inviting written proposals shall be sent to a minimum of five (5) prospective A&E Consultants to include at least:

- (1) Description of project
- (2) Anticipated contract performance schedule
- (3) Conditions or limitations
- (4) Date and time proposals are due
- (5) Criteria upon qualified consultant will be selected
- (6) Statement that proposer are responding at the own expense
- (7) Statement directing proposers to protest procedures set forth in Division 48 of these rules.

ii. Review Proposals - All proposals shall be reviewed and the three most qualified consultants selected and ranked.

iii. Competitive Informal Selection - The informal selection procedure shall be competitive to the maximum extent practicable and the selection and ranking based on criteria which include, but not limited to consultant's capacity to perform; number of experienced staff;

performance history; project approach and design philosophy; compensation information; geographic proximity to the project.

- iv. Negotiate Scope of Services- The District shall discuss and refine the scope of services for the project and shall negotiate conditions, including but not limited to a compensation and performance schedule with the highest ranked consultant.

Note: If the scope of a project is revised during negotiations and the estimated cost of the consultant's services exceeds \$150,000, then the informal process will be terminated and the services of a qualified consultant shall be solicited using the formal selection process below.

c. Formal Selection Process

This formal procedure shall be used whenever the estimated cost of A&E consultant services exceeds \$150,000.

- i. Advertising - The Board of Directors must authorize the advertisement to bid for goods and services when services exceed \$150,000. All rules related to advertising must be followed.

(1) Request for Qualifications (RFQ) - Used to develop a short list of at least three qualified Consultants. Must be followed by a Request for Proposal.

(2) Request for Proposal (RFP) - Whether or not preceded by an RFQ, the RFP shall describe or contain project description, evaluation process, whether interviews are anticipated, closing date and time, reservation to reject any or all proposals, contract requirements, and a sample contract.

(a) Procuring Departments shall create a Request for Proposals (RFP) to include at a minimum:

- (i) Background information and project description;
- (ii) Evaluation Criteria for Selection;
- (iii) Conditions or Limitations;
- (iv) Whether interviews are possible;
- (v) Proposal Due Date;
- (vi) Reservation of the right to: seek clarification, negotiate, and reject any and all proposals;
- (vii) Statement that Proposers responding at own expense;
- (viii) Protest Procedures
- (ix) Special Contract Requirements;
- (x) Statement of whether a pre-Proposal meeting will be held;
- (xii) Sample Contract

(b) District shall advertise each RFP at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14) calendar days before the closing date of the RFP.

- ii. Pre-proposal meeting - May be held for all interested consultants to discuss the proposed project and the required consultant services.
- iii. RFP Analysis - Consultant selection committee shall review, score and rank all responsive proposals according to the criteria included in the RFP.
- iv. Contract Negotiations - Contract negotiations with the highest ranked consultant shall be directed toward obtaining written agreement.
- v. Contract Award - Only the Board of Directors has the authority to award a contract for services.

d. Solicitation Requirements

All formal solicitations require an RFP or RFQ, and must be in writing and advertised at least once in the publication of general circulation, such as the Daily Journal of Commerce, no fewer than fourteen (14) calendar days before the closing date of the RFP or RFQ. Upon completion of contractor selection and competitive procurement procedures, refer to Purchasing Authority Policy

General Origin of Rules

The following table shows the statutory or other legal basis for personal services contracting activities. For other statutory or legal basis for competitive procurement, see OAR 137-047.

<u>Rule</u>	<u>Origin</u>
Personal Services Contracts	
Authority	ORS 279A.055
A&E Consultant Selection Procedures	
Application	137-048-0100
Definitions	137-048-0110
List of Interested Consultants	137-048-0120
Applicable Selection Procedures	137-048-0130
Direct Appointment Procedures	137-048-0200
Informal Selection Procedures	137-048-0210
Formal Selection Procedures	137-048-0220
Ties Among Proposers	137-048-0230
Protest Procedures	137-048-0240

Rule	Origin
Solicitation Cancellation	137-048-0250
Two-Tiered Selection Procedures for Public Improvement	137-048-0260
Prohibited Payment Methodology	137-048-0300
Expired or Terminated Contracts; Reinstatement Contract Amendments	137-048-0310

RESOURCES

Department of Administrative Services Purchasing Home Page:
<http://www.oregon.gov/DAS/EGS/ps/Pages/index.aspx>

Administrative Services Purchasing – Reciprocal Preference Law re Non-resident Bidders:
<http://www.oregon.gov/DAS/EGS/ps/Pages/reciprocal.aspx>

Attorney General’s Model Public Contracting Rules: OAR Chapter 137, Divisions 46, 47, 48, 49
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_046.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_047.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_048.html
http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_137/137_049.html

Bureau of Labor and Industries Prevailing Wage Information:
<http://www.oregon.gov/boli/WHD/PWR/Pages/index.aspx>

Construction Contractor’s Board Home Page: <http://www.oregon.gov/CCB/Pages/index.aspx>

Public Contracting Statute (ORS 279):
http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors279A.html
http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors279B.html
http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors279C.html

Elections

(Chapter 5)

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INTRODUCTION

As a board member or manager of a special district, it is necessary to understand the election requirements for special districts. Special districts must hold elections to select board members, ask for a new or increased tax rate, or vote on bond measures.

Laws governing the conduct of local elections are administered by the Secretary of State's Election Division and by each county's elections officer (county clerk). Administrative rules and directives are issued by the Secretary of State to provide uniformity in local elections. County elections officers are responsible for conducting and administering local elections. Please contact your county before proceeding with election preparations.

When any measure is to be voted upon, the district board must notify the county elections officer. The county clerk is responsible for overseeing all further requirements. It is recommended that each person responsible for coordinating elections work closely with the county elections officer to assure that correct procedures are followed.

While the majority of special districts are included under the same election statutes (ORS 255), there are six districts that have different election requirements. These districts are:

- Drainage Districts (ORS 547)
- Emergency Communications Districts (ORS 401.807)
- Irrigation Districts (ORS 545)
- People's Utility Districts (ORS 261)
- Hospital Districts (ORS 441)
- Soil and Water Conservation Districts (ORS 568.210)

Although most election requirements are similar for all local governments, the six districts listed above should consult their enabling statutes for the appropriate election procedures.

THE STATE OF OREGON'S DISTRICT REFERRAL MANUAL

The State of Oregon's Elections and Public Records Divisions prepares the *County, City and District Referral Manual* and distributes copies to 36 county clerks, who serve as county election officers. Copies are then made available locally. In most counties, the county clerk mails a copy of the manual to each voting district in the county's jurisdiction. This useful publication is updated annually and contains election calendars, a special district's election "checklist," sample filing forms, and the names of county elections officers.

<http://sos.oregon.gov/elections/Documents/ReferralManual.pdf>

The Elections Division also publishes a *Campaign Finance Manual* for candidates and political committees. This manual is a must for any district candidate or political committee that will be accepting financial contributions. <http://sos.oregon.gov/elections/Documents/campaign-finance.pdf>

To obtain copies of these manuals either accesses them via the web or call or write:

Secretary of State's Office
Elections Division
141 State Capitol
Salem, Oregon 97310-0722
(503) 986-1518
elections@sos.state.or.us

ELECTION DATES

Districts can hold elections on the following four dates:

- The second Tuesday in March.
- The third Tuesday in May - Primary Election/Board of Director's elections in odd numbered years only.
- The third Tuesday in September.
- The first Tuesday after the first Monday in November - General Election.

Districts may, in any year, submit a measure to vote at any one or more of the four dates listed above. Districts may also hold an election to request that voters approve permanent tax rate authority at any of the four dates listed above. Elections of governing board members may only be held in May of odd-numbered years (unless a new district is being formed---board members are elected at the time of formation).

A special election may be held on a date other than one of the above if the district elections authority by resolution finds that an election sooner than the next available election date is required on a measure to finance repairs to property damaged by fire, vandalism, or a natural disaster.

FILLING VACANCIES ON THE DISTRICT BOARD

When a vacancy becomes available on a district board between elections, the vacancy shall be filled by appointment of the remaining board members. If a majority of the board is vacant or if a majority cannot agree, the county court shall fill the position.

The person appointed to fill a vacancy by the board or the county court will serve until June 30th following the next regular district election at which governing body members are elected (May in odd numbered years). The successor elected at the next regular election shall serve for the unexpired term.

ELECTION NOTICES

Governing Body Election Notices

When a district board member election is to be held, the elections officer (the county clerk) publishes a notice that includes the following information:

- Date of the election.
- Governing body positions up for vote.
- The last date candidates may file for office.
- The newspaper(s) in which the notice is to be published. The newspaper must be of general circulation in the district not later than the 40th day before the last day for filing a petition for nomination or declaration of candidacy.

Bond or Measure Election Notices

Before a bond or measure election, the district must deliver notice 61 days before the election to the county clerk, which asks for:

- The date of the election.
- The ballot title.

Any notice of a bond election must also include:

- The purpose for which the bonds are to be used.
- The amount and term of the bonds.
- The kind of bonds proposed to be issued.

** If the measure is to be held in November, and the district already submitted the same measure at the proceeding September election, then the measure must be filed 47 days before the election.

CANDIDATES FILING FOR DISTRICT OFFICES

Candidates for district offices can either declare their candidacy by submitting a filing fee (with the proper forms), or petition for nomination. Contact your county clerk's office to receive all required filing forms.

A candidate includes any of the following:

- An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual's consent, for nomination or election to a public office.
- An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received, or the expenditure is made, and whether or not the name of the individual is printed on the ballot.
- A public office holder against whom a recall petition has been completed and filed.

Candidate Responsibilities

A candidate may either serve as the candidate's own treasurer or may designate a principal campaign committee and appoint a separate treasurer. The treasurer must be a registered voter in Oregon. Only the candidate or a designated treasurer may sign the Statement of Organization and Contribution and Expenditure reports.

The candidate is responsible for:

- Establishing and maintaining a dedicated campaign account in an Oregon financial institution for depositing contributions and making expenditures.
- Signing all checks issued from the campaign account (only one signature is required).
- Filing and amending Statements of Organization.
- Filing accurate and timely contribution and expenditure reports.
- Signing all reports and statements.
- Keeping detailed financial records current to within 7 days after the date of receiving a contribution or making an expenditure.
- Preserving records as described in the Oregon Archives Division Records Retention Schedule.
http://sos.oregon.gov/archives/Pages/records_retention_schedule.aspx

The treasurer of record is responsible for these duties until an amended Statement of Organization is filed by the candidate appointing a new treasurer.

Liability

Both the candidate and the treasurer are personally responsible for carrying out the duties listed above and should understand these responsibilities, as well as their personal liability for fulfilling them.

Oregon election law provides for civil penalties up to \$10,000 for late or insufficient filings of reports. The candidate and treasurer are held financially responsible for such penalties imposed on a committee.

Candidates Filing by Petition or Declaration

Candidates for special district offices filing by petition or declaration must submit the following forms to the county clerk before circulating the petition:

- Filing of Candidacy for Special District Nomination (SEL 190)
<http://sos.oregon.gov/elections/Documents/SEL190.pdf>
- Special District Petition for Nomination (SEL 191)
http://oregonvotes.org/doc/publications/forms/100_candidate_filing/SEL191.pdf
- Statement of Organization (SEL 220)
<http://sos.oregon.gov/elections/Documents/SEL220.pdf>
- Campaign Account Information (SEL 223)
<http://sos.oregon.gov/elections/Documents/SEL223.pdf>

A candidate is not required to establish a campaign account, file a Statement of Organization or file contribution and expenditure reports if all three of the following conditions are met:

- The candidate serves as the candidate's own treasurer.

- The candidate does not have an existing candidate committee.
- The candidate does not expect to receive or spend more than \$350 for the entire election. This \$350 includes personal funds spent for any campaign-related costs, such as any expense incurred in circulating a nominating petition and paying the Voters' Pamphlet filing fee.

If the candidate has an existing candidate committee, the candidate or treasurer must file an amended Statement of Organization for Candidate Committee (SEL 220) within 10 days of changing any information on the Statement of Organization, but not later than the date of the filing of the prospective petition. The amendment will reflect any changes (designation of office sought, applicable election, etc.).

The Statement of Organization must be filed within 3 business days of receiving a contribution or making an expenditure, but no later than when the completed petition is filed. District candidates must file their Statement of Organization and contribution and expenditure reports with the Secretary of State.

Special District Petition for Nomination (SEL 191)

A "final or perfected" petition must meet the following criteria:

- The petition must be signed by at least 10 percent of the voters or 25 voters (whichever is less) residing in the district.
- The electors signing the petition must include their signatures, printed names, precinct names or numbers (if known) and residence addresses.
- Candidates gathering signatures from more than one county (multi-county districts only) must not have signatures from more than one county on a page. Signatures of electors from more than one county in a multi-county district, must be verified by a county elections official before submission.
- Each signature sheet must be verified on its face by the signed statement of the circulator that the circulator believes each individual is an elector qualified to sign the petition.
- Signatures must be submitted to the county clerk of the county in which the signer is registered for verification purposes.

Deadline to File Completed Petition

The deadline for Primary and General Elections is sooner than the 110th day and no later than 5:00 p.m. on the 70th day before the election.

The deadline for Regular District Elections or First Election Where Members of Newly Formed District Board are formed is no sooner than the 101st day and no later than 5:00 p.m. on the 61st day before the election.

Candidate Withdrawal

To withdraw from candidacy or nomination, a candidate must file a Withdrawal of Candidacy or Nomination (SEL 150).

<http://sos.oregon.gov/elections/Documents/SEL150.pdf>

A nominee for election to a district board must withdraw the nomination no later than 5:00 p.m. on the 70th day before a primary or general election or no later than 5:00 p.m. on the 61st day

before a regular district election (or the first election at which members of the district board are elected).

INITIATIVE AND REFERENDUM PETITION PROCESS

The specific requirements for the exercise of initiative and referendum in special districts are as follows:

- File the prospective petition with the county elections official where the administrative office of the district is located.
- The initiative petition must include the text of the proposed measure and a referendum petition must include the text of the ordinance adopted by the governing body of the district. Additionally, a Petition for Local Measure (SEL 370) must be filed for an initiative and referendum petition.
<http://sos.oregon.gov/elections/Documents/SEL370.pdf>

If the petition designates fewer than three chief petitioners, additional chief petitioners, up to a total of three, may be added before final approval of the cover and signature sheets. A chief petitioner may not resign or be replaced by another individual before final approval of the cover and signature sheets. A letter signed by all current chief petitioners must accompany the SEL 370 when designating additional or different chief petitioners. At least one original chief petitioner must remain as a chief petitioner throughout the process. If all original chief petitioners resign, the initiative must be refilled.

- File a completed Statement One or More/No Petition Circulators Will Be Paid
http://oregonvotes.org/doc/publications/forms/300_ir_filing/SEL300.pdf

After receiving the prospective initiative petition, the county elections official must notify the chief petitioners, no later than five business days after the proposed initiative is filed, that the text complies with the procedural requirement contained in the Oregon Constitution, Article IV, Section 1 and ORS 255.140.

Ballot Title for Referendum Petitions

The county elections official forwards two copies of the prospective referendum petition to the District Attorney for preparation of the ballot title. The District Attorney has five business days to prepare a ballot title and return it to the county elections official. Oregon statutes require that the ballot title contain the following elements:

- A caption not to exceed 10 words -- The caption must reasonably identify the subject of the referendum;
- A question not to exceed 20 words -- The question must plainly phrase the chief purpose of the referendum so that an affirmative response corresponds to a yes vote on the ballot; and
- A summary not to exceed 175 words -- The summary must be concise and impartial and summarize the measure and its major effect.

The county elections official furnishes the chief petitioners with a copy of the ballot title. Receipt of the ballot title must be published in the next available edition of a newspaper of general circulation that includes a statement a statement that the ballot title has been received.

The notice includes all of the following:

- Notice that an elector can file a petition for a review of the ballot title.
- The deadline for filing a petition for review with the Circuit Court (no later than the 7th business day after the ballot title is filed with the county elections official).
- The ballot title provided by the District Attorney or information on how to obtain a copy of the ballot title.

After a petition to review a ballot title is filed, the Circuit Court conducts a review of the ballot title which is the first and final review. The Circuit Court then renders its decision and certifies a ballot title meeting the requirements of ORS 250.035 to the county elections official.

Circulating a Referendum Petition

After preparing the cover and signature sheets for the prospective referendum petition, the chief petitioners submit a draft to the county elections official for review. A complete copy of the ordinance must also be submitted with the draft cover and signature sheets.

The text, cover and signature sheets for a prospective referendum petition must be approved in writing by the county elections official before the chief petitioners may begin circulating the petition. The county elections official will inform the chief petitioner of the last day to submit signatures collected for the referendum petition.

Each person collecting signatures must carry at least one full and correct copy of the text of the ordinance and allow any person to review the text upon request. The circulator whose certification appears at the bottom of the petition sheet must personally witness each signature.

The number of active registered voter's signatures required to place a district initiative or referendum measure on the ballot is based upon a percentage of the total votes cast in the district for all candidates for governor at the last election in which a candidate for governor was elected to a full term.

For most districts the percentage of signatures required is not less than 15% for an initiative petition and not less than 10% for a referendum petition. Signature verification must be completed within 15 days of submission.

Once the referendum has been submitted for final signature verification, the chief petitioners committee's treasurer must file its first contribution and expenditure report no later than 5:00 p.m. on the 15th day after the signatures have been submitted.

After at least the constitutionally required number of signatures has been verified, the district elections official must establish the date for the measure election in accordance with ORS 255.345 and no later than the first regular district election following the 40th day after the order of the election.

ABSTRACTS AND CERTIFICATES OF ELECTION

Not later than the 20th day after an election, the county clerk shall prepare an abstract of the votes and deliver it to the district election authority. Not later than the 30th day after receiving the abstract, the district elections officer shall determine from it the results of the election.

The county clerk shall issue a certificate of election after the district elections officer has notified the county clerk in writing of the result of the election.

MISCELLANEOUS PROVISIONS

Contests of Election, Recount, and Recall

The procedures for election contests, recount, and recall for special districts are the same as for any other election in the state.

- Provisions regarding election contests and recounts may be found in ORS 258.
- Provisions regarding recall may be found in ORS 249 and OAR Chapter 165.

RESTRICTIONS ON POLITICAL CAMPAIGNING

While the following guidelines are offered, local officials are encouraged to consult with their attorney when specific questions arise. These guidelines apply to the expenditure of public funds, with a focus on the use of work time by public employees. Confusion about the use of funds may be avoided if interested citizens form a Political Action Committee (PAC), which can legally solicit contributions and produce/ distribute advocacy materials.

General

Public agencies are subject to the general rule prohibiting the use of public funds to advocate a position either in support of, or opposed to, a ballot measure. All information presented and paid for with tax dollars must be impartial. ORS 260.432 prohibits public employees from spending time “while on the job during working hours” to promote or oppose a ballot measure. While it does not apply to elected public officials, the definition of “public employees” includes not only paid staff, but also unpaid, appointed members of boards, commissions, and committees.

Issues relating to the use or misuse of public funds, equipment, materials, supplies, or space are likely to be dealt with under the provisions of ORS 294.100, which establishes personal liability for misappropriation of public funds.

Preparation and Distribution of Written Material

Local officials, both elected and appointed, can develop and distribute impartial and factual information on the effects of a ballot measure and may use public funds to do so. Such material should be informational, provide the public with a fair presentation of relevant facts, and not advocate a particular position. For example, staff may spend time doing research and preparing information that fairly assesses the effects of the measure on the agency. Local officials can use such information in meeting with individuals and organizations, e.g., newspaper editors and reporters, legislators, local civic organizations, and special interest groups to explain objectively the measure’s impact on the agency.

Written material prepared or distributed by public employees must be impartial, neutral, unbiased, equitable, and dispassionate. A statement is advocacy if, when read in its entirety, is clearly intended to generate votes for or against the measure. Factors, which may be used to determine the line between information and campaign advocacy, may include the following:

- The timing of the material relative to an election date.

- The balance of factual information including pros and cons about the measure.
- The overall impression a reader may be left with. Have facts been presented neutrally so that the reader has to decide how to vote, i.e., it informs rather than persuades?
- The tone of the material. Is it dispassionate rather than enthusiastic for one side or the other of the measure? Do headings, words, and phrases lend a positive, negative, or neutral tone in favor of, or opposition to, the measure?
- The quotes used. Are they all favorable or unfavorable? Are they all from persons on one or the other side of the measure?
- Reference to contact with supporting or opposing PACs—such references may imply a connection between the agency and the campaign.
- The content of the document - it cannot explicitly urge a “yes” or “no” vote.

If you have difficulty making a distinction between legitimate research/information efforts and possible campaign advocacy in specific instances, the Secretary of State’s Office is willing to review staff work before its printing and distribution.

Published material (written or broadcast) relating to a ballot measure requires identification as to its source. The words “authorized by” and the name and address of the person, agency, or political committee responsible for the material should be seen or heard. Governing bodies are exempt from this requirement when they publish impartial material for information purposes related to a measure they are referring to the ballot. Regularly published agency newsletters are also exempt from this requirement. (Special editions or one-time publications are not exempt.) In both cases though, it needs to be apparent that the governing body has prepared and is distributing the material.

The Governing Body

A governing body of elected officials can take positions on ballot measures and staff can record votes and type resolutions of support or opposition if that is part of their normal work duties. Staff can also do research to bring the measure to the governing body. This research can describe background information on the measure, its potential effects, and pros and cons of the measure.

The governing body may not make a mass distribution of their advocacy position on a ballot measure to the public; however, if copies are requested by the public, the agency may use office facilities to copy the resolution expressing their position.

Elected Officials

Elected officials may spend their work time on ballot measures, whether the position they hold is paid or unpaid under ORS 260.432 (4) (a). The courts have recognized the right, if not the duty, of public officials to speak out on major issues, particularly on matters that affect the governmental body on which they serve. However, elected officials must be careful not to

involve support staff in their advocacy campaign, e.g., staff persons cannot type advocacy statements or speeches for elected officials on agency time.

Agency Staff

Agency staff must use their own personal time if they want to advocate a position on a measure. A public employer is required to post, in a conspicuous place, a notice that outlines legal restrictions on the political activity of their employees while on the job during working hours. Contents of the notice are contained in ORS 260.432 (3).

Employees may use breaks, lunch hours, and vacation time to advocate for or against a measure. Employees should keep notes on when they are using breaks, lunch, or vacation time for advocacy. If a public employee makes a presentation outside working hours which will include advocacy statements, it may still be advisable to announce to the audience that they are speaking not in their “official capacity” but as a private individual.

Subject to limited regulation by the employer to avoid disruption in the workplace or suggesting to the public that the employee’s personal political views are endorsed by the public employer, public employees may express their personal opinion on the job, wear buttons, and do other things which are protected under their right to free speech.

A public employee may not be coerced to vote for a measure or work to advocate for or against it. For example, a manager representing the public agency may tell employees about the possible effects of a measure, such as possible layoffs, but must not threaten them with financial loss if they vote one way or another.

A public employee can make an impartial presentation of information relating to a ballot measure. This presentation can include a discussion about how the measure came into being (history) and its impacts, so long as it doesn’t segue into advocacy. An elected official may follow a staff person’s presentation and advocate in support of or opposition to the measure.

Political Action Committee (PAC)

Formation of a PAC must occur before any funds are collected. PACs must be filed with the county elections officer. The forms and guidebooks necessary to form a political committee and report contributions and expenditures are available from the county elections officer.

As a general rule then, public employees may say, “Here are the facts, please vote.” Elected officials may say, “Here are the facts, please vote for/against this measure,” provided public funds are not used to advocate that position and no public employee time is used to assist in delivering that message.

PERMANENT TAX RATE BALLOT MEASURE [ORS 280.070(6)]

Caption—10 words

- a. Purpose is to identify the type of tax.
- b. Do not put district name or dollar amounts in the caption.

Question—20 words

- a. Include the name of the taxing district. The word “district” can be substituted for the full name if the full name is included in the summary.
- b. State the tax rate per \$1,000 of assessed value.
- c. State the first fiscal year the tax will be imposed.

Summary—175 words

- a. If the election is not in November of an even-numbered year, begin the summary with:
“**This measure may be passed only at an election with at least 50 percent voter turnout.**”
This statement is not counted in the 175-word limit.
- b. Explain the purpose in plain language. Do not advocate a yes or no answer.

Sample

March 2014 Election

CAPTION: Permanent Tax Rate Limit

QUESTION: Shall district be authorized to impose \$0.52 per \$1,000 of assessed value as a permanent rate limit beginning in 2014-2015?

SUMMARY: This measure may be passed only at an election with at least 50 percent voter turnout. The Sample Soil and Water Conservation District has operated for 25 years on the revenue from grants and user fees. Many grant programs are no longer available. This measure would establish a permanent tax rate limit for the district. The revenue from the new permanent rate would be used to help operate the district and help avoid future increases in user fees. In the first year of imposition the proposed rate will raise approximately \$750,200.

ONE YEAR LOCAL OPTION TAX [ORS 280.060(1)(B)]

Caption—10 words

- a. Purpose is to identify the type of tax.
- b. Do not put district name or dollar amounts in the caption.

Question—20 words

- a. Include the name of the taxing district. The word “district” may be substituted for the full name if the full name is included in the summary.
- b. State the tax rate per \$1,000 of assessed value.
- c. State whether the tax is for operating purposes or capital projects.
- d. State the fiscal year the tax will be imposed and the number of years the tax will be imposed.
- e. Include the following statement after the question: **“This measure may cause property taxes to increase more than three percent.”** This statement is not counted in the 20-word limit.

Summary—175 words

- a. This example is in November of an even-numbered year, so the double majority statement is not included.
- b. Explain the purpose in plain language. Do not advocate a yes or no answer.
- c. Give the amount of tax that is estimated to be raised in the fiscal year the tax is imposed.

Sample

November 2014 Election

CAPTION: One-year Local Option Tax for Operations

QUESTION: Shall Progressive City impose \$.18 per \$1,000 of assessed value for one year for operations in 2014-2015? This measure may cause property taxes to increase more than three percent.

SUMMARY: The tax revenue from this measure would allow Progressive City to operate the city office six days a week, Monday through Saturday, from 10:00 a.m. until 7:00 p.m. The office is currently open Monday through Wednesday from noon until 5:00 p.m. and on Saturday from 10:00 a.m. until 3:00 p.m. The requested rate will raise approximately \$130,000 in fiscal year 2014-2015.

MULTIPLE- YEAR LOCAL OPTION TAX FIXED DOLLAR AMOUNT [ORS 280.060(1)(A)]

Caption—10 words

- a. Purpose is to identify the type of tax.
- b. Do not put district name or dollar amounts in the caption.

Question—20 words

- a. Include the name of the taxing district. The word “district” may be substituted for the full name if the full name is included in the summary.
- b. State the amount of tax to be imposed each year in dollars.
- c. State whether the tax is for operating purposes or capital projects.
- d. State the first fiscal year the tax will be imposed and the number of years the tax will be imposed.
- e. Include the following statement after the question: **“This measure may cause property taxes to increase more than three percent.”** This statement is not counted in the 20-word limit.

Summary—175 words

- a. Explain the purpose in plain language. Do not advocate a yes or no answer.
- b. This example is not in November of an even-numbered year, so begin the summary with: **“This measure may be passed only at an election with at least 50 percent voter turnout.”** This statement is not counted in the 175-word limit.
- c. Include the total amount of tax to be raised by the measure.
- d. If an estimated rate per \$1,000 is given, include the statement: **“The estimated tax cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.”** This statement is not counted in the 175-word limit.

Sample

May 2014 Election

CAPTION: Six-year Capital Projects Local Option Tax

QUESTION: Shall Sample District impose \$20,830 each year for six years for capital projects beginning in 2014-2015? This measure may cause property taxes to increase more than three percent.

SUMMARY: This measure may be passed only at an election with at least 50 percent voter turnout. The taxes needed for six years total \$124,980, which will be imposed in equal amounts of \$20,830 each year. The taxes will be used to purchase office furniture and equipment for the district headquarters building. It is estimated that the proposed tax will result in a rate of \$.01 per \$1,000 of assessed value in the first year. The estimated tax

cost for this measure is an ESTIMATE ONLY based on the best information available from the county assessor at the time of the estimate.

OUTSIDE CONSTITUTIONAL LIMITATIONS

1. Caption limited to 10 words
 - a. Purpose is to identify the type of tax.
 - b. Dollar figures should not appear in the caption.
 - c. Example: “General Obligation Bonds for Capital Construction.”

2. Question limited to 20 words
 - a. Name of the district.
 - b. The purpose of the bonds.
 - c. The kind of bonds to be used.
 - d. Include the following statement after the question: “If the bonds are approved, they will be payable from taxes on property or property ownership that is not subject to the limits of Sections 11 and 11b, Article XI of the Oregon Constitution.
 - e. Example: “Shall The Water District issue \$3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?”

3. Summary limited to 175 words
 - a. Explain the purpose in plain language.
 - b. Do not advocate a yes or no answer.
 - c. The purpose of the bond that includes a reasonably detailed, simple, understandable description of the use of proceeds.
 - d. The term and amount of the bond.
 - e. The type of bond.

Sample

Caption: “General Obligation Bonds for Capital Construction”

Question: “Shall The Water District issue \$3,000,000 in general obligation bonds for the purpose of constructing a water treatment plant?”

Summary: This measure would allow The Water District to issue general obligation bonds to construct a water treatment plant to comply with the Safe Drinking Water Act. Currently, The Water District does not have a water filtration system and uses the chlorination process to disinfect the water system. The Water District has recently completed a master plan and seeks to implement recommendations of that plan. The \$3,000,000 general obligation bond term will not exceed 20 years. If the bonds are approved, they will be payable from taxes on property ownership that is not subjected to the limits of Sections 11 and 11b, Article XI of the Oregon Constitution.

Calculate Measure 5 Limit “Gap”

Real Market Value of district in Tax Code Area 1 \$100,000

Taxable Assessed Value of district in Tax Code Area 1 \$ 80,000

Existing tax rates already being imposed in general government category:

District	Existing Rate
County	\$2.5600
City	4.8664
Park & Rec Dist.	.8406
Health Dist.	<u>3.9330</u>
Total existing rate	\$12.2000

1. Calculate the Measure 5 limit: $\$10.00 \times (100,000 \text{ RMV} \div 1,000) = \$1,000$

2. Divide M5 limit by TAV and multiply by 1,000 to convert it to a Measure 50 limit:
 $\$1,000 \div \$80,000 \text{ TAV} = .00125 \times 1,000 = 12.5000$

3. Subtract total existing general government category rate to get “gap”.

M-50 Limit	\$12.5000
Existing M-50 gen. gov. rates	<u>12.2000</u>

Measure 50 “gap” in Tax Code Area 1 \$.3000

4. Repeat for every tax code area in the district. The lowest “gap” rate in all of the tax code areas is the rate that can be fully imposed (on average) without compression loss.

RESOURCES

Campaign Finance Manual: <http://sos.oregon.gov/elections/Documents/campaign-finance.pdf>

Department of Revenue Property Tax Division Website: <http://www.oregon.gov/DOR/PTD>

County, City and District Referral Manual:
<http://sos.oregon.gov/elections/Documents/ReferralManual.pdf>

Oregon Department of Revenue Tax Election Ballot Measures:
<http://www.oregon.gov/DOR/PTD/docs/504-421.pdf>

Secretary of State Elections Division Website: <http://sos.oregon.gov/elections/Pages/default.aspx>

Special District Elections (ORS 255):
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors255.html

Formation, Alteration, and Dissolution of Special Districts

(Chapter 6)

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INTRODUCTION

The formation of most types of special districts is covered in Oregon Revised Statute (ORS) Chapter 198 - "Special Districts Generally." Some types of districts have additional requirements for formation that are found in that particular type of district's principal enabling statute. Please check the principal statutes for each type of special district being formed.

Applicable Oregon Revised Statutes

The formation of most types of special districts is covered in Oregon Revised Statute (ORS) Chapter 198 - "Special Districts Generally." Some types of special districts have additional requirements for formation that are found in that particular type of district's principal enabling statute. ORS Chapter 198 covers the formation of the following districts:

<u>Type of District</u>	<u>Enabling Oregon Statutes</u>
1. Cemetery Maintenance District	ORS Chapter 265
2. Domestic Water Supply	ORS Chapter 264
3. Geothermal Heating District	ORS Chapter 523
4. Health District	ORS 440.305 to 440.410
5. Heritage Districts	ORS 198.973 to 198.989
6. Highway Lighting District	ORS Chapter 372
7. Library District	ORS 357.216 to 357.286
8. Metropolitan Service District	ORS Chapter 268
9. Park and Recreation District	ORS Chapter 266
10. Port District	ORS 777.005 to 777.725
11. Road Assessment District	ORS 371.405 to 371.535
12. Sanitary Authority, Water Supply Authority or Joint Water and Sanitary Authority	ORS 450.600 to 450.989
13. Sanitary District	ORS 450.005 to 450.245
14. Special Road District	ORS 371.305 to 371.360
15. Transportation District	ORS 267.510 to 267.650
16. Vector Control District	ORS 452.020 to 452.170
17. Water Control District	ORS Chapter 553
18. Water Improvement District	ORS Chapter 552
19. Weather Modification District	ORS 558.200 to 558.540
20. County Road District	ORS 371.055 to 371.110
21. The Port of Portland	ORS Chapter 778.010
22. Translator District	ORS 354.605 to 354.715

Special districts with formation requirements in addition to those specified in this chapter:

1. Corporation for Irrigation, Drainage, Water Supply or Flood Control	554
2. County Service District	451
3. Drainage District	547
4. Emergency Communications District	403300 to 403.380
5. Irrigation District	545
6. Mass Transit District	267.010 to 267.390
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8. Rural Fire Protection District	478
9. Soil and Water Conservation District	568.210 to 568.805

INITIAL STEPS

Special districts are the most rapidly growing form of government in the United States. One reason is the advantage districts enjoy over other forms of government: districts provide one service, and all funds collected are expended on this one type of service. This allows special districts to concentrate on a particular service, and avoid many of the controversies that surround general-purpose governments who must make funding decisions by weighing the needs of competing groups or interests.

The first step in forming a special district is usually to form a committee to analyze the need for the district and to discuss the steps that must be undertaken. Consideration should be given to the area that will be served, the assessed valuation of the area, the revenue that could be provided by a reasonable tax or user fee, long and short term debt structure, if any, and how to generate needed funds for a security bond and possibly an election.

Formation may take as long as 12 to 24 months, depending on the type of district and whether the district will need to assess property taxes. Districts that involve public facilities construction may require advanced preparation (*i.e.*, sewer or water systems). In addition, there are important state and county deadlines, which must be met, and should be considered in the planning process.

The following steps are general guidelines to the formation of most types of special districts:

- Interested citizens with time, energy, and willing to raise or bear certain expenses should form an unofficial or “ad hoc” committee. This committee should be formed approximately 9 to 12 months prior to March 31st -- the date by which the county assessor and the Department of Revenue must be officially notified of the formation of a new district.
- Even at this early stage, the committee would be well advised to employ an attorney familiar with their particular type of special district and election laws. If possible, others who have gone through the process of formation should be contacted to gain additional information and assistance.
- The committee must determine who will initiate the formation and where the initiators will derive financial support. Costs will include obtaining a bond to accompany the formation petition, possible election fees, any attorney or consultant fees, printing fees, boundary commission filing fees, etc. Some of these costs are refundable if the district is formed. If the district is not formed, the members of the committee, or those that provided the funding, must bear the cost.
- The Committee should study the feasibility of forming a district by estimating the following:

- The area to be served (rough boundaries should be established, specific boundaries will be required with the formal proposal).
 - The assessed valuation of the area to be served.
 - Sources of potential revenue, such as taxes, user fees, bonds, etc.
 - The anticipated level of services to be provided.
 - The cost to provide these services.
- Notices advising of any proposed public discussion regarding formation should be developed and distributed as widely as possible within the proposed district area. Available news media should be utilized and special effort given in making sure notices are brought to the attention of all voters and property owners. The notices should briefly describe the proposal; announce a date, time, and place for a public meeting to discuss the proposal; outline the proposed boundaries; and briefly discuss relevant issues.
 - The committee should hold a meeting open to the public on the date, time, and place specified in the notice, in order to determine voter interest. At this meeting, the committee should:
 - Present information, data, and other research materials.
 - Present its recommendations.
 - Introduce any people available to serve as a resource, such as an attorney, consultant or representative from state organizations.
 - Present any other pertinent information or individuals regarding the need for the district and the services that it would provide.

After a limited time has been given to answering questions, those attending the meeting should be polled to determine if there is enough support to petition the county board on the matter. If it appears there is sufficient interest in the measure, the committee should begin the job of developing a formation plan.

FORMATION

A special district may be formed from contiguous or noncontiguous territory located in one or more adjoining counties. Exceptions to this may exist in individual principal acts that govern the formation and authorities of specific types of districts. A district may also include territory within a city if the city governing body consents to the formation. Territory within another district performing the same services as the proposed district may not be included in a new district unless the territory is withdrawn, either by a simultaneous withdrawal proceeding or automatically by statute, from the former district. The boundaries of a new district may only include territory that can be reasonably served by the facilities or services of the proposed district.

If two or more counties are affected by a formation proposal, the notices, proceedings, orders, and any other act required of a county board or county clerk must be given or taken to the person holding those offices in the principal county. The principal county is the county in which the greatest portion of the assessed valuation of all taxable property in the proposed district is located. Officers of any other affected county must cooperate with the officers of the principal county and must furnish such records and certificates as may be required. Once the principal county is determined, it will remain the county with jurisdiction over the special district for all purposes thereafter.

There are three procedures that may be used to form a special district:

- The filing of a petition for formation,
- The consent of all property owners within the area of the proposed district, or
- Initiation and order of the county board.

Following is an analysis of each of those procedures:

Initiation by Petition

Pursuant to ORS 198.800, formation of a special district may be initiated by a petition filed with the county board of the principal county. If the proposed district includes territory within a city, a certified copy of the resolution of the city's governing body approving the petition must be filed with the petition.

The petition must contain the following information:

- A statement that the petition is filed pursuant to ORS 198.705 to 198.955.
- A statement of the names of all affected districts and all affected counties.
- A designation of the principal act of each affected district.
- A statement of the nature of the proposal, whether formation of a district or change of organization and the kind of change proposed.
- A statement whether the territory subject to the petition is inhabited or uninhabited (uninhabited territory means territory within which there reside less than twelve (12) electors who were residents within the territory thirty (30) days prior to the date a proceeding is commenced to form the district).
- A statement that district board members are or are not to be elected and, if so, the number of members on the board.

- A proposed permanent tax rate sufficient to support the services and functions described in the economic feasibility statement and a declaration of the rate of taxation necessary to raise an amount of revenue equal to the proposed permanent tax rate. A permanent tax rate need not be included in the petition if no tax revenues are necessary to support the services and functions described in the economic feasibility statement. The permanent tax rate, if any, must be expressed as a total dollar amount and the tax rate must be expressed as a rate per thousand of assessed valuation. These rates must be calculated for the latest tax year for which information is available.
- A statement of the proposed terms and conditions, if any, to which a proposed formation is to be subject.
- A statement or indication opposite each signature on the petition whether the signers of the petition are landowners within the district or electors registered within the district, or both.
- A request that proceedings be taken for formation of the district.

The petition for formation must be signed by at least:

- 15% of the electors or 100 electors, whichever is more, registered in the territory to be included in the proposed district; or
- 15 landowners or the owners of 10% of the acreage, whichever is greater, within the territory to be included in the proposed district.

Before circulating the petition for formation of a district, the persons designated on the petition as the chief petitioners must complete an economic feasibility statement for the proposed district. That feasibility statement forms the basis for any proposed permanent tax rate. The feasibility statement must contain:

- A description of the services and functions to be performed or provided by the proposed district;
- An analysis of the relationships between those services and functions and other existing or needed government services; and
- A proposed first year line item operating budget and a projected third year line item operating budget for the new district that demonstrates its economic feasibility.

The economic feasibility statement must be attached to the petition when it is filed with the county and before it is circulated for signing.

Prior to circulation of any petition, the petitioners must file with the county clerk of the principal county a prospective petition. The prospective petition must include a description of the boundaries of the territory proposed to be included in the district.

The petition should provide space for each signer to sign his or her name, print his or her name and add the date of signing. The petition should also provide that if the person is signing the petition as an elector, the person shall add after the signature the person's place of residence, giving street and number or a designation sufficient to enable the place of residence to be readily ascertained. If the signer is signing the petition as a landowner, the number of acres of land owned by the signer and the name of the county whose assessment role is used for the purpose of determining the signer's right to vote must be stated in the body of the petition or indicated opposite the signature. If the signer is a legal representative of the owner of the property, the signature must be accompanied by a certified copy of the signer's authority to sign as a legal representative.

A signer may withdraw his or her name from the petition up until the time of filing with the county, but may not withdraw the name after such filing.

A petition must designate not more than three (3) persons as "chief petitioners," setting forth their names and mailing addresses.

A petition may consist of a single document or separate documents.

Petition Filing Requirements

A petition may not be accepted for filing by the county unless the signatures have been secured within six (6) months of the date on which the first signature on the petition was obtained. Nor may a petition be accepted for filing if it is not accompanied by the economic feasibility statement required under ORS 198.749.

If the petition for formation of a district includes a permanent tax rate for the proposed district, the petition must be filed not later than 180 days before the date of the next regular statewide primary or general election at which the petition for formation may be voted upon.

A petition for formation of a district may not be accepted for filing by the county unless the petition is accompanied by a bond, a cash deposit, or other security deposit.

- A bond must be in a form and in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the district, up to a maximum of \$10,000. The bond must be conditioned that, if the attempted formation is not completed, the chief petitioners will pay the costs thereof.
- A cash deposit must be in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the district up to a maximum of \$10,000. The cash deposit must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the cash deposit and the amount provided by each, and a statement signed by the chief petitioners that if

the costs of the attempted formation exceed the deposit, the chief petitioners will pay to the county the amount of the excess costs.

- A security deposit other than a bond or cash deposit shall be of a kind and in an amount approved by the county board not to exceed \$100 for each precinct in the affected district and any territory to be included in the district up to a maximum of \$10,000. The security deposits must be accompanied by a form prescribed by the Secretary of State. The form must include the names and addresses of all persons and organizations providing any part of the security deposit and the amount in mind provided by each, and a statement signed by the chief petitioners that if the costs of the attempted formation exceed the security deposited, the chief petitioners shall or will pay to the county the amount of the excess cost.

After circulation of the petition, the clerk of the principal county has ten (10) days from the date the petition is received to review the petition and determine whether it has been signed by the requisite number of qualified signers. If the clerk determines there are sufficient signatures, the clerk files the petition. If the clerk determines there are insufficient signatures, the clerk notifies the chief petitioners and may return the petition to the petitioners.

A petition may not be filed unless the certificate of the county clerk or the district secretary is attached thereto certifying that the county clerk or district secretary has compared the signatures of the signers with the appropriate records and that the county clerk or district secretary has ascertained the number of qualified signers appearing on the petition and that the petition is signed by the requisite number of qualified signers.

After a petition satisfying all the statutory requirements has been filed, the county board must set a date for hearing on the petition and will give notice of the hearing by posting and publication as specified in ORS 198.730 and 198.800(2). Chief petitioners are advised to keep in constant contact with the county clerk and the board of county commissioners to assure that the functions required of the county by the statutes are actually performed in a timely manner.

Formation by Consent of Property Owners

Pursuant to ORS 198.830, a special district may be created by consent of all property owners within the area of the proposed district. The owners of all real property within an area may petition the county board to form a district. The petition must contain all the information required by ORS 198.750 to 198.755, must state the names of the person who will serve as members of the first district board, and must contain the written acceptance of each person agreeing to serve as a board member. The petition must include an affidavit of one of the petitioners that the petitioner believes that the signers of the petition comprise all the owners, at the time of the verification, of all the land included within the proposed district.

The county board then holds a hearing on the petition. If the county board finds that all property owners within the proposed district have joined in the petition and that the area

could be benefited by formation of the district, the board will adopt an order approving formation of the district. If the formation is approved, any election otherwise required by law is dispensed with. The board shall enter an order creating the district, and the persons nominated by the petition and accepting nomination, as members of the board shall constitute the first board of the district.

Initiation by County Board

Pursuant to ORS 198.835, a county board may initiate and pay the cost of the formation of a district to be located entirely within the county by adopting an order stating the county board's intention to initiate formation of the district, identifying the principal act, describing the name and boundaries of the proposed district, and setting a time, date, and place for a public hearing on the proposal. If any of the territory to be included within the proposed district is within the boundaries of a city, a certified copy of the city governing body's resolution approving the order must be attached to the order.

Notice of the hearing set by the board order must be posted in at least three public places and published by two insertions in a newspaper. In addition, the notice must state that the county board has entered an order declaring its intention to initiate formation. The hearing and election on the proposal, and the election of the initial board members, is to be conducted pursuant to ORS 198.800 to 198.825.

Hearing

Once proper petitions have been circulated and filed with the principal county and have been approved by endorsement by any agency required by the principal act, the county is required to set a hearing on the petition. The hearing must be held between 30 days and 50 days after the date the petition is filed. Notice of hearing must be posted in at least three places and published by two insertions in a newspaper. The notice must include:

- The purpose for which the district is to be formed.
- The name and boundaries of the proposed district.
- The time and place of the hearing on the petition.
- A statement that all interested persons may appear and be heard.

On or before the date set for any hearing on the petition, any person interested in the proposed formation of a district may appear and present written statement for or against the granting of the petition. At the hearing on the petition for formation, the county board may receive oral or written testimony favoring or opposing the district formation. Any written statement objecting to the formation must clearly identify the error, omission, or defect, which is the basis for the objection. If the written objection is not timely filed, the objection is considered waived.

Upon conclusion of the hearing, the county board must evaluate the formation petition by applying the criteria in ORS 199.462. That statute requires consideration of local

comprehensive planning for the area, economic, demographic, and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed district, and the statewide goals.

The board may modify the boundaries of the proposed district to include or exclude territory considering the benefit the proposed district will have to territory in or out of the district. The board may not modify the boundaries to exclude land that could be benefited by the district formation and may not include land that will not be benefited. If the county board determines that land that has been improperly omitted from the proposed district and the owner has not appeared, the county board must continue the hearing and order notice to be given to the non-appearing owner in the manner required by ORS 198.805.

If the county board approves the formation of the petition, the board adopts an order identifying the name and boundaries of the proposed district and setting a time and place, between 20 and 50 days from the date of the order, for a final hearing on the petition. The order must also state that if no written requests for an election are filed, the board will adopt an order creating the district at the final hearing. Notice of the final hearing is given by publication.

Election

If the approved petition includes a permanent tax rate, an election on the question of formation of a special district is required. An election is also required if the county board receives requests for an election filed by at least 15% of the electors or 100 electors, whichever is less, on or before the date of the final hearing, even if the petition for formation includes no permanent tax rate.

If a sufficient number of requests for an election are filed with the county on or before the date of the final hearing, or if the petition for formation includes a permanent tax rate for the proposed district, the board provides by an order for the holding of an election to submit to the electors the question of forming the district.

The board must cause notice of the election to be published by two insertions in a newspaper. If requests for an election are filed by less than the required number of persons and no permanent tax rate is included in the petition, the county board shall dismiss the requests for an election and enter an order creating the district. Nevertheless, the county board must order an election for the purpose of electing the first members of the district board. The procedure for nominating and electing the first board is provided in ORS Chapter 255.

If no permanent tax rate is proposed, the only question before the electors is whether the proposed district should be formed. When the proposal for information includes a permanent tax rate for the proposed district, the ballot title shall clearly indicate that a single question is being proposed which is:

- Whether the proposed district should be formed.
- Whether the permanent tax rate specified in the ballot title should be adopted as the initial permanent tax rate of that district.

When the proposal for formation includes a permanent tax rate limit for the proposed district, the district will be authorized to impose operating taxes not in excess of the permanent rate limit if the proposal is approved by a majority of the votes cast in an election held in May or November of even numbered years.

The county board has thirty (30) days after the date of the election to canvass the votes and adopt an order regarding the proposed formation. If a majority vote favors formation of the district, the board adopts an order creating the district. After the date of the formation order, the inhabitants of the territory within the new district become a municipal corporation with all the powers conferred by the principal act. The new district pays the costs of forming the district and the county clerk refunds any cash deposit or other form of security to the persons who post the security with the county.

If a majority votes against formation of the district, the county board will adopt an order dismissing the petition. The county clerk reimburses the county for the costs of the attempted formation from the security deposit posted by the chief petitioners and refunds any remaining portion of the security deposit to the chief petitioners. If the costs of the attempted formation exceed the amount of the deposit, the chief petitioners must pay the amount of the excess costs.

Challenges to District Formation

Pursuant to ORS 198.785, any citizen of the affected district or territory may initiate proceedings to challenge the county clerk's refusal to accept and file a petition for formation or the county board's refusal to call a special election on the question of formation within ten (10) days of such refusal. Such citizen may file in circuit court of the principal county for a writ of mandamus to compel the county clerk to accept and file the petition or to compel the county board to call an election. If the circuit court finds that the petition for formation is legally sufficient and the requisite number of signatures is attached, the circuit court will direct the county board to call the election. The courts are required to handle and decide such suits as quickly as possible and the circuit court's decision is appealable.

In addition, proceedings to challenge the validity of a formation of a district may be brought by filing a writ of review pursuant to ORS 33.710 or ORS 34.010 to 34.100.

STEPS FOR DISTRICT FORMATION

- Establish a working committee.
 - Set up community meetings and contact local agencies.
 - Draft maps and research property values.

- Review estimated costs and boundaries at public meetings.
- Draw up petitions. Submit prospective petition to county clerk. Begin preparing an Economic Feasibility Statement.
- Circulate petitions. Obtain resolutions from any affected cities.
- Submit petitions, Economic Feasibility Report, and security deposit 180 days prior to election to County Clerk and Surveyor for review.
- County schedules hearing date and bond posted.
- County holds initial hearing.
- County holds second hearing.
- County enacts formation resolution or schedules election date.
- Formation materials submitted to Department of Revenue.
- Submit formation order to Assessor's Office.
- Hold formation and Board Member election (formation elections including permanent tax rates may only be held in May or November).

Note: If there is a formation election held, the permanent tax rate, if any, must be included in that election.

MERGERS AND CONSOLIDATIONS

Pursuant to ORS 198.885 to 198.915, two or more districts providing like services may consolidate and form a new district or a district may merge its operations into a surviving district. Consolidation and merger are statutory methods for creating a special district by joining two or more existing districts into a single new or surviving district.

Districts which are merged into other districts are considered to be annexed by and absorbed into the surviving district. Districts which consolidate, however, become an entirely new district.

Mergers and consolidations are designed to promote efficiency in providing governmental service. In fact, Oregon law encourages and facilitates mergers and consolidations among water and sanitary service providers located within a single river basin or other region.

Initiation of Merger or Consolidation

Creation of a new district by merger or consolidation may be initiated in any one of four ways:

- By duplicate petitions filed by the electors of two or more districts with the boards of the districts to be merged or consolidated. ORS 198.895(1). The petition shall state the names of the affected districts and the name of the surviving or successor district and whether the merger or consolidation must be approved by each district.
- By duplicate petitions filed by the electors of two or more districts with the district boards and by the electors of a city with the city governing body, if the proposed consolidation includes joining a city to the surviving or successor district. A petition under this statute must contain all the matters required stated in the petition under Bullet 1 above except that the petition must also state the name of the city proposed to join the surviving or successor district and whether the merger or consolidation must be approved by each district or city in order to be effective (ORS 198.895(3)).
- By duplicate petitions filed by the electors of a single district with the district board and by the electors of a city with the city governing body, if the proposal is to join a city to the district. ORS 198.895(4). A petition under this statute must contain the name of the district, the name of the city, and must state that the proposal must be approved by the district and the city in order to be effective.
- By resolution adopted by the boards of two or more districts. If the merger or consolidation proposes to join a city to the successor district, the city governing body must also adopt a resolution approving the consolidation. ORS 198.895(5). A resolution adopted or approved under this statute must contain all the matters required to be stated in a petition to merge or to consolidate.

A proposal to merge or consolidate districts may provide that a city be joined to the surviving or successor district for the purpose of receiving service from the district.

If a proposal to merge or consolidate districts includes a proposal to join a city to the surviving or successor district, the proposal may be initiated as provided in ORS 198.895.

The procedures and requirements for preparing, circulating, and filing a petition in a district or city proposed to be included in a proposed consolidation are described in ORS 198.705 to 198.955. A petition for merger or consolidation must be signed by not less than 15% of the electors or 100 electors, whichever is less, registered in each district proposed to merge or consolidate; or by 15 owners of land in each district or by the owners of 10% of the acreage located in each district, whichever is the greater number of signers. ORS 198.755(4).

A petition for consolidation or merger may include a plan for the distribution of debt, which is to be voted upon as a part of the proposal. The plan may provide for any distribution of indebtedness and may require that merging or consolidating districts, and

any city to be joined to the surviving or successor district, remain solely liable for all or any portion of the indebtedness outstanding at the time of the consolidation or merger. ORS 198.900(1).

When the governing body of each affected district or city has received a petition containing the required number of signatures, or has adopted or approved a resolution, the governing body of the affected entity having the largest population according to the most recent federal decennial census must call a joint assembly of the governing bodies of the affected entities. The governing body calling the joint assembly must give notice of the time and place of the assembly by certified mail.

At the joint assembly, a majority of the members of each governing body will constitute a quorum for the transaction of business. The assembly, by a majority of all members present, must adopt an order calling an election in each affected entity. That order must include all matters required in ORS 198.745. The order adopted by the assembly may include a plan for zoning or sub-districting the surviving or successor district for the purpose of nominating or electing members of its board if the principal Act for the district provides for election or representation by zone or sub-district. If required by the principal Act, the plan must also include a map of the proposed zone or sub-district boundaries.

It should be noted that zones or sub-districts must be based on equal distribution of population. Also, if the merger or consolidation is initiated by petition, and the petition includes a debt distribution plan, the order adopted by the assembly must include that plan. ORS 198.903.

Election

As indicated above, there is held a joint assembly of the affected governing bodies. By a majority vote of all of the members present, the joint assembly adopts an order calling for an election in each affected entity. The electors of each district and city involved in the merger or consolidation must approve the merger or consolidation, and the majority of votes in any one of the districts or city against consolidation or merger defeats the proposal. However, where there are more than two districts, or districts and cities, involved and the proposal specifically provides that it will be effective in all districts or cities where it has been approved and does not require the approval of all areas to be effective, the election will be effective in those approving districts or cities, and the areas where the proposal is not approved would not be part of the merged or consolidated district.

If the proposal for merger or consolidation is approved by a majority of the votes cast in each affected entity required for approval of the proposal, the governing body of the affected entity with the largest population must call and give notice of a joint meeting of the governing bodies of the affected entities. The meeting must be held at a time and place designated by the governing body calling the meeting not later than ten (10) days after the canvass of the vote in the entity last canvassed. At the meeting, a majority of the members of the governing body of each affected entity constitutes a quorum for the

transaction of business. The purpose of the joint meeting is to elect members of the board of the successor district and to declare the formation of the consolidated district.

The newly elected board meets immediately and adopts a resolution declaring the districts consolidated and each affected city joined to the district, as the case may be. The number of board members elected is as provided in the principal Act of the surviving or successor district, and the terms of office of such members are provided in ORS 198.910(3).

From the date of adoption of the resolution, the merger or consolidation is complete and the city territory, if any, together with any territory thereafter annexed to the city, is included in the boundaries of the surviving or successor district and shall be subject to all the liabilities of the district in the same manner and to the same extent as other territory included in the district.

In a merger or consolidation, board members of the new or surviving district are apportioned as required by ORS 198.912. If two or more of the affected districts each have 20 percent or more of the electors or owners of land within the successor or surviving district, then each affected district is represented by one member when the percentage of electors or owners of land is at least 20 percent but less than 40 percent of the successor or surviving district. When the percentage is between 40 and 60 percent, they are represented by two members.

At the first regular election held in the surviving or successor district, two or three board members are required to be elected as provided for in ORS 198.910(3).

Effect of Consolidation or Merger

Once a consolidation is effective, the successor district succeeds to all the property, contract rights, and powers of the former districts. The former districts must turn over to the board of the successor district all funds, property, contracts, and records of the former districts, and uncollected taxes, assessments, or charges levied by the former districts become the property of the successor district. The successor district board must levy taxes and assessments for the liquidation of any prior existing indebtedness in accordance with the debt distribution plan.

Where two or more districts have merged or consolidated, the tax rate of the surviving district or successor district is that rate that would produce the same tax revenue as the merging or consolidating districts would have cumulatively produced in the year of consolidation or merger if the consolidation or merger had not occurred. *Oregon Constitution Article XI, Section 11(3)(d)*.

ANNEXATION

Annexation is the process by which territory may be added to a special district.

A district may consist of contiguous or noncontiguous territory located in one or more adjoining county. If any part of territory to be annexed is within a city, the petition must

be accompanied by a certified copy of a resolution of the governing body of the city approving the petition.

A district may not, by annexation or otherwise, include territory included within another district formed under the same principal Act when the other district is authorized to perform and is performing the services the affected district is authorized to perform unless:

- Withdrawal of such territory is proposed and the territory is actually withdrawn by means of withdrawal proceedings conducted in the other district simultaneously with the annexation proceedings, and the proposed boundary changes are approved for both districts; or
- The Principal Act provides for automatic withdrawal of the affected territory in such case.

The boundary lines of a special district must include only such territory as may reasonably be served by the facilities or services of the district. Therefore, if property proposed to be annexed cannot be served by the district, the county board may remove that territory or the annexation may be challenged in court on that ground.

Application of Statutes

The process of annexation to special districts is governed by ORS 198.850 through 198.869. Those statutes refer to other statutes that indicate particular procedural requirements. The processes provided for in those statutes apply to annexation to special districts that are listed in ORS 198.010. Annexations to districts not listed in that statute would be accomplished pursuant to the statute creating the particular district (principal Act). Territory within a district may not be included within or annexed to another district subject to the same principal act.

Initiation of Annexation

A proceeding to annex territory to a special district may be initiated by any one of the following methods:

- By electors. Pursuant to ORS 198.850(1) electors of an area who wish to annex to a special district may file an annexation petition with the county board of the county in which the territory proposed to be annexed is located. Prior to filing the petition with the county board, the petition must be approved by the board of the affected district, by endorsement on the petition, and by any other agency which is required by the principal Act of the particular district to endorse or approve the petition.
- By the district board. Pursuant to ORS 198.850(3), annexation may be initiated by the district board by adoption of a resolution setting forth the following:
 - The intention of the district to initiate the annexation of territory to the district and citing the principal Act of the district.

- The name of the district and the proposed territory to be annexed.
- By the county board. The county board may initiate an annexation to a special district by the same process indicated above. See ORS 198.850(3).
- Other agencies. If authorized by the principal Act, any other agencies so authorized may initiate an annexation to a special district pursuant to the process indicated above. See ORS 198.850(3).
- By a landowner. An owner of land may petition the county for annexation of such land. A public hearing is held, but no election. See ORS 198.857.
- By a city. A city may propose annexation of city territory to a special district to receive services. Such annexation is initiated by a resolution or motion of the city delivered to the district board. If the district board approves the proposal from the city, the board calls an election in the district and the city calls an election in the city on the same day. If the proposal passes in both jurisdictions, the county adopts an order annexing the city to the district. See ORS 198.866 and 198.867.

Contents of Petition

A petition by electors should include the following information:

- An endorsement on the petition by the district or any agency required by the principal Act to endorse or approve the petition.
- A statement of how the proposal complies with the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.
- Whether or not any of the proposed property to be annexed is within a city. If so, a copy of a resolution of the governing body of the city approving the petition should be attached.

Where an annexation is initiated by resolution of a district or the county board, or by any other public agency authorized to do so by the principal Act, the resolution should set forth the matters indicated above. In addition, if the initiation is by a district board, it may include an effective date, which is not later than 10 years after the date of the order declaring the annexation.

Sufficiency of Petition

Before any further proceedings are conducted, the county must determine whether the petition is sufficient. The petition must:

- State that the petition is filed pursuant to ORS 198.705 to 198.955;

- State the names of all affected districts and all affected counties;
- Designate the principal act of each affected district;
- State the nature of the proposal (annexation);
- State whether the territory subject to the petition is inhabited or uninhabited. “Uninhabited territory” means territory within which there reside less than 12 electors who were residents within the territory 30 days prior to the date a proceeding for annexation is commenced (ORS 198.705(19));
- State any proposed terms and conditions, if any, to which the proposed annexation is to be subject;
- State opposite each signature whether the signers of the petition are landowners within the district or electors registered in the district or both;
- Request that proceedings be taken to annex the proposed territory;
- Include a description of the boundaries of the territory proposed to be annexed;
- Include an affidavit of the person circulating the petition stating that every person who signed the petition did so in the presence of the person circulating the petition;
- Be signed by not less than (a) 15% of the electors or 100 electors, whichever is less, registered in the area proposed to be annexed; or (b) 15 owners of land or the owners of 10% of the acreage, whichever is the greater number of signers, within the area proposed to be annexed;
- Include the printed name of each signer and the date of signing;
- If the signer is signing as an elector, include the person’s place of residence, giving street and number or a designation sufficient to enable the place of residence to be readily ascertained;
- If the signer is signing the petition as a landowner, include the number of acres of land owned by the signer and the name of the county whose assessment roll is used for the purpose of determining the signer’s right to vote;
- If the signer is a legal representative of a property owner, the signature shall be accompanied by a certified copy of the signer’s authority to sign as a legal representative;
- Include endorsement on the petition by the district or any agency required by the principal act to endorse or approve the petition;

- Include whether or not any of the proposed property to be annexed is within a city. If so, a copy of a resolution of the governing body of the city approving the petition should be attached; and
- Where an annexation is initiated by resolution of a district or the county board, or by any other public agency authorized to do so by the principal act, the resolution should set forth the matters indicated above. In addition, if the initiation is by a district board, it may include an effective date, which is not later than 10 years after the date of the order declaring the annexation.

Notice of Hearing

The county board must set a date for hearing on the petition, which hearing shall be held not less than 30 days nor more than 50 days after the date the petition is filed. The county board shall cause notice of the hearing to be posted in at least three public places and published by two insertions in a newspaper. The notice should state:

- The purpose of the proposal,
- The boundaries of the proposed annexation,
- The time and place of the hearing on the petition, and
- That all interested persons may appear and be heard.

Hearing

At the time and place announced in the notice, the county will conduct a hearing pursuant to ORS 198.805. All interested persons may appear and be heard. The county must determine at the hearing whether the proposal is consistent with the local comprehensive plan and inter-governmental service agreements and if the area could be benefited by the annexation. The county must adopt written findings of compliance with those criteria. The county may adjourn the hearing from time to time but not exceeding four weeks in all without additional notice. The county may alter the boundaries proposed in the petition to either include or exclude territory based upon benefit of such inclusion or exclusion. The board may not modify the boundaries to exclude from the proposed area any land that could be benefited nor may the board include any land that may not be benefited.

If the county board determines that any land has been improperly omitted from the proposal and that the owner of such property has not appeared at the hearing, the board shall continue the hearing and order notice given to the non-appearing owner requiring the owner to appear before the board and show cause, if any, why the land of the owner should not be included in the proposal. Service of such notice is prescribed by ORS 198.805(2).

At the conclusion of the hearing, the board should make its determination, consistent with the above criteria, and adopt findings in support of that determination.

If the board approves the petition, as presented or as modified, or if the boundary commission does so and transmits its approval to the county board, the board shall enter an order declaring approval of the petition.

Election

The county board must order an election on the proposed annexation to be held in the territory proposed for annexation to the special district and in the special district in the following circumstances:

- If the annexation petition is signed by less than all of the owners of all of the lands in the territory proposed to be annexed and the county board receives the requisite number of requests for an election pursuant to ORS 198.815; or
- If the annexation petition is signed by less than the majority of the electors registered in the territory proposed to be annexed and by the owners of half or less than half of the land in the territory and the county board receives the requisite number of requests for an election pursuant to ORS 198.815.

The election must be held both in the territory proposed to be annexed and in the affected district on the same day. After the election, the district board must certify the results of the election in the district to the county board. The county shall order the annexation only if a majority of the votes in the territory to be annexed and a majority of the votes in the district are in favor of the annexation. Without such double majority, the county board shall declare that the proposal has failed.

If the annexation petition is signed by all the owners of land in the territory proposed to be annexed, or is signed by a majority of the electors registered in the territory proposed to be annexed and by the owners of more than half of the land in the territory, an election in the territory and in the district shall be dispensed with. Also, if an individual landowner files a petition to annex this land, there is no election.

After the hearing on the petition, if the county board approves the petition as presented or as modified, or if an election is held, and the electors approve the annexation, the county board shall enter an order describing the boundaries of the territory to be annexed and declaring it annexed to the district.

After the election, if any, is held, if it is determined by the county board that the majority of the votes cast were in favor of the annexation to the district, the board shall enter an order approving the annexation. The order shall be entered within 30 days after the date of the election.

Effect of Annexation

After the date of entry of an order by the county board annexing territory to a district, the annexed territory becomes subject to all outstanding indebtedness of the district,

including bonded debt, in the same manner as other territory in the district, unless otherwise provided in a debt distribution plan established under ORS 198.900.

City Annexation to a District

The governing body of a city may adopt a resolution or motion to propose annexation to a district for the purpose of receiving services from the district. Upon adoption of such annexation proposal, the governing body of the city shall certify to the district board a copy of the proposal.

The district board shall then approve or disapprove the city's annexation proposal. If the district board approves the proposal, the board shall adopt an order or resolution calling an election in the district. The order or resolution shall:

- Provide for giving notice of the election.
- Designate the district or the territory within which the election is to be held.
- Fix a date for the election.
- State the substance of the question to be submitted to the electors.
- Specify any terms or conditions provided for in the annexation proposal.
- Contain such other matters as may be necessary to provide for or give notice of the election and to provide for the conduct thereof in the canvass of the returns thereupon.

In addition, the order or resolution may contain a plan for zoning or sub-districting the district as enlarged by the annexation if the principal act for the district provides for election or representation by zone or sub-district.

The district board must certify a copy of the resolution or order to the governing body of the city. Upon receipt of the resolution or order from the district board, the city shall call an election on the date specified in the order or resolution of the district board. The election must be held on a date specified in ORS 255.345 that is not sooner than the 90th day after the date of the district order or resolution calling the election.

If the electors of the city approve the annexation, the city governing body must certify to the county board of the principal county for the district the fact of approval. If the electors of the district approve the election, the district board must certify the results of the election to the city and the county board. Upon receipt of the certificate from the city and the district, the county board enters an order annexing the territory included in the city to the district. Thereafter, the city territory is annexed to the district and is subject to all liabilities of the district in the same manner and to the same extent as other territory included in the district.

Contracts to Annex

Pursuant to ORS 198.869, a special district and a landowner may contract regarding provision of extraterritorial service and consent to eventual annexation of property to the district. Such agreement must be recorded in county records and, when recorded is binding on all successors with an interest in that property.

WITHDRAWAL OF TERRITORY

Territory of a special district can be withdrawn from the district pursuant to the procedures contained in ORS 198.870 to 198.882. Generally speaking, withdrawal of territory from a district may occur when the territory to be withdrawn has not been or cannot be served by the district.

Initiation of Withdrawal

A withdrawal of territory from a special district may be initiated by either of two methods:

- A property owner within the district may petition the county board to withdraw the owner's property from the district.
- The electors of an area within a special district may petition the county board to withdraw their property from the district.

Under either of the above alternatives, such petition must be signed by not less than 15% of the electors or 100 electors registered in the district, or by 15 landowners or the owners of 10% of the acreage, whichever is the greater number of signers within the district. Petitioners must cause notice of the filing of the petition to be given in writing to the secretary of the district. Within five days after the petition is filed, the petitioners must furnish the secretary of the district with a copy of the petition filed.

Procedure

With some exceptions, the statutory procedure for withdrawing territory from the special district is the same as the statutory procedure for annexing property to a district. The procedures governing the county board's conduct of hearings, adoption of orders, and calling an election, are the procedures set forth in the preceding section on annexation. The county board may approve a petition for withdrawal as presented, or may approve the petition with modified boundaries. The county board must approve the petition if it has not been, or would not be feasible for the territory described in the petition to receive service from the district. The board must deny the petition if it appears that it is or would be feasible for the territory described in the petition to receive service from the district.

Election

An election on the petition for withdrawal may or may not be required. If written requests for an election are filed by fifteen percent (15%) or one hundred (100) electors, whichever is less, an election must be held. If a sufficient number of written requests for election have not been filed at the time of the county board's final hearing on the proposed withdrawal, an election is not required, and the county board simply adopts an order withdrawing the territory from the district. If sufficient requests are timely filed,

the county board must call an election on the proposed withdrawal if those requests are filed on or before the date of the board's final hearing on the withdrawal.

If a majority of the votes cast favors the proposed withdrawal of territory, the county board adopts and enters an order withdrawing the territory from the district. If a majority of the votes cast opposes the proposed withdrawal, the county board adopts and enters an order declaring the election result. The election is held district wide.

Regardless of the result of the election, the county board must cause a copy of the order to be filed with the secretary of the district.

Effect of Withdrawal

From the date of the entry of the order by the county board, the area withdrawn from a district is thereafter free from assessments and taxes levied thereafter by the district. However, the withdrawn area remains subject to any bonded or other indebtedness existing at the time of the order. The proportionate share of such indebtedness is based upon the assessed valuation, or according to the assessment role in the year of the levy, of all the property contained in the district immediately prior to the withdrawal.

Notwithstanding the above, the governing body of the district shall relieve an area withdrawn from the district from taxation for its proportionate share of outstanding bonded or other indebtedness if no district services have been provided to the withdrawn area and the area withdrawn does not exceed five percent (5%) of the equalized assessed valuation of the taxable property within the entire district prior to the withdrawal.

However, if the total unlimited taxing power of the district over the area not withdrawn does not wholly satisfy the bonded or other indebtedness incurred prior to the withdrawal, the withdrawn territory is taxed in an amount sufficient to satisfy its proportionate share of that indebtedness.

DISSOLUTION

Dissolution of a special district is a process of terminating the district's existence and disposing of any remaining assets.

Initiation

Dissolution of a special district may be initiated in one of three ways:

- By a petition of electors requesting dissolution of the district, filed with the county board. Such petition must be signed by not less than 15% of the electors registered in the district or the owners of 15% of the acreage of the district.
- By resolution of the district board filed with the county board when the district board determines that it is in the best interest of the district's inhabitants that the district be dissolved and liquidated.
- By resolution of the county board if:

- The district has failed to elect district board members to fill vacancies on the district board.
- If the territory within the district is uninhabited.
- If the county board determines it is in the best interest of the people of the county that the district be dissolved and liquidated.

Within five days after a petition is filed or a resolution of the county board is adopted, as provided for above, a copy shall be filed with the district's secretary, if any, or with any other district officer who can with reasonable diligence be located. If there are no qualified district board members at the time, the county board shall act as, or appoint, a board of trustees to act on behalf of the district regarding the dissolution proceedings.

If the district to be dissolved is located within the jurisdiction of a local government boundary commission, the dissolution must be reviewed and approved according to the boundary commission's procedures for the review of major boundary changes.

Procedures

When dissolution proceedings have been initiated, the district board must make findings of fact concerning the district's finances. Specifically, those findings must include the following:

- Description of the indebtedness and the name of the holder and owner of each, if known.
- A description of each parcel of real property and interest in real property and, if the property was acquired from delinquent taxes or assessments, the amount of such taxes and assessments on each parcel of property.
- Uncollected taxes, assessments, and charges levied by the district and the amount upon each lot or tract of land.
- A description of the personal property and all other assets of the district.
- The estimated cost of dissolution.

In addition, the district board must also propose a plan of dissolution and liquidation as required by ORS 198.925(2) and 198.930. The plan of dissolution and liquidation may include provisions for transfer and conveyance of all assets of the district to any other district or, in the case of a county service district, to the county in which the district is located.

Within 30 days after initiation of the dissolution proceeding, the findings of fact and the proposed plan of dissolution and liquidation must be filed in the office of the county clerk and must be made available for inspection by any interested person.

Within 10 days after the district board files the dissolution and liquidation plan with the county clerk, the district board calls an election to determine whether the district shall be dissolved, its indebtedness liquidated and its assets disposed of in accordance with the proposed dissolution and liquidation plan. The notice of election must briefly summarize the dissolution and liquidation plan and state that the plan is available for examination at the office of the county clerk.

An election is not required and the county board may declare the district dissolved and proceed to wind up the district's affairs, if the county board finds:

- The dissolution is in the best interest of the people of the county; and
- The territory within the affected district is uninhabited;
- The district has failed regularly to elect district board members in accordance with the district principal act; or
- For a county service district, dissolution is required because there is no public need for continuation of the district.

If a majority of the district's electors approve dissolution of the district, the district board declares the district dissolved. The district board then becomes a board of trustees which pays or obtains releases of the district's debt and disposes of the district property. If the district is located entirely within the boundaries of a single county, the district board may designate the county board as the board of trustees for the purpose of winding up the district's affairs.

After the district's affairs have been fully settled, the board of trustees deposits all of the district's books and records with the county clerk. The board of trustees must execute, under oath, and file with the county board a statement that the district has been dissolved and its affairs liquidated. As of the date of the statement, the corporate existence of the district is terminated for all purposes.

If a majority of the district's electors opposes dissolution, the district board declares the dissolution proposal failed and makes the election results a part of the district's records. No subsequent election on dissolution of the district may be held for one year after the date of the election.

Disposition of District's Assets

The board of trustees may convey all of the dissolving district's assets to another district if the other district assumes all of the debt and obligations of the dissolving district, continues to furnish the services provided by the dissolving district pursuant to the dissolution and liquidation plan, and if the consent of all known holders of valid indebtedness against the district has been obtained or the plan provides for payment of the non-assenting holders.

The board of trustees may also turn over to the county treasurer any surplus funds remaining after payment of all of the district's indebtedness. If the district's assets are

insufficient to pay the indebtedness, the board of trustees must levy taxes within the district for the liquidation of the indebtedness. However, if property of the district is within the corporate limits of a city, the property vests in the city upon dissolution and any property of the district located outside the city's corporate limits vests in the county upon dissolution.

Dissolution of Inactive District

The procedures for dissolution of inactive districts are somewhat different.

Special districts that fail to file for three consecutive years reports required by ORS 294.555 or 297.405 to 297.555 with the Secretary of State or Department of Revenue, as the case may be, either of those state agencies must notify the county board of the county where the district is located. Within 30 days after such notice to the county board, the county must initiate proceedings to dissolve the special district and may appoint three individuals, which are residents of the district, to assist in locating the assets, debts and records of the district.

Within 60 days after receiving the notice from either state agency, the county board must prepare a financial statement for the district and file it with the county clerk. The financial statement must include:

- The date of formation of the district.
- The date of the last election of officers and the names of such officers;
- The amount of each outstanding bond, coupon, or other indebtedness with a general description of such indebtedness and the name of the holder and owner of each;
- A description of each parcel of real property and interest in real property owned by the district;
- Any uncollected charges, taxes, and assessments levied by the district;
- A description of all personal property and of all other assets of the district; and
- The estimated cost of dissolution.

Upon filing the financial statement, the county board must enter an order calling for a hearing on the question of dissolving the district. The hearing shall be called not less than 21 nor more than 30 days after the filing of the statement. If the county is within the jurisdiction of a local government boundary commission, the county board must, within ten days after filing a financial statement, file with the boundary commission a resolution requesting dissolution of the district.

If the county is not within a local government boundary commission, the notice of hearing by the county must be given by publication once each week for not less than three weeks in a newspaper of general circulation within the district. The notice must state the time and place of the hearing and that all interested persons may appear and be

heard. The notice must also state that all persons having claims against the district must present them at the time of the hearing.

After the hearing, the county board must determine whether the district is in fact operating as an active district. Once the reports required by ORS 294.555 and 297.405 to 297.555 are properly filed by the county for the district, the county must then enter an order. Such order may (a) terminate all further proceedings if the county finds that continuation of the district is necessary, or (b) continue the hearing to initiate proceedings to incorporate or annex the district area into a county service district. In such case, the county proceeds under ORS Chapter 451.410 to 451.610 to create a county service district.

If the county board finds that the district is not active and there is no need for the district, the board shall thereupon constitute a board of trustees for the purpose of paying the debts and disposing of the property of the district. Any surplus funds and assets remaining to the credit of the district after payment of the debts of the district shall be credited to the county general fund. If the district was located in more than one county, the surplus shall be apportioned and turned over to each county in which the district was located. The funds and assets are apportioned according to the proportion in each county of the assessed valuation of taxable property in the district.

If the assets of the district are insufficient to pay the debts of the district, the county board must levy taxes for the liquidation of the debts. If the only debt of the district is the cost of dissolution proceedings, the county shall pay the cost of the proceedings.

RESOURCES

Audits of Public Funds and Financial Records (ORS 297):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors297.html

County and Municipal Financial Administration (ORS 294):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors294.html

Special District Elections (ORS 255):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors255.html

Special Districts Generally (ORS 198):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors198.html

Grants & Loans

(Chapter 7)

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INTRODUCTION

Applying for grants and loans can be an excellent way to get funds for improving the services districts provide. Usually funds must be used for specific programs that add value to the community. Funds are generally not granted to meet normal operating expenditures.

Receiving needed aid is often not as easy as it sounds. Filling out applications can be time-consuming and complicated for districts with little or no staff. Patience is essential; it can take months to gather materials necessary for grant and loan applications.

There are three main sources for grants and loans: the Federal government, State government, and private sources. Exploring all three will increase the chances of finding funding to meet the district's needs. Most often, funds are combined from various sources to meet the goals of the district's program. Providing matching funds can also be helpful.

DEVELOPING A PLAN

The most important step in applying for a grant or loan is the development of an effective plan. Careful consideration and documentation is essential in determining what the dedicated funds will be used for. If the district cannot justify the need for the funds and prove that the money is essential, then it is likely that funds won't be granted.

A schedule should be implemented and a detailed capital improvement plan generated. Good planning and a demonstration that the plan is well formulated will be essential for proving the merits of your project to any funding source.

Suggested steps to be completed when developing a plan:

- **Legislative Commitment:** The district board agrees to implement an ongoing comprehensive capital planning process. Some kind of staff support is assigned.
- **Set a Timetable:** A timetable is developed, taking into account the annual budget cycle of the district. Development of a GANT chart can be of great assistance in displaying the schedule of the project.
- **Identify Roles:** The district board identifies who will develop, monitor, and recommend revisions to the capital planning process. It could be a citizen's group, a number of department heads, or some mixture of staff and public.
- **Establish Criteria:** Criteria is established for use in prioritizing project proposals against local needs and goals.
- **Gather Information:** Necessary information is gathered -- existing plans and documents, or an inventory of the condition and adequacy of all systems. This crucial step develops the first-cut list of local needs as proposed projects.
- **Financial Analysis:** Examining historic and projected revenues and expenditures, estimating the district's cash flow and long-term financial condition, and taking a hard look at present and future capital financing alternatives -- is performed. Account for and be able to justify every dollar that you are asking for.
- **Funding Sources:** Funding sources are identified and recommendations made regarding the type of funding most appropriate for specific kinds of capital improvements.

- **Project Proposals:** The project proposals are evaluated using the project selection criteria developed earlier, and a preliminary project list is made.
- **Selecting Funding Sources:** Priority projects are matched with fund sources, taking into account when the financing will become available. The list is further fine-tuned and the resulting preliminary capital plan is submitted to the district board for review and approval.
- **Public Review:** Opportunities for public review and comment are made available. Following consideration of local input, any adjustments are made and the district board formally adopts the capital plan.
- **Planning Period:** The first year of the five or six-year capital plan is adopted as the capital budget for the given fiscal year, allowing implementation of the plan to begin.
- **Implementation:** Implementation of the plan is monitored by the district board and assigned staff.

APPLICATION POINTERS

Once the plan is completed, the district can proceed with the application process. Explore many different alternatives and find the agency or organization that is most likely to fund your project. Most funds for public infrastructure projects will be loans. Districts with projects that relate to improving health, education, or community support may have an easier time finding grant funds from private sources.

Once the district decides where to apply, it should give careful consideration to the following:

- Know the needs and priorities of your district.

Six year plans, comprehensive plans, public facility plans, water plans, and sewer plans can help a district allocate scarce local and grant funds to the most important needs. Plans should be appropriate to the community. Nothing is worse than spending all your money analyzing problems and then having no money to pay for solutions. Involve citizens in setting priorities, they will have a better understanding of your district's revenue needs. Plans are important for three reasons:

- They help the district make better decisions.
 - Some grant and loan programs require a plan as a condition of funding.
 - The information and priorities in the plans are useful when writing the grant.
- Know the grant loan programs and the program staff.

Competition is tough for most grants and loans. Most major projects are funded by a "package" of funding from several sources, sometimes in several phases. The more you know, the more competitive your application.

- Do initial research on the grant and loan program available. Find out which programs are most likely to fund the solution to your problem.
- Contact the program staff. Attend the application seminar. Ask questions. Ask staff for a "one to one" conference where you discuss your project and how to apply.

- Get a copy of a successful application for a similar problem and read it. How did they do it? Program staff will provide you with a copy, generally for free, ask them.
- Read the application package.
- Get help if you need it.

Many districts can do most grants alone. Some districts need a little help. There are several sources of inexpensive grant writing help that may be available to you.

- United Way offers inexpensive programs on how to write grants. Go or send a staff person.
- If you belong to a Council of Governments or Regional Planning Commission and need some help, ask them.
- If your grant or loan application will promote economic development, the local Economic Development Council may be able to help.
- If your grant or loan will aid low-income persons, your Community Action Council may be able to help.
- If you decide you need a consultant, check lots of references, get a contact, and establish a firm price.
- Get the application written.

Most applications take two or three months to pull together. Cost estimates, letters of support, and writing all take time. Last minute applications are usually not very competitive.

Be accurate, but tell a story. Tell how many are affected by the problem. Personalize the problem. Tell why the problem is important from both a local and statewide perspective. Explain how the problem and solution meet the grant or loan program criteria.

Make sure cost estimates are accurate. Especially for public facilities projects, the cost estimate is not a job for nonprofessionals. Preliminary engineering should be done on all public facilities before the application is submitted. Get an estimate and the details to back it up. Include the detail in an appendix to the application. You will get a better estimate if you require detailed data.

- Learn from your mistakes and successes. If you are not funded, there is always next year. Because of heavy competition, good projects are not always funded.

If you are not funded, ask the program staff for a conference to discuss why the application was not approved. Take notes and do better next year. Don't argue. Remember, it is your job to communicate to program staff through the application. Help them find and understand the information included in the application.

- Establish a track record of delivering on your promises.

If you are funded, do a good job of administering the project. Do what you said you were going to do. Your application should include enough funds to do the job right. Municipalities with good track records have a better chance of being funded in the future.

DEVELOPING A PROPOSAL

Competition for grant funds can be intense. Every non-profit corporation or local government with a project that will improve the community is likely to be applying for some type of aid. The key is to make your proposal stand out and the merits of your project seem more important. Know what the funding organization wants and then give it to them. Make the proposal easy to understand, clean and appealing, and demonstrate that your project has been well planned and thought out.

Writing the Proposal

Structure, attention to specifications, concise persuasive writing, and a reasonable budget are the critical elements of the writing stage. There are many ways to organize proposals. Read the guidelines for specifications about required information and how it should be arranged.

Standard proposal components are: the narrative, budget, appendix of support material, and authorized signature. Sometimes proposal applications require abstracts or summaries, an explanation of budget items, and certifications.

Narratives

- Statement of need - purpose, goals, measurable objectives, and a compelling, logical reason why the proposal should be supported. Background provides perspective and is often a welcome component.
- Approach - method and process of accomplishing goals and objectives, description of intended scope of work with expected outcomes, outline of activities, description of personnel functions with names of key staff and consultants, if possible.
- Method of evaluation - some require very technical measurements of results. Inquire about expectations.
- Project timeline - paints a picture of project flow that includes start and end dates, schedule of activities, and projected outcomes. Should be detailed enough to include staff selection and start dates.
- Credentials - information about the applicant that certifies ability to successfully undertake the proposed effort. Typically includes institutional or individual track record and resumes.

Tips on Writing the Narrative

Narratives typically must satisfy the following questions:

- What do we want?
- What concern will be addressed and why?
- Who will benefit and how?
- What specific objectives can be accomplished and how?
- How will results be measured?
- How does this funding request relate to the funder's purpose, objectives, and priorities?
- Who are we (organization, independent producer) and how do we qualify to meet this need?

The HOOK

There are many ways to represent the same idea. However, the HOOK tailors the description of the idea to the interest of a particular funder. The HOOK aligns the project with the purpose and goals of the funding source. This is a critical aspect of any proposal narrative because it determines how compelling reviewers will perceive your proposal to be.

Budget

Budgets are cost projections. They are also a window into how projects will be implemented and managed. Well planned budgets reflect carefully thought out projects.

Funders use these factors to assess budgets:

- Can the job be accomplished with this budget?
- Are costs reasonable for the market - or too high or low?
- Is the budget consistent with proposed activities?
- Is there sufficient budget detail and explanation?

Many funders provide mandatory budget forms that must be submitted with the proposal. Don't forget to list in-kind and matching revenue, where appropriate. Be flexible about your budget in case the funder chooses to negotiate costs.

Supporting Materials

Supporting materials are often arranged in an appendix. These materials may endorse the project and the applicant, provide certifications, add information about project personnel and consultants, exhibit tables and charts, etc.

Policies about the inclusion of supporting materials differ widely among funders. Whether to allow them usually depends upon how materials contribute to a proposal's evaluation. Restrictions are often based on excess volume, the element of bias, and relevance. Find out if supporting materials are desired or even allowed.

Be prepared to invest the time to collect resources, produce a tape, document capability, update a resume, collect letters, and include reference reports or whatever is needed.

Authorized Signatures

Authorized signatures are required. Proposals may be rejected for lack of an authorized signature. Be sure to allow the time to acquire a needed signature.

Specifications

Tailor proposal writing to specifications found in the guidelines. Include only the number of pages allowed. Observe the format. Is there a form to complete? Must the proposal be typed, double spaced, on 8-1/2 x 11 inch pages? Are cover pages allowed or desired? Caution! - the beautifully bound proposal is not always appreciated or allowed. Be concise. Elaborations should add depth and scope, not page fillers. Be prepared to write one or more drafts.

Submission Checklist

- The proposal must be **neat, complete, and on time**, with the requested number of copies and original authorized signatures.
- Address the proposal as directed in the guidelines.
- Be sure to include required documentation.

Follow-Up

Contact the funding source about the status, evaluation, and outcome of your proposal. It is important to request feedback about a proposal's strengths and weaknesses, although this information is sometimes unavailable, especially with a large volume of submissions.

Reference information may also be useful if you choose to approach the same or different funder again with your idea.

TYPES OF AID

Federal Aid: Federal funds are available through both loans and grants. Most Federal dollars are distributed to states first and then local governments apply for the funds through their individual states. Important points to remember when considering federal aid include:

- **Be patient:** It can take a long time for Federal funds to be approved.
- **Be accurate:** Don't leave anything out of the application materials. Make sure every question is answered and every blank filled.
- **Be prepared:** Federal dollars are often attached to strict requirements for accepting the money. Be prepared to expand your administrative support to keep up with all of the new paper work that will be required.
- **Matching funds:** Many Federal programs will require that the district find matching funds from state or local sources.

State Aid: Most money from the State of Oregon is in the form of loans. Individual state agencies administer programs that relate to their purpose. Grant money is also available and often in the form of Federal dollars administered through the state.

- Although state aid can be easier to get than federal aid, the district must understand that the funds will not be granted immediately.
- Don't leave anything out or miss any details.
- Stay in contact with the agency that will be making the decision. Know the individuals involved with your application and ask how the process is going and if they need anything from your district.

Private Aid: Most private money is in the form of grants, available for almost any need. Competition for money from private grant sources can be intense. Many grants do not allow governments to apply, so read the eligibility requirements carefully.

- Prepare specific, clean, and detailed grant applications. Prove that the district needs the money and that it is a project that the grantor should be interested in.
- Don't spend a great deal of time preparing grant applications until you are fairly certain that the granting source is interested. Write a letter explaining the proposed project and ask for their opinion.
- Thousands of grants are available, do careful research to find out which will fit your organization the best.

Applying for grants from private sources is much different than applying for aid from the Federal government or the State because private sources likely know little or nothing of your organization or what it does. Time must be dedicated in the proposal to explain the mission of your district, the population it serves, and the nature of the services it provides.

- **Be Brief:** Be specific and to the point. Go only into as much detail as needed to adequately explain your project and the need for the funds you are requesting.
- **Define Terms:** Make sure that you define all of the jargon that you may use in the application. Remember that those reviewing the application will probably not know very much about your district or the services you provide.
- **Clarity:** Have persons not involved in the project or even with the district read the application to see if they understand it.
- **Accuracy:** Don't make mistakes. Persons reviewing the application will assume that if you make mistakes on the application you will probably make mistakes administering the grant.
- **Packaging:** Don't use elaborate proposal packaging. Make the proposal clean and neat but don't give the impression that you have wasted valuable resources creating the proposal.
- **Copies:** Only submit as many copies as required.
- **Original:** Don't send out hundreds of the same material to different sources. Tailor each application, letter, and proposal to meet the specific needs of each granting source.
- **Credibility:** Design a detailed program. Substantiate how all of the money will be spent, provide a detailed timetable, and thoroughly describe the scope of your problem.

RESOURCES

This list of resources is only a sample of what is available. If you know of any other sources for funds that should be added to the list, please let SDAO know and we will add them to future updates.

Some of the programs relate only to specific types of districts, while others are broad in their scope. Browse through the directory and see if a program can help your district solve a current or future problem.

Note: Before requesting any applications, contact the organization administering the program, explain what you have in mind, and find out if you are eligible to apply.

THE COLLINS FOUNDATION

1618 SW First Avenue, Suite 505
Portland, Oregon 97201-5708
503-227-7171
www.collinsfoundation.org

Type of Assistance: Grants

Distributes in excess of \$8 million annually, as follows: 22% to community welfare; 18% to children; 18% to education; 17% to arts; 18% to human services; 12% to humanities and religion; 9% to health and science; and 4% to environment. Accepts applications throughout the year. Applicants must hold 501c(3) tax-exempt status.

COW CREEK/ UMPQUA INDIAN FOUNDATION

2371 NE Stephens Street
Roseburg, Oregon 97470
541-957-8945
www.cowcreekfoundation.org

Type of Assistance: Grants

Distributes up to \$15,000 per grant to a wide array of categories. Uses a very simple application process with two due dates per year. Proposals accepted from Douglas, Jackson, Klamath, Coos, Josephine, Lane and Deschutes counties. Has a decent track record for awarding grant to quasi-governmental organizations and special districts.

DEPARTMENT OF ENVIRONMENTAL QUALITY

811 SW 6th Avenue
Portland, Oregon 97204-1390
503-229-5630
www.deq.state.or.us/bc/grants.htm

Type of Assistance: Loans

Grant for Site-Specific Assessments designed to promote redevelopment or property transfer; Low interest loan fund that is available for water and sanitary systems; Grant for nonpoint source water quality and watershed enhancement projects that address the short and long term NPS priorities available to Soil and Water Conservation Districts; Loan fund for very large pollution control projects, including wastewater and solid waste facilities.

ECONOMIC DEVELOPMENT ADMINISTRATION

Suite 205, One World Trade Center
121 SW Salmon
Portland, Oregon 97204
503-229-5625

Type of Assistance: Grants

Grants are provided to help distressed communities attract new industry, encourage business expansion, diversify economies, and generate long-term, private sector jobs. Projects funded for water and sewer facilities primarily serving industry and commerce.

Proposed projects must be located within an EDA-designated redevelopment area (RA). Projects must be consistent with an approved overall economic development program.

THE FORD FAMILY FOUNDATION

www.tfff.org

Type of Assistance: Grants

Distributes about \$10 million annually. Prefers to fund in small rural communities with population of less than 30,000. With few exceptions, this foundation will not fund projects of governmental units, but has provided funding to special districts at the request of their voluntary governing boards-particularly in smaller communities. Pre-applications may be submitted at any time.

HISTORIC PRESERVATION FUND

Oregon Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, Oregon 97301
503-986-0690
www.oregon.gov/oprd/hcd/shpo/pages/index.aspx

Type of Assistance: Grants

The Oregon State Historic Preservation Office has funds available for archaeological and historic preservation projects. These funds may be used for surveys, inventories, and evaluation of historic and prehistoric resources. Grants may be used to nominate multiple property resources to the National Register of Historic Places.

JACKSON FOUNDATION

503-275-4414
www.thejacksonfoundation.com

Type of Assistance: Grants for Portland Metropolitan area.

Grants awarded for money to be used within the State of Oregon for charitable and educational purposes, and for the advancement of public welfare.

JELD-WEN FOUNDATION

3250 Lakeport Boulevard
Klamath Falls, Oregon 97601
541-880-2185
www.jeld-wenfoundation.org

Type of Assistance: Grants

Funding emphasis is given to projects that improve existing opportunities or provide new community services via capital projects or seed money for new programs.

LOCAL PARKS GRANT

Oregon Parks and Recreation Department
Grants Programs
725 Summer Street NE
Salem Oregon 97301
503-986-0705
www.oregon.gov/oprd/grants/Pages/local.aspx

Type of Assistance: Grants

Grant funds available for the acquisition of land and the development of public outdoor recreation facilities. The grants are limited to 50% of the total cost of the project.

MEYER MEMORIAL TRUST
425 NW 10th Avenue, Suite 400
Portland, Oregon 97209
503-228-5512
www.mmt.org

Type of Assistance: Grants

General-purpose grants awarded for a variety of projects including human services, health, education, arts and culture, social benefit and environmental.

NORTHWEST HEALTH FOUNDATION
221 NW Second Avenue, Suite 300
Portland, Oregon 97209
503-220-1955
www.nwhf.org

Type of Assistance: Grants

A nonprofit foundation that seeks to advance, support, and promote the health of the people of Oregon and southwest Washington. This one would be of interest to hospital districts and health districts.

OREGON OFFICE OF ENERGY
Small Scale Energy Loan Program (SELP)
625 Marion Street NE
Salem, Oregon 97301-3737
800-221-8035
www.oregon.gov/energy/loans/Pages/selphm.aspx

Type of Assistance: Loans for energy saving measures

The objective of the Small Scale Energy Loan Program (SELP) is to promote energy conservation and renewable energy resource development in Oregon. The program offers competitive fixed interest rate loans for projects that save energy, produce energy from renewable resources, use recycled materials to create products, and use alternative fuels.

OREGON ECONOMIC & COMMUNITY DEVELOPMENT DEPARTMENT
Oregon Community Development Programs
775 Summer Street NE, Suite 200
Salem, Oregon 97310-1280
503- 986-0123
www.oregon4biz.com

Type of Assistance: Grants

Grants and Loans focusing on economic development projects. Emphasis on water and sanitary projects that are essential for economic development.

OREGON FORESTRY DEPARTMENT

2600 State Street
Salem, Oregon 97310
503-945-7200
www.oregon.gov/odf

Type of Assistance: Grants

The grants are fairly small in size, call for information. Funds can be used for training, equipment, and management needs.

OREGON STATE FIRE MARSHAL'S OFFICE

4760 Portland Road NE
Salem, Oregon 97305-1760
503-378-3473
www.oregon.gov/osp/sfm/pages/grants.aspx

Type of Assistance: Grants

Financial assistance for fire districts. Additional information on website.

OREGON TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM

Oregon Department of Transportation
555 13th Street NE
Salem, Oregon 97301
503-986-4349
www.oregon.gov/lcd/tgm/pages/index.aspx

Type of Assistance: Grants

The Transportation and Growth Management Program is a discretionary grant program. Its goal is to create vibrant, livable places in which people can walk, bike, take transit or drive where they want to go.

PAUL G. ALLEN FOUNDATION

505 5th Avenue South, Suite 900
Seattle, Washington 98104
206-342-2030
www.pgafoundations.com

Type of Assistance: Grants

Although this foundation is located in Washington State, it extends its grant making programs to Oregon. Additional information is available on the web site.

USDA RURAL DEVELOPMENT

1201 NE Lloyd Boulevard, Suite 801
Portland, Oregon 97232
503-414-3300
www.rurdev.usda.gov/rd/nofas/index.html

Type of Assistance: Loans and Grants

Rural Development announces the availability of money formany of its programs in the Federal Register, through a Notice of Funds Availability (NOFA). Please visit the website for more information.

US DEPARTMENT OF TRANSPORTATION

Oregon Division Federal Aid
530 Center Street NE, Suite 420
Salem, Oregon 97201
503-399-5749
www.fhwa.dot.gov/index.html

Type of Assistance: Grants and Information

Authorizes Federal surface transportation programs for highways, highway safety, and transit.

WATER RESOURCES DEPARTMENT

Water Development Loan Program
725 Summer Street NE, Suite A
Salem, Oregon 97301
503-986-0900
www.oregon.gov/owrd/pages/mgmt_wdlp.aspx

Type of Assistance: Loans

Loans for community water supply projects. Visit the website for more information.

RESOURCES FOR PRIVATE FOUNDATIONS

- GuideStar
www.guidestar.org
Online database of more than 850,000 U.S. private nonprofit organizations including foundations.
- The Oregon Foundation DataBook
C&D Publishing
1017 SW Morrison, Suite 500
Portland, Oregon 97205
503-274-8780
www.foundationdatabook.com/pages/or/or1.html

- The Foundation Center
79 Fifth Avenue/16th Street
New York, New York 10003-3076
212-620-4230
www.foundationcenter.org

GOVERNMENT FUNDING

www.grants.gov

All federal grant opportunities are now listed at www.grants.gov. This relieves grant seekers of needing to follow the web pages or individual listings of the various departments of the federal government. Grant seekers should be encouraged to logon to the website very early in their grant research efforts. The web page has a number of user-friendly research tools that permit users to review all new grant announcements since their last visit, search for grants by keyword, or receive electronic notices of new grants as they are posted. Indeed, this website has become very organized, user-friendly, up-to-date, and single-point-of-contact for all federal grant programs.

GRANT INFORMATION ON THE INTERNET

The internet is a useful tool when conducting research for grant and funding resources. There are many helpful search engines that can provide webpage addresses for funding resources. Some search engines to try are:

www.google.com

www.bing.com

www.altavista.com

www.ask.com

www.go.com

www.hotbot.com

www.lycos.com

www.metacrawler.com

www.yahoo.com

To conduct a search, enter the key words of the topic you are researching. For instance, to search grant information, enter “grants” or “funding sources”. Many web pages have grant application contact names and phone numbers, an online grant application process, or downloadable grant applications.

Investments

(Chapter 8)

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INTRODUCTION

Investing is an important part of using district funds efficiently, and maximizing resources. Even small districts with limited expertise can take advantage of investment opportunities that have been created specifically for small public organizations.

Oregon Revised Statute, Chapter 294, "Municipal Financial Administration," provides the investment authorization for special districts. If this chapter does not specifically authorize an investment, then districts are forbidden from making that type of investment. In addition, no district may invest money unless its board has authorized the investment.

Normally, the district board appoints a staff investment officer, such as the manager or chief financial officer, and approves the investment policy. The adoption of an investment policy provides authorization and guidelines for the types of investments that will be permitted. The policy should be put in writing and state that it complies with applicable state statutes. The policy should also set guidelines for diversification, liquidity, and maturity of investments.

The Oregon Short Term Fund Board, "strongly recommends that local governments with limited amounts of money to invest, or with limited time and resources to devote to their investment, concentrate on making sure that their investments are safe (there is no appreciable risk that the investment will fail) and liquid (the investment can be easily converted to cash)." The lowest priority of objectives should be attached to maximizing the rate of return.

CASH MANAGEMENT

Investing is part of a cash management program. The objective of cash management is to have sufficient liquidity to pay obligations when they are due while minimizing borrowing expenses and maximizing investment revenues from surplus funds.

Surplus funds are monies, which temporarily exceed cash flow requirements. Typically these funds are monies reserved for capital expenditures, fall tax turnovers (when a large percentage of annual revenue is received in a short period of time and will not be disbursed until later in the year), bond sale proceeds, carryover funds from the previous fiscal year (cash on hand), system development charge income, grant proceeds, etc.

Good cash management practices encourage the investment of monies which in turn increases revenue. Reasonable rates of return on investments can be obtained while maintaining security and liquidity. In some cases, investment earnings can even reduce tax rates or user charges.

FIDUCIARY RESPONSIBILITIES OF BOARD MEMBERS

Board members can be held personally liable for certain financial misdeeds of the organization. There are several actions board members should take to protect themselves from exposure to litigation. These include:

- Purchase of appropriate liability insurance coverage for the governing body. *Note: If you do not currently have this coverage, SDIS has coverage options available to members.*
- Put an investment policy in writing.
- Insist on adequate financial reporting from staff.
- Understand the board's powers, responsibilities, and any legal restrictions.

- Seek expert advice before taking any action in which the board lacks reasonable competence to handle.
- Understand the principals of investment so that the board can manage the investment manager.

THE INVESTMENT POLICY

Since any investment made by a district requires authorization by the board, it is recommended that all districts have an adopted investment policy. A policy is useful regardless of the type of investing a district intends to pursue. The policy should be easily understood by individuals with or without investment expertise.

The Oregon Short Term Fund Board recommends, in its "Local Government Investment Policy Guidelines," creating a written investment policy for several reasons. An investment policy can:

- Increase investment flexibility.
- Reduce investment risk.
- Improve the district board's understanding of the investment process.
- Allow the district board to deal with the investment policy in a consistent and clear manner.
- Acquaint the investment officer with the investment preferences of their board, and provide the investment officer with rules to avoid misunderstanding and liability.
- Provide written guidance to new or substitute investment officers, who may not be familiar with investment or the district's past practices, and who might otherwise make inappropriate investments.

Key elements of an investment policy should consist of the following:

- Scope: Identifies funds under the authority of the policy.
- Objectives: (Prioritized)
 - Safety
 - Liquidity
 - Return
- Standards of Care:
 - Prudence (Prudent Person Standard)
 - Ethics and Conflicts of Interest
 - Indemnification for investment decisions
 - Delegation of Authority
 - Internal Controls
 - Separation of investment decisions and recordkeeping
- Safekeeping & Custody:
 - Delivery vs. Payment protocol
 - Safekeeping/Custody by 3rd Party
- Authorized Investments: Specific authorized investment types should be listed

- Risk Parameters:
 - Credit Risk:
 - Ratings requirements
 - Exposure limitations
 - Interest Rate Risk:
 - Maximum investment maturity
 - Maximum average maturity
 - Concentration Risk:
 - Diversification requirements
 - Liquidity Risk:
 - Minimum liquidity guidance
 - Maturity buckets
- Transaction Counterparties:
 - Minimum requirements to approve broker/dealers
 - Minimum requirements to approve investment advisers
- Policy Compliance:
 - Reporting requirements:
 - Required data
 - Periodicity of reporting
 - Recipients of reports
 - Guideline violation resolution
- Policy Maintenance
 - Periodic Policy Review

INVESTMENT METHODS AVAILABLE TO SPECIAL DISTRICTS

Oregon law restricts special districts to specific types of investments. The following is a short description of the types of investments that districts can legally utilize.

- US Treasury Obligations: U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States for the timely payment of principal and interest.
- US Agency Obligations: Senior debenture obligations of US federal agencies and instrumentalities or U.S. government sponsored enterprises (GSE).
- Oregon Short Term Fund.
- Corporate Indebtedness
 - Commercial paper issued under the authority of section 3(a)2 or 3(a)3 of the Securities Act of 1933.
 - Corporate Bonds
- Repurchase Agreements
- Municipal Debt
- Bankers Acceptances
- Qualified Institution Time Deposits.Savings Accounts/Certificates of Deposit.

A list of investments allowed under ORS 294.040 and 294.810 may be found on the Oregon State Treasury website:

Other Investments

Oregon statutes permit certain other investments and transactions for special purpose funds in limited circumstances. For example, fixed or variable life insurance or annuity contracts, guaranteed investment contracts, and, for deferred compensation funds, share and savings accounts in credit unions and trusts. Seek advice of legal counsel if these investments are contemplated.

INVESTMENT RESTRICTIONS

Oregon law places certain restrictions on local government investing. ORS 294 prohibits local governments from:

- Committing to invest funds more than 14 days in advance of settlement.
- Agreeing to invest funds or sell securities for a fee other than interest.
- Lending securities, unless authorized by an investment policy which has been reviewed by the Short Term Fund Board.
- Paying for securities before the local government or a custodian bank receives physical delivery of the securities.
- Delivering securities to a purchaser prior to receiving payment in full.

In addition, investments may not have a maturity in excess of eighteen months unless the governing body adopts a written investment policy, and that policy is reviewed by the Oregon Short Term Fund Board. The investment policy must include guidelines concerning maximum investment maturity dates and require readoption, not less than annually. This eighteen month restriction does not apply to money which the local government is specifically authorized by state law to hold for more than one year, if the money is invested in securities which mature when the money is expected to be needed and to certain reserves for bonds and construction projects.

WRITTEN INVESTMENT PROCEDURES

Instituting written investment procedures offers several benefits apart from an investment policy. Written procedures outline the process for making investment decisions, detail the activities of the investment staff, and specify how investment decisions are to be carried out. An investment policy should succinctly state the entity's investment objectives, outline the risk tolerances of the governing body, and delegate authority to investment personnel. In contrast, an investment procedure should formalize the investment process and put the investment policy into action.

Well-written investment procedures will answer the following questions:

- Who is authorized to initiate investment transactions?
- Who is authorized to approve investment transactions?
- Who is authorized to initiate fund transfers or wire transactions?

- Who will make investment bookkeeping and accounting entries?
- Who are the approved broker/dealers and financial institutions for transacting business on a day-to-day basis?
- Who is the safekeeping agent and what are the delivery instructions?

When developing written procedures, it is helpful to think through the entire investment process from beginning to end, and then document the activities that take place. Investment procedures should begin with a review of the daily cash position and include a review of maturing investments and incoming payments.

Next, the procedures should detail how investment decisions will be made. How will cash flow needs be determined? What are current and expected interest rates? What other investments are in your entity's portfolio? Written procedures should outline or detail how investment transactions will be handled.

To help ensure compliance with the investment policy and adherence to internal controls, the items listed below should be included in the procedure:

- Governing statutes, regulations, ordinances, resolutions, and policies.
- Duties of personnel.
- Limitations of employee authority.
- Flowchart of transaction initiation and execution.
- Lists of authorized broker/dealers and financial institutions who may be called for competitive quotes on securities.
- List of relevant bank account numbers, safekeeping, and delivery instructions.
- Descriptions of relevant cycles and functions, including review and approval processes.
- Timelines for report preparation and report distribution lists.
- Methodologies and formulas for allocations, distributions, and other calculations.
- Samples of all forms and reports.
- Descriptions of back-up and disaster recovery procedures.
- Implementation dates and dates of revisions.

Some investment procedure manuals go beyond the daily routine and outline what activities should take place on a monthly, quarterly, periodic, and annual basis. For example, the procedure manual might include information on how broker/dealers and financial institutions are selected, how often those institutions are reviewed for creditworthiness, and who is responsible for this review. Written procedures should be reviewed and updated annually.

SAMPLE INVESTMENT POLICY FOR LOCAL GOVERNMENTS

PURPOSE

This Investment Policy defines the parameters within which funds are to be invested by [Local Government]. The [Local Government] is a [Type of Government] whose purpose is to [Function of Local Government]. This policy also formalizes the framework, pursuant to ORS 294.135, for the [Local Government]'s investment activities to ensure effective and judicious management of funds within the scope of this policy.

These guidelines are intended to be broad enough to allow designated investment staff to function properly within the parameters of responsibility and authority, yet specific enough to adequately safeguard the investment assets.

The policy adopted by each entity will, by definition, have some variation with those policies adopted by others. The policy should be a reflection of what actually happens within each organization. Every effort should be made by treasurers, finance officers and approving authorities to understand the philosophy and reasons behind each element of the policy. Merely copying the Model Policy will not insure that the theory is internalized within the organization and that the policy will have an impact on the financial health of the investment portfolio.

GOVERNING AUTHORITY

[Local Government]'s investment program shall be operated in conformance with Oregon Revised Statutes and applicable Federal law. Specifically, this investment policy is written in conformance with ORS 294.035; 294.040; 294.052; 294.135; 294.145; and 294.810. All funds within the scope of this policy are subject to laws established by the State of Oregon. Any revisions or extensions of these sections of the ORS shall be assumed to be part of this Investment Policy immediately upon being enacted.

SCOPE

This policy applies to activities of [Local Government] with regard to investing the financial assets of [operating funds/capital funds/bond proceeds/bond reserve funds]. Funds held by trustees or fiscal agents are excluded from these rules, however, all funds are subject to statutes and regulations established by the State of Oregon. The amount of funds falling within the scope of this policy over the next three years is expected to range between \$xxx million and \$xxx million.

GENERAL OBJECTIVES

The primary objectives, in priority order, of investment activities shall be:

Preservation of Invested Capital

Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. The goal is to mitigate credit risk and interest rate risk.

Liquidity

The investment portfolio shall remain sufficiently liquid to meet all reasonable anticipated operating requirements. Furthermore, the portfolio should consist largely of securities with

active secondary or resale markets. A portion of the portfolio also may be placed in the Oregon Short Term Fund which offers next-day liquidity. Where possible and prudent, the portfolio should be structured so that investment mature concurrent with anticipated demands.

Return

The investment portfolio shall be designed with the objectives of attaining a market rate of return throughout budgetary and economic cycles, taking into consideration the safety and liquidity needs of the portfolio. Although return consists of both principal return (gains and losses due to market value fluctuations) and income return (yield), this policy discourages active trading and turnover investments. Investments should generally be held to maturity.

STANDARDS OF CARE

Prudence

The standard of prudence to be used by investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and this investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and the liquidity and the sale of securities are carried out in accordance with the terms of this policy.

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

Ethics and Conflicts of Interest

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. Employees and investment officials shall disclose any material interests in financial institutions with which they conduct business. They shall further disclose any personal financial/investment positions that could be related to the performance of the investment portfolio. Employees, officers and their families shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the [Local Government]. Officers and employees shall, at all times, comply with the State of Oregon Government Standards and Practices code of ethics set forth in ORS 244.

Delegation of Authority and Responsibilities

Governing Body

The governing body will retain ultimate fiduciary responsibility for invested funds and will receive reports, pursuant to, and with sufficient detail to comply with ORS 294.085 and 294.155.

Delegation of Authority

Authority to manage investments within the scope of this policy and operate the investment program in accordance with established written procedures and internal controls is granted to

[Designated Position], hereinafter referred to as Investment Officer, and derived from the following: ORS 294.035 to 294.053, 294.125 to 294.145, and 294.810.

No persons may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Investment Officer. The Investment Officer shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

Investment Committee

The [Governing Body or Position] may seek to establish an investment committee to provide guidance to the Investment Officer(s) and monitor investment policy compliance.

Investment Advisor

The [Governing body or Position or Investment Officer] may engage the services of one or more external investment managers to assist in the management of the entity's investment portfolio in a manner consistent with this investment policy. Investment advisors may be hired on a non-discretionary basis. All investment transactions by approved investment advisors must be pre-approved in writing by the Investment Officer and compliant with this Investment Policy. If [Local Government] hires an investment advisor to provide investment management services, the adviser is authorized to transact with its direct dealer relationships on behalf of [Local Government].

Note: Oregon Revised Statutes do not restrict hiring investment advisors on a discretionary basis. However, the OSTR Board cautions against hiring investment advisor on a fully discretionary basis. Therefore, this sample policy only allows for non-discretionary investment advisors.

TRANSACTION COUNTERPARTIES, INVESTMENT ADVISORS AND DEPOSITORIES

Broker/Dealer

The Investment Officer shall determine which broker/dealer firms and registered representatives are authorized for the purposes of investing funds within the scope of this investment policy. A list will be maintained of approved broker/dealer firms and affiliated registered representatives.

The following minimum criteria must be met prior to authorizing investment transactions. The Investment Officer may impose more stringent criteria.

Broker/Dealer firms must meet the following minimum criteria:

- Be registered with the Securities and Exchange Commission (SEC);
- Be registered with the Financial Industry Regulatory Authority (FINRA);
- Provide most recent audited financials;
- Provide FINRA Focus Report filings.

Approved broker/dealer employees who execute transactions with [Local Government] must meet the following minimum criteria:

- Be a registered representative with the Financial Industry Regulatory Authority (FINRA);
- Be licensed by the state of Oregon;
- Provide certification (in writing) of having read, understood, and agreed to comply with the most current version of this investment policy.

The Investment Officer may want to establish policy for engaging broker/dealer firms and registered representatives that are more restrictive than stated in this policy. Additional requisites or due diligence items may include:

- Positive references from at least three other local government clients.
- As part of the periodic due diligence review, inquiries with other local government clients with regard to their recent experiences with broker/dealer firms or registered representatives and any change in relationship status.
- Requirement that approved registered representatives provide notification within 30 days of any formal investigations or disciplinary actions initiated by federal or state regulators.
- Requirement that prospective registered representatives have an established history of advising local governments with similar amounts of assets under management.

Periodic (at last annual) review of all authorized broker/dealers and their respective authorized registered representatives will be conducted by the Investment Officer. Factors to consider would be:

- Pending investigations by securities regulators.
- Significant changes in net capital.
- Pending customer arbitration cases.
- Regulatory enforcement actions.

Professional conduct, regulatory filing history, and registration status for any registered broker/dealer firm or for an individual representative can be researched at the FINRA website using the FINRA Brokercheck service.

- www.finra.org/Investors/ToolsCalculators/BrokerCheck/

Additional information (including state issued Enforcement Orders) on brokers and registered representatives licenses by the state of Oregon may also be obtained from the Oregon Department of Consumer and Business Services Division of Finance and Corporate Securities.

- www.cbs.state.or.us/external/dfcs/

Direct Issuers

Obligations that are permitted for purchase by this policy may be purchased directly from the issuer.

Investment Advisers

A list will be maintained of approved advisers selected by conducting a process of due diligence.

The following items are required for all approved Investment Advisers:

- The investment adviser firm must be registered with the Securities and Exchange Commission (SEC) or licensed by the state of Oregon; (*Note: Investment adviser firms with assets under management > \$100 million must be registered with the SEC, otherwise the firm must be licensed by the state of Oregon*)
- All investment adviser firm representatives conducting investment transactions on behalf of [Local Government] must be registered representatives with FINRA;
- All investment adviser firm representatives conducting investment transactions on behalf of [Local Government] must be licensed by the state of Oregon;
- Certification, by all the adviser representatives conducting investment transactions on behalf of this entity, of having read, understood and agreed to comply with this investment policy.

A periodic (at least annual) review of all authorized investment advisers will be conducted by the Investment Officer to determine their continued eligibility within the portfolio guidelines.

Factors to consider would be:

- Pending investigations by securities regulators.
- Significant changes in net capital.
- Pending customer arbitration cases.
- Regulatory enforcement actions.

Professional conduct and regulatory filing history for any registered investment advisor or for individual adviser representatives can be researched on the Securities and Exchange Commission's (SEC) Investment Adviser Public Disclosure website.

The SEC's Investment Adviser Public Disclosure website provides access to the registration form 9"Form ADV") that the adviser filed. Form ADV contains information about an investment adviser and its business operations. Additionally, it contains disclosure about certain disciplinary events involving the adviser and its key personnel.

The website also allows users to search for an individual investment adviser representative an view that individual's professional background and conduct, including current registrations, employment history, and disclosures about certain disciplinary events involving the individual.

- www.adviserinfo.sec.gov/IAPD/Content/Search/iapd_Search.aspx

The Investment Officer may want to establish guidelines or policy for engaging investment advisers' services that are more restrictive than stated in policy. Additional requisites or due diligence items may include:

- Positive references from at least three other local government clients of a prospective investment adviser firm.
- As part of the periodic due diligence review, inquiries with other local government clients of approved investment advisers with regard to their recent experiences with the adviser and any change in the relationship status.
- Requirement that approved investment advisers provide notification within 30 days of a relationship termination by an Oregon based local government.
- Requirement that approved investment advisers provide notification within 30 days of any formal investigations or disciplinary actions initiated by federal or state regulators.
- Requirement that prospective investment advisers have an established history of advising local governments with similar amounts of assets under management.

Depositories

All financial institutions who desire to become depositories must be qualified Oregon Depositories pursuant to ORS Chapter 295.

Competitive Transactions

- The Investment Officer shall obtain and document competitive bid information on all investments purchased or sold in the secondary market. Competitive bids or offers should be obtained, when possible, from at least three separate brokers/financial institutions or through the use of a nationally recognized trading platform.
- In the instance of a security for which there is no readily available competitive bid or offering on the same specific issue, then the Investment Officer shall document quotations for comparable or alternative securities.
- When purchasing original issue instrumentality securities, no competitive offerings will be required as all dealers in the selling group offer those securities at the same original issue price. However, the Investment Officer is encouraged to document quotations on comparable securities.
- If an investment adviser provides investment management services, the adviser must retain documentation of competitive pricing execution on each transaction and provide upon request.

ADMINISTRATION AND OPERATIONS

Delivery vs. Payment

All trades of marketable securities will be executed (cleared and settled) by delivery vs. payment (DVP) to ensure that securities are deposited in the [Local Government]'s safekeeping institution prior to the release of funds.

Third-Party Safekeeping

Securities will be held by an independent third-party safekeeping institution selected by the [Local Government]. All securities will be evidenced by safekeeping receipts in the [Local Government]'s name. Upon request, the safekeeping institution shall make available a copy of its Statement on Standards for Attestation Engagement (SSAE) No. 16.

Internal Controls

The Investment Officer and [Oversight Body or Person] are jointly responsible for establishing and maintaining an adequate internal control structure designed to reasonably assure that invested funds are invested within the parameters of this Investment Policy and protected from loss, theft, or misuse. Specifics for the internal controls shall be documented in writing. The established control structure shall be reviewed and updated periodically by the [Oversight Body or Person].

The concept of reasonable assurance recognizes that the cost of a control should not exceed the benefits likely to be derived and the valuation of costs and benefits requires estimates and judgments by management.

The internal controls shall address the following points at a minimum:

- Compliance with Investment Policy.
- Control of collusion.
- Separation of transaction authority from accounting and record keeping.
- Custodial safekeeping.
- Avoidance of physical delivery of securities whenever possible and address control requirements for physical delivery where necessary.
- Clear delegation of authority to subordinate staff members.
- Confirmation of transactions for investments and wire transfers in written or digitally verifiable electronic form.
- Dual authorization of wire and automated clearing house (ACH) transfers.
- Staff training.
- Review, maintenance and monitoring of security procedures both manual and automated.

An external audit shall provide an annual independent review to assure compliance with Oregon state law and [Local Government] policies and procedures.

SUITABLE AND AUTHORIZED INVESTMENTS

Permitted Investments

The following investments are permitted pursuant to ORS 294.035, 294.040, and ORS 294.810. *(Note: Permitted investments may be more restrictive than ORS 294.035 and 294.810.)*

- US Treasury Obligations: U.S. Treasury and other government obligations that carry the full faith and credit guarantee of the United States for the timely payment of principal and interest.
- US Agency Obligations: Senior debenture obligations of US federal agencies and instrumentalities or U.S. government sponsored enterprises (GSE).
- Oregon Short Term Fund.
- Corporate Indebtedness.
 - Commercial Paper issued under the authority of section 3(a)2 or 3(a)3 of the Securities Act of 1933.
 - Corporate Bonds.
- Repurchase Agreements.
- Municipal Debt.
- Bankers Acceptances.
- Qualified Institution Time Deposits/Savings Accounts/Certificates of Deposit.

Approval of Permitted Investments

If additional types of investments are considered for investment, per Oregon state statute they will not be eligible for investment until this policy has been amended and the amended version adopted by [Local Government].

Prohibited Investments

- Private Placement of “144A” Securities
Private placement or “144A” securities are not allowed. For purposes of this policy, SEC Rule 144A securities are defined to include commercial paper privately placed under section 4(a)(2) of the Securities Act of 1933.
- US Agency Mortgage-backed Securities
US agency mortgage-backed securities such as those securities issued by FNMA and FHLMC are not allowed.
- Securities Lending
The [Local Government] shall not lend securities nor directly participate in a securities lending program.

Demand Deposits and Time Deposits

- All demand deposits and time deposits (Examples of time deposits are: certificates of deposit and savings accounts) shall be held in qualified Oregon depositories in accordance with ORS Chapter 295.
- Demand deposits in qualified depository institution are considered cash vehicles and not investments and are therefore outside the scope and restrictions of this policy. Pursuant to ORS 294.035(3)(d), time deposits, certificates of deposit and savings accounts are considered investments and within the scope of this policy.

Repurchase Agreements

- ORS 294.035(3)(j) requires repurchase agreement collateral to be limited in maturity to three years and priced according to percentages prescribed by written policy of the Oregon Investment Council or the Oregon Short Term Fund Board.
- ORS 294.135(2) limits the maximum term of any repurchase agreement to 90 days.
- The OSTF Board has adopted the following margins:
 - US Treasury Securities: 102%
 - US Agency Discount and Coupon Securities: 102%
 - Mortgage Backed and Other*: 103%

**Limited to those securities described in ORS 294.035(1)*

INVESTMENT PARAMETERS

Credit Risk

Credit risk is the risk that a security or a portfolio will lose some or all of its value due to a real or perceived change in the ability of the issuer to repay its debt. Credit risk will be mitigated by the following guidelines:

- **Diversification**
It is the policy of [Local Government] to diversify its investments. Where appropriate, exposure will be limited by security type, maturity, issuance, issuer, and security type. Allowed security types and investment exposure limitations are detailed in the table below.
- **Recognized Credit Ratings**
Investments must have a rating from at least [one/two] of the following nationally recognized statistical ratings organizations (NRSRO): Moody's Investors Service, Standard & Poor's, and Fitch Ratings Service as detailed in the table below. Ratings used to apply the guidelines below should be investment level ratings and not issuer level ratings.
- **Portfolio Average Credit Rating**
The minimum weighted average credit rating of the portfolio's rated investments shall be Aa/AA/AA by Moody's Investor Service, Standard & Poor's, and Fitch Ratings Service respectively.
- **Exposure Constraints and Minimum Investment Credit Ratings**
The following table limits exposures among investment permitted by this policy.

This table contains sample restraints. Local Governments should also consult applicable state statutes and legal guidelines)>

Issue Type	Maximum % Holdings	Minimum Ratings Moody's/S&P/Fitch
US Treasury Obligations	100%	None
US Agency Securitys Per Agency (Senior Obligations Only)	100% 33%	- -
Oregon Short Term Fund	Maximum allowed per ORS 294.810	-
Banker's Acceptances	25% ⁽¹⁾	A1+/P1/F1+
Time Deposits/Savings Accounts/Certificates of Deposit ⁽²⁾ Per Institution	25%	-
Repurchase Agreements	5%	-
Corporate Debt (Total)	15% ⁽³⁾	-
Corporate Commercial Paper Per Issuer	15% ⁽³⁾ 2.5% ⁽⁴⁾	A1/P1/F1
Corporate Bonds Per Issuer	10% ⁽³⁾ 2.5% ⁽⁴⁾	Aa/AA/AA
Municipal Debt (Total)	10%	-
Municipal Commercial Paper	10%	A1/P1/F1
Municipal Bonds	10%	Aa/AA/AA

⁽¹⁾25% Maximum per ORs 294.035(D)

⁽²⁾As authorized by ORs 294.035(3)(d)

⁽³⁾35% Maximum per ORS 294.035(D)

⁽⁴⁾5% Maximum per ORS 294.035(D)

- Restriction on Issuers with Prior Default History
Per ORS 294.040, the bonds of issuers listed in ORS 294.035(3)(a) to (c) may be purchased only if there has been no default in payment of either the principal of or the interest on the obligations of the issuing county, port, school district or city, for a period of five years next preceding the date of the investment.

Liquidity Risk

Liquidity risk is the risk that an investment may not be easily marketable or redeemable. The following strategies will be employed to mitigate liquidity risks:

- The value of at least 25% of funds available for investing or [three/six/twelve] months of budgeted operating expenditures will be invested in the Oregon Short Term Fund, with a

qualified depository institution or investments maturing in less than [30/60/90] days to provide sufficient liquidity for expected disbursements.

- Funds in excess of liquidity requirements are allowed for investments maturing in greater than one year. However, longer-term investments tend to be less liquid than shorter term investments. Portfolio investment maturities will be limited as follows:

Total Portfolio Maturity Constraints:

Maturity Constraints	Minimum % of Total Portfolio
Under [30/60/90] days	25% or [three/six/twelve] months Estimated Operating Expenditures
Under 1 year	50%
Under 3 years	100%

- Reserve or Capital Improvement Project monies may be invested in securities exceeding the maximum term if the maturities of such investments are made to coincide as nearly as practicable with the expected use of the funds.
- Larger issuance sizes enhance liquidity as there are likely to be a greater number of investors. Issuance sizes above a minimum amount qualify a corporate or municipal debt bond issuance for index eligibility. Index eligibility bonds have a significantly larger investor base which improves liquidity.
- Limiting investments in a specific debt issuance improves secondary market liquidity by assuring there are other owners of the issuance.

Issue Type	Maximum % of Issuance* (Par)
US Agency Securities	50%
Corporate Debt (Total)	-
Corporate Commercial Paper	100%
Corporate Bonds	25%
Municipal Bonds	25%

*The par amount issued under a single CUSIP.

Interest Rate Risk

Longer-term investments have the potential to achieve higher returns but are also likely to exhibit higher market value volatility due to the changes in the general level of interest rates over the life of the investment(s). Interest rate risk will be mitigated by providing adequate liquidity for short term cash needs, and by making longer-term investments only with funds that are not needed for current cash flow purposes. Certain types of securities, including variable rate securities, securities with principal pay-downs prior to maturity, and securities with embedded options, will affect the interest rates risk profile of the portfolio differently in different interest rate environments. The following strategies will be employed to control and mitigate adverse changes in the market value of the portfolio due to changes in interest rates:

- Where feasible and prudent, investment maturities should be matched with expected cash outflows to mitigate market risk.
- To the extent feasible, investment maturities not matched with cash outflows, including liquidity investments under one year, should be staggered to mitigate reinvestment risk.

- No commitments to buy or sell securities may be made more than 14 days prior to the anticipated settlement date, or receive a fee other than interest for future deliveries.
- The maximum percent of callable securities in the portfolio shall be xx%.
- The maximum stated final maturity of individual securities in the portfolio shall be three years, except as otherwise states in this policy.
- The maximum portfolio average maturity (measured with stated final maturity) shall be 1.5 years.

INVESTMENT OF PROCEEDS FROM DEBT ISSUANCE

Investments of bond proceeds are restricted under bond covenants that may be more restrictive than the investment parameters included in this policy. Bond proceeds shall be invested in accordance with the parameters of this policy and the applicable bond covenants and tax laws.

Funds from bond proceeds and amounts held in a bond payment reserve or proceeds fund may be invested pursuant to ORS 294.052. Investments of bond proceeds are typically not invested for resale and are maturity matched with outflows. Consequently, surplus funds within the scope of ORS 294.052 are not subject to this policy's liquidity risk constraints within section IX(2).

INVESTMENT OF RESERVE OR CAPITAL IMPROVEMENT FUNDS

Pursuant to ORS 294.135(1)(b), reserve or capital improvement project monies may be invested in securities exceeding three years when the funds in question are being accumulated for an anticipated use that will occur more than 18 months after the funds are invested, then, upon the approval of the governing body of the county, municipality, school district or other political subdivision, the maturity of the investment or investments made with the funds may occur when the funds are expected to be used.

GUIDELINE MEASUREMENT AND ADHERENCE

Guideline Measurement

Guideline measurement will be [par/market] value of investments.

Guideline Compliance

- If the portfolio falls outside of compliance with adopted investment policy guidelines or is being managed inconsistently with this policy, the Investment Officer shall bring the portfolio back into compliance in a prudent manner and as soon as prudently feasible.
- Violations of portfolio guidelines as a result of transactions, actions to bring the portfolio back into compliance and, reasoning for actions taken to bring the portfolio back into compliance shall be documented and reported to the [Designated Oversight Body].
- Due to fluctuations in the aggregate surplus funds balance, maximum percentages for a particular issuer or investment type may be exceeded at a point in time. Securities need not be

liquidated to realign the portfolio; however, consideration should be given to this matter when future purchases are made to ensure that appropriate diversification is maintained.

REPORTING AND DISCLOSURE

Compliance

The Investment Officer shall prepare a report at least [monthly/quarterly] that allows the [Designated Oversight Body] to ascertain whether investment activities during the reporting period have conformed to the investment policy. The report should be provided to the investment oversight body. The report will include, at a minimum, the following:

- A listing of all investments held during the reporting period showing: par/face value, accounting book value, market value, type of investment, issuer, credit ratings, and yield to maturity (yield to worst if callable).
- Average maturity of the portfolio at period-end.
- Maturity distribution of the portfolio at period-end.
- Average portfolio credit quality of the portfolio at period-end.
- Average weighted yield to maturity (yield to worst if callable investments are allowed) of the portfolio.
- Transactions since last report.
- Distribution of transactions among financial counterparties such as broker/dealers.
- Violations of portfolio guidelines or non-compliance issues that occurred during the prior period or that are outstanding. This report should also note actions (taken or planned) to bring the portfolio back into compliance.

Performance Standards/Evaluation

At least annually, the Investment Officer shall report comparisons of investment returns to relevant alternative investments and comparative bond indexes. The performance of the portfolio should be compared to the performance of alternative investments such as available certificate of deposit, the Oregon Short Term Fund, US Treasury rates, or against one or more indices with a similar risk profile (e.g. Bond indexes comprised of high grade investments and maximum maturities of three years).

When comparing performance, all fees and expenses involved with managing the portfolio shall be included in the computation of the portfolio's rate of return.

Marking to Market

The market value of the portfolio shall be calculated at least [monthly/quarterly] and a statement of the market value of the portfolio shall be issued at least [monthly/quarterly].

Audits

Management shall establish an annual process of independent review by the external auditor to assure compliance with internal controls. Such audit will include tests deemed appropriate by the auditor.

POLICY MAINTENANCE AND CONSIDERATIONS**Review**

The investment policy shall be reviewed at least annually to ensure its consistency with the overall objectives of preservation of principal, liquidity and return, and its relevance to current law and financial and economic trends.

The annual report should also serve as a venue to suggest policies and improvements to the investment program, and shall include an investment plan for the coming year.

Exemptions

Any investment held prior to the adoption of this policy shall be exempted from the requirements of this policy. At maturity or liquidation, such monies shall be reinvested as provided by this policy.

Policy Adoption and Amendments

This investment policy and any modifications to this policy must be formally approved in writing by the [Designated Oversight Body(s)] of [Local Government].

This policy must be submitted to the Orego Short Term Fund (OSTF) board for review if:

- This policy allows maturities beyond 18 months unless the funds are being accumulated for a specific purpose, including future construction projects, and upon approval of the [Designated Oversight Body(s)], the maximum maturity date matches the anticipated use of the funds (ORS 294.135(1)(b) and 294.135(3)).

And either:

- This policy has never been submitted to the OSTF Board for comment;

Or

- Material changes have been made since the last review by the OSTF Board.

Regardless of whether this policy is submitted to the OSTF Board for comment, this policy shall be resubmitted not less than annually to the [Designated Oversight Body(s)] for approval.

LIST OF DOCUMENTS USED IN CONJUNCTION WITH THIS POLICY

The following is a list of suggested documents that may be used in conjunction with this policy.

- Listing of authorized personnel
- Relevant investment statutes and ordinances
- Description of benchmark(s)
- Master repurchase agreements and tri-party agreements
- Listing of authorized broker/dealers and financial institutions used
- Safekeeping agreements
- Wire transfer agreements
- Sample investment reports
- Methodology for calculating rate of return
- Broker confirmations and safekeeping receipts

STANDARD INVESTMENT POLICY - DEFINITIONS

Below is the rationale for the various elements of the model policy.

Policy

The overall policy statement should be summarized and condenses in the opening section. Important considerations include the name of the entity, safety, liquidity and yield of public funds managed by the entity.

Scope

An investment policy should explain its scope. Does the policy apply to all funds held in the custody of the government jurisdiction and all of its officers? If certain funds are excluded, provide an explanation of guidance of investment of those funds.

Prudence

To burden a conscientious professional with personal responsibility for default on a single item within a diversified portfolio seems unduly severe. Accordingly, public entities with portfolios of sufficient size are urged to apply the prudence concept to the overall portfolio.

Objective

Every investment policy must contain a concise and clear statement of objectives regarding safety of capital, liquidity and return on investment. The effectiveness of the investment program is set by a caliber of the staff, the procedures used, the working environment and the policy guidance provide by governing officials. Through its statement of objectives, the governing body sets the tone and direction of the policy and the investment program.

Delegation of Authority

After the investment objectives have been identified, the next logical element of an investment policy is an explicit delegation of authority to specific investment officials responsible for conducting transactions and managing the entity's investment program.

Ethics and Conflicts of Interest

Some governments have adopted conflict of interest legislation that regulates the activities of certain officers and employees. In the investment area, some conflicts may be governed by general code provisions, making separate policies redundant. Some jurisdictions, however, may seek to adopt policies regarding ethical behavior and conflicts of interest.

Authorized Financial Dealers and Institutions

The investment policy should require that a set formal process be used to select depositories and brokers/dealers. Because the policy is intended to endure, it should not mention specific firms or depositories. Rather, it should provide for a process that will screen out institutions that lack economic viability or whose past practices suggests that the safety of public capital would be impaired if transactions were directed to or through such firms.

Authorized and Suitable Investments

The selection of investment instruments to be allowed for investment purposes is a significant policy issue for many governments. Although day-to-day selection of specific instruments should be treated as a management function, the policy should define the general universe. Direction should be specifically given to funds that receive bond proceeds subject to arbitrage considerations.

From the approving authority's perspective, special care must be taken to ensure that the list of instruments includes only those allowed by law and those that local investment managers are trained and competent to handle. Cite the appropriate statutes for the particular entity as attachments.

In selecting authorized investments, consideration should be given to credit ratings on bankers' acceptances and collateralization of applicable instruments. If repurchase agreements are authorized, a Master Repurchase Agreement must be signed with the bank or dealer.

Collateralization

Collateralization must be required on any repurchase agreement. The policy should address such points as market valuation responsibility and timing, safekeeping by an independent third party and evidence of ownership.

Safekeeping and Custody

Like private investors, governing officials feel more secure about their entity's investments if they know that the securities are physically safe. The investment policy must include a clause regarding third-party safekeeping and custody of securities and collateral. The policy must also address the delivery of securities, where Delivery Versus Payment (DVP) is a requirement (i.e. Delivery of securities with a subsequent exchange of money for the securities).

Diversification

The investment policy should state the purpose of diversification – to reduce overall portfolio risks while attaining market average rates of return. Diversification should be conceptualized in terms of maturity as well as instrument type and issuer. Thus, the diversification concept in a cash management fund should include prohibition against over concentration in a specific maturity sector, as well as constraining the reliance on specific risky instruments and issuers.

Maximum Maturities

To protect public funds from market price losses resulting from rising interest rates, the entity may wish to limit the maximum term to maturity on current operating funds' investment to 12 months – the operating budget cycle. Some may find this term unduly restrictive and may employ a two-year (or longer) rule. The latter only appears reasonable if a portion of the assets are not required for expenditure within the one-year budget cycle.

Internal Controls

The development of internal controls remains a management function. The specific internal control measures are beyond the scope of the investment policy and should be subject of the normal operating procedures of the Treasury. The investment policy merely should require that a system of internal controls should be established. The policy can, of course, provide for the timing of periodic reviews and monitoring of controls. The review of internal controls should not be left up to the periodic examination by the Office of the State Auditor but review of controls is an ongoing responsibility of the entity.

Performance Standards

Much of the investment policy focus is directed towards controls. Yield objectives are also quite important. The long-run interests of the jurisdiction go beyond simple prudence and safety of funds. The investment policy should provide a formal evaluation of performance and occasional operational audits. Market Yield (Benchmark): entity's investment strategy is either passive or active. Given the strategy, define the basis used by the Treasurer to determine whether average yields are being achieved by comparison to a benchmark. List a recognized and verifiable index, e.g. six month U.S. Treasury bill, average Fed Funds rate, the Local Government Investment Pool, etc.

Reporting

Investment reports provide a mechanism for monitoring by the governing body. Periodic flows of information are needed to consider the impact of economic conditions, portfolio changes and the results of investment operations. Reporting also provides written communication regarding investment performance, compliance, and a clear representation of the investment portfolio.

Investment Advisors

If an entity will be utilizing investment advisors for assistance in their investment practices and portfolio management, it should be included in the policy.

Accounting Method

A public entity must comply with Generally Accepted Accounting Principles.

Investment Policy Adoption

It is best to have the policy certified by the board or certification committee prior to taking the policy to the statutory governing body, the Oregon Short Term Investment Board. In order for the investment policy to receive certification, these items MUST be included.

SAMPLE RESOLUTION ADOPTING INVESTMENT POLICY

RESOLUTION NO. _____

A RESOLUTION ADOPTING INVESTMENT POLICY

WHEREAS, ORS Chapter 294, Municipal Financial Administration, provides investment authorization for special districts.

WHEREAS, the adoption of an investment policy provides authorization and guidelines for the types of investments that will be permitted.

WHEREAS, no district may invest money unless its board has authorized the investment.

NOW, THEREFORE BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF _____ hereby adopts its Investment Policy dated _____.

ADOPTED BY BOARD OF DIRECTORS THIS _____ DAY OF _____, _____.

President (or Chairman)

ATTEST:
Secretary (or Clerk)

RESOURCES

County and Municipal Financial Administration (ORS 294):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors294.html

Local Government Investment Pool:

<http://www.oregon.gov/treasury/Divisions/Finance/LocalGov/Pages/LGIP%20Resources.aspx>

Oregon State Treasury Finance Division Home Page:

<http://www.oregon.gov/treasury/Divisions/Finance/Pages/default.aspx>

Public Funds Collateralization Program:

<http://www.oregon.gov/treasury/Divisions/Finance/LocalGov/Pages/Qualified-Depositories.aspx>

Meetings and Records

(Chapter 9)

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OREGON PUBLIC MEETINGS LAW

The purpose of the Oregon Meetings Law is to assure that meetings of public bodies are open to the public, so the public will know of the activities and actions of its public officials. The key requirements of the law are to hold meetings that are open to the public unless an executive session is authorized, to give notice of meetings and to take minutes. In addition, there are requirements regarding location, voting, and accessibility for disabled persons. All of these requirements are discussed in Oregon Revised Statute 192.610 to 192.690.

WHAT IS A PUBLIC MEETING?

A meeting is a convening of a quorum of the governing body of a public body for the purpose of deciding or deliberating upon a public issue. Unless the following criteria are met, the meeting is not a public meeting and the open meetings law does not apply:

- If less than a quorum of a board meets and discusses a public issue, it is not a public meeting.
- If a quorum of the board meets for a reason other than deliberation or decision on a public issue (e.g., a party, a seminar, a reception, etc.) it is not a public meeting.
- If a quorum meets for a reason other than deliberation or decision on a public issue, but then engages in such discussion, the meeting becomes a public meeting and would be unlawful unless proper notice had been given.

An advisory body, subcommittee, task force, or other official group that has authority to make recommendations to a public body on policy or administration is also required to comply with public meetings law.

A staff meeting is not covered under Public Meetings Law because it does not require a quorum, and because staff simply makes recommendations to the board which is the policy making body. If, however, a staff meeting includes enough board members as to constitute a quorum, then it must be open to the public.

Public Meetings Law is not a “public participation law.” The right of the public to attend meetings does not include the right to participate by giving testimony or comment. However, the public must be allowed to give comment on employment of a public officer or the standards to be used in hiring a chief executive officer.

PUBLIC NOTICE

The law requires that public notice be given of the time and place of meetings. This includes regular, special, and emergency meetings and workshops, and also includes meetings of subcommittees and advisory committees established by the governing body.

- Notices must be reasonably calculated to give actual notice to interested persons, including news media that have requested notice.
- The same notice must be given if a meeting is to only include an executive session. Any notice of an executive session must also include the specific statutory provision authorizing the executive session. If a regular, special, or emergency meeting is to be held which will include an executive session, the notice of executive session should be included in the notice along with the statutory authority. (See section on Executive Sessions for statutory authority.)
- Notice must include a list of the principal subjects anticipated to be considered at the meeting. The agenda does not need to go into detail about subjects scheduled for discussion,

but should be sufficiently descriptive so that interested persons will have an accurate picture of the anticipated agenda topics.

- The law does not require that every proposed item of business be described in the notice, but rather a reasonable effort to inform the public of the nature of the more important issues to be considered. Additional subjects may be considered at the meeting, even though not included in the notice.
- Paid display advertising is not required, and the governing body does not have a duty to be absolutely certain that the notice is published.

Regularly Scheduled Meetings: Press re-leases should be issued to:

- *Wire Service:* Associated Press and United Press International.
- *Local Media Representatives:* If the meeting involves a local matter then the notice should be sent to local media.
- *Mailing Lists:* Districts maintaining mailing lists of persons or groups for notice of public meetings should send notice to the persons on the list.
- *Interested Persons:* If a district is aware of persons interested in receiving notice of a meeting, these persons should be notified.
- *Notice Boards:* Some smaller communities have a designated area or bulletin board for posting notices. Governing bodies may want to post notices of meetings in such areas.

Special Meetings: Special meetings require at least 24 hours notice. Such notice should include a press release or telephone call to media, particularly media that has requested prior notice. Special meeting notice should also include telephone, letter, or fax notice to other interested parties.

Emergency Meetings: Emergency meetings may be held on less than 24 hours notice. An actual emergency must exist, and the minutes must describe the emergency, which justifies less than 24 hours notice. Notice of an emergency meeting must be “appropriate to the circumstances,” which should at least include a reasonable attempt to contact the media and other known interested persons.

- An actual emergency on one item does not permit consideration of other items at the emergency meeting.
- Work schedule conflicts or inconvenience of board members is not a justification for an emergency meeting.

Notice of Ordinances: If an ordinance is to be considered, ORS 198.540 requires that the meeting agenda be published between 4 and 10 days before the meeting and that it be posted in three places 10 days before the meeting.

MEETING LOCATIONS

The governing body is responsible to assure that there is adequate room for public attendance. Unexpected overflow crowds need not be accommodated, but reasonable efforts should be made to allow unexpected crowds to attend.

- Meetings must be held within the geographic boundaries of the district, at the district's administrative headquarters, or at any other nearest practical location. Emergency meetings and training sessions are not subject to those alternative requirements.
- Public meetings may be held in private places, such as restaurants or residences, as long as adequate notice of the location is given so that interested persons may attend and accommodations can be made for public attendance.
- Meetings may not be held where discrimination on the basis of race, creed, color, sex, age, national origin, or disability is practiced.
- Public meetings must be held in places accessible to individuals with mobility and other impairments, and a good faith effort to provide needed interpreters for hearing-impaired persons needs to be made. A hearing-impaired person requesting an interpreter must give the governing body at least 48 hours notice.

PUBLIC ATTENDANCE AND PARTICIPATION

The Public Meetings Law requires that attendance be allowed, but not participation by the public. Public participation or input can be disallowed on all but the following three issues:

- Employment of a public officer.
- Determination of standards to be used in hiring a chief executive officer.
- Determination of standards to be used in evaluating the employment-related performance of a chief executive officer.

CONTROL OF MEETINGS

The presiding officer has the inherent authority to keep order and impose reasonable restrictions necessary for the orderly and efficient conduct of a meeting. Unless the board decides otherwise, the presiding officer may regulate or disallow public input, may limit public input to relevant points, and may establish time limits for such input. Persons who fail to comply with such reasonable regulations or who otherwise disturb the meeting may be asked to leave, and upon failure to do so, may be treated as a trespasser.

- Members of the public cannot be prohibited from unobtrusively recording public meetings.
- Smoking is banned at public meetings at meeting places that are rented, leased, or owned by the District. The presiding officer should make an announcement at the beginning of each meeting to remind participants that smoking is not allowed.

VOTING

All official actions by governing bodies must be taken by public vote of the governing body, and the results of such vote, including how each board member voted on each issue, must be covered in the minutes. Secret ballots are prohibited. Failure to record a vote is not grounds to reverse that decision without a showing of intentional manipulation of the voting.

MINUTES AND RECORD KEEPING

Written minutes must be taken of all meetings. Minutes need not be verbatim transcripts, nor are tape recordings required. Minutes, in whatever form, must give a true reflection of matters discussed at the meeting and the views of the participants. Governing bodies must prepare minutes and have them available to the public within a reasonable time after the meeting. Minutes must be made available to the public even though not formally approved by the board.

Any tape recordings or written minutes of public Board meetings or executive sessions shall be retained by the District until such time as their disposal is authorized by rule or specific authorization of the State Archivist pursuant to ORS 192.105. It is recommended that minutes be retained forever. Minutes of executive sessions may be kept in the form of a tape recording rather than written minutes, and such minutes are not public records.

Written minutes must include:

- Members present.
- Motions, proposals, resolutions, orders, ordinances, and measures proposed and their disposition.
- Results of all votes taken, unless the district board has more than 25 members present.
- The substance of any discussion of any matter.
- A reference to any document discussed at the meeting.

EXECUTIVE SESSIONS

District boards may meet in executive (closed) session only under certain, statutorily authorized situations, and there are civil penalties for violation of executive session laws. The following are among the permissible purposes for executive sessions:

- **Employment of Public Officers, Employees, and Agents**
A meeting to discuss the specific hiring of a public officer, employee, or staff member. This provision applies only if the vacancy for the position has been advertised, regular procedures for hiring have been adopted, and, for a public officer, the public has the opportunity to comment on the employment. [ORS 192.660(2)(a)]
- **Discipline of Public Officers and Employees**
A meeting called to discuss the discipline or termination of a public officer, employee, or staff member, or hear complaints or charges brought against that person, unless the person asks for an open hearing. [ORS 192.660(2)(b)]
- **Public Hospital Medical Staff** Authorized for considering matters pertaining to the function of the medical staff licensed under ORS chapter 441. Meetings of medical peer review committees held under ORS 441.005 are also exempt from Public Meetings Law. [ORS 192.660(2)(c)]
- **Labor Negotiator Consultations**
A meeting for the purpose of conducting deliberations with persons designated by the governing body to carry on labor negotiations. The media may be excluded from the executive session. [ORS 192.660(2)(d)]
- **Real Property Transactions**
A meeting to discuss or negotiate on a property transaction. May not include discussion of a public body's long-term space needs or general policies concerning lease sites. [ORS 192.660(2)(e)]

- **Exempt Public Records**
If any of the records or information considered exempt from Public Records Law is discussed at a meeting then the District may hold an executive session. [ORS 192.660(2)(f)]
- **Trade Negotiations**
To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations. [ORS 192.660(2)(g)]
- **Legal Counsel**
A meeting may be held in executive session for the purpose of consulting with legal counsel concerning the legal rights and duties of current litigation or litigation likely to be filed. The governing body must bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation. [ORS 192.660(2)(h)]
- **Performance Evaluations**
A meeting to review the performance of a chief executive officer, other officers, employees, and staff members of the district. An executive session may not be held if the person whose performance is being reviewed and evaluated requests an “open hearing.” [ORS 192.660(2)(i)]
- **Public Investments**
An executive session may be called to negotiate with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments. [ORS 192.660(2)(j)]
- **Health Professional Licensee Investigation**
A meeting to consider information obtained as part of an investigation or licensee or applicant conduct. Confidential information must be protected even when the board convenes in public session for the purposes of deciding whether or not to issue a notice of intent to impose a disciplinary sanction on a licensee or to deny or approve an application for licensure. [ORS 192.660(2)(k)]
- **Labor Negotiations**
Labor negotiations can be held in an open meeting unless both sides of the negotiations request that they be held in executive session. Such executive sessions are not subject to the notification requirements of ORS 192.640. This subsection allows governing bodies to engage in labor negotiations with employees’ representatives. [ORS 192.660(2)(n)].

Executive sessions may be called during regular meetings, special, or emergency meetings, for which proper notice has been given. Also, a meeting may be called which is only an executive session. The presiding officer must first announce the statutory authority for the executive session before going into session.

The media cannot be excluded from an executive session, except for sessions regarding labor negotiations. Media representatives in attendance at an executive session should be instructed not to report or disclose matters discussed at the session; if such instruction is not given, the media may disclose the discussions. The presiding officer may prohibit the media from recording an executive session. The media includes newsgathering representatives (i.e., reporters) of news media that ordinarily reports activities of the public body, or ordinarily report matters of the nature under consideration by the public body.

Even though certain persons can be excluded from executive sessions, it does not restrict the authority of the governing body to invite persons not part of the board to attend executive sessions.

All final decisions must be made outside of the executive session. The public must have a chance to be aware of the final decision. A vote of the district board relating to information discussed in the executive session can satisfy this requirement. However, executive sessions may not be held for the purpose of taking any final action or making any final decision.

ENFORCEMENT

Enforcement of the Public Meetings Law may be by litigation brought by an interested person to force compliance or to determine the applicability of the law to particular meetings. A decision made in a meeting that violates the Public Meeting Law may be ratified at a subsequent meeting that complies with the law, and a recommendation made by a committee in violation of the Public Meetings Law can be ratified by the board in accepting the recommendation at an open meeting. Normally, courts will not void a decision made at an improper public meeting without a finding of intentional conduct. In addition, the Oregon Government Ethics Commission may consider complaints against public officials for violation of executive session laws, and may impose civil penalties of up to \$1,000.

SAMPLE NOTICES

Notice of Regular, Special or Emergency Meeting

(A)

The Board of Directors for the North Rose Sanitary District will hold a (regular, special, emergency) meeting at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). A copy of the agenda of the meeting is attached.

(B)

The Board of Directors for the North Rose Sanitary District will hold a (regular, special, emergency) meeting at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). The meeting will cover the Rose Urban Area Comprehensive Plan, Treatment Plant rate increase, and district medical plan.

Notice of Executive Session

The Board of Directors for the North Rose Sanitary District will hold an Executive Session [pursuant to ORS 192.660(2)(a)] at (time) at the District Office at 691 N.E. Alameda Ave., Rose City, on (month, day, year). The session will consider an applicant for the position of General Manager for the district.

SAMPLE PUBLIC MEETING POLICY

Preparation for Board Meetings

- Distribution of Materials to Board Members

The Agenda, Chief Executive Officer's Report, Treasurer's Report, and Statement of Bills shall be given to each member of the Board of Directors at least four (4) days prior to any regularly scheduled Board meeting.

At the same time, the Chief Executive Officer shall provide members detailed information relative to the Agenda, including existing Board policy pertinent to Agenda items.

- Distribution of Agenda to the Public

The proposed Agenda will simultaneously be distributed to all District offices and other facilities, local and other news media, and posted at one or more locations convenient for review by District personnel and the public.

Board Meeting Agenda

The Clerk of the Board shall draft the Agenda after conferring with the President of the Board. The following general order shall be observed:

- Call to order; Pledge of Allegiance to the flag
- Roll call by Secretary-Treasurer or designee
- Approval of the minutes
- Audience participation (testimony from citizens)
- Secretary-Treasurer's report
- Statement of bills
- Old business
- Correspondence
- New business
- Chief Executive Officer's report
- Items not on agenda open to public, Board and staff participation
- Agenda suggestions for future meetings from Board members and District personnel
- Adjournment

Notice and Location of Meetings

- **Application**
This policy applies to all meetings of the Board of Directors of the District, and to any meetings of subcommittees, or advisory groups appointed by the Board if such subcommittees or advisory groups normally have a quorum requirement, take votes, and form recommendations as a body for presentation to the Board of Directors.
- **Compliance With Law**
All meetings shall be conducted in accordance with the Oregon Public Meetings Law, ORS 192.610-192.710, and 192.990.
- **Location of Meetings**
All meetings shall be held within the geographic boundaries of the District, except for training sessions held without any deliberative action. No meeting shall be held in any place where discrimination on the basis of race, creed, color, sex, age, national origin, or disability is practiced. All meetings shall be held in places accessible to the handicapped.
- **Meetings Held By Telephone**
Meetings held by telephone or other electronic communication is subject to the Public Meetings Law if they otherwise qualify by virtue of their deliberative purpose and the presence of a quorum. ORS 192.670(1). Notice and opportunity for public access shall be provided when meetings are conducted by electronic means. At least one location shall be provided where meetings held by telephone or other electronic means may be listened to by members of the public. ORS 192.670(2).
- **Regular Meetings**
The Board shall hold regular monthly meetings on the **[day, e.g. the first and third Wednesday]** of each month. Such meetings shall be held at **[location]**, at **[hour, a.m./p.m.]**, or at such other places and times as the Board may designate from time to time.
- **Special Meetings**
The Board shall hold special meetings at the request of the President or any three members of the Board. If the President is absent from the District, special board meetings may be held at the request of the Vice-President. No special meeting shall be held upon less than 24 hours public notice.
- **Emergency Meetings**
Emergency meetings may be held at the request of persons entitled to call special meetings, upon less than 24 hours notice in situations where a true emergency exists. An emergency exists where there are objective circumstances which, in the judgment of the person or persons calling the meeting, create a real and substantial risk of harm to the District which would be substantially increased if the Board were to delay in order to give 24 hours notice before conducting the meeting. The convenience of Board members is not grounds for calling an emergency meeting.

At the beginning of any emergency meeting, the Director or Directors calling such meeting shall recite the reasons for calling such meeting, and the reasons the meeting could not have been delayed in order to give at least 24 hours notice, which reasons shall be noted in the minutes. The Board shall then determine if the reasons are sufficient to hold an emergency meeting and, if not, shall immediately adjourn such meeting. Only business related directly to the emergency shall be conducted at an emergency meeting.

- Notice of Meetings

Notice of the time, place, and principal subjects to be considered shall be given for all meetings. For regular meetings, the notice shall be in the form of an agenda, which shall be sent to all Board members, local media, and to all persons or other media representatives having requested notice in writing of every meeting. The agenda shall also be posted at the following locations within the District: **[insert locations]**.

Written notice shall also be sent to any persons who the District knows may have a special interest in a particular action, unless such notification would be unduly burdensome or expensive. For special meetings, press releases shall be issued or phone calls made to wire services and other media; and interested persons shall be notified by mail or telephone. For emergency meetings, the District shall attempt to contact local media and other interested persons by telephone to inform them of the meeting.

- Executive Sessions

Notice for meetings called only to hold executive sessions shall be given in the same manner as notice for regular, special and emergency meetings set forth above, except that the notice need only indicate the general subject matter to be considered at the executive session, but it shall also set forth the statutory basis for calling the executive session.

The President or other presiding officer shall announce the statutory authority for the executive session before going into closed session. Once the executive session has been convened, the President shall direct any representatives of the news media who are present not to report certain specified information from the executive session. In general, the extent of the non-disclosure requirement should be no broader than the public interest requires, and the news media will ordinarily be allowed to report the general topic of discussion in the executive session. Board members, staff and other persons present shall not discuss or disclose executive session proceedings outside of the executive session without prior authorization of the Board as a whole.

- Interpreters For the Hearing Impaired

The District shall comply with ORS 192.630(5) regarding the provision of interpreters for the hearing impaired at Board meetings, in accordance with the following rules:

- The District shall make a good faith effort to have an interpreter for hearing impaired persons provided at any regularly scheduled meeting if the person requesting the interpreter has given the District at least 48 hours notice of the request, provided the name of the requester, the requester's sign language preference, and any other relevant information which the District may require. "Good faith efforts" shall include contacting the Oregon

Disabilities Commission, or other state or local agencies that maintain a list of qualified interpreters.

- If a meeting is held upon less than 48 hours notice, the District shall make reasonable efforts to have an interpreter present.
- The requirement for an interpreter does not apply to emergency meetings.
- The Chief Executive Officer shall be responsible for developing and maintaining a list of qualified interpreters, and shall have the responsibility for making the required good faith effort to arrange for attendance of an interpreter at any meeting for which an interpreter is requested.

Board Meeting Conduct

- **Presiding Officer**
The President shall preside at Board meetings. In the President's absence, the Vice-President shall preside. If both the President and Vice-President are absent, any other member of the Board may preside.
- **Authority to Conduct Meetings**
The President or other presiding officer at any Board meeting shall have full authority to conduct the meeting. Meetings shall be conducted in such a manner as to provide a full and fair opportunity for discussion of the issues in an efficient and timely manner. Any decision of the President or other presiding officer at the meeting may be overridden by a majority vote of the Board.
- **Public Participation**
If public participation is to be a part of the meeting, the presiding officer may regulate the order and length of appearances, and limit appearances to presentations of relevant points. Persons failing to comply with the reasonable rules of conduct outlined by the presiding officer, or causing any disturbance, may be asked or required to leave. Upon failure to do so, such persons become trespassers.
- **Electronic Equipment**
The authority to control the meetings of the District Board extends to control over equipment such as cameras, tape recorders and microphones. The presiding officer shall inform persons attending any meeting of the District Board of reasonable rules necessary to assure an orderly and safe meeting. The physical comfort and safety of members of the Board and the public attending the meeting shall be of primary concern in formulating such rules.
- **Recording of Votes**
Votes shall be recorded. Any member may request that his or her vote be changed, if such request is made prior to consideration of the next order of business.

- **Quorum Requisites**
[Number] members shall constitute a quorum. If only a quorum is present, a unanimous vote shall be required to take final action.
- **Vote Explanations**
Members of the Board may append to the record, at the time of voting, a statement indicating either the reason for their vote or abstention.
- **Conflict of Interest/Ex Parte Contacts**
In the event of a potential conflict of interest, a member of the Board shall declare such conflict but may participate in discussions and vote. In the event any member of the Board has had any ex parte contact in a quasi-judicial matter, the member shall declare such contact prior to participating in discussion on the matter.
- **Smoking**
Pursuant to ORS 192.710, no person shall smoke or carry any lighted cigar, cigarette, pipe or other smoking equipment into a room where a meeting is being held by the Board or is to continue after a recess. For purposes of the statute, a meeting is deemed to have started at the time the agenda or meeting notice indicates it is to commence, regardless of the time the meeting actually begins. This rule shall apply at any regular, special or emergency meeting at which the Board intends to "exercise or advise in the exercise of any power of government." No quorum requirement shall apply for this smoking ban to apply. If the Board intends to reconvene after leaving a meeting room for an executive session, the Board will be deemed to be in a "recess" during which smoking shall be prohibited in the meeting room.
 - **Smoking Policy at Other Locations:** If a meeting is held at a location other than one which is "rented, leased or owned" by the District, such as a hotel meeting room, where no separate charge is made for the room, the smoking ban of ORS 192.710 shall not apply, but other laws prohibiting smoking except in designated areas, such as that found in ORS 433.845, may apply.
 - **Smoking Reminder:** Whenever members of the public are in attendance at a meeting, the presiding officer shall remind those present of the no smoking rule at the beginning of the meeting to avoid potential embarrassment.
- **Adjournment**
The meeting shall be adjourned by a majority vote or as a result of the loss of a quorum.

Executive Sessions

- **Notice**
Notice for meetings called only to hold executive sessions shall be given in the same manner as notice for regular, special and emergency meetings set forth above, except that the notice need only indicate the general subject matter to be considered at the executive session, but it shall also set forth the statutory basis for calling the executive session.

- No Final Decisions
The Board shall not make any final decisions during any executive session. This policy, however, shall not prohibit full discussion of Board members' views during executive sessions.
- Purposes
Executive sessions shall be held only for the following purposes:
 - Employment of Personnel: ORS 192.660(2)(a). To discuss the employment of a public officer, employee, or staff member, but only if the following requirements have been met:
 - The vacancy for the position has been advertised.
 - Regularized procedures for hiring have been adopted.
 - There has been opportunity for public input into the employment of such employee or officer.
 - Where employment of a Chief Executive Officer is under consideration, the standards, criteria and policy directives to be used in hiring such officer must have been adopted at a meeting open to the public at which the public has had an opportunity to comment. No executive session may be held under ORS 192.660(2)(a) for purposes of filling a vacancy in an elective office.
 - Discipline of Public Officers and Employees: ORS 192.660(2)(b). To consider the dismissal or disciplining of a public officer, employee, staff member or individual agent, or to hear complaints or charges brought against such persons, unless the person complained against requests an open hearing.
 - Medical Staff of a Public Hospital: ORS 192.660(2)(c). To consider matters pertaining to the function of the medical staff of a public hospital including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review, committees and all other matters relating to medical competency in the hospital.
 - Consultation with Labor Negotiator: ORS 192.660(2)(d). To conduct deliberations with persons designated by the Board to carry on labor negotiations on its behalf. News media representatives may be excluded from executive sessions called under this section.
 - Real Property Transactions: ORS 192.660(2)(e). To conduct deliberations with persons designated by the Board to negotiate real property transactions.
 - Exempt Records: ORS 192.660(2)(f). To consider records which are exempt by law from public inspection. Examples of such records include medical records pertaining to personnel, confidential communications from legal counsel, employment tests or examination materials, and other materials exempted from public disclosure under the Public Records Law, ORS 192.501 and 192.502.

- Trade or Commerce: ORS 192.660(2)(g). To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- Litigation/Consultation with Legal Counsel: ORS 192.660(2)(h). To consult with legal counsel concerning the District's legal rights and duties, as well as current litigation or litigation likely to be filed. Whenever written legal advice received from counsel is to be discussed, the Board may utilize an executive session to discuss the writing under the authority of ORS 192.660(2)(f), as well. This section authorizes an executive session to consider records which are exempt by law from public inspection.
- Performance Evaluations: ORS 192.660(2)(i). To review and evaluate the employment-related performance of the chief executive officer, other officers, employees or staff members, pursuant to standards, criteria and policy directives adopted by the District, unless the person whose performance is being reviewed and evaluated requests an open hearing. The standards, criteria and policy directives to be used in evaluating chief executive officers must first have been adopted by the Board in meetings open to the public in which there was an opportunity for public comment. Executive sessions called pursuant to this section may not include a general evaluation of any District goal, objective or operation, and may not include any directive to the Chief Executive Officer or other District personnel concerning agency goals, objectives, operations or programs.
- Public Investments: ORS 192.660(2)(j). An executive session may be called to negotiate with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.
- Health Professional Licensee Investigation: ORS 192.660(2)(k). A meeting to consider information obtained as part of an investigation or licensee or applicant conduct. Confidential information must be protected even when the board convenes in public session for the purposes of deciding whether or not to issue a notice of intent to impose a disciplinary sanction on a licensee or to deny or approve an application for licensure.
- Labor Negotiations: ORS 192.660(2)(n). Labor negotiations may be held in executive session if either side requests an executive session.
- Conduct of Executive Session

The President or other presiding officer shall announce the statutory authority for the executive session before going into closed session. Once the executive session has been convened, the President shall direct any representatives of the news media who are present not to report certain specified information from the executive session. In general, the extent of the non-disclosure requirement should be no broader than the public interest requires, and the news media will ordinarily be allowed to report the general topic of discussion in the executive session. Board members, staff and other persons present shall not discuss or disclose executive session proceedings outside of the executive session without prior authorization of the Board as a whole.

Minutes of Board Meetings

- **Written Minutes**

The Board shall keep written minutes of all of its meetings in accordance with the requirements of ORS 192.650. Minutes of public meetings shall include at least the following information:

 - All members of the Board present.
 - All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
 - Results of all votes, including the vote of each member by name.
 - The substance of any discussion on any matter.
 - Subject to ORS 192.410 - 192.505 relating to public records, a reference to any document discussed at the meeting.
- **Minutes of Executive Session**

Minutes of executive sessions shall be kept separately from minutes of public meetings. Minutes of executive sessions may be kept either in writing, in the same manner as minutes of public sessions, or by tape recording. If minutes of an executive session are kept by tape recording, written minutes are not required, unless otherwise provided by law. ORS 192.650(2).
- **Disclosure of Executive Session Matters**

If disclosure of material in the executive session minutes would be inconsistent with the purpose for which the executive session was held, the material may be withheld from disclosure. No executive session minutes may be disclosed without prior authorization of the Board. ORS 192.650(2).
- **Retention**

Any tape recordings or written minutes of public Board meetings or executive sessions shall be retained by the District until such time as their disposal is authorized by rule or specific authorization of the State Archivist pursuant to ORS 192.105. It is recommended that minutes be retained forever.
- **Availability to the Public**

Written minutes of public sessions shall be made available to the public within a reasonable time after the meeting. ORS 192.650(1)

OREGON PUBLIC RECORDS LAW

The purpose of Public Records Law is to assure that all records of a public agency, with some exceptions, are available for inspection and copying by the public.

- Every person has a right to inspect any non-exempt public records of a public body in the state. The intent, identity, motivations, or need of the person requesting the records are irrelevant.
- Public Records Law applies to all public bodies, but may also apply to private bodies established by public agencies or other groups which are the functional equivalent of a public body.

WHAT IS A PUBLIC RECORD?

Public Records Laws apply to all government records, no matter what kind. As defined by the Oregon Statutes, public records are any information that is prepared, owned, used or retained by a state agency or political subdivision that relates to an activity, transaction or function of a state agency or political subdivision; and that is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision.

Public agencies are required to maintain a public record without regard to the technology or medium used to create or communicate the record. Public records can be in the form of paper, tape, film, photographs, discs, pictures, sounds, symbols, or any other physical medium used to record information. Many public bodies use electronic mail (e-mail) for communications. E-mail is a public record. Even after individual e-mail messages are “deleted” from a computer, the messages generally continue to exist on computer back-up tapes, which are also public records. As with any public record, a public body must make all nonexempt e-mail available for inspection and copying regardless of its storage location.

Public Records Laws does not require public bodies to create public records. For example, if a district has information stored in a computer and the public requests that it be provided with a copy of the information in a different form than the district stores the information, the district is not required to manipulate the information to create the requested document. Alternate forms must be provided if the person is asking because of a disability, unless to do so would impose an undue financial or administrative burden on the district.

If an outside body, such as a private contractor, prepares a document for a district that contains information that can be considered public information, the records are considered public and fall within Public Records Laws. However, a record created by a private organization or individual does not become a public record simply because it is reviewed by a public body. For example, sample materials prepared and owned by a private company are not considered public records when they are simply reviewed by the public body and no decisions to use the materials have been made.

OBTAINING PUBLIC RECORDS

Districts must ensure that their records are made accessible to the public. A written public records policy must be made available to the public listing the individual responsible for receiving the request, cost, and how costs are determined.

A public entity must provide, as appropriate:

- A statement that it does not possess, or is not the custodian of, the record.
- Copies of all requested public records to which an exemption does not apply.
- A statement that it is the custodian of at least some of the requested records, an estimate of the time the public body requires before inspection can be made or copies of the records provided, and an estimate of the fees to be paid as a condition of receiving the records.

- A statement that it is the custodian of at least some of the requested records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.
- A statement that it is uncertain whether it possesses the record and that it will search for the record and make an appropriate response as soon as practicable.
- A statement that state or federal law prohibits it from acknowledging whether the record exists, or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction, and citing the applicable law.

Copying

If the records can be copied, then it is the responsibility of the district to furnish a copy of the records to the requester. Private individuals also have the right to make their own copies, using their own equipment, or inspect copies of the records. The district has the right to protect the records if it feels that the method used to copy the records will cause them damage.

Records must be available during usual business hours to persons wishing to either review or copy the records. The requester of the records is obligated to come to the district to get the records. The district need not deliver any records. When a request is submitted in writing, the response time must be “as soon as practicable and without undue delay.”

Fees

Districts are allowed to charge a fee for copying or locating records. The fee must be reasonable and reflect the actual cost of making the records available. Fees must be limited to no more than \$25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants the public body to proceed. Services that are permissible to charge a fee for include:

- The time spent by staff in locating the requested records.
- Reviewing records in order to delete exempt material.
- Supervising a person's inspection of original documents in order to protect the records.
- Copying records.
- Certifying documents as true copies.
- Sending records by special methods, such as express mail.

Fees should be consistent and included in the official policies of the district. A per-page charge is recommended that includes the expenses involved with handling and providing access to the records.

The requestor of the records does have the right to petition for a waiver of the fee if the records are of "public interest." If the records simply relate to a personal matter, such as seeking information relating to defense in a criminal matter, then the request for a waiver can be denied.

PUBLIC RECORDS EXEMPT FROM DISCLOSURE

If a district denies a request for a public record, it has the burden to prove that the record is exempt from disclosure. If the record is exempt from disclosure, the district is not required to

provide the record. In many instances, the district has the authority to voluntarily provide records, even if they are exempt from disclosure. If a district does voluntarily provide an exempt record to an individual, it does not give up the right to deny access of the record to another individual in the future.

The district records officer should use the following steps when deciding whether to honor a request for the district's records:

- Is there any good reason not to disclose the records?
- If the answer is yes, is the record exempt from disclosure?
- If there is any question as to whether or not the record is exempt, and the district does not wish to release the record, then legal counsel should be consulted.

An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address or personal telephone number remains available for public inspection.

Documents that are exempt from disclosure unless "the public interest requires disclosure in the particular instance," include the following:

- **Public Records Pertaining to Litigation**
Litigation records in which the district is part of the complaint or which the district believes that it is likely to become part of the complaint. This exemption does not apply to litigation which has been concluded. [ORS 192.501(1)]
- **Trade Secrets**
The information must not be patented, it must only be known to a limited number of persons, it must have the potential of deriving economic value, and it must give its users the chance to obtain a business advantage over competitors not having the information. [ORS 192.501(2)]
- **Criminal Investigatory Material** Information compiled in a criminal investigation that if divulged may deprive a person of a fair trial, constitute an invasion of privacy, disclose the identity of a confidential source, disclose investigation techniques, or endanger the safety of law enforcement officers. [ORS 192.501(3)]
- **Tests and Examination Material**
Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination. [ORS 192.501(4)]
- **Business Records Required to be Submitted**
Records which will identify a particular business and its production levels. [ORS 192.501(5)]
- **Real Estate Appraisal Information**
Information relating to the appraisal of real estate prior to its acquisition. [ORS 192.501(6)]
- **Employee Representation Cards**
The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections. [ORS 192.501(7)]

- **Civil Rights Investigation Material**
Information relating to complaints of discrimination in housing, places of public accommodation, or private vocational, professional or trade schools. However, the actual complaint is not exempt. [ORS 192.501(8)]
- **Unfair Labor Practices Complaints**
Information which relates to unfair labor practice investigations and complaints before the Employment Relations Board. The complaint itself would not be exempt from disclosure. [ORS 192.501(9)]
- **Debt Collection Agency Investigation Records**
Records, reports and other information received or compiled by the Director of Consumer and Business Services concerning debt collection. [ORS 192.501(10)]
- **Archaeological Site Information**
Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. [ORS 192.501(11)]
- **Personnel Discipline Actions**
A personnel discipline action, or materials or documents supporting that action, if a sanction was imposed. This exemption does not apply when an employee of a public body resigns during an employer investigation or in lieu of disciplinary action. [ORS 192.501(12)]
- **Information About Threatened or Endangered Species**
Information regarding the habitat, location or population of any threatened or endangered species, if the requestor of the records will use the information to further endanger the species. [ORS 192.501(13)]
- **Faculty Research**
Writings prepared by or under the direction of faculty of public educational institutions, in connection with research, until publicly released, copyrighted or patented. [ORS 192.501(14)]
- **Computer Programs for the Use of Public Bodies**
Computer programs developed or purchased by or for a public body for its own use, not including the original data or the mathematical formulas used to manipulate the data. [ORS 192.501(15)]
- **Agricultural Producer Indebtedness Mediation Data**
Data and information provided by participants to mediation for agricultural producers in danger of foreclosure. [ORS 192.501(16)]
- **Unsafe Workplace Investigation Materials**
Investigatory information relating to complaints of violations of laws governing workplace safety. It does not cover the complaint itself but provides for confidentiality of the identity of the employee making the complaint. [ORS 192.501(17)]
- **Public Safety Plans**
Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared and used by a law enforcement agency, if public disclosure would endanger the life or physical safety of a

citizen or law enforcement officer or jeopardize the law enforcement activity involved. [ORS 192.501(18)]

- **Telecommunications Utility Audits**

An external or internal audit or audit report pertaining to a telecommunications carrier. [ORS 192.501(19)]

- **Residence Address of Elector**

Requires the county clerk to keep the elector's residence address exempt from disclosure if requested by an elector who demonstrates to the satisfaction of the county clerk that the elector's personal safety or that of any family member residing with the elector is in danger. [ORS 192.501(20)]

- **Housing Authority and Urban Renewal Agency Records**

Certain records, communications and information submitted to a housing authority as defined in ORS 456.005 by applicants for and recipients of loans, grants and tax credits. [ORS 192.501(21)]

- **Interference with Property or Service** Records or information that if disclosed would allow a person to gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body. [ORS 192.501 (22)]

- **Security Measures**

Records or information that would reveal the security measures taken or recommended to be taken to protect [ORS 192.501 (23)]:

- An individual
- Buildings or other property used or owned by a public body
- Information processing, communication or telecommunication systems, including the information contained therein, that are used or operated by a public body

- **OHSU Donation Records**

Writings prepared by or under the direction of officials of Oregon Health Sciences University about a person and the person's potential interest in donating money or property to the university or the person's actual donation unless disclosure is authorized by the person. [ORS 192.501(24)]

- **Financial Transfer Records**

Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number. [ORS 192.501(27)]

- **Attorney-Client Privilege Records**
A public body that denies a request for a record that would otherwise be exempt under attorney-client privilege must provide a “condensed version” of the factual information in the record without waiving the privilege. A person whose request is denied may petition a court for review to make sure the condensed version is accurate.
- **Work Papers and Documents for Audits**
Work papers and related documents are exempt from disclosure until the final audit is released. Copies of the draft audit sent to an audited entity are disclosable. Affected audits are those that are conducted under nationally recognized auditing standards.
- **Email Addresses in a Public Body’s Possession**
This exemption does not apply to email addresses assigned by a public body to a public employee for use by that employee in the course of his or her public employment.

The following public records are always exempt from disclosure (ORS 192.502):

- **Internal Advisory Communications** Communication within a public body or between public bodies if it is advisory or preliminary to any final action. If the communication covers purely factual materials, or if the public interest in frank communication outweighs the public interest of disclosure then the records are exempt from disclosure.
- **Personal Privacy Exemption**
Information, which would constitute an unreasonable invasion of privacy if publicly disclosed. Unless the public interest by clear and convincing evidence requires disclosure in the particular instance.
- **Public Employee Addresses, Social Security Number, Birth Dates and Telephone Numbers**
Addresses, social security numbers, dates of birth and telephone numbers contained in personnel records maintained by employer or recipient of volunteer services. Does not apply to employees or volunteers if they are elected officials or that public interest requires disclosure in a particular instance.
- **Confidential Submissions**
In order for records submitted by a citizen of the district in confidence to be exempt, they must meet the following tests:
 - The informant must have submitted the information on the condition that it would be kept confidential.
 - The informant must not have been required by law to provide the information.
 - The information itself must be of a nature that reasonably should be kept confidential.
 - The public body must show that it has obliged itself in *good faith* not to disclose the information.
 - Disclosure of the information must cause harm to the public interest.

- **Corrections and Parole Board Records**
Information or records from the Department of Corrections which if made available to the public would interfere with the rehabilitation of a person in custody.
- **Lending Institution Records**
Records, reports and other information received or compiled by the Department of Consumer and Business Services to the extent that interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.
- **Presentence and Probation Reports** Presentence and probation reports filed with court order.
- **Federal Law Exemption**
Any public records or information the disclosure of which is prohibited by federal law. For example, public assistance and unemployment insurance records, and certain student records.
- **Other Oregon Statutes Establishing Specific Exemptions**
Any public records or information the disclosure of which is prohibited, restricted, or otherwise made confidential or privileged under Oregon law.
- **Transferred Records**
Public records or information furnished by a public body to any other public officer or public body in connection with performance of the duties of the recipient.
- **Security Programs for Transportation of Radioactive Materials**
Records of the Energy Facility Sitting Council concerning the review or approval of security programs pursuant to sitting of nuclear power plants.
- **PERS Nonfinancial Information about Members**
Employee and retiree address, telephone number and other non-financial membership records and employee financial records maintained by the Public Employees Retirement System.
- **Records Relating to Treasury or OIC Publicly Traded Investments**
Confidential records provided to the State Treasurer or Oregon Investment Council by private businesses or individuals related to proposed public investments.
- **Public Employee Retirement Fund and Industrial Accident Fund Monthly Reports**
The monthly reports prepared and submitted concerning the Public Employee Retirement Fund and Industrial Accident Fund may be exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.
- **Abandoned Property Reports**
Reports of abandoned property filed by the property holder.
- **Economic Development Information**
Information submitted to the Oregon Economic Development Department, including personal financial statements, financial statements of applicants, customer lists, information of an applicant pertaining to litigation, production and sales data, or marketing strategy information.

- **Transient Lodging Tax Records**
Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid.
- **Information for Obtaining Court Appointed Counsel**
All information supplied by a person for the purpose of requesting court-appointed counsel.
- **Workers' Compensation Claim Records**
Workers' compensation claims records that can be used to discriminate unlawfully against persons previously injured on the job who has filed a workers' compensation claim.
- **OHSU Sensitive Business Records**
Records of financial or commercial information of the Oregon Health Sciences University that is not customarily provided to business competitors.
- **OHSU Candidates for University President**
Records of the Oregon Health Sciences University regarding candidates for the position of university president.
- **Library Records**
The records of a library, including circulation records, showing use of specific library material by a named person or consisting of the name of a library patron together with the address or telephone number, or both, of the patron.
- **Housing and Community Services Department Records**
Records, communications and information submitted by applicants for and recipients of loans, grants and tax credits:
 - Personal and corporate financial statements and information, including tax returns
 - Credit reports
 - Project appraisals
 - Market studies and analyses
 - Articles of incorporation, partnership agreements and operating agreements
 - Commitment letters
 - Project pro forma statements
 - Project cost certifications and cost data
 - Audits
 - Project tenant correspondence requested to be confidential
 - Tenant files relating to certification.
 - Housing assistance payment requests
- **Forestland Geographic Information System**
Raster Geographical Information System (GIS) digital databases provided voluntarily and in confidence to the State Forestry Department.
- **Electricity Sale or Purchase of Electric Power**
Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers.

- **Klamath Cogeneration Project**
Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project.
- **Public Utility Customer Information**
Personally identifiable information about customers of a municipal electric utility or a people's utility district, or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109.
- **Security Programs**
Information about or approval of programs relating to the security of:
 - Generation, storage or conveyance of electricity; gas in liquefied or gaseous form; hazardous substance as defined in ORS 453.005(7)(a), (b) and (d); petroleum products; sewage; or water.
 - Telecommunication systems, including cellular, wireless or radio systems.
 - Data transmission by whatever means provided.
- **Public Safety Officer Addresses, Telephone Numbers and Electronic Mail Addresses**
The home address, home telephone number and electronic mail address if requested by a public safety officer, defined in ORS 181.610 to include “corrections officers, youth correction officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and fire service professionals.” This exemption does not apply to addresses and telephone numbers that are contained in county real property or lien records.
- **Separation of Exempt and Nonexempt Material**
If any public record contains material which is not exempt under ORS 192.501 and 192.502, as well as material which is exempt from disclosure, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

Other Public Record Exemption Rules

- After 25 years, exempt records lose their exemption and may be available to the public.
- Records may be exempt for up to 75 years if they contain information about the physical or mental health, or psychiatric care or treatment of a living individual.
- Records less than 75 years old which are sealed by statute or by a court order are exempt unless a court orders disclosure.
- Records of a person who is or has been in custody or under the supervision of a state agency, court or local government are exempt from disclosure for 25 years following termination of the custody to the extent that disclosure would interfere with rehabilitation of the person. The public interest in confidentiality may outweigh the exemption.

- Student records required by state or federal law to exempt from disclosure.

ENFORCEMENT

A person denied the right to inspect or obtain a copy of a public record may petition the District Attorney for release of the record. The District may seek the advice of the District Attorney prior to denial of an inspection request. Upon receipt of the petition for review to the District Attorney, the DA will ask the District for a copy of the record for review. The District should provide a copy to the DA with an explanation justifying denial of disclosure. The DA has seven days to deny or grant the petition, and failure of the DA to decide within the seven-day period constitutes denial of disclosure. If the DA denies disclosure, the petition may seek judicial review. If the DA orders disclosure, against the denial by the District, the District may give notice and file suit in Circuit Court for a judicial determination.

Districts should seek the advice of legal counsel if they receive a request, which is difficult to arrange, or if they feel the request should be denied on the basis that the records are exempt from the Public Records Laws. The State Attorney General has concluded that, "when a public body does so, it does not thereby actually or constructively deny the request. Nor does a public body deny a request merely because it fails to comply with the deadline the requester seeks to impose."

SAMPLE PUBLIC RECORDS POLICY

Compliance

The District shall fully comply with the Oregon Public Records Law, ORS 192.410-192.505.

- **Specificity of Request:** In order to facilitate the public's access to records in the District's possession, and to avoid unnecessary expenditure of staff time, persons requesting access to public records for inspection or copying, or who submit written requests for copies of public records, shall specify the records requested with particularity, furnishing the dates, subject matter and such other detail as may be necessary to enable District personnel to readily locate the records sought.
- **Access:** The District shall permit inspection and examination of its non-exempt public records during regular business hours in the District's offices, or such other locations as the District Manager may reasonably designate from time to time. Copies of non-exempt public records maintained in machine readable or electronic form shall be furnished, if available, in the form requested. If not available in the form requested, such records shall be made available in the form in which they are maintained. ORS 192.440(2).

Fees for Public Records

Fees must be limited to no more than \$25.00 unless the requestor is provided with a written notification of the estimated amount of the fee and the requestor confirms that he/she wants the public body to proceed.

In order to recover its costs for responding to public records requests, the following fee schedule is adopted by the District:

- Copies of Public Records; Certified Copies: Copies of public records shall be ___ cents per copy for standard, letter size copies. Copies shall be certified for an additional charge of _____.
- Copies of Sound Recordings: Copies of sound recordings of meetings shall be ___ per copy.
- Copies of Maps and Other Nonstandard Documents: Charges for copying maps or other nonstandard size documents shall be charged in accordance with the actual costs incurred by the District.
- Research Fees: If a request for records requires District personnel to spend more than 15 minutes searching or reviewing records prior to their review or release for copying, the minimum fee shall be ___ hour and additional charges shall be in ¼ hour increments. The District shall estimate the total amount of time required to respond to the records request, and the person making the request shall make payment for the estimated cost of the search and copying of the records in advance. If the actual time and costs are less than estimated, the excess money shall be refunded to the person requesting the records. If the actual costs and time are in excess of the estimated time, the difference shall be paid by the person requesting the records at the time the records are produced.
- Additional Charges: If a request is of such magnitude and nature that compliance would disrupt the District's normal operation, the District may impose such additional charges as are necessary to reimburse the District for its actual costs of producing the records.
- Reduced Fee or Free Copies: Whenever it determines that furnishing copies of public records in its possession at a reduced fee or without costs would be in the public interest, the Board or District Manager may so authorize. ORS 192.440(4).

Authorization Required for Removal of Original Records

At no time shall an original record of the District be removed from the District's files or the place at which the record is regularly maintained, except upon authorization of the Board of Directors or Manager of the District.

On-Site Review of Original Records

If a request to review original records is made, the District shall permit such a review provided that search fees are paid in advance in accordance with the Fees for Public Records section, above. A representative shall be present at any time original records are reviewed, and the charges for standing by while the records are reviewed shall be the same as the charges for searching or reviewing records.

Unauthorized Alteration, Removal, or Destruction of Records

If any person attempts to alter, remove or destroy any District record, the District representative shall immediately terminate such person's review, and notify the attorney for the District.

Sample Documents from Department of Justice Website

- Sample Request for Disclosure of Public Records
- Sample Written Procedures for Public Records Requests
- Sample Response to Public Records Request
- Certification of True Copy (Paper Records)
- Certification of True Copy (Electronic Records)
- Petition for Attorney General's or District Attorney's Review
- Helpful Hints for Responding to Public Records Requests

http://www.doj.state.or.us/public_records/manual/pages/public_meetings_b.aspx

RESOLUTION ADOPTING PUBLIC MEETING AND RECORDS LAW COMPLIANCE

RESOLUTION NO. _____

**A RESOLUTION ADOPTING DISTRICT COMPLIANCE
WITH PUBLIC MEETING AND RECORDS LAW**

WHEREAS, compliance with Oregon's Public Meeting and Records Law set out in Oregon Revised Statutes 192, is required by all Oregon special districts.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF _____:

That the District shall comply with the provisions of Public Meeting and Records Law, and with the instructions and requirements of the Oregon Department of Justice, in accordance with Oregon Revised Statute 192.

ADOPTED BY BOARD OF DIRECTORS THIS _____ DAY OF _____, _____.

President (or Chairman)

ATTEST:

Secretary (or Clerk)

RESOURCES

Archives Division – Records Retention Requirements:

http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_150.html

Attorney General’s Public Meetings and Records Manual:

http://www.doj.state.or.us/public_records/pages/index.aspx

Public Meetings and Records (ORS 192):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors192.html

Personnel Policies and Procedures

(Chapter 10)

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INSTRUCTIONS

This model personnel policies chapter is prepared for use by special districts throughout the State of Oregon. This model is intended to serve as a place to begin. Because special districts are of varied sizes and have different needs and operating requirements, the model policy requires modification to address each district's specific needs and responsibilities. It should not be adopted without careful review and tailoring based upon individual requirements.

This instruction sheet serves as a guide to modifying the Personnel Policies and Procedures chapter. Special care should be taken in determining which revisions to make and which optional policies to include, in order to arrive at a Personnel Policies and Procedures chapter that is both legally sufficient and practically useful for your district.

In each section with language you must clarify, fill in the blanks, make appropriate elections, and eliminate any text which is in bold (other than headings, there should not be bold or blanks in the text of your final manual).

If you elect changes in the model, you should be confident that the change has no legal significance. When in doubt, contact SDAO pre-loss legal.

Personnel Policies and Procedures

- **Purpose of Personnel Policies**
Insert name of your district and the title of the individual who manages the district and directly reports to the Board of Directors (e.g., General Manager, Fire Chief, Executive Director, etc.) Fill in this title wherever you see the "[_____]," unless instructed otherwise. Districts with a union labor agreement should insert additional section on page 347 at the end of this section.
- **Introduction**
Insert the title of the individual with authority to enter into special employment relationship agreements and modify district personnel policy, if anyone (other than the Board of Directors).
- **Personnel Administration Generally**
Insert the title of the individual responsible for these personnel administration duties. Districts with several departments should include the information on page 277 into this section.

Appointments, Qualifications, and Separation

- **Job Announcement**
Insert the title of the individual who initiates the request to fill a vacant position, the methods that the district uses to publish the job opening, and the minimum number of working days that job announcements will be posted.

- **Applications**
Insert the title of the individual that has the applications and makes appointments to positions authorized by the Board.
- **Selection**
Insert the title of the individual that designs selection criteria.
- **Orientation**
Insert the title of the individual responsible for orientation of new employees.
- **Probationary Period**
Insert the appropriate length of the probationary period based on the nature of your district (e.g., 6 months, vs. 12 or 18 months).
- **Employee Status**
 - **Regular Part-Time Employees**
Determine whether to add the last sentence for districts that pay a proportion of benefits to regular part-time employees.
 - **Temporary Employees**
Determine whether to add the last sentence related to temporary employees being ineligible for employer paid benefits.
 - **Duration of Employment**
Determine whether to insert the reference to an applicable collective bargaining agreement for district's with a union.
- **Employment of Relatives**
Determine whether your district also wants to extend this policy to other relatives as listed in the Sick Leave policy later in this chapter.
- **Driving Record**
Insert the title of the individual that must be notified of any change in an employee's license status and all traffic violations.
- **Personnel Record**
Insert the title of the individual that maintains personnel files and/or determines whether documents should be removed from the personnel files as appropriate throughout this section.

Payroll, Scheduling, and Overtime Practices

- **Work Week and Working Hours**
Insert title of the individual(s) responsible for fixing hours of employment (e.g., department heads, supervisors, Director, etc.).

Wage Compensation

- **Wage Policy**
Insert title of individual suggesting appropriate wage amounts (e.g., department heads, supervisors, etc.)

- **Salary Review**
Insert the title of the individual who reviews employee compensation (e.g., department heads, supervisors, etc.), and by whom this recommendation is reviewed (Executive Director, Fire Chief, etc.). Insert the number of months of employment that must pass prior to regular employee salaries being reviewed (e.g., generally 12 months). Insert the title of the individual in your district that makes salary recommendations into this section as well.

- **Overtime**
Insert language regarding collective bargaining agreement into this section if your district has a union. Insert additional section on page 322 for district's with a "comp time" policy, however, special caution should be exercised to ensure compliance with FLSA laws.

- **Payday**
Insert the district's payday(s), and the percentage of salary that may be taken as a mid-month payroll draw, if applicable.

- **Medical and Life Insurance**
Insert the types of insurance provided by your district, and the title of the individual in your district to contact about benefits information. Insert additional section on page 309 for districts with PERS benefits. Insert additional section on page 308 for districts with job sharing into this section, if applicable.

Employee Travel Authorization and Reimbursement

- **Approval**
Insert the title of the individual with authorization and/or approval authority regarding travel requests.

- **Travel Request**
Insert the title of the individual who receives completed request for expenses forms.

Time Off

- **Vacation Benefits**
Insert alternative monthly accrual rates for vacation benefits if desired for your district. Insert the title of the individual in your district with approval for scheduling employee vacations. Insert additional section on page 348 for districts with seniority scheduling, if applicable.

- **Holidays**
Districts may revise the list of recognized holidays. Districts with floating holidays should insert additional section on page 342.

- **Sick Leave**
Insert additional section on page 346 for districts that want to include a leave transfer provision. Such districts should determine whether they want to allow transfer of sick or vacation leave or both.

Note: Districts with at least 25 employees should insert (after the section on “Sick Leave”) the family leave policy and apply based on the district’s size. Insert additional section on page 340 for a Family Medical Leave Policy. The Oregon Family Leave Act (“OFLA”) generally applies to employers of 25 or more employees in Oregon, while the federal Family Medical Leave Act (“FMLA”) generally applies in the public sector to employees who work within a 75-mile radius of 50 or more district employees.

- **Jury Duty**
Insert the title of the individual who should be notified in the event an employee receives a jury duty summons.
- **Volunteers**
Confirm that your district provides workers’ compensation coverage for volunteers. Prepare an appendix of volunteer benefits. Ensure that volunteer compensation is consistent with being a volunteer and not an employee.

Note: Additional Section on page 338 for districts who choose to have an extended leave without pay policy should be inserted here (after the section on “Jury Duty”). Additional section on page 347 for fire districts with unpaid leave to perform volunteer firefighter duties should be inserted here, if applicable.

Safety and Accidents

- **Accident Reporting**
Insert the title of the individual who should receive reports and make investigation decisions regarding accidents.
- **Employee Injury Report**
Insert the title of the individual who should be notified of employee injuries, and confirm that your district has a safety officer to fill in here.
- **Return to Work Policy**
Additional section on page 347 should be inserted for districts with light duty assignments, and insert the title of the individual with authority to make decisions regarding light duty issues.
- **Violence in the Workplace**
Insert the title of the individual(s) who should receive reports of workplace violence and/or related concerns.

What the District Expects From You

- **Outside Employment**
Insert the title of the individual who should be notified of employment outside of the district and notify employees if their outside employment is found to be in conflict with the district's interests.

- **Drugs and Alcohol**
 - **Policy**
Insert the title of the individual who will be working with the district in this issue.

 - **Reports of Drug Conviction**
Insert the title of the individual that employees must report to regarding drug convictions.

- **Employee Education**
Insert the title of the individual that maintains information related to the hazards of and treatment for drug and alcohol related problems.

- **Employee Assistance**
Insert the title of the individual that will assist employees who seek an appropriate treatment program.

- **Discipline Related to Abuse**
Insert the title of the appropriate individual(s) to work with employees who are in a treatment program or working with a health care provider.

- **Testing Procedure**
Insert the title of individuals at the district who must concur in order to have authorization to drug test an employee.

- **Definitions**
Insert the title of the individual in the district who should approve searches and/or be contacted in the event employee refuses to test.

Note: District's with employees subject to the federal Department of Transportation ("DOT") regulations should insert the additional section on page 322. This section should apply only to Commercial Driver's License ("CDL") holders; others should not be in the CDL random testing pool.

Non-Discrimination and Harassment

- **Equal Employment Opportunity**
Insert the title of the individual who coordinates the district's anti-harassment procedures.

- **Harassment**
Insert the titles of the individuals who are involved in each aspect of harassment response and investigation.

Note: Additional section on page 343 can be inserted here (after the “Harassment Policy”) for districts with specific HIV concerns. Additional section on page 315 can be inserted for districts that may reasonably anticipate employee exposure to a bloodborne pathogen or other potentially infectious materials.

Performance Evaluations

- Employee Performance Reviews
Districts must determine the title of the individual who will review performance evaluations and the date upon which employees will be evaluated.
- The Evaluation Process
May use as a separate guidance memo (not in the manual) the sample evaluation process on page 405, for those districts that want to advise its managers on this subject in greater detail.

Problem Solving Process

- Steps to Solution
Insert title of the individual who may receive reports of problems by employees, as well as those involved in each level of the problem solving process. Districts instead can choose additional section on page 339 in lieu of Problem Solving Process.

Discipline

- Discipline Generally
Insert which employment terms apply to your district’s chief executive officer (e.g., serving at the pleasure of the Board of Directors or under the terms of an employment agreement).
- Application of Progressive Discipline
Insert the title of the individual who may suspend employees without pay.
- Discharge Procedure
Insert the title of the individual with responsibility in regard to pre-discharge conferences. (Note: Fire districts must provide pre-discipline process either through policy or fire district civil service procedures [for Districts with 5 or more firefighters]).
- Appeal of Discipline Action
Insert the title of the appropriate individuals in connection with the appeal of disciplinary action.

Note: Appeal generally is made to the Board of Directors. The additional section on page 276 can be added for districts with department heads. (Note: Fire Districts with five or more employees are required to maintain a civil service or equivalent system.)

Additional Policies

Additional Section on page 336 can be added for districts with an Employee Assistance Program (EAP). Additional section on page 336 can be inserted for districts with education and training policies. Additional Section on page 337 can be inserted for districts with employer provided cell phones.

Certificate and Acknowledgement Form

Insert the title of the individual (if anyone) with authority to enter into an agreement in writing contrary to the personnel policies and procedures of the district.

SAMPLE PERSONNEL POLICY AND PROCEDURES

OVERVIEW AND PURPOSE OF PERSONNEL POLICIES

These policies provide rules and regulations for all employees of the _____ DISTRICT (which is referred to as "the District" throughout these policies) relative to matters of personnel administration, except that the [General Manager, Fire Chief, Executive Director] serves at the pleasure of the Board of Directors and is the Board of Director's representative in relation to application and administration of these policies to all other District employees.

These rules and regulations are intended to set a general framework for effective personnel administration. In all cases, these policies should be construed with this in mind and should be understood as guiding the [____], and not limiting in any way the prerogatives of the Board in its relationship with the [____]. These personnel policies do not constitute a contract for employment.

These policies replace and supersede all pre-existing policies, procedures, or orders relating to personnel matters of the District and its employees, unless contained in a written document approved by the [____] and/or Board of Directors. Department heads should ensure that existing department policies are consistent with this manual.

Introduction

This manual contains statements of personnel policies and procedures. It is designed to inform everyone of the working guidelines for supervisory and staff personnel in the daily administration of the District to provide employees an understanding of what is expected of them, and to ensure consistent, fair, and uniform treatment of District employees.

The District reserves the right to change these policies and procedures at any time. These policies and procedures do not and are not intended to confer any property right in continued employment, to constitute an expressed or implied contract, or to give rise to a binding past practice under any collective bargaining agreement. These policies are intended to provide guidelines and procedures, not substantive contractual or property rights.

Employees and the District reserve the right to end the employment relationship, with or without cause, at any time. Further, except as might be approved in writing by the [____], no employee or representative of the District has the authority to enter into an agreement for employment for any specified period of time, or to make any agreement contrary to Board-approved policies.

The [____] may vary or modify any District personnel policy, on a case-by-case basis, if it is found that strict application of the policy is impractical or if it would result in hardship.

Exceptions granted in any instance will not be binding in the future.

Personnel Administration Generally

The Board of Directors and [_____] shall have authority over all matters of personnel administration through adoption and implementation of the District budget, pay plans, collective bargaining agreements, and ordinances and resolutions adopting and/or amending the personnel rules and regulations.

The [_____] is charged with responsibility for the interpretation and application of the policies.

The [_____] may specifically delegate in writing the authority for the enforcement of rules and policies.

The [_____] shall be responsible for ensuring the effective implementation of these rules and regulations and may further establish, amend, or otherwise modify administrative rules and regulations pursuant to Board policies and shall advise the Board on any changes concerning these rules and regulations. The Board delegates to [_____] broad discretion in all aspects of personnel and labor relations, subject to the advice and concurrence of the Board.

Labor negotiations (including the settlement of any grievance after that grievance has been denied by the Board or a committee thereof) must and in every instance shall be approved by the Board of Directors before the District may be bound.

APPOINTMENTS, QUALIFICATIONS, AND SEPARATION

Job Announcement

A job announcement will be made for any vacant position within the District and shall be initiated by [_____]. The announcement shall specify title and salary range of the position, the nature of the duties performed, qualification requirements, the time and place to apply, and may include the selection process to be used. Job announcements shall be posted on appropriate bulletin boards, and may be published in District publications [and appropriate newspapers or newsletters]. Job announcements will be posted a minimum of [_____] working days prior to the closing date.

Applications

Appointment to positions is through an open competitive process and will be based on merit and qualification. Promotional appointments may be made exclusively from employees if it is determined that a sufficient number of employees are interested and qualified to compete through an internal selection process. Ordinarily, all vacancies will be posted internally and advertised externally, in order to hire the most qualified applicant.

Applications shall be available in the [_____]’s office. Applications will be accepted only for advertised openings. Applicants will complete the application form and any supplemental materials required by the District for positions within the time period specified in the job announcement.

Applicants for employment shall furnish complete information requested as to education, special training, experience, and skills, as well as a chronological schedule of employment, references,

and other pertinent information. The [_____] makes all appointments to positions authorized by the Board.

Eligibility

At the time of application all applicants must meet the minimum qualifications for the position or demonstrate a reasonable assurance of meeting the minimum qualifications by the time of appointment.

Selection

- **Veteran's Preference in Public Employment**

Public employers must grant a preference in hiring and promotion to qualifying veterans and disabled veterans if their hiring decision will be based on the results of a merit-based, competitive process. Generally, this process involves recruiting, selecting and promoting employees on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants.

Selection criteria and procedures will be based solely on job-related knowledge, skills, abilities, experience, education, training, and, when appropriate, prior demonstrated performance, aptitude, and character. The [_____] shall design selection criteria based on the classification specifications and job requirements. Based on the results of the selection process, applicants will be selected by [_____] for an employment interview.

There are four ways to qualify as an eligible veteran:

- Must have served on active duty with the US Armed Forces for a period of more than 178 consecutive days and have been discharged under honorable conditions; or
- Must have served on active duty with the US Armed Forces for 178 days or less and have been discharged under honorable conditions because of a service-connected disability (disabled veteran); or
- Must have served on active duty in the US Armed Forces for at least one day in a combat zone and have been discharged under honorable conditions; or
- Must have received a qualifying military decoration for service in the US Armed Forces.

At each stage of the application process five preference points will be added to an eligible veteran's score and ten preference points to a disabled veteran's score. These point preferences need to be added every time an eligible veteran or disabled veteran applies for a position based on the results of a merit-based, competitive process even if they are already an employee of the district.

Preference points must be granted as follows:

- For an initial application screening used to develop a list of persons for interviews, add

five preference points to a veteran's score and 10 preference points to a disabled veteran's score.

- For an application examination, given after the initial screening that results in a score, add preference points to the combined examination score without allocating the points to any single feature of the examination. Add five preference points to a veteran's score and 10 preference points to a disabled veteran's score.
- For an application examination that consists of an interview, an evaluation of the veteran's performance, experience or training, a supervisor's rating or any other method of ranking an applicant that does not result in a score, preference must be given to the veteran or disabled veteran. Districts that use an application examination of this type must devise and apply methods by which special consideration in the hiring decision is given to veterans and disabled veterans.
- Pre-Employment Drug Screening for Safety Sensitive Positions
Applicants who are offered an opportunity to interview for a "safety sensitive" position will be required to consent to a pre-employment drug screen. Safety sensitive is defined as "Discharge duties fraught with risk of injury to others that even a momentary lapse of attention can have disastrous consequences." Examples: police, firefighters, dispatchers, maintenance personnel, emergency response, utility workers, positions wherein driving is an essential aspect of daily duties, etc.

The applicant will be advised that the presence of one or more drugs may be cause for rejection from further consideration for employment, and that appointment to a position is contingent upon a negative drug test result. The applicant will be asked to authorize the District to conduct, through the District's designated physician or laboratory testing facility, a drug screen test as a requirement of employment.

Applicants shall be directed to an appropriate collection facility. The drug test must be undertaken as soon after notification as is possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants shall be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug and that such information will be reviewed only by medical consultants to determine whether the individual is lawfully using an otherwise illegal drug.

The District will decline to extend a final offer of employment to any applicant with a verified positive test result, and such applicant may not reapply to the District for a period of twelve months. The District shall object to the applicant on the basis of failure to pass the drug screen, a lack of personal characteristics necessary to relate to public employment or failure to support the goals of the District. The District shall inform such applicant that a confirmed presence of an illegal drug in the applicant's urine precludes the District from hiring the applicant.

Orientation

Upon appointment, the [_____] shall be responsible for orientation of new employees. Orientation shall include, but shall not be limited to, organization and services of the District, work rules, personnel policies and procedures, safety training, completion of payroll forms, and introduction to other District personnel.

Probationary Period

New and rehired employees shall serve a probationary period of [six (6) months] commencing with their first day of employment [except firefighters, security, or police employees, for whom the probationary period should be not less than twelve (12), and preferably eighteen (18) months]. The District can extend the duration of the probationary period up to six (6) months if, in its sole determination, such an extension is appropriate. Upon promotion, probation is six (6) months unless otherwise specified in the position or at the time of the promotion opportunity.

Probation is part of the selection process used to confirm the initial employment decision and to reject those whose performance is not satisfactory. During this evaluation period, the employee and the District will have an opportunity to determine whether further employment with the District is appropriate.

During the probation period, an employee's employment may be terminated without recourse and without appeal under these policies and procedures. An employee who successfully completes the probationary period will be notified in writing that he or she has become a regular full-time or a regular part-time employee of the District.

No employee will be deemed a "regular" and no longer a probationary employee until the District has so determined and notified the employee in writing.

Employee Status

- **Regular Full-Time Employees**
An employee who regularly works a minimum of forty (40) hours a week on a continuing basis, and who has completed the probationary period, is considered a regular full-time employee.
- **Regular Part-Time Employees**
An employee who regularly works less than forty (40) hours a week is considered a regular part-time employee once the probationary period is successfully completed. [The District shall pay a proportion of benefits, based on the regular hours of work.]
- **Temporary Employees**
Temporary employees are defined as those employees holding jobs of limited duration arising out of special projects, abnormal work-loads or emergencies. [Temporary employees are ineligible for employer-paid benefits.]

Duration of Employment

All employees, except temporary employees, are hired for an unspecified duration. The District may not guarantee employment for any specific length of time. Employment is at the mutual

consent of the employee and the District. Accordingly, either the employee or the District can end the employment relationship at any time, in accordance with District procedures [and applicable collective bargaining agreements.] Discipline and discharge may occur subject to the policies and procedures set forth on page 251, except these shall not apply to a probationary employee.

Anniversary Dates

The anniversary date used to determine vacation and merit increases of an employee hired before the 15th of the month shall be the first day of the month. The anniversary date of an employee hired on or after the 15th shall be the first day of the following month.

Volunteers

Volunteers are not employees of the District. Volunteers receive only those benefits expressly conferred in writing or by law. Workers' compensation insurance [will be, will not be] provided to volunteers. The service of a volunteer may be discontinued at any time for any reason. Volunteers must abide by all applicable rules, policies, and practices of the District, and are held to the same standard of performance as applies to regular employees. Volunteers serve at the pleasure of the District and the volunteer, and either may end the volunteer arrangement at any time.

Employment of Relatives

Relatives of employees may be hired by the District only if individuals concerned do not work in a direct supervisory relationship or otherwise create a potential conflict of interest that would interfere with the normal operation of the District. "Close family members" include current spouse, children, parents, grandparents, brothers, sisters, grandchildren, aunts, uncles, first cousins, and corresponding in-laws and "step" relations. Present employees who marry will be permitted to continue work if they do not work in a direct supervisory relationship with one another or otherwise create a potential conflict. Employees will be allowed to accept a transfer including a demotion to an available and suitable position to avoid direct supervision by a relative. If this cannot be accomplished, one of the employees may be terminated.

Physical Examinations

An offer of employment may be contingent upon an applicant's successful completion of a medical examination to determine if the applicant is able to perform the essential functions of the job, with or without reasonable accommodation and without direct threat to the health or safety of the applicant or other persons. If required, this examination will be provided by the District at District expense. Any information gathered will be treated as a confidential medical record. The scope of the post-offer medical examination need not be limited to the ability to perform essential job functions and may include a base-line physical exam and other inquiry into the applicant's physical and/or mental condition.

In order to ensure continued qualification for employment, the District may request its employees to submit to a medical examination when the request is job related and consistent with business necessity at the District's expense. Medical examinations may be required to support family medical leave situations, including requests for second or third opinions and fitness for duty certifications, as provided by family medical leave laws and the District's policies.

Driving Record

Employees who may be required to drive must possess a valid Oregon driver's license and must comply with any operator's license restriction. All employees who may be required to drive on District business may at any time have their driving record checked by the District as permitted by applicable law. If the record indicates violations, the employee may be subject to appropriate warnings or disciplinary action. As a condition of continued employment each employee who operates District vehicles must maintain a personal driving record which is within risk criteria, if any, established by the District's insurer.

Job applicants' driving records are checked prior to being hired as a condition of employment.

Employees who may be required to drive shall notify the [_____] of any change in license status, and all traffic violations. Failure to report a traffic violation or change in license status to the [_____] is viewed as a violation of District policy. The District monitors driving records as a component of risk management, in order to identify needs for driver improvement. This section is applicable to qualified individuals with disabilities only when driving is an essential function of their job.

Layoffs

Should a reduction in the District work force become necessary, the following procedures shall apply:

Layoffs may be implemented on a District-wide basis or in one or more departments, work groups, or job classifications depending on the needs of the District. Once it is determined what the scope of the layoff will be, employees generally will be laid off in the following order:

- Temporary and on-call employees;
- Probationary employees;
- Part-time employees; and
- Regular employees, according to knowledge, skills, and abilities as determined by the District.

In lieu of layoff the District may reduce the hours of work of District personnel. The District will make available medical and dental insurance as required by COBRA.

Voluntary Resignations

To voluntarily resign in good standing, an employee must submit a written letter of resignation to the department head allowing at least ten working day's advance notice. Failure to submit a timely written resignation may preclude the individual from future employment opportunities with the District.

Personnel Records

- Maintenance of File

Official personnel records of employees shall be maintained by the [_____]. If there is a change of name, address, telephone number, marital status, or number of dependents, the [_____] should be notified in order to keep applicable records up to date.

- **Removal**
Documents shall not be removed from a personnel file, except pursuant to a determination by the [_____] that each particular document is not accurate, or is no longer relevant or timely to any personnel or performance matter. Any document which is removed shall be maintained in a separate file containing all such documents, not indexed under the name of any employee.
- **Medical Records**
Documents containing medical information shall be kept in a separate, confidential file that is not part of the employee's personnel file. While these records shall be treated as confidential, supervisors and managers may be informed regarding necessary work restrictions and necessary accommodations. First aid and safety personnel may be informed, when appropriate, of an employee's disability, if the disability might require emergency treatment. Government officials investigating compliance with discrimination laws shall be provided relevant information on request.
- **Personnel Files**
This policy defines circumstances under which an employee may examine his/her personnel records; as well as the circumstances under which an individual who is not an employee of the District may examine an employee's personnel record. This policy and procedure applies to all District employees.
 - No material of a negative or derogatory nature shall be placed in an employee's file unless a copy is given to the employee.
 - Employees may be allowed to include in their personnel file any material deemed relevant to job qualifications or performance, in the judgment of the District. Employees may inspect and review their personnel files, excluding confidential reports from previous employers and all other information gathered prior to the date of hire.
 - Employees may protest, or comment upon in writing, any materials placed in their personnel file. Such protest/comments shall be placed in the personnel file.
- **Procedure For Access By Employee**
 - Employees wishing to inspect/ review their personnel file shall make an appointment in advance with the [_____].
 - An employee must receive a copy of such records within 45 days following a request. Employee may be charged the actual cost of providing this service.
- **Access to Personnel Files - Persons Other Than Employee**
 - Personnel files are exempt from disclosure under the provisions of ORS 192.502(2) if

disclosure would constitute an unreasonable invasion of privacy. Records of discipline may be exempt from public disclosure.

- Any person seeking disclosure of material that would constitute an unreasonable invasion of any employee's privacy shall have the burden of showing that public disclosure would not constitute such an unreasonable invasion of privacy, by clear and convincing evidence.
 - In any event, no information in any employee's personnel file will be released until the employee is notified and has a reasonable opportunity to comment on the request, except as required by Oregon law. In all cases, the District must determine whether or not particular personnel records of any District employee are subject to public disclosure. An employee's expectation of confidentiality and privacy is, in each case, subject to the requirements of Oregon's Public Records Law.
 - Information regarding an employee's address, telephone number, work history, performance or salary will not be given over the telephone. Only employment dates and job title may be released verbally.
 - Verification of employment, requests for salary or other confidential information must be in writing, signed by the employee, authorizing release of specific information.
 - Work reference requests, for both present and terminated employees, must be in writing and signed by the employee, authorizing release of information, and continuing an effective authorization to disclose and release of liability (as determined by the District) for providing such information.
- Management Review of Personnel Files
 - Upon request of an employee, adverse material in the personnel files will be reviewed by the [_____] to determine the continued appropriateness of retention.
 - Materials deemed inappropriate or no longer relevant may be removed from the personnel file with the employee concerned so notified. Criteria which may be used include age of the material, seriousness of the infraction, and instances of repeated or similar infractions. However, such information may be maintained by the District in a separate file for purposes of forewarning and litigation defense, but generally not for human resources determinations.

PAYROLL, SCHEDULING, AND OVERTIME PRACTICES

Work Week and Working Hours

The normal workweek consists of forty (40) hours, however this should not be considered as a guarantee of any specific amount of work being made available. [_____] and employees are expected to accomplish service priorities in a timely fashion within the normal work week to the greatest extent possible. The hours of employment shall be fixed by the [_____].

Wage Compensation

- **Wage Policy**

The District maintains a pay plan covering all positions in the District, showing the minimum and maximum rates of pay. In arriving at such salary ranges, consideration is given to prevailing rates of pay for comparable work in other public and in private employment, including consideration of conditions of work and basic pay, current costs of living, the local economy, and wage adjustments in the community, suggestions of [____], and the District's financial condition.

- **Salary Review**

Compensation will be reviewed by the [____] at the end of an employee's probation. An increase may be recommended to the [____] based upon competent and commendable service.

Regular employee's salaries will be reviewed [after twelve (12) months] of continuous employment in the current classification. Wage increases are not automatic. [____] make salary recommendations to the Board of Directors based upon merit. For exceptional performance a [____] may recommend a merit increase to any employee paid below the top of the range, and if granted, it may be reduced to the step appropriate at any time extraordinary performance ceases.

Overtime

Employees who are non-exempt under the Fair Labor Standards Act will be paid for all hours in excess of 40 in a workweek at the rate of time and one-half their regular rate [unless a collective bargaining agreement provides otherwise].

Rest Periods

Employees may take a paid 15-minute rest period during each half shift, scheduled at or as near as feasible to the middle of each half shift. Consistent with operating requirements, employees who, at the request of the District, work two or more hours beyond their regular quitting time shall receive a 15-minute rest period before starting on the next shift, in addition to the regular rest periods occurring during the shift. Each rest period shall not exceed fifteen (15) minutes total. Rest periods shall not interfere with or be detrimental to the public safety.

Meal Periods

Employees shall be granted an unpaid meal period not to exceed one hour during each work shift. Consistent with operating requirements, meal periods shall be scheduled at or about the middle of the work shift. Employees who have their meal period interrupted by the District to perform required work shall be compensated for their meal period time worked.

Payday

The District's payday is the [] of the month. [A mid-month payroll draw of [] %] of salary may be authorized upon written request by the employee].

Payroll Deductions

- **Required Deductions**

Federal and state laws require the following deductions from every paycheck:

- Federal Withholding Tax;
 - State Withholding Tax;
 - Social Security Taxes (FICA);
 - State Accident Insurance-Employee Surcharge;
 - Court Ordered Child Support Payments or Garnishments; and
 - Retirement.
- Optional Deductions
Other deductions may be made from the employee's paycheck with the employee's written request, including, but not limited to:
 - Credit Union participation;
 - United Way contribution;
 - Insurance contribution;
 - Any other deduction of general interest to District employees affecting five or more employees may be authorized by the employee in writing, with approval of the [Finance Director];
 - Union Dues; or
 - Monies due to the District which are in the nature of a loan where the employee has voluntarily signed a repayment agreement, the loan was in cash or equivalent, the loan was solely for the employee's benefit and the deduction does not exceed the limits of ORS 18.385 (a) or (d).
 - Deferred Compensation
Any District employee may elect to enroll in a deferred compensation plan approved by the District. Deferred compensation accounts will be established on behalf of any employee who is willing to make contributions to the plan in accordance with plan requirements.

Medical and Life Insurance

The District provides [group medical, dental, long term disability, and life insurance] for eligible employees. Coverage for eligible employees begins the first of the next month following the employment date. Information regarding eligibility and specific benefits is available from the [_____].

Time Records

Time cards must serve as an accurate record of the time for which each employee is paid wages and overtime. Each employee is expected to record accurately the time spent working on District business. Personal time spent in District offices outside regular working hours should not be recorded.

An employee of the District may volunteer service to the District, and the time involved would not be recorded, **ONLY IF** the volunteer hours worked **DO NOT INVOLVE THE SAME TYPE OF SERVICE** which the person is employed to perform for the District. All volunteer activities by employees must be approved in advance, and in writing.

Pay Upon Separation

A regular employee terminating employment with the District will be paid any earned and unpaid wages then due for work hours, earned vacation which the employee is eligible to take off, and compensatory time, which shall be paid at the employee's hourly rate (hereafter "pay upon separation"). An employee who is involuntarily terminated will be paid no later than the end of the first business day after a discharge or termination. If an employee resigns and fails to give at least forty-eight (48) hours advance notice prior to quitting District employment, pay upon separation shall be paid within five (5) days of termination.

EMPLOYEE TRAVEL AUTHORIZATION AND REIMBURSEMENT

General Expectations

All employees of the District are expected to use good judgment regarding the expenditure of funds for travel expenses.

Documentation Objectives

The Procedures for documenting the expenses involved with employee travel on District related business activities are designed to provide public accountability in two areas:

- Pre-approval of all travel requests to ensure that the travel is appropriate to the needs of the District and that budgeted funds are available for specific travel requests; and
- A complete accounting of the actual expenses for the travel to ensure that the expenses reported for reimbursement are appropriate and provide appropriate documentation.

Approval

The [_____] shall authorize registration, travel, and attendance expenditures in advance within the budgeted amounts adopted by the Board. Prior to submittal for [_____] approval, the request must be approved by [_____].

Travel Request

At least two weeks prior to the anticipated travel, the employee should submit a completed REQUEST FOR EXPENSES form to [_____]. This will document advance approval of the requested travel and provide a basis for an advance of funds to the employee.

Travel Settlement

Within one week after the travel has been completed, the employee must turn in receipts for lodging and all other expenses to be paid on an actual basis.

Guidelines:

The following general guidelines apply to the reimbursement of employee travel expenses:

- **Transportation**
The actual cost of transportation, taxi fares, telephone calls, and similar items incidental and necessary to the performance of official business while on travel status will be paid. If the employee's personal vehicle is used, the District will reimburse the employee at the current IRS mileage rate for the actual mileage required for the trip. Parking and other related expenses must be documented by receipt.
- **Lodging**
Hotel and motel accommodations should be appropriate to the purpose of the trip. Expenses for lodging must be supported by actual receipts. Reimbursement for lodging is generally limited to the expense of a single room, except where employees are sharing a room.
- **Meals**
Employees will be allowed a per diem rate of \$25.00 per day for meals. This is broken down as follows: \$6.00 for breakfast, \$7.00 for lunch, and \$12.00 for dinner. No receipts are required for meals covered under the per diem. With approval, an employee may be reimbursed for actual meal expenses incurred up to \$35.00 per day, with receipts required under this provision.
- **Telephone and Facsimile**
Expenses for telephone and facsimile communications are reimbursable only if they are directly related to District business and are supported by actual receipts. Personal telephone calls charged to the District or to your room and paid by the District must be reimbursed.
- **Registration and Tuition Fees** Expenses for conference registration, conference meals, activities and tuition fees are allowable expenses. A copy of the registration must be attached to the Request for Expenses form.
- **Accompanied Travel**
Any expenses for family members who accompany the employee on a trip are not reimbursable.
- **Alcoholic Beverages**
Expenditures for alcoholic beverages may not be reimbursed by the District.

TIME OFF

Vacation Benefits

Vacation benefits are intended to provide eligible employees with a period of paid rest and relaxation away from work. Accordingly, employees are encouraged to schedule vacations each year, and to use all earned vacation benefits.

If a holiday falls during an employee's scheduled vacation, the employee will receive holiday pay for the day, if eligible for such pay, and will not be charged for vacation benefits for the day.

Accrued and unused vacation benefits shall be paid upon termination of employment. Vacation credits shall not accrue during any unpaid leave of absence.

The District provides vacation benefits to its regular part-time and full-time employees. Vacation credits will be posted monthly as follows for employees:

<u>Years of Continuous Service</u>	<u>Monthly Accrual</u>
0 through 1	6.673 hours
2 through 5	8.000 hours
6 through 10	10.000 hours
11 through 15	13.329 hours
16 plus	15.000 hours

Employees may accrue up to 240 hours of vacation accrual. Accruals will not be posted to increase any employee's vacation balance in excess of 240 hours and will be forfeited or may be directed as time off or paid in the District's discretion. Vacations must be scheduled and approved by [_____] in advance or by designated supervisors.

Holidays

Regular full-time employees will receive a day off with pay on each of these recognized holidays:

Martin Luther King Jr.'s Day

New Year's Day

Presidents' Day

Memorial Day

Fourth of July

Labor Day

Veteran's Day

(Veterans are to be permitted to have Veterans Day off as a holiday provided that doing so does not create an undue economic or operational burden or hardship. If the employee cannot be allowed that day off, the employee must be granted an alternative day off.)

Thanksgiving Day

Day after Thanksgiving

Christmas Day

Part-time employees receive pro-rated holiday benefits.

When a scheduled holiday falls on Sunday, it will be observed on the following Monday. When a scheduled holiday falls on a Saturday, it will be observed on the preceding Friday.

If an employee works on any holiday observed by the District, the employee shall either be paid or given compensatory time for all hours worked at the rate of one and one-half times the regular rate of pay.

Employees who are off work on a leave of absence shall not receive holiday pay. Employees who are off work due to sickness or vacation shall be paid for the holiday in lieu of using vacation or sick leave credits.

Sick Leave

- **Notification of Inability to Work**

Employees are expected to be able to attend work reliably, predictably and regularly. Employees who are unable to report to work due to personal or dependent illness or injury must contact their immediate supervisor on or before scheduled starting time. If an employee becomes sick during the day, the supervisor or designee must be notified before the employee leaves work.

When sick leave is taken to care for a dependent the District expects that other care arrangements will be made as soon as possible, except where leave for dependent care purposes is provided for by family leave laws and the employee is eligible for such leave. The employee must comply with the notice requirements under family leave laws, which may provide for later notification of inability to work than is otherwise required by this policy, if the need for the leave is unanticipated.

- **Accrual**

In order to minimize the economic hardships that may result from an unexpected short-term personal or dependent illness or injury, the District provides regular full-time employees with eight (8) hours of accumulated sick leave per month. Unused sick leave benefits accumulate from year to year. Employees are not paid for unused sick leave upon employment termination.

- **Concurrent Leaves**

Sometimes more than one type of leave may apply to a situation. Where allowed by federal or state law, leaves will run concurrently. This means that sick leave, workers' compensation leave, personal leave, leave as a reasonable accommodation for a qualified individual with a disability, federal family medical leave, and unpaid leaves of absence may all run concurrently and be counted against the employee's family medical leave entitlement. The District may designate any type of leave as Family Medical Leave if the leave is used for a family medical leave purpose.

- **Medical Certification**

An employee on sick leave that is running concurrently with another type of leave, for example family medical leave or personal leave, must provide the medical certification required for any and all applicable types of leave. This means an employee on sick leave may be required to have their medical provider complete the certification of physician or practitioner form required for federal or state family medical leave, obtain second or third medical opinions, as provided by family medical leave laws, and provide fitness for duty medical certifications before returning to work as provided by the family medical leave policy.

Jury Duty

If a summons for jury duty is received, the employee shall notify [_____]. Arrangements will be made to reassign work and time off will be granted. Employees serving as jurors will pay the District payments received for jury duty except mileage when using their personal vehicle and will be paid regular wages. Employees are expected to report for work when not selected for a jury on any day, or when jury duty requires only part of a day.

Uniformed Services Leave and Reemployment

Upon application, the District will grant a leave of absence to members of the reserve components of the armed forces of the United States or the state of Oregon, or to an employee who leaves his/her employment with the District, whether voluntarily or involuntarily, to perform extended military duty. Such employees will be accorded all rights to which they are entitled under Oregon and federal law, as may be amended periodically.

An employee who has been employed by the District for at least six months is entitled to one paid leave of absence for annual active duty for training per military training year, not to exceed fifteen (15) calendar days. Any subsequent leave of absence during the military training year (October 1 through September 30) will be unpaid.

Except as provided for above, the District will not provide wages or other monetary compensation during an employee's military leave of absence. At the employee's discretion, he/she may use accrued vacation, personal holidays, or compensatory time during the absence. The employee may elect to continue health care coverage during the absence and may be subject to paying the full costs of such coverage.

Domestic Violence Victim Leave

Any employee who is a victim of or at risk of domestic violence, sexual assault, or stalking is covered by the law, regardless of how long he or she has worked for the employer and regardless of how many hours per week the employee works.

An employee who is a victim may request a reasonable safety accommodation to allow the employee to more safely continue to work. For instance, a safety accommodation might be a transfer, reassignment, modified schedule, unpaid leave from employment, changed work telephone number, changed work station, installed lock, change in office policy, or any other adjustment to a job structure, workplace facility, or work requirement in response to actual or threatened domestic violence, sexual assault, or stalking.

An employer must grant a request for a reasonable safety accommodation unless it would impose an "undue hardship" on the employer. Employers are permitted to require a limited amount of verification of the need for leave and must treat all information received as confidential.

A summary of the statutes and administrative rules that govern the protected leave will be posted in a conspicuous and accessible place.

Unpaid Leave for Victims of Harassment

Districts that employ six or more individuals must allow eligible employees to use unpaid leave

to address issues arising from harassment. "Victim of Harassment" is defined as an individual who has obtained a court's stalking protective order or a temporary court's stalking protective order. Reasonable safety accommodations shall be made for the employee.

SAFETY AND ACCIDENTS

Safety Policy Statement

Nothing is of greater concern to the District than the safety of its employees and the public. For the employee's protection, job-related injuries or illnesses must be reported immediately in accordance with the District's safety and accident policy. Employees are expected to use common sense and good judgment in work habits, to follow safe work practices, and to bring any unsafe condition to the attention of a supervisor.

For example, employees shall:

- Use the safety equipment that has been provided for use;
- Not operate equipment while medication, drugs or alcohol are present in the body without a doctor's written approval;
- Operate only the equipment on which they have received training;
- Warn co-workers and management of unsafe conditions or practices. Accept with appreciation the warning of a co-worker or supervisors as an expression of concern for their own well-being;
- Report dangerous or unsafe conditions observed at work; and
- Refrain from horseplay at all times.

Unsafe Conditions

- **Employee Responsibility**
Every employee is responsible for safety as a specific job assignment. To achieve the District goal of providing a safe work place, everyone must be aware of safety at all times. Employees shall report immediately any unsafe or hazardous condition directly to a supervisor, if it cannot be corrected safely and independently. Every effort will be made to remedy safety problems as quickly as possible.
- **Management Responsibility**
The District will establish and administer a safety committee or hold safety committee meetings. Each department supervisor shall frequently review the need for implementing safety practices, policy, or procedures warranted by hazards. Each accident and "near miss" is cause for review. A copy of such policies shall be delivered to all department employees. Department heads will periodically involve employees in the process. The need for periodic training shall be considered and arranged, as determined by the department head.
- **Managing Unsafe Conditions**
It is every employee's responsibility to observe and identify conditions which could pose a hazard to employees or to the general public.

After identifying the problem, employees at the scene are expected to:

- Safely eliminate the hazard, and obtain necessary assistance;
- Safely control the hazard by enclosure or guard;
- Employ avoidance procedures; and
- Use personal protective equipment as appropriate.

Accident Reporting

Accidents involving the District must be reported in detail as soon after the occurrence as possible. All accident reports should be submitted to the [_____].

- **Vehicular Accidents**
Accidents involving other District owned vehicles or personal vehicles being operated on District business must also be reported to a police agency for investigation. Any accident resulting in personal injuries or death must be reported immediately to the District office.
- **Other Accidents**
Accidents involving damage to equipment or property, or personal injury, must also be reported to [_____]. The [_____] will determine the need for further investigation.

In case of an accident involving personal injury to an employee, regardless of how serious, a supervisor and the [_____] should be notified as soon as possible. Failure to report accidents can result in a violation of conditions of insurance coverage and state laws, leading to difficulties in processing insurance and benefit claims. Injured workers must fill out a Workers' Compensation Report form and submit it as soon as possible to the [Safety Officer]. All injuries must be reported in a timely manner to avoid risk of claim denial. The [Safety Officer] will provide advice and assistance to any person filling out a Workers' Compensation Report.

If an injury results in the death of an employee, then the supervisor shall immediately notify the Safety Officer who, in turn, shall immediately notify the State Workers' Compensation Department and the District's insurance carrier by phone. The [Safety Officer] will then proceed to process a claim report form.

The appropriate entries shall be made in the OSHA 300 Report log.

Workers' Compensation Insurance

If an employee is injured on the job, in most cases the injured worker will be entitled to benefits under the state workers' compensation law. The District carries workers' compensation coverage and will assist employees in obtaining all benefits to which they are legally entitled.

Return-to-Work Policy

The following procedures must be followed by employees who wish to return to work following an on-the-job injury which has resulted in the employee's being off work.

- All requests to return to work must be made in writing, dated, and signed by you.
- All requests to return to work must be accompanied by a dated, written release signed by your attending physician. This release must clearly specify whether you are released for your former job or are restricted in any way.
- Requests to return to work must be made no later than the seventh (7th) calendar day following the date of your physician's signature on the written release. Except where, in our opinion, extenuating circumstances exist, failure to make a timely request terminates your right to reinstatement or reemployment. Failure to seek a written release upon your becoming able to return to work may constitute abandonment of your right to reinstatement or reemployment. However, if the District has 20 or fewer employees both at the time of your injury and at the time of your request to return to work, the District has no obligation to reinstate you.
- Requests to return to work may be brought in personally or mailed to the District. If mailed, the request should be directed to the person listed below. Requests brought in personally will be deemed made the date on which the written request is given to the District. Mailed requests will be deemed made on the date of receipt. All requests will be date stamped upon receipt.
- All requests to return to work must be directed to the [_____].
- If a suitable job is not available at the time of your request, you must contact the [_____] in person or by telephone once a week to renew your request. If a period of 10 days elapses without such a contact, you will be considered to have abandoned your right to be returned to work.
- All job offers will be made by telephone. It is your obligation to keep the District advised of any changes in your telephone number.
- If you are offered a suitable position in response to your request to return to work and you refuse to accept it, you will be considered to have voluntarily terminated your employment and abandoned your right to reinstatement or reemployment.

Violence in the Workplace

The District is absolutely committed to providing a workplace which is free of harassment, threats, intimidation, and violent acts. Each of the District's employees is entitled to come to work without fear of being the target of such actions.

The District has a zero-tolerance policy in this area. Such acts will not be permitted to occur. This prohibition includes verbal or physical harassment, verbal or physical threats, any menacing

behavior, any actual aggressive or angry touching of a co-worker, verbal confrontations, name-calling or profanity directed against anyone personally, explosions of anger, and any other actions that cause others to feel unsafe, harassed, or threatened. This policy is in addition to our harassment policy.

Examples of behavior that will not be tolerated include, but are not limited to, continually making fun of another person; angry outburst or threats to others which cause them to feel unsafe and intimidated; employees “ganging up” to ridicule or tease an employee who does not quite “fit in” with the rest of the group; employees refusing to train, work with, help or cooperate with another person when necessary; off the job harassment, threats, unwelcome advances or stalking of a co-worker, which causes workplace consequences; and any other conduct which causes a tense and stressful workplace filled with interpersonal conflict.

For purposes of this policy, violent behavior is defined as:

- The actual or implied threat of harm to an individual, group of individuals, or associates of those individuals.
- The possession on District property of weapons of any kind, unless specifically authorized by District management, or the brandishing of any object that could reasonably be construed as a weapon. Weapons include, but are not limited to, guns, knives, explosives, tear gas, and mace. District property includes parking lots. Weapons are not permitted in cars parked in District lots, and this includes rifles during hunting season.
- Loud, angry, or disruptive behavior (“temper tantrums”). Such outbursts are clearly not an acceptable part of the District’s work environment.
- Negligent or intentional disregard for the physical safety or well-being of others.
- Willful destruction of District or other employee property.
- Commission of any violent crime on District property.
- Any other conduct that a reasonable person would perceive as constituting actual or threatened violence.

Anyone engaging in any acts of harassment, threats, intimidation, or violence against a fellow employee will be subject to discipline, up to and including immediate termination.

This policy is not intended to take away employees’ freedom of speech or to keep employees ever from engaging in light-hearted banter in the workplace. However, there is a clear line between lighthearted kidding and banter, and subjecting a fellow employee to ridicule, threats or other action, which makes for a hostile or violent workplace. It takes only a little common sense to realize that, if an employee would be uncomfortable in a co-worker’s shoes, the line has been crossed and the employee’s behavior is inappropriate. Each employee should respect the other’s feelings, as they would expect their own feelings to be respected.

Any employee who is subjected to, witnesses, or has knowledge of actions that could be perceived as harassment, threats, intimidation, or violence, or has reason to believe that such actions may occur, is encouraged and required to report them immediately to [_____]. Employees may raise concerns and make reports without fear of reprisal. Such communications will be kept confidential to the full extent possible under the circumstances.

The District reserves the right to inspect, with or without notice, all District property, and any other property, whether belonging to employees, customers, clients, etc., brought onto the District's premises, including, but not limited to packages, bags, briefcases, backpacks, purses, automobiles, etc. The District also reserves the right to conduct ongoing background checks on employees in compliance with applicable law and to remove any individuals from the District's premises that present safety risks to others.

WHAT THE DISTRICT EXPECTS FROM YOU

Teamwork and Excellence

This section has been arranged to present a general overview of some of the District's expectations of its employees. Every employee should keep in mind that each is a part of a team of public employees, and public satisfaction with the District depends upon good service.

Personal Conduct

Positive attitude, proper courtesy, and conduct on and off the job are important to the individual as well as to the District. Neatness of work performed is also important. All employees are engaged in public relations. Some deal directly with the public; others, while not in direct personal contact, do perform work under the public eye. Employees of the District, regardless of whether contacts are direct or indirect, are expected to be courteous, efficient, and helpful in all their work assignments. Favorable impressions created by employees' public behavior help develop good will and support for District services.

Code of Ethics for District Employees

- **Personal Interests Avoided**
District employees may not use District time, equipment or services for personal interest or gain. When giving testimony unrelated to their assigned District responsibilities, District employees shall not use information or facts that have come to them by virtue of their employment for personal gain or benefit. In matters of personal interest, employees should conduct themselves so as not to impair their working relationship with other employees, officials, or the public.
- **Gifts and Gratuities**
Employees shall not accept any special favors, gifts, or gratuities resulting from or related to employment with the District. In this regard, the appearance of impropriety can be as damaging as actual impropriety and shall be avoided.
- **Special Gifts**
Department heads may allow acceptance of non-monetary gifts of nominal value [e.g., under \$50] at holidays or special occasions which are available to be shared by all employees.

Political Activities for District Employees

- **Official Position Campaigning**
Employees may not use their official authority or position with the District to further the cause of any political party or candidate for nomination or election to any political office.
- **On-Duty Activity**
Oregon law forbids any District employee, while on the job, from soliciting money, influence, service, or other article of value or otherwise aiding and/or promoting any political cause, or the nomination or election of any person for public office.

Attendance and Punctuality

Each employee and the employee's performance on the job are important to the overall success of operations. When absent, someone else must do the job. Everyone is expected to keep regular attendance, be on time, and work as scheduled.

In accepting employment with the District, each employee is required to meet certain standards. Maintaining an acceptable level of job attendance is part of good work performance and is one of the standards by which an employee's overall contribution to the District may be measured. Continued employment carries with it the personal responsibility of each employee to be on the job and on time every scheduled workday. Recurring and excessive absences and/or tardiness are disruptive to work schedules, costly to the District and its residents, and detrimental to the morale and efforts of employees who maintain a good work record.

Except when the absence is due to leave protected by state or federal law, failure to meet these requirements subjects an employee to disciplinary action, which includes termination. The ability to attend work regularly is an essential job requirement.

Personal Appearance

Each employee while on the job is responsible to present a proper, businesslike appearance whether in the office, a District vehicle, or other site. Good taste and good judgment in personal attire is expected. All articles of clothing shall be neat and clean and in good repair.

Appearance of Work Areas

The District's objective is to provide and maintain clean, safe, and healthy work conditions. It is the responsibility of each employee to maintain a safe, neat work area and ensure that all working documents, desks, cabinets, and equipment are secure at the close of the work shift.

Personal Telephone Calls

District phones are to be used for District purposes. Telephone calls of a personal nature (incoming or outgoing) should be kept to a minimum and made during breaks or lunch periods whenever possible. Under no circumstances should an employee charge a long distance call to the District unless it is work-related. Friends and relatives should be discouraged from calling during working hours except in emergencies.

Smoking

State law prohibits smoking in the workplace buildings, and it is only allowed in designated

smoking areas on District property.

Outside Employment

- **District Comes First**
When an individual accepts employment with the District it is understood that the District has first call upon the services of its employees, regardless of any effect on secondary employment.
- **Incompatible Work**
Employees shall not engage in outside employment that conflicts in any way with District employment, detracts from the efficiency of work performance, or is in conflict with the interests of the District. The District expects employees to avoid extra work which affects endurance, overall personal health, or effectiveness. The District will hold all employees to the same standards of performance and scheduling demands, including employees who hold outside jobs.
- **Notification**
Employees shall notify the [_____] in writing, in advance, of all employment outside the scope of their employment with the District.
- **Conflicts**
The [_____] will notify the employee at any time outside employment is found to be in conflict with the interests of the District or is likely to bring discredit upon the District. It shall be up to the employee to choose which employment option is most desired.

Communications and Software Policy

The following describes the District's policy on the use and monitoring of its electronic communication/information systems, including computers, electronic mail ("E-mail"), Internet access, voice-mail, facsimiles, and copy machines.

All electronic equipment and all communications and stored information transmitted, received, or contained in the District's electronic communication/information systems are the property of the District and, as such, are to be used solely for job-related purposes. The use of the District's electronic communication/ information systems for non-job related purposes is strictly prohibited, and employees should not have any expectation of privacy when using these systems or any related equipment. The District specifically reserves the right to access, review, monitor and disclose all matters received, disseminated or stored on its systems (including deleted material) at any time and for any reason, and may do so with or without notice.

Employees who use these systems for any non-job related purposes do so at their own risk. The District may decide reasonable use in its sole discretion. Employees are strictly prohibited from using any of the District's electronic communication systems to send messages which may be interpreted as harassing, discriminatory, obscene, derogatory or defamatory. The District's anti-harassment policy fully applies to employees in their use of the District's electronic communication systems.

Only authorized users may access the Internet on District-owned systems and equipment. The District's name should not be used in external communication forums such as chat rooms without prior written authorization from a supervisor. Employees should not mail, upload, or broadcast any sort of information for personal gain, including but not limited to chain letters, solicitation of and response to employment opportunities, sale of products, and/or searches of non-business related sites or any obscene or offensive material.

To prevent computer viruses from being transmitted through the District's Internet system, there will be no unauthorized downloading of software. Employees also should not upload or download information, data, or software which is copyrighted by a third-party.

All passwords and codes are the property of the District and do not guarantee any privacy to the employee. Password protection does not prevent access by the District. Employees shall not use a code, access a file, or retrieve any stored communication, other than where authorized, unless there has been prior clearance by an authorized supervisor. Information in District computers and equipment that is confidential and/or proprietary information cannot be shared with individuals outside of the District without prior clearance from an authorized supervisor.

The use of encryption devices or software that has not been authorized by the District is prohibited.

Any employee terminating employment with the District is prohibited from taking (in any form) or copying any computer discs, hard copies, or other information stored on the District's electronic equipment.

To ensure that the use of the District's electronic communication systems is consistent with the District's legitimate business interests, and to assure compliance with the District's policy, the District specifically reserves the right to access, review, monitor and disclose all components of these systems (including deleted material) at any time and will do so with and without notice.

Employees who violate this policy are subject to disciplinary action, up to and including termination of employment. Action or inaction by the District in response to prior violation(s) of this policy does not constitute a waiver of the District's right to take appropriate action for any subsequent violation. All violations of this policy should be reported to [_____].

Drugs and Alcohol

- Statement of Concerns
 - The District has a responsibility to its employees, and the public to ensure safe working conditions for its employees and a productive workforce unimpaired by chemical substance abuse. The District has a responsibility pursuant to the Drug Free Workplace Act of 1988. To satisfy these responsibilities, the District must preserve a work environment free from the effects of drugs, alcohol, or other performance-impairing substances.
 - The misuse of alcohol and other drugs can impair employee performance, as well as physical and mental health, and may jeopardize employee safety as well as the safety of

the public.

- Policy
 - The District is committed to maintaining a safe and healthy work place for all employees by assisting employees to overcome drug or alcohol related problems through appropriate treatment and, if necessary, disciplinary action.
 - An employee whose position has been classified as “safety sensitive” may be asked to submit to pre-employment, random controlled substance testing, reasonable suspicion testing and post-accident discovery testing to confirm that they are drug or alcohol free. Testing includes a urinalysis or blood serum, or both. An employee who is returning to safety-sensitive functions after engaging in conduct prohibited by this policy concerning alcohol may also be required to undergo a return-to-duty alcohol test.
 - Each employee is responsible for meeting performance, safety, and attendance standards.
 - Employees shall not report to work under the influence of intoxicating liquor or illegal drugs.
 - The use, sale, possession, manufacture, distribution, and/or dispensing by an employee of an intoxicating liquor, controlled or illegal substance, or a drug not medically authorized, or any other substances which impair job performance, or pose a hazard to the safety and welfare of the employee, other employees or the public, is strictly prohibited. The use of alcohol or medically prescribed controlled substances off-duty is not controlled by this policy. Conduct in violation of this policy may result in disciplinary action and/or criminal investigation, if appropriate.
 - Employees may obtain counseling and rehabilitation through the Employee Assistance Program ("EAP").
 - Laboratory tests relied upon shall be highly accurate and reliable.
 - Positive test results may only be disclosed to the employee, the appropriate EAP administrator, the appropriate management officials necessary to process an adverse action against the employee, or a court of law or administrative tribunal in any adverse personnel action.
 - All medical and rehabilitation records in an EAP will be deemed confidential "patient" records and may not be disclosed without the prior written consent of the patient, authorizing court order, or otherwise as permitted by Federal law implemented at 42 CFR Part 2.
 - This policy will be enforced and administered in a manner which is consistent with the value statements set forth in this section, and with the advice and concurrence of the District's [_____].

- **Permitted Use**
It is the employees' responsibility to determine from a physician whether or not a prescribed drug can impair job performance. An employee whose impairment may affect job performance should take sick leave or other steps consistent with advice of a physician. If an employee reports to work under the influence of prescription medication and endangers self or others, the employee may be disciplined. Any failure to report the use of such drugs or other substances following an event of concern to the District, or failure to provide evidence of medical authorization, can result in disciplinary action.
- **Reports of Drug Conviction**
Each employee must report facts and circumstances to the [_____] no later than five (5) days after conviction for violating any criminal drug statute.
- **Employee Education**
The District will afford employees an opportunity to deal with drug and alcohol related problems. The [_____] maintains information relating to the hazards of and treatment for drug and alcohol related problems. Proactive training and information shall be sponsored by the District periodically. Any District employee may seek advice, information, and assistance voluntarily. Medical confidentiality will be maintained, consistent with this policy.
- **Employee Assistance**
Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through a private treatment program for drug and alcohol problems. The [_____] will assist employees who wish to identify and select an appropriate treatment program.

If an employee seeks drug treatment voluntarily and not under adverse employment circumstances, accrued sick leave benefits may be used while attending rehabilitation. After such accommodation, the discontinuation of any involvement with alcohol or drugs may be an essential requisite for employment and is consistent with the District's policy of maintaining a drug free workplace.

- **Discipline Related to Abuse**
An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:
 - Direct observation;
 - Evidence obtained from an arrest or criminal conviction;
 - A verified positive test result; or
 - An employee's voluntary admission.

In such a case, the employee may be subject to disciplinary action, up to and including immediate dismissal. As part of the disciplinary action arising from current use of illegal

drugs or job-related alcohol problem, an employee may be directed to consult with health care providers. Such an employee may be required to participate in a drug or alcohol treatment program as a condition of continued employment.

A supervisor, based on reasonable suspicion that substance abuse is a factor in employment, may require an employee to be evaluated for illegal drug and alcohol use and treatment by an employee assistance program or a doctor. An employee may be required to participate in follow-up care as part of a comprehensive alcohol and drug treatment program based upon medical advice.

When an employee is required to undergo treatment under the policy, the employee may be required to authorize the following as a condition of continued employment:

- Monitoring of the treatment program and the employee's participation by the [_____] or the [____]; and
- Submission to random blood and/or urine screening for alcohol and/or drugs for a specific period of time not to exceed thirty-six (36) months.

When an employee voluntarily enters a treatment program, which is not associated with District intervention, testing and monitoring by the District will not be required.

Medical confidentiality will be preserved, subject to rights granted by the employee to the [supervisor] and [department head] to monitor treatment and program compliance with a health care provider in order to ensure compliance with conditions of employment and ability to return to or remain at work.

- **Drug Testing Upon Reasonable Suspicion**
Where a supervisory employee has a reasonable suspicion that an employee is under the influence of alcohol or illegal drugs, including unlawful use of a controlled substance without a valid prescription, the employee in question will be asked to submit to discovery testing. This may include urinalysis or a blood screen, or both, to confirm involvement with alcohol or illegal drugs or that the employee is drug or alcohol free at the time in question.
- **Consequence of a Positive Test**
An employee who is found to be under the influence of or impaired by alcohol or illegal drugs as a result of a test requested by the District, based upon reasonable suspicion, will be subject to disciplinary action including suspension or termination.
- **Consequence of Refusal to Submit to Testing**
An employee who refuses to submit to discovery testing for alcohol and illegal drugs will be subject to suspension or discharge, or both. Alleged lack of reasonable suspicion is not grounds to refuse to submit to a test; however, it is reason to challenge discipline if discipline is imposed based on the test result alone.
- **Testing Procedure**

- **Employee Representation**
 When the employee is notified that he or she is required to consent and submit to such tests, he or she may request the presence of a representative to witness the test. The test may not be delayed unreasonably in order to wait for a representative. The absence of a representative shall not be grounds for the employee to refuse to consent and submit to such tests or searches. The presence of a representative shall not disrupt or interfere with the tests or searches.

- **Authorization to Test**
 Before a supervisor, acting on behalf of the District under this policy, may require an employee to consent and submit to any test, the supervisor must first obtain concurrence from the [_____] or the [_____] that the information available to the District about the subject employee is sufficient to determine reasonable suspicion that prohibited conduct will be established as a result of the test.

- **Procedure for Consent**
 The employee shall give consent to a blood, urine, or breathalyzer test, or any combination, upon request, by signing a consent form. The form shall contain the following information:
 - Employee's consent to release tests results to the District;
 - The procedure for confirming an initial positive test result for a controlled substance, including marijuana;
 - The consequences of a confirmed positive test result for a controlled substance, including marijuana;
 - The consequences of a positive test for alcohol, under the circumstances;
 - A listing provided by the employee of legally prescribed and over-the-counter medications, which may be in the employee's body;
 - The right to explain a confirmed positive test result for a controlled substance, including marijuana, or a positive test for alcohol; and
 - The consequences of refusing to consent to the blood, urine, or breathalyzer test.

- **Confirmatory Test**
 In the event that the blood or urine test results are positive for controlled substance(s), including marijuana, the District shall require that a second confirmatory test from the same sample be conducted, using gas chromatography/mass spectrometry methods performed by a laboratory certified by the National Institute on Drug Abuse. This test also must be positive before concluding the employee has such substances(s) present in the body.

- **Employee Requested Test**
If a blood or confirmed urine test is positive, the District will instruct the laboratory to retain the blood or urine sample for a period of not less than thirty (30) calendar days from the date the tests are complete for the purposes of allowing the employee to conduct an independent test at his or her own expense at a laboratory approved by the District.
 - **Chain of Evidence**
The procedures to obtain, handle, and store blood and urine samples and to conduct laboratory tests shall be documented to establish procedural integrity and chain of evidence. Such procedures shall be administered with due regard for the employee's privacy and the need to maintain the confidentiality of tests results to an extent which is not inconsistent with the needs of this policy.
 - **Notification**
The employee shall be notified of the results of all tests conducted pursuant to this policy. Employees who test positive shall be afforded an opportunity to provide medical or other information that may explain the positive test result. If a question exists, the available information will be reviewed by a licensed physician with training in forensic drug testing.
- **Random Drug Testing**
The District will perform random alcohol testing and random controlled substance testing for employees whose positions have been classified as “safety sensitive.” The dates for the tests will not be announced and will be spread throughout the calendar year. An employee who is notified of selection for random testing must proceed to the test site immediately.
- **“Post-Accident Testing”**
In the event of an accident involving a commercial motor vehicle, the District will test each driver who was performing safety-sensitive functions with respect to the vehicle if the accident:
 - involved loss of human life;
 - the driver receives a citation under state or local law for a moving traffic violation arising from the accident and one or more motor vehicles incurs disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle, and/or bodily injury to a person who as a result of the injury receives medical treatment away from the scene.
- **Definitions**
 - "Reasonable suspicion" is defined as specific articulable observations by a supervisory employee concerning the work performance, appearance (including noticeable odor of an alcoholic beverage), behavior, or speech of the employee. Any accident or incident involving physical injury to any person may be considered as constituting reasonable suspicion for discovery testing for drugs and alcohol where human factors contribute to the incident and a question of sobriety short of reasonable suspicion exists.

Reasonable suspicion testing may be based upon, among other things:

- Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
- A pattern of abnormal conduct or erratic behavior;
- Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
- Information provided either by reliable and credible sources or independently corroborated;
- Newly discovered evidence that the employee has tampered with a previous drug test.

Although reasonable suspicion testing does not require certainty, mere "hunches" are not sufficient to meet this standard.

- "Under the Influence" is defined as any detectable level of a controlled substance (in excess of trace amounts attributable to secondary exposure) in an employee's blood or urine or any noticeable or perceptible impairment of the employee's mental or physical faculties. With respect to alcohol, a blood alcohol content of .04% constitutes under the influence while on duty.
- "Controlled Substances" are defined as all forms of narcotics, depressants, stimulants, hallucinogens, cannabis, and other controlled substances of which the sale, purchase, transfer, use, or possession is prohibited or restricted by The Federal Controlled Substances Act. "Illegal or controlled substances" means a controlled substance as defined by Section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.
- "Over-the-Counter Drugs" are those which are generally available without a prescription from a medical doctor and are limited to those drugs which are capable of impairing the judgment of an employee to safely perform his or her duties.
- "Prescription Drugs" are defined as those drugs which are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.
- "Searches"
Employees have no expectation to be free from search of a locker, desk or contents of other similar District controlled spaces. A search for contraband within personally controlled spaces on District property (purses, garments, brief cases, or a personal vehicle, for example) shall be based on reasonable grounds or consent of the employee.

In accordance with the provisions of this policy prohibiting drugs in the workplace, or based upon legitimate concerns for the possession of other unauthorized materials (such as firearms, explosives, or stolen property), this policy constitutes formal notice of the District's intent to search premises, persons and secured spaces, including vehicles parked on District property, based upon reasonable grounds or consent. Searches shall be approved by the [_____] or his/her designee, and, if possible, notice to the employee and an opportunity to be present shall be given.

- “Refusal”
Failure to appear for testing without a deferral will be considered refusal to participate in testing, and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector shall contact the [_____] to obtain guidance on action to be taken.

NON-DISCRIMINATION AND HARASSMENT

Equal Opportunity Employment

It is the District's policy to employ, retain, promote, discipline, discharge, and otherwise treat all employees and job applicants on the basis of merit, qualifications and competence or membership in any other classification protected under federal or Oregon law. It is the policy of the District to comply with federal and state statutes on equal employment opportunity. This policy shall be applied without regard to any individual's sex, gender, race, color, religion, national origin, ancestry, age, marital status, political affiliation, sexual orientation, veteran status, any disability which can be accommodated reasonably, or any other status protected by law. Actual or perceived homosexuality, heterosexuality or bisexuality are also categories of people protected from discrimination in hiring, firing, discipline and other terms of employment.

The [_____] is the coordinator for the District's procedures for the implementation of this policy. It is the intent and desire of the District that equal employment opportunity will be provided in employment, promotions, wages, benefits, and all other privileges, terms and conditions of employment.

Harassment

- Statement of Concern
The District will work to eliminate and prevent harassment and to alleviate any effect harassment may have on the working conditions of an employee. All harassment of any employee is forbidden, including unsolicited remarks, gestures or physical contact, display or circulation of derogatory written materials or pictures regarding either gender or disability or racial, ethnic or religious groups, and personnel decisions based on an employee's response to such harassment. The District regards job-related harassment as a serious transgression and reason for discipline or discharge.
- Policy
The policy of the District is that every employee has a right to be free of harassment or hostile or offensive conduct directed at another. In response to formal reports of harassment, the District will protect all parties involved from retaliation, false accusations, or future

harassment, and where indicated, will take prompt and adequate remedial measures.

Should an issue of harassment be raised, all related matters will be kept confidential to the extent possible throughout the investigation, counseling and disciplinary stages. Any supervisor or manager receiving notice of harassment shall notify the [____], or the [____] who will direct an investigation and ensure that the charge is resolved appropriately.

- Reporting Harassment

Any employee who feels that he/she is the object of offensive harassing behavior or is aware of harassment of another employee, and/or is urged to report this to an immediate supervisor, department head, or [____]. The report may be informal or formal.

- Response to Reports of Harassment

The District will investigate and promptly take remedial action if deemed appropriate. Reports concerning harassment will be forwarded to the [____] unless there is an allegation against that person, and if so, then written reports will be forwarded to the [____] who will delegate the matter to the District's legal counsel. This procedure will apply to written statements received from reporting employees or written records made by supervisory employees, including department heads. Whenever supervisory employees become aware of allegations of harassment, they will make a written record of the allegations and will forward the record to the District in accordance with this policy.

- Investigation

The [____] or the District's legal counsel or other person designated by the [____] will begin an investigation if necessary. The first pre-investigation step shall be to inquire of all persons reporting as to whether the record now includes all allegations of harassment. The investigation will be conducted promptly on a priority basis. The investigation will be directed at ascertaining the facts concerning the allegations.

The investigator shall cause the person reported to have harassed an employee to be advised of the allegations and to afford such person an opportunity to reply verbally or in writing. The employee shall also be advised that any retaliatory conduct will be subject to disciplinary action regardless of allegations of harassment.

The results of the investigation shall be written. A finding shall be made that there is or is not reasonable cause for disciplinary action. Nothing in this section shall limit the authority of the District to modify policies or practices to correct any appearance of sexual harassment without finding reasonable cause for disciplinary action or taking any disciplinary action. The report will also include any recommendations to remedy the situation and prevent similar future incidents.

A report which finds reasonable cause for disciplinary action will be maintained in the personnel file of any employee subject to discipline. The employee may have placed in the personnel file a statement of rebuttal or correction. For the purpose of this section, a former employee may present such statement.

Immigration and Nationality Program

- **Policy Statement**

The District recognizes that it has a responsibility to comply with the provisions of the Immigration Reform and Control Act of 1986 by employing only citizens of the United States of America and lawfully authorized alien workers.

The District's policy is to provide equal opportunity to all persons in matters affecting employment with the District, including full compliance with the Immigration Reform and Control Act of 1986. The District shall not discriminate against any individual, other than an unauthorized alien, based on national origin or citizen status.

- **Procedure**

In order to assure compliance with the Immigration and Nationality Act, the District will:

- Consider every job applicant on his or her merits;
- Verify employability and identity in a lawful and consistent way; and
- Maintain complete and accurate documentation of all decisions.

PERFORMANCE EVALUATIONS

Purpose - Communication

Employee performance reviews are an essential communication process between the employee and the immediate supervisor. Such reviews provide information relating to merit, identify areas of training needs, target the strengths and weaknesses of the employee's work performance, and measure the relationship between goals and objectives and the individual employee's job performance. The purpose of evaluations is to let employees know how well they are performing their job and whether they have performance problems. It also serves as a basis of personnel decisions -- merit increases, promotion, and termination.

Goal – Form Desirable Behaviors

The goal of the employee performance review process is to establish a pattern of expected work performance and habits. The review process gives employees and supervisors an opportunity to measure, review, and establish goals, reward or acknowledge good performance, create incentives, and to detect and correct improper behavior or activity and/or substandard work performance.

Review Process

Performance reviews shall be completed at least annually and in accordance with the guidelines and instructions set forth by the Board. Employees and supervisors are required to sign the completed performance review forms. All performance reviews will be reviewed by the [_____] and placed in the employee's personnel file. Employees will be provided with a copy of performance reviews.

Employees Affected

All regular employees of the District will be evaluated under this policy. The [_____] shall be

evaluated by the Board based upon the consensus of the Board, using a written performance evaluation.

Regular Review

All employees will be evaluated at least annually in the month of [their anniversary date.] or [_____].

Pay and Probation Recommendations

A recommendation concerning qualification for a merit or step increase and/or passing probation to regular employee status shall be set forth in a performance evaluation.

Supplemental Evaluation

A supplemental performance evaluation may be submitted on any occasion deemed appropriate by a supervisor to clarify performance deficiencies and goals or plans for improvement.

PROBLEM SOLVING PROCESS

District Policy

The District strives for fair treatment of all employees, however, misunderstandings and problems may occur in any organization. The District intends that such matters be resolved as early and fairly as possible. Disagreements relating to work assignment, pay, promotion, opportunity or any aspect of the work relationship should be openly discussed with the immediate supervisor. Supervisors and employees should make honest attempts to understand each other's perspectives and make every effort to resolve differences.

Steps to Solution

If at any time an employee believes s/he is not being treated fairly, the employee may report the problem to the department head or the [_____]. Several steps are suggested to insure that a prompt and fair resolution is achieved.

- Talk with your supervisor as soon as possible. Your department head is the person responsible for what goes on in your work areas. S/he will review your problem, and keep you informed of the progress.
- If you believe the problem is not properly resolved you can file a written statement concerning the problem with [_____]. A copy should be sent to the [_____]. You will be given a written reply by your [_____] within ten (10) working days after the written statement is received, unless additional time is needed.
- The [_____] will review any decision upon request, investigate further if appropriate, and issue a decision. The employee's request for consideration of the [_____] should be made within ten (10) working days from receipt of the supervisor's decision. The employee may present further facts, documents or argument.
- The District cannot guarantee that an employee's point of view will be accepted, but supervisors and the [_____] will always listen, and make every effort to ensure that problems are resolved fairly and in the public interest.

DISCIPLINE

Discipline Generally

On-the-job conduct of District employees affects the ability of the District to serve its citizens and affects the taxpayer's impression of District government. Employee safety, public safety, productivity, and morale are dependent upon employee conduct.

Occasionally it is necessary for supervisors to resort to corrective action when other actions are inappropriate, or where a particular employee fails to respond to informal guidance.

In order to provide a fair method of correcting, and when necessary, disciplining employees, the District will use progressive discipline procedures where appropriate in a given situation. This section concerning discipline does not apply to the District's chief executive officer, who serves [at the pleasure of the Board of Directors] or [under the terms of an employment agreement]. This section establishes procedures and a process, and it does not constitute the creation of a contractual right to retain employment.

Discipline – General Guidelines

- Discipline may be initiated for many proper reasons, including, but not limited to, violations of the work rules, insubordination or poor job performance. The severity of the disciplinary action generally depends on the nature of the offense and an employee's work record, and may range from verbal counseling to discharge.
- Progressive discipline for infractions include, but is not limited to:
 - Verbal counseling;
 - Written counseling or warning;
 - Temporary reduction in pay in lieu of suspension;
 - Suspension;
 - Demotion; and
 - Discharge.

Any or all of these steps may be utilized, depending upon individual circumstances and the nature of the infraction. Exceptions or deviations from the normal procedure may occur whenever the District deems it appropriate, case by case.

Suspension of Salaried Exempt Employees

No salaried exempt employee will be suspended by the District except for serious misconduct which does not warrant discharge and in such a case the employee must be suspended for not less than one full work week.

Application of Progressive Discipline

- For performance deficiencies and minor matters, employees will normally be verbally counseled. A supervisor may or may not choose to make counseling or the imposition of a verbal warning part of the employee's personnel file by documenting what was said into a memo.

If no other deficiency occurs during the next twenty-four (24) months, the employee may request the warning be removed from the personnel file. Documents removed from individual personnel files will be retained by the District in a separate record system not filed by name, which generally shall not be considered in personnel decisions.

- In the event of two or more performance problems or more serious violation of a District policy or rule, a written warning may be issued.
- The warning should be signed and dated by the employee. An employee who disagrees with the facts in the warning may submit a written response. It will be placed in the personnel file with the warning.
 - A written warning need not pertain to the same or similar matter (issue).
 - In addition to a written warning, the [_____] may also suspend an employee without pay for a period of up to thirty (30) working days, or take other disciplinary action deemed appropriate. Prior to suspending an employee without pay, the [_____] will meet with and afford the employee an opportunity to respond.
 - The District may demote or reduce the pay of employees. A written statement of the reasons for such action shall be furnished to the employee, and a copy shall be made a part of the personnel file. The employee will sign the statement acknowledging he has received a copy of it, and may file a rebuttal statement.
 - Discharge may result if the employee violates District policy, commits serious misconduct or fails to improve the level of performance. However, this statement does not limit the District's right to end the employment relationship with or without cause, at any time.
 - An employee should not be reinstated or otherwise relieved of misconduct if to do so would be contrary to public policy. In determining if reinstatement or other action would be contrary to public policy, the District will look at public policy requirements as clearly defined in statutes or judicial decisions, including but not limited to policies respecting sexual harassment or sexual misconduct, unjustified or egregious use of physical or deadly force and serious criminal misconduct, related to work.

Additionally, when an employee claims the employer's alleged previous differential treatment of employees for the same or similar conduct is the basis for reinstatement of an employee who has engaged in misconduct, the following principles apply:

- Some misconduct is so egregious that no employee can reasonably rely on past

treatment for similar offenses as justification or defense to discharge or other discipline.

- Public managers have a right to change disciplinary policies at any time, notwithstanding prior practices, if reasonable advance notice is given to affected employees and the change does not otherwise violate a collective bargaining agreement.

The [_____] will conduct the conference and decide whether to impose discharge or a lesser degree of discipline, or no discipline as appropriate.

Discharge Procedure

Pre-Discharge Conference

If [_____] determines there is cause for the serious discipline up to discharge of an employee, [_____] shall notify the employee of the specific reasons and that a suspension without pay, demotion, pay reduction, and/or discharge is being considered. The employee shall be provided with the facts upon which the contemplated disciplinary actions would be based. The [_____] shall afford the employee a formal opportunity to refute the charges orally or in writing. Once the employee has been afforded an opportunity to refute the charges and explain the facts and circumstances, the employee may be suspended without pay. An employee may be put on administrative leave without pay at any time. If a pre-discharge conference is to be held, it will be scheduled and held three [3] days after notice of action has been given. The employee will be given adequate time to develop a response and to seek necessary outside assistance as the employee feels necessary. The time limits may be varied by the District to meet individual needs.

Appeal of Discipline Action

- Right to Appeal from Discipline

Any regular employee subordinate to the District's Chief Executive Officer who has been suspended, reduced in pay, demoted or dismissed, shall have the right of appeal to the [Board of Directors]. Notice of the appeal must be filed not later than ten (10) days of the effective date of the action. The notice of appeal shall include at least the following information: (a) a statement of the complaint and the facts upon which it is based; (b) the remedial action requested; (c) a statement of the reasons why the remedial action is appropriate; (d) a statement of any policies, procedures or law or rules which have not been adhered to or which should be followed. The appeal generally will be heard by the [Board of Directors] within twenty (20) days after receipt of the request. The [Board of Directors] shall furnish [_____] with a copy of the notice of appeal in advance of the hearing.

- Who May Appeal

Only regular employees not excluded from the application of these policies have a right to appeal disciplinary actions. In addition to formal appeals under this Section, the [Board of Directors] may give consideration to all suggestions and complaints that concern administration of the personnel policies.

- Investigations

In connection with an appeal or complaint, with respect to any matter arising under these

personnel policies, the [_____] may conduct or cause an investigation to occur as [_____] deems necessary. The [investigator] shall make a written report upon all matters investigated under the personnel policies. A copy will be given to the employee and placed in the file.

- Hearings on Appeal.
 - Procedure. The Board of Directors shall set a hearing upon timely requests made under this policy. The employee and the [department head] or [supervisor] shall be given written notification of the time and place of the hearing.

The order of procedure at the hearing may be as follows, or as otherwise determined as appropriate:

- The department head or a designee will set forth the reasons for the action and the facts on which it is based. The employee may conduct cross-examination if appropriate.
- The employee may present evidence in support of the appeal with or without the assistance of legal counsel or other representative.
- The department head or a designee may cross-examine or submit evidence in rebuttal or both.
- Opening statements, if any, will be brief and confined to the issues. Closing argument, if any, will be first by the department head or a designee then by the employee. The department head may offer rebuttal evidence if desired.
- Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Affidavits and counter-affidavits may be acceptable as evidence. If either party intends to rely on an affidavit, it shall provide the other party with such affidavit together with the name, address and telephone number of the affiant at least ten (10) days prior to the hearing or such affidavit shall be inadmissible.
- Conduct of Hearings. A hearing before the Board of Directors is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges brought to the Board of Directors. The hearing shall be conducted accordingly. The Board of Directors may impose limits on questioning in the interest of the orderly conduct of the hearing and fairness.
- Counsel or Representative. In appealing a disciplinary action to the Board of Directors an employee may, but is not required to, have counsel or other representative. The District's counsel may assist the [department head, supervisor, or Executive Director].
- Findings. If, after receiving evidence presented in hearings on disciplinary actions, the Board of Directors finds that sufficient evidence supports the charges, that the complained-of action taken by the [department head] was reasonable and was taken for a

proper reason consistent with policy, the Board may affirm the action; if they find that the complained-of action taken by the [department head] was not so made, the Board shall fashion an appropriate remedy and the personnel file shall be revised accordingly or purged of any record inconsistent with the Board's determination. The Board in lieu of affirming the disciplinary action may modify the discipline as the circumstances warrant.

- The Board may refer any issue to a Hearings Officer who shall conduct the proceedings in accordance with these rules. In such event, all provisions of these rules relating to the duties and authority of the Board shall also apply to the Hearings Officer in the conduct of the hearing. The Hearings Officer shall issue Recommended Findings which shall be reviewed by the Board based solely on the record and applicable law. The Board may adopt the Findings by voice vote. In all other cases the Board shall issue a final written decision within twenty (20) working days from receipt of the Recommended Findings.

At the time of filing of the request of the appeal with the Board, the department head shall supply the employee with an outline of the procedures used by the Board of Directors. The decision of the Board of Directors shall include findings of fact and shall be final.

An employee with remedies under a labor agreement may use this appeal procedure, but may do so only if the employee and the Union waive the right to proceed to appeal under any other policy or contract law or rule.

ADDITIONAL OPTIONAL SECTIONS TO BE ADDED TO POLICIES AND PROCEDURES

Appeals of Discipline Action for Department Heads Discipline Section Page 310

The standards of conduct, performance, and discipline to which the District holds department heads and managers is quantitatively and qualitatively different (higher) than the standards by which other employees are judged. Discussions of expectations, goals and objectives, and coaching, and counseling should, in the case of management employees, be sufficient. In rare cases of misconduct, it may be that a suspension could be justified, however, ordinarily instances committed by this level of employee warrant either discharge or counseling. The [_____] is expected to ensure standards are established and met, and that an appropriate combination of performance plans, evaluations and counseling are utilized to help the manager succeed. In the event a manager is discharged, asked to resign, or suspended without pay, then such manager may request review of the decision of the [_____] by the Board.

In the event such a hearing is requested, the request shall meet the requirements of Section [____]. The hearing procedure involving the [_____] (and not a department head) before the Board of Directors shall be conducted in the same manner provided in Section [____]. The Board shall determine whether the action was taken for sufficient cause and is not arbitrary and capricious as determined solely by the Board of Directors. Sufficient cause shall be judged based on factors which include the considerations set forth above. The following shall also apply:

- Evidence objected to may be received by the Board and, in the Board's discretion, rulings on

admissibility or exclusion may be reserved until such time as the Board's findings are issued. In considering the admissibility of evidence, the Board may consider but is not bound by the Oregon's Rules of Evidence.

- If, after receiving evidence presented in hearings on disciplinary actions, the Board finds that the complained-of action taken by the [department head] or the [_____] was taken for sufficient cause, the Board may affirm the action; if the Board finds that the complained-of action taken was for insufficient cause, the employee shall be reinstated to the position and shall not suffer any loss in pay or status and the official personnel file shall be purged of such record. The Board, in lieu of affirming the disciplinary action, may modify it as the circumstances may warrant. The decision of the Board shall include findings of fact and shall be final and binding on all interested parties.

Bloodborne Pathogens or Other Potentially Infectious Materials Safety and Accidents Section Page 306

(Consider as mandatory if any employees may reasonably anticipate exposure to a bloodborne pathogen or other potentially infectious materials).

- **Background**
Employees of the District provide services to citizens that may require employees to come into contact with bodily fluids, such as blood or other potentially infectious materials. This can occur as a regular part of the duties of emergency responders, firefighters and paramedics, law enforcement officers, corrections officers, evidence handlers, health care workers, maintenance workers, or persons giving first aid to others. There are a variety of methods by which this exposure may occur.
- **Policy**
Exposure to bloodborne pathogens may lead to sickness such as hepatitis, AIDS, or malaria. The District wants to assure its employees of a safe and healthy work environment. It is the policy of the District to comply with all legal and regulatory obligations for the prevention of exposures to blood-borne pathogens. To this end, the District will comply with all sections of the Oregon Administrative Rules, Chapter 437 and all other statutory requirements regarding the prevention of occupational exposures to blood-borne pathogens. The District will identify each classification and position the duties of which could lead to exposure, identify the nature of exposure, and ensure that equipment, training, and appropriate procedures are in place. These shall be grouped as class 1 (all employees could be exposed) and class 2 (some employees could be exposed).
- **Infected Citizens**
As a public service organization, the District cannot discriminate against citizens on the basis of disability. If uniform health precautions are followed rigorously and routinely, then the risks of accidental infection when rendering aid to an infected person is minimized. The routine activities of citizens in dealings with the District pose no measurable risk of bloodborne infection to employees. Unlawful discrimination against citizens with or suspected of infection will not be tolerated.

- Exposures

In the event of exposure to body fluids under circumstances that could present a risk of infectious exposure, a report will be made to the [_____] as soon as possible. If confirmed, the [_____] may solicit the cooperation of the source person through voluntary testing with informed consent. In order to protect the employee, a baseline test will be made within the week following exposure, and at three-month intervals for one year. The [_____] will insure that the employee involved receives counseling appropriate for the circumstances. All testing will be preceded by informed consent and written authorization.

- Universal Health Precautions and Work Practices

As recommended by public health authorities, the District will adhere to a program of universal precautions for protection against diseases spread by blood or bodily fluids. ("Bodily fluids" refers to fluids that may contain blood or feces, not urine, sweat, saliva, or tears.) This means that, for safety purposes, employees will operate on the assumption that all blood and bodily fluids are potential carriers of bloodborne disease, and will adhere to universal precautions protecting against AIDS and other diseases. The following general precautions will be followed:

 - Eating, drinking, smoking, applying cosmetics, lip balm, or handling contact lenses are prohibited in the work areas, including field locations, where there is an anticipated exposure to bloodborne pathogens.

 - The Oregon Administrative Rules mandate universal precautions at all times to prevent contact with blood or other potentially infectious materials. It is difficult or impossible to differentiate between bodily fluid types under circumstances present in the workplace. Therefore, ALL BODILY FLUIDS SHALL BE CONSIDERED POTENTIALLY INFECTIOUS MATERIALS, including blood and tissue or organs from either a living or dead human.

 - Any employee cleaning up a spill of blood or bodily fluids or rendering emergency medical assistance will wear appropriate protective gear (such as latex gloves and a mask);

 - Protective gear for cleaning blood or bodily fluid spills will be provided by the District and will be located near any area determined to be a site of such a spill, in emergency response vehicles, and at first aid stations.

 - An employee rendering medical assistance which may expose the employee to blood or bodily fluids will take precautions against contamination (such as wearing latex gloves while bandaging a bleeding wound, or using a disposable mouthpiece for CPR). An employee exposed to blood or bodily fluids will scrub with soap and water, remove rings, watch, and jewelry and scrub thoroughly.

 - Gloves and one-way CPR masks shall be available in all first aid kits.

 - Hand washing facilities shall be provided at all locations where there is anticipated

exposure to bloodborne pathogens. If the anticipated exposure is to a crew, working in the field, an approved portable pressure tank may be used. There shall be a sufficient amount of soap and water to wash the greatest number of washings on a crew. Where the anticipated exposure is to an individual at a place where hand washing facilities are not available, antiseptic hand-cleaner or towelettes shall be readily accessible and shall be used. However, if antiseptic hand-cleaner or towelettes are used, the exposed areas shall be washed with soap and water as soon as possible after removal of the personal protective equipment.

- Contaminated syringes or needles shall be handled only in accordance with approved one-handed methods or with approved devices. Needles shall not be bent, recapped, or removed unless authorized and the employee is specifically trained to do so.
- If potentially contaminated syringes or needles are discovered, the devices shall be placed in approved containers. After securing in an approved container, the item shall be delivered to the [_____] or to a medical services provider for disposition.
- Equipment which may become contaminated with blood or other potentially infectious materials shall be examined prior to servicing and shall be decontaminated as necessary. Emergency service equipment may be used while contaminated to complete the assignment. However, upon completion of the immediate assignment, vehicles and equipment shall be removed from service and the contaminated area decontaminated prior to the next use. The contaminated area shall be identified with an approved BIOHAZARD label, and all affected employees, including maintenance personnel shall be informed of the hazard, until decontaminated.

Any additional precautions applicable to specific job functions, as well as any further general precautions, will be conveyed through employee training sessions, educational material, or more specific departmental policy.

- Personal Protective Equipment. When an employee has an anticipated exposure to a bloodborne pathogen, and the exposure cannot be controlled through redesign of work facilities, mechanical devices or barriers which isolate people from potentially infectious materials, or work practice controls, then personal protective equipment shall be provided.
 - The equipment shall be provided at no cost to the employee and shall be decontaminated and/or replaced as necessary.
 - Employees shall wear appropriate personal protective equipment whenever there is a potential for an exposure. Personal protective equipment is appropriate if it does not permit blood or other potentially infectious materials to pass through and come in contact with the employee's street clothes, undergarments or, skin.
 - Personal protective equipment selected shall be appropriate for the anticipated exposure. Some examples of personal protective equipment are latex (surgical) gloves, surgical masks, disposable mouth-piece for CPR, face-shields, disposable coveralls, and

disposable boots.

- If the personal protective equipment is penetrated by blood or other potentially infectious materials, the personal protective equipment shall be removed immediately or as soon as feasible. All personal protective equipment shall be removed before leaving the work area, and placed into an appropriate designated area or container for storage, washing, decontamination, and/or disposal.
- If gloves are used for protection, the following precautions shall be taken:
 - Disposable gloves shall be replaced as soon as practical when contaminated.
 - Disposable gloves shall not be washed or decontaminated for reuse.
 - Reusable gloves may be decontaminated for reuse if the integrity of the glove is not compromised. Reusable gloves shall be thrown away if the glove is contaminated and cracked, torn, punctured, or when their ability to function as a barrier is compromised.
- Masks and eye and face protection shall be worn when there is an anticipated exposure to splashed, spraying, spatter of blood or other potentially infectious materials.
- Other body protection, such as disposable coveralls, over-boots and aprons shall be worn when there is an anticipated exposure to blood or other potentially infectious materials.
- Housekeeping

Worksites shall be maintained in a clean and sanitary condition. When warranted due to risks of contamination, a supervisor shall determine and implement an approved written schedule for cleaning and method for decontamination. If the anticipated exposure is in the field, a supervisor shall determine if and where decontamination exists and whether it is necessary to implement the appropriate actions.

 - All equipment and environment, including work surfaces shall be cleaned and decontaminated after known or suspected contact with blood or other potentially infectious materials.
 - All protective coverings, such as plastic wrap used to cover equipment, shall be removed as soon as feasible.
 - All bins, cans, pails, or similar devices which are anticipated to become contaminated shall be visually inspected and cleaned on a regular schedule. If there is visible contamination, they shall be cleaned immediately.
 - All refuse anticipated to be contaminated with blood or other potentially infectious materials shall be handled with a mechanical device.
- Waste Management

Whenever it is necessary to prevent the spread of a known or potential infectious disease, a waste management program will be implemented. The program will be implemented as soon as the potential exposure is discovered. The District will use red plastic bags, identified with the BIOHAZARD label for contamination containers. Unless the contaminated materials are evidence to be retained for use in a criminal proceeding, the containers shall be transported to the appropriate disposal site.

- When personal protective equipment is removed it shall be placed in an appropriate biological hazard container. The container shall be:
 - Closable.
 - Constructed to contain all contents and prevent leakage of fluids.
 - Labeled biohazard and colored red.
 - Closed prior to removal.
- Disposal of all infectious waste shall be done in accordance with all federal, state and local requirements.
- Decontamination and Laundry
Decontamination of employees, equipment, materials, and the environment shall be done immediately or as soon as practical, upon discovery of the contamination. Decontamination means the washing of the body, equipment, materials, and the environment so as not to have any contamination with blood or other potentially infectious materials.
- The minimally acceptable level of decontamination is washing with soap and water. Depending on the type of contamination, more aggressive measures may need to be taken such as use of commercially prepared agents or a 1:9 solution of household chlorine bleach and water.
- If an employee's clothes become contaminated, the employee shall immediately, or as soon as feasible, remove all contaminated clothing and wash with soap and water. If contamination of an employee's clothes results in exposure of the employee's non-intact skin or mucus membranes to blood or potentially infectious materials, the employee should be transported to the nearest hospital or the nearest appropriate facility for evaluation. If the employee is required to enter a vehicle while contaminated, both the employee and vehicle shall be decontaminated prior to being put back into service.
- All clothing and equipment considered for decontamination shall be placed in a container which is clearly marked and identified with the appropriate BIOHAZARD label, and transported to an approved commercial laundry with employees trained in universal precautions. Washing in 160 degree F water for at least 25 minutes with chlorine bleach is effective.

- Only authorized personnel shall be qualified to transport contaminated containers.
- Hepatitis B Vaccination Information.
 - All employees who have a reasonably anticipated occupational exposure to Hepatitis B and have received training in accordance with OAR 437.002-1910.1030(f) shall be offered the opportunity to receive the Hepatitis B vaccination series, and any boosters as recommended by law. Receiving the Hepatitis B series is not mandatory, nor is it a bona fide occupational qualification.
 - The Hepatitis B vaccination series shall be offered to all employees within 10 days of initial assignment, unless the employee has previously received the complete hepatitis B series. Antibody testing may be performed to determine that the employee is immune to Hepatitis B, or that the vaccine is contraindicated for medical reasons. Such additional testing shall be the decision of the [_____].
 - An employee may decline to receive the Hepatitis B series initially, and later change his/her mind and receive the series at any time the employee performs duties where there is a reasonably anticipated occupational exposure to Hepatitis B.
 - If any employee declines to receive the Hepatitis B vaccination series, the employee shall sign a statement indicating the declination, which states:

"I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring Hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with Hepatitis B vaccine, at no charge to myself. However, I decline Hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring Hepatitis B, a serious disease. If in the future I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with Hepatitis B vaccine, I can receive the vaccination series at no charge to me."
- Post-Exposure Evaluation and Follow-up.
 - Upon notification of an exposure to blood or other potentially infectious materials, the employee will be given the opportunity to have a confidential medical evaluation and follow-up at a local hospital at no cost to the employee.
 - The immediate supervisor of the employee exposed to blood or other potentially infectious materials shall perform an investigation of the exposure immediately after the exposure. A copy of the evaluation shall be provided to the employee and the person performing the medical evaluation. The Post-Exposure Evaluation shall contain the following information:
 - Employee biographical information;
 - Circumstances under which the exposure incident occurred;

- The route of exposure;
 - A description of the exposed employee's duties as they relate to the exposure incident;
 - Results of the source individual's blood testing, if available;
 - If the exposure was not a person, the source of the exposure;
 - All medical records relevant to the appropriate treatment of the employee, including vaccination status.
- The department shall obtain a copy of the health care provider's written evaluation, if any, within fifteen (15) days of the evaluation, and shall provide a copy to the exposed employee. The information shall be kept confidential and not disclosed without the employee's consent.
 - After an exposure an employee shall be given the opportunity to have their blood tested for the presence of Hepatitis B (HBV) and human immunodeficiency virus (HIV).
 - After the exposure an employee shall be given the opportunity for counseling.
 - Reasonable attempts shall be made to identify the source individual and obtain a consent test for HIV/HBV, including consent to make the test results available to the exposed employee.
- Communication and Training
 - Communication of the potential hazards from blood or other potentially infectious materials shall be done by means of labels or signs, with the appropriate "BIOHAZARD" label, red bags, or red containers, which meet the requirements of the law.
 - All employees working in classifications identified as having a reasonably anticipated potential for an occupational exposure to blood or other potentially infectious materials shall be trained prior to initial assignment, upon change in assignment and annually thereafter.
 - The training program shall contain the elements required by OAR Chapter 437.
- Recordkeeping
 - Individual employee medical records shall be kept by the [_____]. The records shall be kept confidential and only released to the employee, to anyone having the employee's express written consent, and as may be required by law. Employee medical records with regard to exposures to blood or other potentially infectious materials shall be kept for the term of employment, plus thirty (30) years.

- An official record of training shall be maintained in the employee's personnel file. Training records shall be provided, upon request, to employees, employee representatives, and as required by law. The record of training shall be maintained as a permanent part of the personnel file.

Comp Time Policy

Payroll, Scheduling and Overtime Practices Section Page 284

At the discretion of the [_____] on a consistent basis among District employees, an employee may receive compensatory time off instead of overtime at the rate of one and one-half (1½) hours for each hour worked. An employee may accrue compensatory time off for up to forty (40) hours. When an employee reaches forty (40) hours of compensatory time, the employee will be paid by the District for all time in excess at the end of each pay period, unless otherwise mutually agreed between the employee and the [_____].

An employee may utilize compensatory time off in conformity with the FLSA. The District will not be obligated to schedule compensatory time off, and that such request is unduly burdensome if the District does not receive at least seven days advance notice of the requested time off. The District may pay the employee the current value of the comp time balance at any time. Any unused accumulated compensatory time off shall be paid in cash at the time of termination or death.

DOT Regulation Employees Department of Transportation Drugs and Alcohol Policy

What the District Expects from You Section Page 296

- Purpose

The District has a responsibility to our employees and to the public to ensure safe operating and working conditions. To satisfy these responsibilities, the District must establish a work environment where employees are free from the effects of drugs and alcohol.

In addition, the District is subject to the regulations of the United States Department of Transportation (DOT). Under those regulations, the District is required to establish certain rules and follow certain procedures regarding drugs and alcohol. Accordingly, the District has adopted this drug and alcohol policy, which applies to all employees who drive a commercial motor vehicle or otherwise perform safety-sensitive functions as defined in DOT regulations. The goal of this policy is to ensure a substance-free workplace while protecting employees' personal dignity and privacy. Employees covered by the District's DOT drug and alcohol testing policy and procedure are also covered by the District's general drug and alcohol testing policy and procedure.

If an employee has any questions about this policy, he or she should contact the [_____].

- Prohibited Conduct

- Alcohol Concentration

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04% or greater.

- Alcohol Possession

No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment.

- **On-Duty Use of Alcohol**
No driver shall use alcohol while performing safety-sensitive functions.
- **Pre-Duty Use of Alcohol**
No driver shall perform safety-sensitive functions within four hours after using alcohol.
- **Use of Alcohol Following an Accident**
No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.
- **Controlled Substances Use**
No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Drivers shall inform the District of any therapeutic drug use. Such information should be reported to [_____].
- **Controlled Substances Testing**
No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances.
- **Refusal to Submit to a Required Alcohol or Controlled Substances Test**
No driver shall refuse to submit to a post-accident, random, reasonable suspicion or follow-up test.
- **Adulterated or Substituted Test Specimen.**
No driver shall adulterate, substitute or in any other way alter a test specimen.
- **Possession**
The manufacture, or sale, or use or possession of alcohol, any controlled or illegal substance (except strictly in accordance with medical authorization) or any other substances which impair job performance or pose a hazard, when use or possession occurs on our premises or property, or during work time, or while representing us in any work-related fashion is prohibited.
- **Searches**
The District reserves the right to inspect and/or search any employee's personal property on our premises if the District reasonably believes that this policy has been violated. Refusal to submit to any such inspection or refusal to cooperate in any investigation will result in disciplinary action which could include termination.

- Consequences for Engaging in Prohibited Conduct

A driver who has engaged in prohibited conduct shall not be allowed to perform safety-sensitive functions, including the driving of a commercial motor vehicle.

 - If a driver engages in prohibited conduct, the driver will be immediately removed from performing any safety-sensitive functions. The District shall advise the employee of resources available for the evaluation and resolution of problems associated with the misuse of alcohol and the use of controlled substances. The District shall provide the employee with the names, addresses and telephone numbers of substance abuse professionals, and counseling and treatment programs. The employee shall also be evaluated by a substance abuse professional. The substance abuse professional shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
 - Any driver who is returning to work after engaging in prohibited conduct and who has been identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use, shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed by a professional. In addition, the driver shall be subject to unannounced follow-up alcohol and controlled substances tests following the driver's return to duty. The number and frequency of such follow-up testing shall be determined by the substance abuse professional and shall consist of at least six tests in the first twelve months following the driver's return to duty. The District shall direct the driver to undergo return-to-duty testing for alcohol and/or controlled substances before the employee is allowed to return to performing safety-sensitive functions.
 - In addition to the above and completely separate from its rights and responsibilities under the DOT's regulations, the District reserves its right to take disciplinary action for a violation of this policy. This may include termination of employment. Any employee who is found to be in violation of this policy, or who refuses to submit to testing as required, or who refuses to cooperate or attempts to subvert the testing process shall be subject to disciplinary action which could include immediate termination of employment. The District also reserves the right to involve law enforcement officials for any conduct which it believes might be in violation of state or federal law.
 - Required Tests

As required by law, the District must require individuals to submit to the following types of testing. Testing for controlled substances will be limited to tests intended to detect marijuana, cocaine, opiates, amphetamines and phencyclidine.

 - Pre-Employment Testing

Prior to the first time a driver performs safety-sensitive functions for the District, the driver may be required to undergo testing for alcohol. Prior to the first time a driver performs safety-sensitive functions for the District, the driver will undergo testing for controlled substances.

If the driver is required to undergo alcohol testing, the driver will not be allowed to perform safety-sensitive functions unless the alcohol test indicates an alcohol concentration level of less than 0.04. If the pre-employment alcohol test indicates an alcohol concentration of 0.02 or greater but less than 0.04, then the driver will not be allowed to perform safety sensitive functions until the start of the driver's regularly-scheduled duty period, but not less than 24 hours following administration of the test. The Medical Review Officer must report that the employee's controlled substances test has resulted in a verified negative test result before the employee is allowed to perform any safety-sensitive functions.

- Post-Accident Testing

In the event of an accident involving a commercial motor vehicle, the District will test each driver who was performing safety-sensitive functions with respect to the vehicle if the accident:

- involved loss of human life
 - the driver receives a citation under state or local law for a moving traffic violation arising from the accident and one or more motor vehicles incurs disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle, and/or bodily injury to a person who as a result of the injury receives medical treatment away from the scene.
- The tests will occur as soon as possible following the accident. Alcohol and drug tests will be performed as soon as possible and alcohol tests must occur within eight (8) hours of the accident and drug tests must occur within thirty-two (32) hours of the accident. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.

A driver must immediately report any accident to his/her supervisor so that the District may determine whether post-accident testing is appropriate. In lieu of administering a post-accident test, the District may substitute a breath or blood test for the use of alcohol and a urine test for the use of drugs administered by federal, state or local officials having independent authority for the test, using procedures required by their jurisdictions. The District must obtain the results from the local jurisdiction or the driver. The District substituting a law enforcement-based post-accident test must take the actions appropriate to the results.

- Random Testing

The District will perform random alcohol testing and random controlled substances testing. The dates for the tests will not be announced and will be spread throughout the calendar year. A driver who is notified of selection for random testing must proceed to the test site immediately. A driver will be tested for alcohol only while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

- Reasonable Suspicion Testing

A driver will be required to submit to an alcohol test when the District has reasonable suspicion to believe that the driver has violated the portions of this policy concerning alcohol (except for a violation involving only possession of alcohol). Reasonable suspicion exists where there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. A driver shall be required to undergo an alcohol test only if the observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with this policy.

A driver will be required to submit to a controlled substances test when the District has reasonable suspicion to believe that the driver has violated portions of this policy concerning controlled substances. A reasonable suspicion exists where there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

- Return-to-Duty Testing

A driver who is returning to safety-sensitive functions after engaging in conduct prohibited by this policy concerning alcohol may also be required to undergo a return-to-duty alcohol test. The driver will not be returned to duty unless the test indicates an alcohol concentration of less than 0.02. If the driver has an alcohol concentration of 0.02 or greater, the driver will be re-evaluated for treatment by a substance abuse professional (SAP).

A driver who is returning to safety-sensitive functions after engaging in conduct prohibited by this policy concerning controlled substances will undergo a return-to-duty controlled substances test. The driver will not be returned to duty unless and until there is a verified negative result for controlled substances use.

- Follow-Up Testing

A driver who returns to work following prohibited conduct will be required to undergo unannounced follow-up testing as determined by the SAP. Follow-up alcohol testing will occur only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

- Drug Testing Procedures

The District will follow certain procedures during the collection of urine specimens. The procedures are intended to ensure that the collection site person maintains the integrity of the specimen collection and transfer process, while also ensuring the modesty and privacy of the donor. In accordance with this, the collection site person will avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

The collection site person will either (1) have successfully completed training appropriate for his or her function or (2) will be a licensed medical professional or technician who has been provided instructions for collection, in accordance with the DOT's regulations.

The collection process will be documented by utilizing a standard drug testing custody and

control form, as required by the DOT's regulations. The employee being tested, the collection site person and the Medical Review Officer will complete the appropriate portions of the drug testing custody and control form. A chain-of-custody form (and the laboratory internal chain-of-custody document, where applicable) will be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose will be documented on the form each time a specimen is handled or transferred and every individual in the chain will be identified. Every effort will be made to minimize the number of persons handling specimens.

If the employee refuses to cooperate with the collection process, the collection site person will inform the employer-representative and will document the non-cooperation on the drug testing custody and control form.

Each drug test will be accomplished with the use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A tamper proof sealing system will be used, as well as a shipping container that can be sealed and initialed to prevent tampering.

Testing will occur at a designated collection site. The collection site will have an enclosure within which private urination can occur, a toilet for completion of urination, a source of water for washing hands and a suitable clean surface for writing. The collection site will be secure during any drug testing. The collection site may be a public rest room; in such a case, access will be denied during the testing process to all other persons other than the employee and the collection site person.

Collection site personnel will arrange to ship the collected specimen to the drug testing laboratory. The specimens will be placed in shipping containers designed to minimize the possibility of damage during shipment (For example: specimen boxes and/or padded mailers); and those containers will be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person will sign and enter the date specimens were sealed in the shipping containers for shipment. The collection site person will ensure that the chain-of-custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.

If the sample is being collected from an employee in need of medical attention, necessary medical attention will not be delayed in order to collect the specimen.

The District will take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. In accordance with this responsibility, the District will take the following minimum precautions:

- To deter the dilution of specimens at the collection site, toilet bluing agents will be placed in toilet tanks if possible, so that the reservoir of water in the toilet bowl always remains blue. Where practicable, there will be no other source of water (for example, shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

- When an individual arrives at the collection site, the collection site person will ensure that the individual is positively identified as the employee selected for testing (for example, through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person will show his or her identification to the employee.
- If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.
- The collection site person shall ask the individual to remove any unnecessary outer garments (such as a coat or jacket) that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person will ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site personnel will provide the employee a receipt for any personal belongings.
- The individual will be instructed to wash and dry his or her hands prior to urination.
- After washing hands, the individual will remain in the presence of the collection site person and will not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
- The individual may provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person will provide the individual with a specimen bottle or collection container, if applicable, for this purpose.
- The collection site person will note any unusual behavior or appearance on the urine custody and control form.
- In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (for example, circumstances require a post-accident test), a public restroom may be used according to the following procedures: A collection site person of the same gender as the individual will accompany the individual into the public restroom which shall be made secure during the collection procedure. If possible, a toilet bluing agent will be placed in the bowl and any accessible toilet tank. The collection site person will remain in the restroom, outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person will instruct the individual not to flush the toilet until the specimen is delivered to collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain-of-custody procedures.
- The collection site person will instruct the employee to provide at least 45 ml of urine under the split sample method of collection. The employee will urinate into a collection container or a specimen bottle capable of holding at least 60 ml. If a collection container is used, the

collection site person, in the presence of the employee, will pour the urine into two specimen bottles. 30 ml will be poured into one bottle, to be used as the primary specimen. At least 15 ml will be poured into the other bottle, to be used as the split specimen. If a single specimen bottle is used as a collection container, the collection site person will pour 30 ml of urine from the specimen bottle into a second specimen bottle (to be used as the primary specimen) and retain the remainder (at least 15 ml) in the collection bottle (to be used as the split specimen).

- After the specimen has been provided and submitted to the collection site person, the individual will be allowed to wash his or her hands.
- Immediately after the specimen is collected, the collection site person will measure the temperature of the specimen. The temperature measuring device used will accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure in no case may exceed four minutes.
- A specimen temperature outside the range of 32.5° to 37.7° Celsius (90.5° to 99.8° Fahrenheit) constitutes a reason to believe that the individual has altered or substituted the specimen. In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.
- Immediately after the specimen is collected, the collection site person will inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings will be noted on the urine custody and control form.
- All specimens suspected of being adulterated will be forwarded to the laboratory for testing.
- Whenever there is reason to believe that a particular individual has altered or substituted the specimen, a second specimen will be obtained as soon as possible under the direct observation of a same gender collection site person. The following circumstances are the exclusive grounds constituting a reason to believe that the individual may have altered or substituted the specimen:
 - The employee has presented a urine specimen that falls outside the normal temperature range, as explained above, and either the employee declines to provide a measurement of oral body temperature or oral body temperature varies by more than 1° Celsius (1.8° Fahrenheit) from the temperature of the specimen.
 - The last urine specimen provided by the employee was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L.
 - The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (for example, substitute urine in plain view, blue dye in specimen presented, etc.).

- Both the individual being tested and the collection site person must keep the specimen in view at all times prior to its being sealed and labeled. The specimen must be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person will request the individual to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.
- The collection site person and the individual being tested shall be present at the same time during the procedures outlined in the next four paragraphs.
- The collection site person will place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamper-proof seal will also be applied.
- The individual must initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
- The collection site person will enter on the drug testing custody and control form all information identifying the specimen. The collection site person will sign the drug testing custody and control form certifying that the collection was accomplished according to all applicable federal requirements.
- The individual will be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided. The employee may be required to sign a consent or release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer.
- The collection site person will complete the chain-of-custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and will certify proper completion of the collection.
- If the specimen is not immediately prepared for shipment, the collection site person will ensure that it is appropriately safeguarded during temporary storage.
- While any part of the above chain-of-custody procedures is being performed, the urine specimen must be under the control of the involved collection site person. If the collection site person leaves his or her work station momentarily, he or she must take the specimen and drug testing custody and control form with him or her or shall secure them. After the collection site person returns to the workstation, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she will package the specimen for mailing before leaving the site. The collection site person must not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number and seal initialed by the employee. If it becomes necessary for the

collection site person to leave the site during this interval, the collection will be nullified and (at the election of the employer) a new collection begun.

- **Employee Explanation for Positive Result**
The Medical Review Officer will review a confirmed positive test result by examining alternate medical explanations for the result. The Medical Review Officer will contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the positive result. If the Medical Review Officer cannot reach the employee despite making all reasonable efforts, the Medical Review officer will contact a designated management official, who will direct the employee to contact the Medical Review Officer. If despite making all reasonable efforts, the management official and/or MRO are/is unable to contact the employee within 14 days, the test will be considered positive.

If the employee expressly declines to discuss the test or fails to contact the Medical Review Officer within five days of being instructed to do so, the Medical Review Officer will confirm the positive result without the employee's input.

- **Employee Requests for Retest**
If the test result is positive, the employee may request that the Medical Review Officer direct that the split specimen be tested in a different DHHS-certified lab. Such a request must be made within 72 hours of notification of the positive test. The employee will be removed from safety-sensitive duties pending the results of the test of the split specimen.
- **Alcohol Testing**
The District will conduct alcohol testing by the use of an evidential breath testing device (EBT) and/or any other non-evidentiary technology that may be approved by the DOT in the future. The test will be conducted by a breath alcohol technician (BAT) who will be trained in the operation of the EBT and in the correct procedures for testing under the DOT's regulations. The District will use a breath alcohol testing form and logbook as required by the DOT's regulations. The employee being tested and the breath alcohol technician will complete the appropriate portions of the form and log book.

The District will conduct alcohol testing in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing the test results. The testing may occur in a mobile collection facility. Wherever the testing occurs, no unauthorized persons shall be permitted access to the testing location while the EBT remains unsecured or at any time when testing is being conducted. In the unusual circumstance that a test cannot be conducted at a location affording complete visual and aural privacy, the District will provide privacy to the greatest extent practicable.

When the employee enters the alcohol testing location, the breath alcohol technician will require him or her to provide positive identification (for example, through use of a photo ID card or identification by an employer representative). On request by the employee, the breath alcohol technician will provide positive identification to the employee. The breath alcohol technician will explain the testing procedure to the employee.

The breath alcohol technician will complete Step 1 of the breath alcohol testing form. The employee will complete Step 2 of the form and will sign the certification. Refusal by the employee to sign the certification will be regarded as a refusal to take the test.

An individually sealed mouthpiece will be opened in view of the employee and the breath alcohol technician, and attached to the EBT in accordance with the manufacturer's instructions.

The breath alcohol technician will instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained.

If the result of the screening test is a breath alcohol concentration of less than 0.02, the breath alcohol technician will date the form and sign the certification in Step 3 of the form. The employee will sign the certification and fill in the date in Step 4 of the form. If the employee does not sign the certification in Step 4 of the form or does not initial the logbook entry for a test, this will not be considered a refusal to be tested. In this event, however, the breath alcohol technician will note the employee's failure in the "remarks" section of the form. If a test result printed by the EBT does not match the displayed results, the breath alcohol technician will note the disparity in the remarks section and both the employee and the breath alcohol technician will initial or sign the notation. Such a test is invalid, and the employer and employee will be so advised. The breath alcohol technician will transmit the result of less than 0.02 to the District in a confidential manner, and the District will maintain the information so as to ensure confidentiality.

If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed. The procedure for the confirmation test will be the same as the procedure for the screening test. A new mouthpiece will be used for the confirmation test. Before the confirmation test is administered, the breath alcohol technician will ensure that the EBT registers 0.00 on an air blank. If a breath alcohol technician other than the one who conducted the screening test is conducting the confirmation test, the new breath alcohol technician will initiate a new breath alcohol testing form, completed in the manner described above.

The confirmation test will occur not less than 15 minutes after the completion of the screening test, but it must be conducted within 30 minutes of the completion of the screening test. If the BAT conducts the confirmation test more than 30 minutes after the result of the screening test has been obtained, the BAT shall document the reason why the test could not be conducted within 30 minutes of the screening test. During the waiting period, the breath alcohol technician will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period. The breath alcohol technician will explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The breath alcohol technician will also explain that the confirmation test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the employee has not complied with the instruction, the breath alcohol technician will so note in the remarks section.

In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action shall be based.

After the confirmation test, the breath alcohol technician will conduct an air blank. If the reading is greater than 0.00, the test is invalid.

The breath alcohol technician will transmit all results to the District in a confidential manner. The transmission may be in writing, in person or by telephone or electronic means. If the transmission is not in writing, the District will establish a mechanism to verify the identity of the breath alcohol technician providing the information. In addition, the breath alcohol technician will follow the initial transmission of information by providing to the District its copy of the breath alcohol testing form. The District will maintain the information so as to ensure confidentiality.

Refusal by an employee to complete and sign the breath alcohol testing form, to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, will be noted by the breath alcohol technician in the remarks section of the form. In addition, the testing process will be terminated and the breath alcohol technician will immediately notify the District.

If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the breath alcohol technician will, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number.

In the event that an employee is unable, or claims to be unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition, the breath alcohol technician will again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the breath alcohol technician will immediately inform the District. If the employee attempts and fails to provide an adequate amount of breath, the breath alcohol technician will so note in the remarks section of the breath alcohol testing form and immediately inform the District.

If the employee attempts and fails to provide an adequate amount of breath, the District will direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the District concerning the employee's medical ability to provide an adequate amount of breath. If the physician determines that a medical condition has, or with a high degree of probability could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath will not be deemed a refusal to take a test. The physician must provide to the District a written statement of the basis for his or her conclusion. If the licensed physician, however, is unable to make such a determination, the employee's failure to provide an adequate amount of breath will be regarded as a refusal to take a test.

- **Employee Information**
Employees will be provided information concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life; signs and symptoms of an alcoholic or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management.

Any employee who has any questions regarding these issues should talk to [_____].

- **Training for Supervisors**
All supervisors charged with the responsibility to determine whether reasonable suspicion exists to require a driver to undergo testing will receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.
- **Certificate of Receipt**
Each driver will be required to sign a statement certifying that he or she has received (1) a copy of this policy and (2) information concerning the effects of alcohol and controlled substances.
- **Access to Records**
A driver may make a written request to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. Upon request, the District will promptly provide such records.

The District will notify a driver of the results of a pre-employment controlled substances test if the driver requests such results within sixty calendar days of being notified of the disposition of the employment application. The District will notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances if the test results are verified positive. The District will also inform the driver which controlled substance or substances were verified as positive.

- **Definitions**
 - “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
 - “Alcohol concentration (or content)” means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
 - “Alcohol use” means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 - “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles used to transport passengers or property, if the motor vehicle: (a) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating

of more than 10,000 pounds; or (b) has a gross vehicle weight rating of 26,001 or more pounds; or (c) is designed to transport 16 or more passengers, including the driver; or (d) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.

- “Confirmation test for alcohol testing” means a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration. Confirmation tests for controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.
- “Driver” means any person who operates a commercial motor vehicle. This includes, but is not limited to: full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to the District or who operate a commercial motor vehicle at the direction of or with the consent of the District. For the purposes of pre-employment/pre-duty testing only, the term "driver" includes a person applying to the District to drive a commercial motor vehicle.
- "Performing a safety-sensitive function" means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- "Refuse to submit to an alcohol or controlled substances test" means that a driver: (a) fails to appear for any test within a reasonable period of time after being directed to do so by the employer; (b) fails to remain at the testing site until the testing process is complete; (c) fails to provide a urine specimen for a required drug test; (d) fails to permit observation or monitoring of the provision of a specimen in the case of a directly observed or monitored collection; (e) fails to provide a sufficient amount of urine when directed when there is no adequate medical explanation for the failure; (f) fails or declines to take a second test when directed by the employer or the collector; (g) fails to undergo a medical examination or evaluation when directed by the MRO as part of the verification process; (h) fails to cooperate with any part of the testing process; and (i) is reported by the MRO as having a verified adulterated or substituted test result.
- “Safety-sensitive function” means any of the following on-duty functions: (a) all time at the District's terminal, facility, or other property, or any public property, waiting to be dispatched, unless the driver has been relieved from duty by the District; (b) all time inspecting equipment as required by law or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; (c) all time spent at the driving controls of a commercial motor vehicle in operation; (d) all time other than driving time in or upon any commercial motor vehicle, except time spent resting in a sleeper berth; (e) all time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to

operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; (f) all time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

- "Screening test (or initial test)" in alcohol testing means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate negative urine specimens from further consideration.

Education and Training Policy

What the District Expects from You Page 296

The District encourages continued education and training for employees to enhance job performance and assist in potential career advancement within the District. The District shall provide such in-service training as deemed necessary and beneficial to the delivery of services and performance of duties.

Employees may request compensation for the costs of college-level, technical or other academic course work, seminars, and conferences relevant to their current or future roles in the organization. Such requests must be made in writing to the [_____] (and forwarded with a recommendation to the [_____] for approval prior to the employee's enrollment or participation.) Reimbursement for college-level course work will only be made if the employee receives a passing grade. All training activities involving a cost to the District must be approved in advance, in writing.

Employee Assistance Program

What the District Expects from You Page 296

- Purpose
The objective of the Employee Assistance Program ("EAP") is to assist and retain valued employees and reduce the potential for difficulties in the workforce stemming from employees' needs and difficulties which otherwise may not be addressed. Problems of a personal nature can have an adverse effect on an employee's job performance. Most personal problems can be dealt with successfully when acknowledged and referred to an appropriate counselor or resource person. The purpose of the Employee Assistance Program is to provide services through appropriate arrangements with outside resources. The program is intended to afford help in the broad range of human problems such as emotional/behavioral, family and marital, alcohol and/or drugs, financial, legal and other personal problems. The program provides problem assessment, short term counseling and referral services. Costs for these services are covered by the employer. If costs are incurred for additional services not covered by insurance or other benefits, those costs will be the responsibility of [the employee].
- Policy
The policy applies to all employees of the District, who receive full benefits, regardless of job title or responsibilities.
 - The program is available to employees or their families on a self-referral basis. Employees or family members who have personal problems and may benefit from

assistance are encouraged to use the program.

- Participation in the program will not jeopardize an employee's job security, promotional opportunities or reputation.
- All records and discussions of personal problems will be handled in a confidential manner as other medical records. These records will be kept by the designated counseling resource and will not become a part of the employee's personnel file. The District will not be informed of matters discussed unless the employee requests.
- If a supervisor has reason to believe that an employee has a personal problem (e.g., substance abuse, financial worries, or a psychological problem) that affects the employee's ability to perform the job, the supervisor should remind the employee that the EAP counsel is available to help.
- Personal problems are not a justification for lower performance requirements. A reasonable toleration period may be established as part of a work plan of accommodation after an employee has sought help through the program upon recommendation of counselor.
- Sick leave may be granted for treatment or rehabilitation on the same basis as is granted for ill health. Consideration may be given for the use of leave without pay.
- This policy does not alter or replace other policies or terms of labor agreements.

Employer Provided Cell Phones

What the District Expects from You Section Page 296

This policy outlines the use of personal cell phones at work, the personal use of District provided cell phones, and the safe use of cell phones by employees while driving.

- **Personal Cellular Phones**
While at work, employees are expected to exercise the same discretion in using personal cellular phones as is expected for the use of District phones (i.e., personal telephone calls are to be kept to a minimum). Excessive personal calls during the workday, regardless of the type of phone used, can interfere with employee productivity and be distracting to others. Employees are asked to make any other personal calls on non-work time where possible and to ensure that friends and family members are aware of the District's policy. Flexibility will be provided in circumstances demanding immediate attention. The District will not be liable for the loss of personal cellular phones brought into the workplace.
- **Personal Use of District-Provided Cellular Phones**
Where job or business needs require immediate access to an employee, the District may issue a business cellular phone to an employee for work-related communications. Such phones are to be used for business reasons only. Phone logs will be audited regularly to ensure no unauthorized use has occurred. Personal long distance calling from the District provided phones is not permitted. [Additional Option: If an employee experiences a personal

emergency that results in the need to use the District's cellular phone for a local call, he or she is required to report this use to [_____] within 48 hours. The employee will be asked to sign a form specifying the number called and the reason for the call as well as a specific promise to reimburse the District in a timely manner when the bill is received. Failure to report such use or reimburse the District may result in disciplinary action.]

Employees in possession of District equipment such as cellular phones are expected to protect the equipment from loss, damage, or theft. Upon resignation or termination of employment, or at any time upon request, the employee may be asked to produce the cell phone for return or inspection. Employees unable to present the phone in good working condition within the time period requested (i.e., 24 hours) may be expected to bear the cost of a replacement. Employees who separate from employment with outstanding debts for equipment loss or unauthorized charges will be considered to have left employment on unsatisfactory terms and may be subject to legal action for recovery of the loss.

- **Safety Issues for Cellular Phone Use**
Employees whose job responsibilities include regular or occasional driving and who are issued a cell phone for business use (or have a personal cell phone used during the workday for personal matters) are not to use their cell phones while operating a motor vehicle.

Special care should be taken in situations where there is traffic, inclement weather, or the employee is driving in an unfamiliar area. In situations where job responsibilities include regular driving and accepting of business calls, hands-free equipment may be provided to facilitate the provisions of this policy. Employees whose job responsibilities do not specifically include driving as an essential function, but who are issued a cell phone for business use, are also expected to abide by the provisions above. Under no circumstances are employees allowed to place themselves or others at risk to fulfill business needs. Employees who are charged with traffic violations resulting from the use of their phone while driving will be solely responsible for all liabilities that result from such actions.

Violations of this policy will be subject to the highest forms of disciplinary action, up to and including termination of employment.

Extended Leave Without Pay

Time Off Section Page 288

- **General**
Employees who have been continuously employed with the District for at least one (1) year may request a personal leave of absence without pay for a reasonable period of time up to sixty (60) days. Requests for leaves of absence will be considered on the basis of the employee's length of service, performance, responsibility level, the reason for the request, whether other individuals are already out on leave, and the expected impact of the leave on the employer.
- **Requests**
Requests must be submitted in writing and must be approved in writing by the employee's department head before the leave begins. Requests for extensions of leaves must be

submitted in writing and approved in writing by the department head before the extended period of a leave begins. It is the employee's responsibility to report to work at the end of the approved leave. An employee who fails to report to work on the day after the leave expires will be considered to have voluntarily resigned.

Fair Treatment Policy

Problem Solving Process Section Page 309

(Alternate for Districts to Consider instead Problem Solving Process)

- **General Policy**

It is the policy of the District to provide for an orderly process whereby employees may have their problems and complaints considered as fairly and rapidly as possible without fear of retaliation. Every effort shall be made to find an acceptable solution by informal means at the lowest possible level of supervision.

- **Definition of Non-Disciplinary Appeal**

If an employee or group of employees in the District believes an injustice has occurred because of:

- Lack of a District policy or a department policy;
- A policy that is unfair;
- Misapplication of a policy;
- Disagreement with another employee or supervisor; A discretionary action of the District or a department in the application of the rules and regulations of the District; or
- Discrimination on the basis of race, color, religion, sex, national origin, marital status, age, expunged juvenile record, association with anyone of a particular race color, sexual orientation, national origin, marital status, age or religion, family relationship, mental or physical disability, or application for Workers' Compensation benefits, or any other statutes protected by applicable law.

- **Non-Disciplinary Appeal Procedure**

Employee/Employer relations are a matter of personal management choice. Some managers may prefer direct, open, free-flowing discussion with their employees, others may prefer more formal management leaving the details of the day-to-day operation to their subordinate supervisors.

It is recommended that every department manager establish a written procedure, which best reflects his/her personal choice in handling non-disciplinary appeals. Regardless of which of the following policies is chosen, all non-disciplinary appeals should be handled in an informal setting to gain better understanding of the problem and a prompt, fair resolution within the department.

Non-disciplinary appeals should not be presented to the department head or supervisor in

writing, unless the issue is such that it cannot be understood except in writing.

- Policy No. 1
Open Door Policy - An employee wishing to discuss any issue or problem of a non-disciplinary nature may meet with the department head at any reasonable time. This is the established non-disciplinary policy. Access to supervisors may be delayed by District operational requirements.
- Policy No. 2
Chain of Command Policy - Employees wishing to discuss a specific non-disciplinary matter shall start with the immediate supervisor and follow the chain of supervisory command. In the event the employee cannot start with the immediate supervisor, s/he shall be entitled to commence the process at whatever level of supervisory command is available.
- Hearing of Appeal
When an appeal of a non-disciplinary issue cannot be resolved with the department procedure, the appeal shall be directed to the [_____] to cause investigation of the matter, if needed, and make a final decision.

**Family Medical Leave Policy For Districts with at Least 25 Employees
Time Off Section Page 288**

Unpaid leave of absence for up to 12 weeks is provided to eligible employees for certain family or medical reasons. This section describes family medical leave under both federal and state laws. If there are greater rights under state law, those state laws will apply. In practical terms, that means in most instances Oregon family medical leave laws will apply for Oregon employees (as coverage is broader under the state laws).

- Eligibility
Employees eligible for leave of absence under the Family Medical Leave Act ("FMLA") must have been employed by the District for 12 months or more and have at least 1250 hours of service during the 12 months immediately preceding the leave of absence, which applies to employees working at a site with at least 50 District employees within a 75 mile radius.

Under the Oregon Family Leave Act ("OFLA"), employees must have worked for a covered employer for at least 180 days and worked an average of 25 hours per week in the previous 180 days to qualify for state family leave, who work for a District with at least 25 employees in Oregon (during 20 or more work weeks in the current or preceding calendar year). Employees taking leave to care for a newborn, adopted, or newly-placed foster child only have to meet the 180 day employment requirement (regardless of the number of hours worked).

- Qualifying Purposes
Employees may request family and medical leave for:
 - The addition of a child to the family through birth, adoption, or placement by foster care

("parental leave");

- A serious health condition of the employee's spouse, child, or parent, grandparents, grandchildren, parent-in-law and same-sex domestic partners;
- A serious health condition that prevents an employee from performing his or her job.
- Under Oregon law, employees may also request family and medical leave for the care of a minor child who is ill and requires home care, even if the child does not have a serious health condition, provided another family member is not willing and able to care for the child.

In addition to the basic 12-week family leave entitlement, Oregon employees may qualify for additional family medical leave under Oregon law in the following circumstances:

- 12 weeks leave for an illness, injury or condition related to pregnancy or childbirth that disables the employee; and
 - 12 weeks of sick child leave for those employees who take 12 weeks of family leave as parental leave, provided the child does not have a serious health condition.
 - 2 weeks of unpaid leave to attend the service for a deceased family member, to make arrangement for a deceased family member, or to grieve the death of a family member. Eligible employees are entitled to a total of two weeks of leave for this purpose during any one-year period, and the leave is counted toward the 12-week limit. The leave must be taken within 60 days of the death of the family member.
- General Provisions
 - Notice

Employees are required to give the company 30 days' notice of the need for leave when it is foreseeable. If the reason for the leave is unforeseeable, you must give the company oral notice within 24 hours of when your leave starts and provide written notice within three days of your return to work.

An employee must make a reasonable effort to schedule treatment for serious health conditions in a manner that does not unduly disrupt business operations.

- Twelve-month Leave Period

The leave calculation year for family medical leave is 12 months starting with the first day family leave is taken by the employee (12-month "looking forward" method.)
- Paid, Other Leave to Run Concurrently

Paid leaves and unpaid leaves (e.g., personal leave) run concurrently with unpaid family medical leave where allowed by law. Any accrued paid leave, such as vacation and accrued sick leave, may be substituted for unpaid family medical leave and taken before the remainder of family medical leave is taken as unpaid leave. Sick leave may only be

used consistent with the sick leave policy and is generally only available for leaves related to the employee's own illness or injury or, in Oregon, for parental leave purposes.

Leave under OFLA runs concurrently with leave under FMLA in most circumstances.

- **Medical Certification**

The company will require a medical certification of serious health conditions. The employee will be required to provide the certification in a timely manner. The company will require returning employees to provide a certification of fitness to return to work.

Under Oregon law, employees who use sick child leave on more than three separate occasions in a 12-month leave period may be required to provide medical documentation from the child's doctor to verify that the child was ill and required home care for all subsequent uses of sick child leave in the 12-month period.

- **Intermittent/reduced Schedule**

Leave generally, intermittent or reduced schedule leave is not available for family leave used for birth, adoption or foster placement. In other situations where intermittent or reduced schedule leave is available, employees may be temporarily transferred to available alternative positions that better accommodate intermittent or reduced schedule leave.

- **Reinstatement**

Generally, employees returning from leave will be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms, unless their former position has been eliminated for bona fide business reasons where the employee may have no reinstatement rights.

Under Oregon law, reinstatement following Oregon family medical leave is generally to the employee's former position, unless the position has been eliminated, in which the employee may be entitled to reinstatement to an available, equivalent job.

- **Continuation of Benefits**

Employees on leave are entitled to continue health benefits on the same terms and conditions as active employees for up to 12 weeks in a leave calculation year. The company will recover premiums paid on behalf of an employee who does not return to work for reasons other than a serious health condition of the employee or family member or other circumstances beyond the control of the employee.

Please contact [____] for applications and/or specific details.

Floating Holidays

Time Off Section Page 288

[Employees in the positions of [____] shall earn [____] floating holidays per year] [one floating holiday per month] which shall be scheduled off and taken off during the year in which

the holiday is earned. Floating holidays may not be carried forward into the succeeding [calendar] or [fiscal] year, unless approved in advance by [_____]. Approval will be given only if the holiday time was scheduled, approved, and then canceled by the District.

HIV Concerns

Non-Discrimination and Harassment Section Page 306

- The Disease

Acquired Immune Deficiency Syndrome (AIDS) is a disease caused by spread of the AIDS virus, Human Immunodeficiency Virus (HIV). Because of the increase of AIDS, AIDS Related Complex (ARC), and (HIV), the District has investigated AIDS concerns and has consulted with experts on this subject. According to current medical evidence available, casual work place contacts among employees and citizens infected with HIV will not result in the transmission of the virus. The nature of the disease and its presence in society warrants a District policy.

- Purpose of Policy

The District recognizes that its employees are entitled to a safe working environment. Employees and job applicants who are HIV carriers or are afflicted with ARC or AIDS are entitled to compassion and legal protection against unlawful discrimination. Based on these principles, the District has formulated this AIDS policy to:

- Prevent unlawful discrimination;
- Educate employees about the ways HIV is, and is not, spread;
- Designate a person to whom concerned employees can go for information;
- Insure the confidentiality of information about any employee who contracts the virus;
- Address employment concerns of infected employees;
- Assure that the public is accommodated and that risks to health are minimized;
- Protect the health and safety of all employees through a program of universal precaution; and
- Avoid disruption or interference with District business that could result from unfounded health concerns.

This policy addresses the work place and shall be supplemented with any additional protocols found appropriate.

- Non-Discrimination in Hiring. The District will not unlawfully discriminate against persons with AIDS, ARC, or HIV on the basis of their handicap. The following practices are to be followed:

- Job applicants are not to be asked whether they have AIDS or are infected with HIV. They may be asked if they are able to perform all functions of the job, both essential and marginal, with or without reasonable accommodation. Only after extension of an offer of employment (which may be made conditional on ability to perform essential job functions) may the applicant's condition be discussed or the need for any reasonable accommodation be discussed.
- Job applicants who voluntarily disclose that they have AIDS or are HIV infected shall be asked if they can perform all job functions, but may not be asked about their disability or need for accommodation before extending an offer of employment. The reasonableness of any requested accommodation shall be determined by management.
- Any applicant known by the District to be handicapped or disabled but capable of performing the duties of the job sought, with or without reasonable accommodation, shall be given the same consideration as other equally qualified applicants.
- Employee Education. Employees who are educated about the actual medical risks posed by AIDS and HIV will be safer and more comfortable at work. The District will strive to provide the following sources of education about the transmission of HIV:
 - Informational materials designed to answer specific questions;
 - Videotaped and/or live presentations; and
 - Confidential access to a designated contact person trained to answer questions or obtain additional information.
 - Employees are strongly urged to take advantage of these resources.
- The Designated Contact Person
The District will have a designated contact person, who will be trained to address AIDS concerns. At present this person is the [_____].
- Confidentiality
The District recognizes that an employee's health concerns are confidential. Employees who have been infected with or exposed to HIV may contact the designated contact person confidentially. Medical information will be kept confidential in separate medical files apart from personnel files, consistent with legal, medical and management practices.

Employees who obtain knowledge that an employee, guest, or other individual utilizing District services is an HIV carrier or is afflicted with ARC or AIDS shall maintain the confidentiality of such information. Failure to do so will result in discipline if the circumstances warrant.

- Employment Concerns of Infected Employees. Employees who are infected with HIV or afflicted with ARC or AIDS may contact the designated contact person for confidential information about the potential impact of their condition on their employment. The District will make reasonable accommodations for employees infected with HIV or afflicted with

ARC or AIDS, unless it would be an undue hardship to do so or would result in a direct health or safety threat to the individual or other persons. The reasonableness of any proposed accommodation will be determined by management and shall take into consideration the health and safety of all employees. Supervisors are to consult the designated contact person and obtain District authorization before making any employment decision on the basis of an employee's actual or perceived infection with HIV. Unlawful discrimination against such employees on the basis of their disability will not be tolerated.

Upon request, the designated contact person will assist concerned employees in obtaining information about community resources and psychological counseling available to persons with AIDS or HIV and their families.

- **Infected Citizens**
As a public service organization, the District may not discriminate against citizens on the basis of disability. If uniform body fluid precautions are followed rigorously and routinely, then the risks of accidental infection when rendering aid to an infected person is minimized. The routine activities of citizens in dealings with the District pose no measurable risk of HIV infection to employees. Unlawful discrimination against citizens with or suspected of HIV or AIDS will not be tolerated.
- **Business Disruptions Due to Unfounded Health Concerns**
If an employee refuses to work with an HIV infected co-worker or serve an infected citizen, and a supervisor decides that the co-worker or citizen poses or posed no threat to the health and safety of others, continued refusal or a failure to work or other disruption of District services may result in discipline including discharge. Harassment of known or suspected HIV carriers is expressly prohibited and may result in discipline, including discharge.
- **Oversight**
Supervisors are charged with insuring that this policy is adhered to. Complaints concerning any employee's failure to comply with this policy should be brought to the attention of a supervisor, and may be raised by following procedures relating to harassment or to complaints.

Job Sharing

Appointments, Qualifications and Separation Section Page 277

A job sharing position is a regular full-time position that is held by two individuals on an interdependent, shared-time basis. The duties and responsibilities of the single position will be divided so as to provide total coverage by the two partners. The partners will normally divide the required working hours, not to exceed a total of forty (40) hours per week, within a pay period. Each partner in a job sharing position must have, or be capable of having, all the knowledge, skills, and abilities necessary to perform the job.

Job share partners will share the benefits of the regular full-time position. Vacation, sick leave and holiday benefits will be pro-rated on the basis of hours worked. Long term disability and retirement benefits will be provided to job share partners based on salary received. Job share partners have the same rights and privileges under the retirement plan as regular full-time employees.

Each job share partner receives the same life insurance coverage as other regular full-time employees. The District pays the cost of health and dental insurance for one full-time equivalent position. Accordingly, if a position is job-shared, each partner pays one half of the insurance premium and the District pays the other half, if both wish to receive coverage. If one partner chooses to waive all coverage, however, then the other partner may receive full coverage at no cost.

Job sharing shall be implemented, continued, or terminated at the discretion of the District based on operational efficiency. Specific scheduling arrangements shall be determined by [_____] and should be a function of the needs of the District, the nature of the job, and the desires of the job share partners.

Leave Transfers

Time Off Section Page 288

Transfer of Sick [or Vacation] Leave. Employees who have exhausted their sick and vacation leave benefits may receive a gift of sick [or vacation] leave from other District employees if they require extended time off for illness or injury. In such event the District's only involvement shall be to transfer an employee's sick [or vacation] leave credit in accordance with the employee's request and add it to the sick [or vacation] leave balance of another employee. Employees may donate up to 10% of their accrued sick [or vacation] leave balance. Only employees who have accumulated more than 240 hours may make a contribution, and no employee may contribute more than 40 hours per year to other employees.

Bereavement Leave (Also see bereavement leave under OFLA section)

Time Off Section Page 288

A leave of absence with pay for up to three (3) days may be granted an employee when a death in the employee's immediate family requires the absence of an employee. Should circumstances require an employee to be absent longer than the three (3) days, the days in excess may be charged against accumulated sick leave. Immediate family means the immediate family of the employee or of the spouse, and is intended to include parents, children, grandparents, step-children, siblings, domestic partners and members of the employee's household. If additional time is needed it may, with approval of the [_____] be credited against accrued sick leave.

PERS

Payroll, Scheduling, and Overtime Practices: Medical and Life Insurance Section Page 284

The District participates in the Public Employee Retirement System for employees working over 600 hours per year. Information about contributions and retirement or disability benefits may be obtained from the [_____] or from PERS.

Rest Breaks for Breast Feeding For Districts with at Least 25 Employees

Payroll, Scheduling and Overtime Practices Section Page 284

Employees may take a reasonable rest break at least 30 minutes per every four hours of work or major fraction thereof. Whenever possible, breaks should overlap with other legally required meal and rest breaks. Reasonable efforts will be made to provide a private place for employees to express milk.

Return to Work Light Duty Assignments

Safety and Accidents Section Page 292

Disabled employees who are temporarily assigned light duty work as a reasonable accommodation but are unable to perform the essential duties of their regular job may be required to provide a medical evaluation after (select 30, 60 or 90) days from their treating physician so that the [_____] may determine whether the employee is capable at that time of performing the essential functions of their regular job, with or without reasonable accommodation. The District offers light duty accommodations only for those employees whom the

[_____] may anticipate will recover the ability to perform all the essential functions of the job with or without a reasonable accommodation and within a reasonable time. If recovery becomes doubtful, the [_____] may discontinue the light duty assignment. No light duty assignment is intended to become permanent.

Employees who refuse bona fide light duty offers while on workers' compensation leaves are automatically placed on OFLA leave if they are otherwise eligible for OFLA.

Written Departmental Rules and Standard Operating Procedures

Overview and Purpose of Personnel Policies: Personnel Administration Generally Section Page 276

Each department may establish such additional written rules and standard operating procedures as may be deemed necessary for the efficient and orderly administration of the department. Such rules and procedures are subject to approval by the [_____] before becoming effective and must be consistent with the general policies, procedures, rules, or regulations established by the District. Copies of the applicable departmental rules and operating procedures shall be made available to all employees in the department and shall be filed with the Board and maintained in the [_____] office.

Union Labor Agreements

Purpose of Personnel Policies Section Page 76

In the event of a conflict in language, interpretation or application of a collective bargaining agreement, where specific collective bargaining agreement language differs from these rules and regulations, the language contained in the collective bargaining agreement shall take precedence over the rules and regulations in the policies for any employee covered by such collective bargaining agreement.

Unpaid Leave to Perform Volunteer Firefighter Duties

Time Off Section Page 288

Employees of the District whose job duties do not involve firefighting or require firefighter skills and training may volunteer to serve as volunteer firefighters and respond to general alarms and other firefighter service emergencies in response to the alarm. Response time within the employee's regular shift will be considered hours worked at the employee's regular rate of pay. The employee will receive no points or other compensation for responding to an alarm during the ordinary hours of work.

Seniority Vacation Scheduling

Time Off Section Page 288

Vacations for the year will be scheduled during/in the month of [_____], based upon seniority. Thereafter, vacations will be approved on a first-to-apply basis.

No employee may accrue a vacation balance in excess of [double the maximum annual accrual]. Any employee with the maximum accrued vacation will forfeit additional vacation accruals.

SAMPLE FORMS

CHANGE IN PERSONAL DATA

Name of Employee as it Appears in Current Personnel/Human Resources Records

Effective Date of Change

a) Type of Change

- | | | |
|---|---|---|
| <input type="checkbox"/> Name | <input type="checkbox"/> Address | <input type="checkbox"/> Phone |
| <input type="checkbox"/> Marital Status | <input type="checkbox"/> Dependent(s) | <input type="checkbox"/> Education/Skills |
| <input type="checkbox"/> Insurance Coverage | <input type="checkbox"/> Emergency Notification | |

Current Information

New Information

Employee Signature

Date

Processed by Personnel/Human Resources: _____

COACHING OR COUNSELING CHECKLIST

Before conducting either type of session, answer all of the questions below about the employee and the situation. Doing so will help you focus on whether you need to counsel or coach.

YES NO

- | | | | |
|-----|-----|-----|---|
| ___ | ___ | 1. | Does the employee know what is supposed to be done and when? |
| ___ | ___ | 2. | Have I defined the job description and skills required to do the job? |
| ___ | ___ | 3. | Does the employee have the skills required to do the job? |
| ___ | ___ | 4. | Has the employee been trained sufficiently in the organizational culture and skills needed to do the job? |
| ___ | ___ | 5. | Do I have the time it will take to sufficiently train and orient this person? |
| ___ | ___ | 6. | Have I adequately defined the ongoing job performance expectations for the employee? |
| ___ | ___ | 7. | If no, can anyone do the job? Is the standard realistic? |
| ___ | ___ | 8. | If no, can I revise the standards? |
| ___ | ___ | 9. | What is the specific difference between the present performance level and the desired performance level? |
| | | | _____ |
| | | | _____ |
| | | | _____ |
| ___ | ___ | 10. | Is the difference important? |
| ___ | ___ | 11. | Define the impact the performance problem has on... |
| | | | You: _____ |
| | | | Employee: _____ |
| | | | The unit: _____ |
| | | | The organization: _____ |
| | | | The customer/client: _____ |

YES NO

- ____ ____ 12. Does the employee want the job?
- ____ ____ 13. Does the employee have adequate resources to do the job? If no, what specifically does the employee need?

- ____ ____ 14. Are obstacles beyond the employee's control affecting performance? If yes, what specific obstacles?

Has the employee raised obstacles? _____
If so, what? _____

Can these obstacles be removed?

If yes, what does the employee need from me during this time to help meet minimal performance standards? _____

- ____ ____ 15. Are consequences positive for positive performance
- ____ ____ 16. Have I been giving high-quality feedback?
If no, how can I improve? _____

- ____ ____ 17. Have I given immediate reinforcement for improvements?
- ____ ____ 18. Have I been inadvertently rewarding poor performance by ignoring it rather than coaching to correct it?
- ____ ____ 19. Does the employee trust me and feel I am here to help him/her be successful in this job?
If no, what specifically can I do to build the trust _____

YES NO

____ ____ 20. Do I have a plan to develop the employee's skill or motivation?

If yes, describe the plan in detail below: _____

If no, develop a plan before conducting a session. Then, during your session, be sure you solicit the employee's ideas first before adding your own. Seriously consider the employee's ideas, and try to develop a plan that blends your ideas with his or hers.

COACHING SHEET

Employee: _____

Date: _____

Describe situation or concern that occurred.

Discussion with employee: _____

Employee's reason for situation: _____

Plan of action (describe any actions necessary by supervisor and/or employee):

Date to review changes or improvement: _____

Supervisor Signature

Employee Signature (if considered appropriate)

COBRA CONTINUATION COVERAGE RIGHTS MODEL GENERAL NOTICE

(FOR USE BY SINGLE-EMPLOYER GROUP HEALTH PLANS)

CONTINUATION COVERAGE RIGHTS UNDER COBRA

Introduction

You are receiving this notice because you have recently become covered under a group health plan (the Plan). This notice contains important information about your right to COBRA continuation coverage, which is a temporary extension of coverage under the Plan. **This notice generally explains COBRA continuation coverage, when it may become available to you and your family, and what you need to do to protect the right to receive it.**

The right to COBRA continuation coverage was created by a federal law, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA continuation coverage can become available to you when you would otherwise lose your group health coverage. It can also become available to other members of your family who are covered under the Plan when they would otherwise lose their group health coverage. For additional information about your rights and obligations under the Plan and under federal law, you should review the Plan's Summary Plan Description or contact the Plan Administrator.

What is COBRA Continuation Coverage?

COBRA continuation coverage is a continuation of Plan coverage when coverage would otherwise end because of a life event known as a "qualifying event." Specific qualifying events are listed later in this notice. After a qualifying event, COBRA continuation coverage must be offered to each person who is a "qualified beneficiary." You, your spouse, and your dependent children could become qualified beneficiaries if coverage under the Plan is lost because of the qualifying event. Under the Plan, qualified beneficiaries who elect COBRA continuation coverage [*choose and enter appropriate information: must pay or are not required to pay*] for COBRA continuation coverage.

If you are an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because either one of the following qualifying events happens:

- Your hours of employment are reduced, or
- Your employment ends for any reason other than your gross misconduct.

If you are the spouse of an employee, you will become a qualified beneficiary if you lose your coverage under the Plan because any of the following qualifying events happens:

- Your spouse dies;
- Your spouse's hours of employment are reduced;
- Your spouse's employment ends for any reason other than his or her gross misconduct;

- Your spouse becomes entitled to Medicare benefits (under Part A, Part B, or both); or
- You become divorced or legally separated from your spouse.

Your dependent children will become qualified beneficiaries if they lose coverage under the Plan because any of the following qualifying events happens:

- The parent-employee dies;
- The parent-employee's hours of employment are reduced;
- The parent-employee's employment ends for any reason other than his or her gross misconduct;
- The parent-employee becomes entitled to Medicare benefits (Part A, Part B, or both);
- The parents become divorced or legally separated; or
- The child stops being eligible for coverage under the plan as a "dependent child."

[If the Plan provides retiree health coverage, add the following paragraph:]

Sometimes, filing a proceeding in bankruptcy under title 11 of the United States Code can be a qualifying event. If a proceeding in bankruptcy is filed with respect to *[enter name of employer sponsoring the plan]*, and that bankruptcy results in the loss of coverage of any retired employee covered under the Plan, the retired employee will become a qualified beneficiary with respect to the bankruptcy. The retired employee's spouse, surviving spouse, and dependent children will also become qualified beneficiaries if bankruptcy results in the loss of their coverage under the Plan.

When is COBRA Coverage Available?

The Plan will offer COBRA continuation coverage to qualified beneficiaries only after the Plan Administrator has been notified that a qualifying event has occurred. When the qualifying event is the end of employment or reduction of hours of employment, death of the employee, *[add if Plan provides retiree health coverage: commencement of a proceeding in bankruptcy with respect to the employer,]* or the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), the employer must notify the Plan Administrator of the qualifying event.

You Must Give Notice of Some Qualifying Events

For the other qualifying events (divorce or legal separation of the employee and spouse or a dependent child's losing eligibility for coverage as a dependent child), you must notify the Plan Administrator within 60 days [or enter longer period permitted under the terms of the Plan] after the qualifying event occurs. You must provide this notice to: [Enter name of appropriate party]. [Add description of any additional Plan procedures for this notice, including a description of any required information or documentation.]

How is COBRA Coverage Provided?

Once the Plan Administrator receives notice that a qualifying event has occurred, COBRA continuation coverage will be offered to each of the qualified beneficiaries. Each qualified beneficiary will have an independent right to elect COBRA continuation coverage. Covered employees may elect COBRA continuation coverage on behalf of their spouses, and parents may elect COBRA continuation coverage on behalf of their children.

COBRA continuation coverage is a temporary continuation of coverage. When the qualifying event is the death of the employee, the employee's becoming entitled to Medicare benefits (under Part A, Part B, or both), your divorce or legal separation, or a dependent child's losing eligibility as a dependent child, COBRA continuation coverage lasts for up to a total of 36 months. When the qualifying event is the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA continuation coverage for qualified beneficiaries other than the employee lasts until 36 months after the date of Medicare entitlement. For example, if a covered employee becomes entitled to Medicare 8 months before the date on which his employment terminates, COBRA continuation coverage for his spouse and children can last up to 36 months after the date of Medicare entitlement, which is equal to 28 months after the date of the qualifying event (36 months minus 8 months). Otherwise, when the qualifying event is the end of employment or reduction of the employee's hours of employment, COBRA continuation coverage generally lasts for only up to a total of 18 months. There are two ways in which this 18-month period of COBRA continuation coverage can be extended.

Disability extension of 18-month period of continuation coverage

If you or anyone in your family covered under the Plan is determined by the Social Security Administration to be disabled and you notify the Plan Administrator in a timely fashion, you and your entire family may be entitled to receive up to an additional 11 months of COBRA continuation coverage, for a total maximum of 29 months. The disability would have to have started at some time before the 60th day of COBRA continuation coverage and must last at least until the end of the 18-month period of continuation coverage. *[Add description of any additional Plan procedures for this notice, including a description of any required information or documentation, the name of the appropriate party to whom notice must be sent, and the time period for giving notice.]*

Second qualifying event extension of 18-month period of continuation coverage

If your family experiences another qualifying event while receiving 18 months of COBRA continuation coverage, the spouse and dependent children in your family can get up to 18 additional months of COBRA continuation coverage, for a maximum of 36 months, if notice of the second qualifying event is properly given to the Plan. This extension may be available to the spouse and any dependent children receiving continuation coverage if the employee or former employee dies, becomes entitled to Medicare benefits (under Part A, Part B, or both), or gets divorced or legally separated, or if the dependent child stops being eligible under the Plan as a dependent child, but only if the event would have caused the spouse or dependent child to lose coverage under the Plan had the first qualifying event not occurred.

If You Have Questions

Questions concerning your Plan or your COBRA continuation coverage rights should be addressed to the contact or contacts identified below. For more information about your rights under ERISA, including COBRA, the Health Insurance Portability and Accountability Act (HIPAA), and other laws affecting group health plans, contact the nearest Regional or District Office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) in your area or visit the EBSA website at www.dol.gov/ebsa. (Addresses and phone numbers of Regional and District EBSA Offices are available through EBSA's website.)

Keep Your Plan Informed of Address Changes

In order to protect your family's rights, you should keep the Plan Administrator informed of any changes in the addresses of family members. You should also keep a copy, for your records, of any notices you send to the Plan Administrator.

Plan Contact Information

[Enter name of group health plan and name (or position), address, and phone number of party or parties from whom information about the plan and COBRA continuation coverage can be obtained on request.]

CONFIDENTIALITY STATEMENT

I hereby state that I shall hold confidential all information regarding the organization and business to which I have access to as an employee of [ORGANIZATION].

I realize and acknowledge that any breach of this confidentiality agreement on my part shall result in immediate termination of my employment. Further, I realize and acknowledge that any breach of this confidentiality on my part may result in legal action.

This statement shall be effective immediately and shall apply to all information regarding [ORGANIZATION], its practices, employees, and business operations.

Employee Signature

Date

Witness Signature

Date

CORRECTIVE ACTION FORM

Date: _____

Employee: _____

Department: _____

This notice of unsatisfactory work is issued to you for the following reason(s):

- Unsatisfactory Work Performance
- Non-cooperation with Supervisor/Co-Worker
- Violating Organization Rules
- Unsatisfactory Customer/Public Relations
- Excessive Tardiness/Absenteeism
- Inattention to Duty
- Other (specify)

Problem: _____

Action:

- Verbal Counseling
- Written Warning
- Final Written Warning
- Suspension – Length: _____
- Termination (requires Department Manager and Personnel approval)

Discussion:

Employee's Reason for What Lead to Corrective Action: _____

Corrective Action Specified by Supervisor: _____

Presented by: _____

Supervisor

Personnel (written warning requires Personnel participation)

Employee Signature (Signature indicates receipt, It does not imply agreement.)

Date

DIRECT DEPOSIT AUTHORIZATION

Name: _____

Date: _____

Department/Location: _____

Home address: _____

Social Security number: _____

I request that [ORGANIZATION] credit the net amount of my earnings to the following account.
This authorization is effective beginning with the next full pay period and shall continue until
canceled by me in writing.

Account number: _____

Bank/financial institution: _____

Address: _____

Employee Signature

To be completed by Bank/Financial Institution

We, (bank/financial institution), agree to act as the above-named employee's agent by accepting
paychecks for credit to his/her account. It is understood that the employee's account number, as
shown above, must appear on all paychecks submitted in this manner.

Authorized Signature

Title

Date

DISPUTE RESOLUTION FORM

The following is a statement of my problem that I hereby request is reviewed in accordance with the dispute resolution procedure:

Name: _____

Position title: _____

Immediate supervisor: _____

Department: _____

Describe the issue and state all facts including date, time, and place of occurrence (Use additional paper, if necessary).

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

My supervisor's response to this problem was as follows:

_____	_____
_____	_____
_____	_____

I disagree with this response for the following reasons:

_____	_____
_____	_____
_____	_____

A more appropriate solution to this problem is:

_____	_____
_____	_____
_____	_____

Employee Signature

Date

EDUCATION OPPORTUNITY REQUEST

(College Credit Class, Work-Related Course, Seminar, Workshop, or Conference)

Name: _____ Department: _____

Position title: _____ Date hired: _____

Employment status: Full-time Part-time

Course or program title: _____

Location: _____ Institution: _____

Date program begins: _____ Ends: _____

Cost: _____

Mode of transportation: _____

Overnight accommodations required? Yes No

Explain how this directly relates to your position: _____

Registration information:

Name: _____ Amount: \$ _____

Authorization for Payment

Address: _____

Date fee is due: _____

Reimbursement Request

Attach receipts and grade slips, if available.

Name: _____ Department: _____

Course completion date: _____ Amount to be reimbursed: \$ _____

*Full tuition if full-time employee,
one-half tuition if part-time
employee.*

Supervisory Approval

Date

EMPLOYEE INFORMATION FORM

Name: _____

Address: _____

Phone: _____

Department: _____

Beginning date: _____

Beginning salary: _____

Date of birth: _____ Social Security number: _____

Marital status: _____ Number of dependents: _____

Person to notify in case of emergency: _____

Day Phone: _____ Evening Phone: _____

Certification/Licensure:

Type: _____ Number: _____

Expiration date: _____

Type: _____ Number: _____

Expiration date: _____

If you will be driving an organization vehicle or your own vehicle for organization business:

Driver's license number: _____ Expiration date: _____

Insurance: _____ Expiration date: _____

EMPLOYEE PERSONNEL FILE

The following are recommended contents for employee personnel files:

For Current Employees

- Employment application
- Resume (if offered)
- Letter of recommendation (if any)
- Employment offer letter
- New employee orientation checklist
- Benefit enrollment beneficiary information
- Employment agreement (if any)
- Copy of original payroll set-up sheet
- Copies of performance evaluations, goals, and objectives
- Copies of all disciplinary actions, any dispute procedure documentation and results
- Requests for any policy exceptions
- Requests for leaves of absence (if this contains medical information, place in separate medical file.
- Copies of complimentary letters or notes
- All notices with appropriate signature for all salary or status changes

For Separated Employees

- Copy of resignation
- COBRA notification

Notes: IRCA documentation (I-9) forms must be completed and should be kept in a separate file. Medical information must be kept in a confidential envelope or separate folder. Any EEO/AA information must be kept separate. Reference checks must be kept in a confidential envelope or separate job file.

EMPLOYMENT APPLICATION

Thank you for considering (Organization Name) in your job search. (Organization Name) is an equal employment opportunity employer and does not discriminate on the basis of sex, age, race, color, religion, national origin, mental or physical disability, marital status or military service or (*any state protected classifications*). No application will be rejected as a result of a disability that, with reasonable accommodation, does not prevent performance of the essential job duties.

CONFIDENTIAL

Please complete by printing in dark ink, complete all questions, and sign your initials and name on the last page where indicated.

Date

PERSONAL INFORMATION

LAST NAME	FIRST NAME	MIDDLE INITIAL
STREET ADDRESS	CITY AND STATE	ZIP CODE
HOME PHONE NUMBER	WORK PHONE NUMBER	DATE YOU CAN BEGIN
E-MAIL ADDRESS	POSITION APPLIED FOR	SALARY DESIRED

LEVEL AND TYPE OF EDUCATION	SCHOOL NAME	CITY AND STATE	LAST YEAR COMPLETED	DID YOU GRADUATE?
HIGH SCHOOL			__9 __10 __11 __12	__ YES __ NO
COLLEGE OR UNIVERSITY				DEGREE
OTHER SCHOOLS				CERTIFICATE OR LICENSE

SPECIAL SKILLS

Software Applications:

EMPLOYMENT RECORD

Please list your most recent jobs first. Include military service as part of your employment record. If you have a resume, please attach it to this form.

Employer	Address
Telephone Number	Supervisor's Name
Job Title	Dates of Employment (month and year)
	From: To:
Starting Salary	Ending Salary
Reason for Leaving	Essential Job Duties

Employer	Address
Telephone Number	Supervisor's Name
Job Title	Dates of Employment (month and year)
	From: To:
Starting Salary	Ending Salary
Reason for Leaving	Essential Job Duties

Employer	Address
Telephone Number	Supervisor's Name
Job Title	Dates of Employment (month and year)
	From: _____ To: _____
Starting Salary	Ending Salary
Reason for Leaving	Essential Job Duties

GENERAL INFORMATION

May we contact your present employer?	<input type="checkbox"/> yes <input type="checkbox"/> no
Do you have the legal right to work in the United States? (if hired, you will be required to provide identification to prove eligibility for employment)	<input type="checkbox"/> yes <input type="checkbox"/> no
Have you been employed or attended school using any other name? If yes, please indicate Names previously used:	<input type="checkbox"/> yes <input type="checkbox"/> no
Do you have any employment restrictions resulting from a non-compete or confidentiality agreement? If yes, please explain:	<input type="checkbox"/> yes <input type="checkbox"/> no

ADDITIONAL INFORMATION:

Please use the space provided to list any additional employers, periods of time not worked, or any other information that you believe we should know in considering your application for employment.

ADDITIONAL INFORMATION:

Please use the space provided to list any additional employers, periods of time not worked, or any other information that you believe we should know in considering your application for employment.

Please read carefully, initial each paragraph and sign below:

initial I certify that I have answered the above questions truthfully and have not withheld any information relative to my application. I understand that any falsification, misrepresentation, or omission, as well as any misleading statements or omissions of the application information, attachments, and supporting documents generally will result in denial of employment or immediate termination, if discovered after hire.

initial I authorize (Organization Name) to thoroughly investigate my references, work record, education and other matters related to my suitability for employment, and further authorize the references I have listed to disclose to the company any and all letters, reports, and other information related to my work records, without giving me prior notice of such disclosure. In addition, I release (Organization Name), my former employers and all other persons, corporations, partnerships and associations from any and all claims, demands or liabilities arising out of or in any way related to such investigation or disclosure.

initial I authorize (Organization Name) to investigate whether I have a criminal record of convictions, and, if so, the nature of such convictions and all the surrounding circumstances of the conviction. (Organization Name) has advised me that any criminal background check will focus on convictions, and that a criminal record will not necessarily disqualify me from employment.

initial If hired, I recognize the rules and policies of (Organization Name). I understand that my employment and compensation can be terminated at any time, with or without cause, and with or without notice, at the option of (Organization Name) or myself. I understand that the (Official's Title) of the company is the only person who will ever have the authority to create any other terms of employment and/or to enter into any employment contract and that all such contracts must be in writing and signed by both parties. However, I also understand that unless otherwise stated in an employment contract, the company may change, withdraw and interpret other policies (including wages, hours and working conditions) as it deems appropriate.

initial I understand and acknowledge that I may be required to submit to a physical examination, including drug test. Additionally, I hereby authorize the release of the results of such an examination to (Organization Name) for their use in evaluating my suitability for employment. Further, I release the examining facility and (Organization Name) from any and all liability, and from any damage that may result from the release of such information.

Date

Signature

(Supplement to Employment Application)

(a) Important Information to Know Before Filling Out An Application for Employment With

(ORGANIZATION NAME)

1. All areas of the application must be filled out completely and accurately. Please fill in the required information directly on the application and do not indicate “see resume”.
2. If you are offered a position with (Organization Name) be aware that we may verify all of the information that you have written on the application, as well as your resume. If there is a discrepancy in your information, the job offer may be withdrawn. It is important to be sure that what you have written is correct.
3. If you have any questions about completing the application, it is important to please ask the (Organization Name) representative who has been assisting you.

Thank you for your cooperation.

Applicant Acknowledgement

My signature below indicates that I have read and understand the importance of supplying accurate information on the application. I am also aware of the possibility of an offer of employment being withdrawn if any of the information is not correct.

Signature of Applicant

Date

EMPLOYMENT OFFER LETTER

(Date)

CONFIDENTIAL

(First Name) (Last Name)

(Address)

(City), (State) (Zip)

Dear (First Name),

It is truly a pleasure to write this letter! It is intended to confirm an offer of employment to you as a _____ (position title) _____ with (Organization Name), effective ___ (date). You will be classified as a (full-time/part-time) (exempt/non-exempt) employee with a starting salary of \$_____ per month (\$_____ per hour). Pay periods are twice a month (1st through 15th usually paid on the 20th, and 16th through the end of the month usually paid on the 5th).

There is an Introductory Period of (no.) days during which no vacation or personal absence accrues and during which each of us can assess whether employment with (Organization Name) is appropriate. After the initial (no.) days, assuming transition to regular employee status, the amount of vacation and personal absence time that would have been earned during the Introductory Period will be credited to your time-off account. An Employee Benefits Summary is enclosed, which outlines major benefits.

Your first performance evaluation will be at the end of _____ months of employment, and you will be eligible for your first pay review at that time as well. Increases in pay are solely at the discretion of the company and are considered based on performance, business development, and contribution to the organization.

This offer letter is a guideline to the terms of your proposed employment at (Organization Name), and should not be considered to waive any provisions of employment at will.

Because of your status as a _____ (position title) _____, your continued relationship with this firm is important. Therefore, as part of this employment offer, a Non-Compete Agreement is required. This Agreement is to ensure that should you separate from the firm, you do not compete with us or seek to work with our clients. In an effort to be as fair as possible to all parties, we have limited this Non-Compete to a (number of months) period and only the geographic area served by (Organization Name). We have enclosed two copies of the Agreement, one for our files and one for your own records.

I have attached a copy of this letter which I ask that you sign to indicate your acceptance of this offer, and mail back to me along with one copy of the signed Non-Compete Agreement. Should

there be any differences between the information in this letter and your understanding of our offer, please contact me so that we have an opportunity to resolve them prior to your first day of work.

(First Name), I am so glad you are joining us. I am confident that your involvement with us makes us a better firm and more strategically positioned for success. It is truly a pleasure to welcome you to (Organization Name).

Sincerely,

ACCEPTED:

(Name)
(Title)

(First Name) (Last Name)

Enclosures: Benefits Summary
Employee Incentive Plan
Non-Compete Agreement

Date

EXIT INTERVIEW - SEPARATION QUESTIONNAIRE

Please complete the following questions. We are very interested in learning about your employment here. We appreciate your openness and time. Thank you.

Name: _____

Date of hire: _____ Date of separation: _____

Position: _____

What did you like and dislike about your job? _____

What did you like and dislike about your supervisor? _____

What could the organization do to improve itself as an employer (e.g., working conditions, salaries, benefits, etc.)?

What could the organization do to improve service to its customers?

What improvements could be made in the organization? _____

Why did you decide to look for another job or organization? _____

Would you return to the organization as an employee? If yes, under what conditions?

Additional comments – please feel free to add any other information you feel would be beneficial to us. Thanks.

Health insurance: _____

Life insurance: _____

Organization property: _____

Keys (if applicable): _____

Forwarding address: _____

- a) Personnel/Human Resources Department comments regarding action required or action taken:

FAMILY AND MEDICAL LEAVE NOTIFICATION

DATE:

TO:

FROM:

SUBJECT: Request for family and medical leave

On [DATE], you notified us of your need to take family and medical leave due to:

- The birth of your child, or the placement of a child with you for adoption or foster care.
- A serious health condition that makes you unable to perform the essential functions of your job.
- A serious health condition affecting your:
 - Spouse Child Parent
 - Parent-in-law Same Sex Domestic Partner

for whom you need to provide care.

You notified us that you need this leave beginning on _____ and that you expect leave to continue until on or about_____.

Except as explained below, you have a right to take up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits will be maintained during any period of unpaid leave under the same conditions as if you continued to work and you will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following this leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your leave.

This is to inform you that:

You are: eligible not eligible for leave under the state and federal leave laws. If eligible, how much available time? _____

The requested leave will will not be counted against your annual OFLA/FMLA leave entitlement.

You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ (date must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

You will will not be required to furnish certification for the
 adoption, foster care placement.

You must use any accrued paid leave before using unpaid leave. Your current paid leave includes:

If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows [DATES (e.g., the 10th of each month, pay periods, etc.) THAT SPECIFICALLY COVER THE AGREEMENTS WITH THE EMPLOYEE].

You have a minimum 30-day [indicate longer period, if applicable] grace period in which to make premium payments. If payment is not made on time, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during leave, and recover these payments from you upon your return to work.

You will be required to present a fitness-for-duty certificate prior to being restored to employment, if the leave is for personal medical reasons. If such certification is required but not received, your return to work may be delayed until the certification is provided.

While on leave, you will be required to furnish us with periodic reports every [week, month, etc.] of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two work days prior to the date you intend to report for work.

CERTIFICATION FOR SERIOUS HEALTH CONDITION

This optional form is designed to help determine if an employee is eligible for leave under either or both the federal **Family and Medical Leave Act (FMLA)** and/or the **Oregon Family Leave Act (OFLA)**.

Employers are not required to use this form in order to designate leave as OFLA or FMLA protected. Information sought on this form relates only to the condition for which the employee is taking leave.

SECTION I: For Completion by the EMPLOYER

INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) *and the Oregon Family Leave Act (OFLA)* provide that an employer may require an employee seeking FMLA/OFLA protections because of a need for leave to care for a covered family member with a serious health condition or *because of a need for leave due to employee's own serious health condition* to submit a medical certification issued by the health care provider of the covered family member *or a medical certification issued by the employee's own health care provider, whichever is appropriate.* Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations, 29 C.F.R. Section 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees' family members, created for FMLA purposes as **CONFIDENTIAL** medical records in separate files/records from the usual personnel files, 29 C.F.R. Section 825.500(g), and in accordance with 29 C.F.R. Section 1630.14(c)(1) if the Americans with Disabilities Act applies. This also applies to OFLA. ORS 659A. 186(2); ORS 659A.136.

Employer name: _____

Employer contact: _____

If this form is being completed for employee 's own serious health condition, please also provide the following information:

Employee's job title: _____

Regular work schedule: _____

Employee's essential job functions:

Check if job description is attached:

SECTION II: For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to *patient's (your own or your covered family member's)* health care provider. FMLA/OFLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA/OFLA leave due to your own *or your covered family member's* serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA/OFLA protections. 29 U.S.C. Section 2613, 2614(c)(3). Failure to provide a complete and sufficient medical certification may result in delay or denial of FMLA protection. 29 C.F.R. Section 825.313. Your employer must give you 15 calendar days to return this form. 29 C.F.R. Section 825.305(b), OAR 839-009-0260(4).

Employee's Name: _____

Patient's Name (if different from employee): _____

If patient is a child, date of birth (mm/dd/yyyy): ____/____/____

Patient's Relationship to Employee (if employee is not the patient):

- Spouse, or (*OFLA only) Same-gender Domestic Partner
- Parent, or (*OFLA only) Parent-in-law, or (*OFLA only) Parent of employee's same-gender Domestic Partner
- Child, or (*OFLA only) Child of employee's same-gender Domestic Partner
- Employee is currently *in loco parentis* (see definition below) to patient who is under age 18 or incapable of self-care due to disability. (Employee has financial or day-to-day responsibility for care of the patient - covered by OFLA and FMLA)
- (*OFLA only) Employee was *in loco parentis* to patient. (Employee had financial or day-to-day responsibility for care of the patient when the patient was under 18 - *OFLA only*)
- Patient was *in loco parentis* to employee (Patient had financial or day-to-day responsibility for care of the employee *when employee was under 18*)
- Grandparent (*OFLA only)
- Grandchild (*OFLA only)

"*In loco parentis*" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(*OFLA only) Check here if requesting "Sick Child Leave", which is available under OFLA for a child's non-serious health condition. (Completion of this form is only necessary *after* a 3rd occurrence of using Sick Child Leave during a "leave year".)

Employee Signature: _____

SECTION III: For Completion by the HEALTH CARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Either your patient has requested leave under the FMLA/OFLA *or the employee listed above has requested leave under the FMLA/OFLA to care for your patient.* Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA/OFLA coverage. Limit your responses to the condition for which the employee is seeking leave.

_____	_____
Printed Name of Physician/ Practitioner	Date Signed
_____	_____
Signature of Physician/ Practitioner	Type of Practice ¹ Field of Specialization
_____	_____
Address	Phone Number

PART A: MEDICAL FACTS

Note: If this form is being used for the purposes of filing for the certification of OFLA's non-serious health condition of a child, only complete # **1***.

- 1) Approximate date condition commenced: _____
- a) Probable duration of condition: _____
- b) Was the patient admitted for inpatient care in a hospital, hospice, or residential medical care facility?
No Yes If "yes", dates of admission: _____
- c) Date(s) you treated the patient for the condition: _____
- d) Was medication, other than over-the-counter medication, prescribed? No Yes
- e) Will the patient need to have treatment visits at least twice per year due to the condition?
No Yes
- f) Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)? No Yes If "yes", state the nature of such treatments and expected duration of treatment:

2) Is the medical condition pregnancy? No Yes If "yes", expected delivery date: _____

3) If patient is EMPLOYEE: Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employee's own description of his/her job functions.

a) Is the employee unable to perform any of his/her job functions due to the condition?

No Yes

If "yes", identify the job functions the employee is unable to perform:

4) Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE_NEEDED When answering these questions, keep in mind that your patient's need for care may include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or the provision of physical or psychological care:

5) Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? No Yes

If "yes", estimate the beginning and end dates for any period of incapacity: _____

If this certification relates to the employee's seriously ill family member(s), also complete the following:

a) Does the patient require assistance for basic medical or personal needs or safety, or for transportation? No Yes

b) Would the employee's presence to provide psychological comfort be beneficial or assist in the patient's recovery? No Yes

c) If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration and frequency of this need: _____

Please explain the care needed by the patient: _____

Affirmative answer to the following question is not required for OFLA or concurrent OFLA/FMLA leave.

Is this care medically necessary? No Yes

- 6) Will the patient require follow-up treatments, including any time for recovery? No Yes
Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:
-
-

Affirmative answer to the following question is not required for OFLA or concurrent OFLA/FMLA leave.

Is this care medically necessary? No Yes

- 7) Will it be necessary for the employee to take leave only intermittently or to work on a less than full-time schedule basis because of the condition or treatment? No Yes

If "yes", expected duration: _____

Frequency (Check One):

- One (1) to two (2) days per month
 Two (2) to three (3) days per month
 Three (3) to four (4) days per month
 Other - *Explain*: _____

Please explain how employee will use leave intermittently, being as specific as possible including frequency and duration of absences: _____

- 8) Will the patient require a regimen of treatment? No Yes If "yes", describe the nature of the treatments: _____

Estimated number of treatments: _____

Estimated interval between treatments: _____

Estimated or actual dates of treatments: _____

What is the duration (and any period required for recovery) for a treatment?

Affirmative answer to the following question is not required for OFLA or concurrent OFLA/FMLA leave.

Is this care medically necessary? No Yes

Affirmative answer to the following question is not required for OFLA or concurrent OFLA/FMLA leave.

9) Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities or performing his/her job functions? No Yes

If "yes", is it medically necessary for employee to be absent from work during those flare-ups?

No Yes If "yes", please explain: _____

Affirmative answer not required for OFLA or concurrent leave.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g. 1 episode every 3 months, lasting 1-2 days):

Frequency: _____ times per _____ week(s) months(s)

Duration: _____ hours or _____ day(s) per episode.

Does the patient need care during these flare-ups: No Yes

Affirmative answer not required for OFLA or concurrent leave.

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

HANDBOOK RECEIPT ACKNOWLEDGEMENT FORM

As an employee of [ORGANIZATION], I acknowledge the following:

1. I have received a copy of the Employee Handbook. I understand that the Handbook contains important information about the organization's policies, work rules and my benefits. I also understand that the Handbook outlines my responsibilities as an employee of the organization. I also understand that I have the responsibility to read and understand the information in the Handbook, and to ask my supervisor for clarification of any information I do not understand.
2. I understand that this handbook is not a contract of employment or a guarantee of specific treatment in specific situations. Except for any supplemental safety policies and rules that apply to employees in certain jobs or work areas, or otherwise stated in a written employment contract, I understand that this handbook supersedes all prior handbooks, policies and understandings on the subjects contained in it.
3. I understand that unless stated in an employment contract, the organization has the right to change, modify, add to, substitute or eliminate, interpret and apply, in its sole judgment, the policies, rules, and benefits described in this Handbook. I understand that should the content be changed in any way, the organization will require an additional signed acknowledgement from me to indicate that I am aware of the changes.
4. **Unless otherwise stated in a written employment contract, I understand that my employment relationship with the organization is at-will, which means that either the organization or I can terminate the relationship at any time, with or without reason or notice.**
5. I understand that the [DESIGNATE POSITION] is the only person who is authorized to make changes in the policies, rules and benefits described in this Handbook and that all such changes must be in writing to be valid. I also understand that he/she is the only person who will ever have the authority to enter into an employment contract, and that all such contracts must be in writing and signed by both parties to be valid.
6. I am aware that I may be given confidential information during the course of my employment, such as customer lists or other information. **I understand that this information is critical to the success of [ORGANIZATION] and that I may not disseminate or use it outside of the organization workplace. In the event of my termination, either voluntary or involuntary, I understand I may not use this information or communicate it to any other individual, organization or entity.**

I also acknowledge that I have asked for and received clarification on any of the six items listed on this acknowledgement form that I did not understand, before signing it.

Employee Signature

Date

Employee Name

JOB DESCRIPTION FORMAT

Title _____ Dept. _____

Exempt/Nonexempt _____ Reports to _____

Pay Grade _____ Effective Date _____

New position

Position change

The following information is designed to outline the functions and position requirements of this job. It does not identify all tasks that may be expected, nor address the performance standards that must be maintained.

General Position Summary:

(2-3 sentences regarding role and responsibilities of position)

Essential Functions/Major Responsibilities:

(Not intended to be a task list, rather an identification of assigned work, and job responsibilities. Each statement should begin with active verb, and clearly identify whether work is done on own, or in conjunction with others.)

Secondary Functions:

Job Scope:

(This section addresses such items as whether job operates within established parameters or is responsible for development and/or decisions regarding new policy or guidelines. It outlines scope of position relative to staff accountability, decision-making authority, creativity/innovation, budgetary accountability, management of capital assets, and responsibility for planning. It addresses consequences of error.)

Supervisory Responsibility:

(This section identifies the type, number, and skill level of employees supervised. It also states level of supervision offered.)

Interpersonal Contacts:

(This section specifies what type of interactions occur, how complex the interactions are, and with whom they occur. The delineation of inside and outside contacts, frequency, and scope should be identified.)

Specific Job Skills:

(This section identifies minimum skills necessary to perform essential job functions. Equal attention should be given to technical, managerial, and professional skills. Physical capabilities needed to perform work must be identified.)

Education and/or Experience:

(This section identifies specific educational credentials (if any) including certification, degree, and licensure. It also specifies the number of years and type of previous experience necessary to meet minimum requirements.)

Job Conditions:

(This section identifies the work environment, job demands, and any undesirable features of position. Such things as temperature, weather, chemicals, machinery, space, travel, pressure, substantial overtime, work schedule, etc., are usually identified here.)

First Level Supervisory Approval

Second Level Approval

JOB DESCRIPTION SAMPLE #1

Title: Route Driver

Department: Mail Services

Exempt/Non-Exempt: Non-Exempt

Reports to: Mail Services Manager

Pay Grade: _____

Effective Date: _____

New position ()

Position change (X)

General Position Summary:

Responsible for timely pickup and delivery of mail on a scheduled basis while ensuring special requirements are met as they occur.

Essential Functions/Major Responsibilities:

- Drive vehicle to collect and deliver materials in order to satisfy customer requests.
 - Reaffirm good customer relations while on deliveries.
 - Maintain and service vehicles on a pre-assigned schedule and/or as needed.
 - Coordinate collection and delivery schedules to maximize effectiveness of time and vehicle usage.
 - Perform special requests such as delivering materials to specific locations at the site.
- This job description does not necessarily include all of the essential functions that may be assigned this position, based upon the continuing needs of the organization.

Secondary Functions:

- Sort mail.
- Coordinate delivery of mail to the Post Office in order to take advantage of special rates.
- Provide input on ways the organization can create integrated employment opportunities for people with disabilities.

Job Scope:

Performs duties independently with minimal supervision, operating from specific and definite directions and instructions. Decisions are of a routine nature made within prescribed operating guidelines, policies, and procedures. Mistakes/errors may result in work stoppage, loss of business, poor customer relations, and/or damage to product, all of which can have negative financial implications for the organization.

Supervisory Responsibility:

This position is not supervisory in nature.

Interpersonal Contacts:

Has both internal and external contacts. The most common internal contacts are with own department staff and own supervisor. The most frequent external contacts are with customers. Both types of interactions involve information exchange and problem solving.

Both types of contacts are as a result of regular, on-going duties. Ten percent of contacts are over the phone and 90% are face to face. At least 30% of all contacts are with external customers, while 70% are non-customers or internal customers.

Specific Job Skills:

- Excellent driving skills.
- Good interpersonal, communication, customer service, and time management skills.
- Ability to read, write and understand English.
- Must possess a valid driver's license, acceptable driving record, and proof of current vehicle insurance.
- Physical ability to engage in repetitive motions of feet, to hear, to see, to move goods for customers, to bend, to twist, and to climb stairs.
- Physical ability to push up to 200 pounds, lift up to 100 pounds and carry up to 80 pounds regularly throughout a normal workday.

Education and/or Experience:

A minimum of 6-12 months experience/training in delivery, driving, or similar function is required. A high school education or equivalent is required.

Job Conditions:

Working conditions include working alone, shift work, extensive driving, heavy equipment operation, working outside in varying weather conditions, frequent interruptions and some evening meetings. The incumbent may be required to work in an environment where there are fumes, building temperature fluctuations, noise, chemicals, poor ventilation, dirt, dust, and chemicals.

First Level Supervisory Approval

Second Level Supervisory Approval

JOB DESCRIPTION SAMPLE #2

Title: Mail Services Manager

Department: Mail Services

Exempt/Non-Exempt: Exempt

Reports to: Dir. of Operations & Marketing

Pay Grade: _____

Effective Date: _____

New position ()

Position change (X)

General Position Summary:

Responsible for overseeing and managing all Mail Services operations and the profitability of the Mail Services Department.

Essential Functions/Major Responsibilities:

- Ensure the profitability of Mail Services operations for the organization.
- Manage existing customer relations by ensuring good customer service is provided to all customers.
- Encourage customer retention by determining customer needs and offering or modifying services accordingly.
- Develop and coordinate work flows and processes of department to ensure that the department provides integrated employment opportunities for people with disabilities.
- Supervise all personnel within Mail Services.
- Oversee all production in Mail Services.
- Act as liaison between organization and Postal Service.
- Prepare operating budget for department.
- Meet department budget objectives, especially for labor and transportation.
- Manage the department capital assets in an efficient and cost-effective manner.
- This job description does not necessarily include all of the essential functions that may be assigned this position, based upon the continuing needs of the organization.

Secondary Functions:

- Provide safety and emergency training to department employees.
- Remain knowledgeable in USPS regulations.
- Provide back-up support/coverage to all positions within Mail Services as needed, including making delivery and receiving runs.
- Ensure all equipment is in serviceable condition and meets USPS standards.

Job Scope:

Performs duties with little direction given, operating from established directions and instructions. Decisions are made within general company policy constraints, but occasionally require independent decision making.

Responsible for budget preparation for the Mail Services Department and compliance accountability for an annual operating budget of \$800,000. Accountable for controlling capital assets worth \$1,500,000. Partially accountable for long range operational planning for the organization and may be asked to provide input for the organization's long range strategic planning process.

Mistakes/errors might result in a loss of employee morale and/or satisfaction in the Mail Services Department, loss of customer satisfaction resulting in loss of customers or poor customer relations, the under-utilization or abuse of capital assets, and the financial impact of increased expenses when budget objectives aren't met.

Supervisory Responsibility:

Full supervisory responsibility for all the department's clerical, technical, and service personnel. This presently includes a total of 15 employees of which 9 are year round, 6 are seasonal, 11 are full time and 4 are part time. This responsibility includes employee evaluation, employee counseling and/or discipline, approving any absences or overtime, and making any recommendations for hiring, terminations, pay changes, job changes, and training.

Interpersonal Contacts:

Has regular contact with others both inside and outside the organization. The most common internal contacts are with own department staff and own supervisor. The most frequent external contacts are with customers and business associations. Internal and external interactions involve information exchange, problem solving, negotiation, and selling.

All contacts usually made at the employee's own initiative with 50% of the contacts being over the phone and 50% face to face. At least 40% of all contacts are with external customers while 60% are not. Internal contacts frequently contain some discussion about confidential/sensitive matters.

Specific Job Skills:

- Excellent supervision/managerial skills.
- Excellent communication skills (including listening, writing, speaking).
- Public relations skills.
- Training/development skills.
- Current knowledge of USPS regulations.
- Physical and mental ability to run all of the equipment within the Mail Services operations (inserter, labeler, folders, bundlers, computerized optical character reader, etc.). This requires the physical ability to bend, twist, lift up to 20 pounds regularly, finger small items, see and hear.

Specific Job Skills: (Cont.)

- Ability to read, write, speak and understand English.
- Mental ability to conduct on-going interpersonal interactions, analyze and solve problems.
- Ability to actively participate in team development and team-oriented processes and motivate others to do the same.
- Physical ability to use computer hardware/software.
- Possess a valid driver's license, acceptable driving record, and proof of current vehicle insurance.

Education and/or Experience:

A minimum of 1-2 years experience/training in mail room operations, plus 1-2 years supervisory experience are required for this position. An Associate degree or equivalent specializing in business management or related field is required.

Job Conditions:

This position requires the incumbent to work in an environment where there may be regular exposure to fumes, building temperature fluctuations, dust, noise, chemicals, odors, and outside weather. Other working conditions may include frequent interruptions, working alone, evening work, working long hours during peak periods, and exposure to computer CRTs.

First Level Supervisory Approval

Second Level Supervisory Approval

**LEAVE OF ABSENCE REQUEST
(NON –FMLA/OFLA RELATED)**

Employee name: _____

Department: _____

Date leave begins: _____ Date of return: _____

Reason for leave: _____

I understand that if I wish to extend my leave of absence, I must do so in writing. I understand that I must notify the [DESIGNATE POSITION] two weeks in advance of my return date to see if a position is available. Further, if a job is available, I have not requested a leave extension, and I fail to return to work within two days of the leave expiration, I understand that I will be considered to have voluntarily resigned.

Employee Signature

Date

Supervisor Signature

Date

Benefits

I understand that I must contribute \$_____, the full monthly premiums, etc.] in advance in order to retain my _____ coverage and _____ insurance during my leave of absence. I hereby elect to:

Continue _____ insurance(s)

Discontinue _____ insurance(s)
Employee must complete new applications upon return

Employee Signature

Date

[NOTE TO EMPLOYER: Include information about any requirements for employees to return to benefits coverage (e.g. waiting periods, examinations, pre-existing conditions, etc.).

NEW EMPLOYEE INFORMATION CHECKLIST

	Yes	No	N/A	Follow-up
• Application (original)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Offer letter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employment agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Payroll advice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Physical Examination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Drug test	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Verification of high school graduation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• College transcript (ordered: _____)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• W-4 withhold allowance (2 originals)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• I-9 & documentation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Handbook Acknowledgement Receipt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Non-Compete/Non-Disclosures (2 weeks prior to date of hire)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Job Description Acknowledgement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Orientation Checklist	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Flex Spending forms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Medical enrollment form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Group medical waiver	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Group life waiver	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Medical questionnaire (if applicable)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Completed reference checks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Property assignment report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- Car insurance form
- Driving record
- Interview record
- Temporary contract
- Employment data sheet
- _____Test results
- Right-to-work documentation
- Union dues authorization

For Office Use Only

Checked by: _____ Name: _____

Hold file date: _____ Date: _____

Social Security number: _____

NEW EMPLOYEE ORIENTATION CHECKLIST

Name: _____

Department: _____

- Handbook received with instructions to return signed receipt form after reading
 - a) Employment Policies
- Policies and procedures reviewed and explained
 - organization philosophy
 - employee classification/status
 - evaluation program and appraisals
- I-9, W-4, and other new hire forms completed and signed
- Introductory period explained
- Job description received and relationship to others in department and organization explained
- Staff introduction and tour conducted
- Organization equipment (keys, nametag, etc.) received and form completed
- Job posting policy explained
- Communication Structure/Policy
 - a) Compensation and Benefits
- Policies and procedures reviewed and explained
 - work hours and overtime
 - paydays
 - salary structure
 - attendance, absence reporting, and timecards
 - rest and meal periods
 - paid time off (vacation, holidays, sick, personal, etc.)
 - leaves of absence
 - educational assistance
- Health plan (medical, dental, disability (short-term and long-term), etc.)
- COBRA Form received

- Life insurance
- Credit union
- Emergency notification information completed
 - a) General
- Policies and procedures reviewed and explained

- safety (including hazardous materials)
- general work rules
- changes in personal data
- access to personnel records
- security regulations
- parking
- smoking
- disciplinary procedure
- confidentiality
- dress code
- organization newsletter
- separation
- other: _____

Employee Signature

Date

Signature indicates that all the above items have been covered

Personnel/Human Resources

Date

NEW EMPLOYEE WRITTEN MATERIALS

Once the new employee begins work, written resources can help answer many questions. Identify whether a copy of the following resources would be helpful to a new employee in your organization.

- | | |
|--|---|
| <input type="checkbox"/> Organizational history | <input type="checkbox"/> Vacation and holiday policy |
| <input type="checkbox"/> Mission statement | <input type="checkbox"/> Credit union information |
| <input type="checkbox"/> Vision statement | <input type="checkbox"/> Retirement plan |
| <input type="checkbox"/> Carpooling information | <input type="checkbox"/> Training-program schedule |
| <input type="checkbox"/> Employee handbook | <input type="checkbox"/> Employee-Assistance Program (EAP) |
| <input type="checkbox"/> Social club information | <input type="checkbox"/> Tuition-reimbursement plan |
| <input type="checkbox"/> Annual report | <input type="checkbox"/> Phone directory, phone-equipment operation manual |
| <input type="checkbox"/> Operations manual | <input type="checkbox"/> Sample forms (expense account, accident report, and performance appraisal) |
| <input type="checkbox"/> Union contract | <input type="checkbox"/> Blood drive |
| <input type="checkbox"/> Facility maps | <input type="checkbox"/> Policy on receiving gifts |
| <input type="checkbox"/> Newsletter | <input type="checkbox"/> Code of conduct or ethical policies |
| <input type="checkbox"/> List of key people | |
| <input type="checkbox"/> Organizational charts | |
| <input type="checkbox"/> Safety and emergency procedures | |
| <input type="checkbox"/> Job descriptions | |
| <input type="checkbox"/> Benefits information | |
| <input type="checkbox"/> Pay schedule | |

NOTICE OF POTENTIAL DISCIPLINARY ACTION AND PRE-DISCIPLINARY HEARING

Date:

Re: Notice of Potential Disciplinary Action and Pre-Disciplinary Hearing

Dear _____ :

On _____, I informed you that I had the following serious concerns about your integrity and job performance. LIST SPECIFIC PERFORMANCE CONCERNS HERE

I am now considering imposing discipline based on the above-listed concerns. The discipline options I am considering are: 1) suspension without pay; 2) demotion and/or 3) dismissal.

Please plan on meeting with me for a pre-disciplinary hearing, where you'll have the opportunity to refute allegations or offer any extenuating or mitigating circumstances, either in writing or verbally. This meeting is scheduled for _____, 2014 in my office. If you wish, you can provide me with the comments in writing by _____, 2014 and forgo the meeting. Please let me know by _____, 2014 how you would like to proceed.

You may seek outside assistance from an attorney, colleague or other party as you feel necessary. You are being provided a written summary of our concerns so that you may adequately respond to the concerns.

After the Pre-Disciplinary Hearing, I will decide whether to impose the above-listed discipline. Thank you for your service to the District.

Respectfully,

Attachments

PAYROLL DEDUCTION AUTHORIZATION

I, _____ hereby authorize Payroll to

deduct \$ _____:

per pay period

per month

as a one-time deduction

from my wages for the following reason:

Employee Signature

Date

Key to Performance Levels: 4 = Exceeds Performance Standards
 3 = Meets Performance Standards
 2 = Work Approaches Standards
 1 = Does Not Meet Standards

PRE-EMPLOYMENT INQUIRY GUIDELINES

Civil Rights law does not prohibit any specific questions from being asked of an applicant, but it does forbid the discriminatory use of information when making hiring decisions. Questions asked on the application form or in the interview could lead an applicant to believe he or she was denied a job illegally. The burden would be on the employer to show why the information requested was needed, and how it was used in the hiring decision.

To lessen the likelihood that discrimination might occur in hiring, it is important for employers to remove inappropriate inquiries from application forms and to refrain from using them as interview questions. Inappropriate inquiries are those that elicit information about someone's protected class status.

Asking the right questions and avoiding the wrong ones on an employment application is crucial to a district's ability to prevent legal challenges and conduct proper background checks. Use the following model application to update your own application materials to ensure that you are not asking any illegal questions.

Note: This is a general compendium of permissible inquiries based on federal, state, and local anti-discrimination statutes. It should not be interpreted as representing the law of any one state or municipality.

Age

Permissible

- "Can you show proof of age upon hire?"
- "Are you over 18 years of age? If you are under 18 years of age, can you produce a work permit upon hire?"

Suspect

- Dates of attendance at elementary or high school.
- Questions which tend to identify applicants as 40 years of age or over.

Applicant Referral

Permissible

- "How were you referred to this position? For example, current employee, newspaper advertisement."

Suspect

- Questions inquiring as to the name of the person who referred the applicant.

Arrest or Criminal Record

Permissible

- Questions regarding prior convictions where accompanied by a statement that such convictions will not absolutely prohibit employment, but will only be considered in relation to specific job requirements.

Suspect

- "Have you ever been arrested?"

Birthplace or Citizenship

Permissible

- “Are you legally authorized to work in the United States?”
- Statement that proof of the applicant’s legal right to work in the U.S. will be required after being hired.

Suspect

- “Are you a U.S. citizen?”
- Birthplace of applicant (or applicant’s parents or family).

Education

Permissible

- Questions regarding extent of education, degree(s) received, names of schools attended, but only where such requirements are demonstrably related to the job.

Suspect

- Questions regarding dates of attendance at elementary or high school.
- Questions regarding ethnic, social, or religious affiliation of schools attended, sororities, fraternities, etc.

Fidelity Bonding

Permissible

- Statement that fidelity bond is a requirement of employment.

Suspect

- “Have you ever been denied a fidelity bond or has one been canceled?”

Height or Weight

Permissible

- Questions may be asked about an applicant’s height or weight but only if height or weight is a bona fide occupational qualification (demonstrably related to job performance).

Suspect

- Height and weight.

Military Service

Permissible

- Questions regarding relevant experience gained during military service.

Suspect

- Questions regarding type of discharge (except dishonorable).
- Questions regarding reserve duty obligations.
- Questions regarding service in foreign military.

Name

Permissible

- “Have you ever used any other name?”
- Is additional information, such as an assumed name or nickname, necessary in order to check job references?

Suspect

- ”What is your maiden name?”
- “Has your name been changed by court order?”

National Origin

Permissible

- What languages other than English are relevant to the job applied for: “What languages, other than English, do you read or write?”
- “Can you speak, read, or write [Spanish]?”

Suspect

- Questions requiring applicant to identify national origin, ancestry, or nationality.
- “What is your first/native language?”

Notice in Case of Emergency

Permissible

- Statement that the name and address of an individual to be notified in case of accident or emergency will be required upon hire.

Suspect

- “Name, address, and relationship of relative or other individual to be notified in case of accident or emergency.”

Organizational Activities

Permissible

- “List all job-related organizations, clubs, or professional societies to which you belong - you should omit those that would identify your race, color, religion, sex, national origin, age, disability, or sexual orientation.”

Suspect

- “List all organizations, clubs, societies, etc. to which you belong.”
- Questions related to political affiliations or union membership.

Physical/Mental Disability

Permissible

- Describing the various functions of the job and asking “Can you perform the functions of the job for which you are applying, with or without a reasonable accommodation?”

Suspect

- “Do you have any physical or mental condition/disability which may affect your ability to

perform the job applied for?”

- Questions regarding an applicant’s general health, medical conditions, illnesses, or disabilities, or receipt of benefits for disability or workers’ compensation.

Qualifications/Previous Work Experience

Permissible

- Questions related to previous experience and/or skills that are pertinent to the job applied for, names and addresses of former employers, dates of prior employment, and reason(s) for leaving previous employer.

Suspect

- Inflated experience requirements that are not strictly job related.

Religion

Permissible

- Statement of the employer’s regular working hours, days, or shifts and whether the applicant can work this schedule.
- Questions regarding religious days of observance or religious affiliation but only where such is a bona fide occupational qualification (demonstrably related to job performance).

Suspect

- Religion of applicant.
- Any questions which tend to elicit information about an applicant’s religious affiliation. For example, regarding activity in church groups.
- Requirement that applicants include a member of the clergy as a personal reference.

Residence

Permissible

- Address.

Suspect

- “Do you rent or own your home?”
- “Do you have any foreign residences?”
- “How long have you lived at your present residence?”

Sex

Permissible

- Applicant’s sex but only if sex is a bona fide occupational qualification (demonstrably related to job performance). Note: This is a very narrow defense.

Suspect

- Sex of applicant.
- Questions regarding pregnancy, birth control, numbers of ages of children, childbearing, or child care plans.
- Questions inquiring whether an applicant’s spouse will allow him/her to travel.

Race

Permissible

- Statement that a photograph may be required after hiring decision.
- Data for OFCCP or affirmative action compliance about EEO record keeping may be recorded and maintained separate from the application.

Suspect

- Questions requiring applicant to identify race, color, complexion, color of skin, hair, or eyes.
- Questions requiring applicant to identify attitudes working with, supervising, or being supervised by person of another race.

References

Permissible

- “List those persons willing to provide personal and/or professional references.”

Suspect

- Questions directed to applicant’s former employer(s) or personal references which illicit information regarding applicant’s race, color, religion, creed, sex, age, national origin, or disability.

Relatives/Anti-Nepotism

Permissible

- Statement of employer’s anti-nepotism policy. (Even though this is not an inquiry, the only way that an applicant can be informed that such a policy exists, and that it may be a disqualifier, is by a statement).
- Questions regarding spouse or relatives working for competitors where necessary to protect company secrets.
- Information for purposes of benefits administration, for example, marital status or number of dependents, can be required after hiring.

Suspect

- Questions that ask applicant to identify relatives or close friends working for the employer.

PERFORMANCE EVALUATION PROCESS

Meaningful performance assessments require both the supervisor and the employee's valuation of the employee's performance.

The Supervisor

The employee's immediate supervisor is responsible for timely completion of the official evaluation report. In cases where the immediate supervisor does not have ample opportunities to judge the employee's performance, the lead worker (or others in a position to observe performance) should be consulted in completing the evaluation. A draft form should be completed initially in pencil, and after discussion with the employee and the reviewer (if needed), the final evaluation will be typed or written neatly in ink.

Common Errors to Avoid in Evaluating an Employee

No matter how well designed, a performance appraisal program can fail if the supervisors doing the appraisal are not adequately trained and informed. The following guidelines describe some frequent errors to avoid.

- Avoid rating most employees at the high end of the scale. Experience shows that "excellent" and "very good" ratings are used more frequently than competent or adequate. This is too often a reflection of supervisor's lack of confidence in the supervisor's own ability than the employee's performance. A rating of "competent" or "adequate" is not adverse and can generate suggestions for improvement needed to merit a higher rating. Descriptions of excellence should be reserved for those whose performance is truly superior.
- Avoid the "Halo Effect." Raters tend to rate an individual consistently high, average, or low on all factors based on an overall impression. A dependable, conscientious employee does not necessarily produce high-quality work. Consider each factor separately and indicate strong and weak points. Don't hesitate to use the entire scale in your ratings. If the evaluations are to provide meaningful information, they must take advantage of the entire scale.
- Avoid labels. Describe exact behavior. For example, telling an employee of a "bad attitude" does not offer an alternative for improvement or provide the employee with understandable examples of the behavior.
- Avoid not using a standard evaluation form. Use the same approved form for all employees evaluated by the District for better consistency and fairness.

Briefly Review General Background Information

The more you know about an employee, the easier it is for you to understand and discuss work performance and behavior. Some time prior to the appraisal discussion, you should review the employee's past history, work experience, education, and previous performance appraisals.

Arrange for the Interview

Set a time and place for the discussion and avoid postponement. Arrange for appropriate privacy

and time for the discussion. It is important to prevent interruption if at all possible. A private office or conference room creates a setting in which you and the employee can communicate effectively.

The Employee Self-Evaluation

The employee shall complete the form for self-evaluation prior to formally discussing past performance with the supervisor. Employees should be notified in writing in advance that an interview is planned. Employees will actively participate in the performance review interview and will be given advance notice of the review date.

Department or Division Review

Individual divisions or departments may review the evaluations. Each should establish procedures and standards for review. The reviewer should normally be the evaluator's immediate supervisor. Only one person within that department or division should be the reviewer. The reviewer may want to review the performance evaluation completed by each evaluator under his/her responsibility before the evaluation is discussed with the employee. The reviewer should consider each evaluator's fairness, objectivity, thoroughness, and consistency in evaluating employees under the reviewer's supervision. In some circumstances to assure consistency, the reviewer should compare one supervisor's evaluations with another's, particularly within the same classification and work assignments.

Conduct the Interview

Approach evaluations as a helper, not a judge. Too often performance appraisal discussions are viewed as a time when the supervisor is the "judge". This is a difficult role which often prevents positive discussion. This is a time when you and the employee can look at job performance and find and discuss ways to improve it.

"Rating" performance involves judgments. However, in the discussion you should focus on specific ways to improve performance, in the role of a helpful teacher.

Structure and Format of the Evaluation

The interview should have some structure to it, varying with individual circumstances.

- Create a relaxed climate by indicating overall satisfaction and honest appreciation of job performance.
- Outline the purpose and objectives of the review. Explain the benefits of positive two-way communications about performance - a clear idea of how the employee is doing and potential steps to improve performance.
- Follow a comfortable sequence during the discussion, for example:
 - Past performance - on each relevant job performance factor;
 - Major strong points and weak points needing greater effort;
 - Specify developmental steps to be taken to improve performance; and
 - Goals and the role of the District.

- Encourage the employee to participate. The more an employee discusses performance, the better the review. Listen and gather information. Active listening is very important.
 - Use open-ended questions (who, what, when, why, and how) which encourage discussion rather than simple "yes/no" responses;
 - Tell the employee you are receiving information, not judging; and
 - Use restatement or reflection. This is a clarification process and feeds back what you are hearing to the employee.
- Discuss areas of good performance first. This is easier if you have required the employee to appraise performance as preparation for the review.
- Focus on areas of performance the employee identifies as not fully satisfactory. Determine what corrective action should be taken, and by whom. Collaborate on the action steps. Do you agree on areas of strengths and weaknesses? The more the employee participates in the plans for improvement, the greater will be the commitment to those plans. Offer useable criticism tactfully and constructively in the context of a discussion of strengths.
- Use specific and realistic improvement targets. Don't try to eliminate all areas of weakness in one session. Concentrate on the most important ones. A development plan with two or three steps is often accomplished. One with eight or nine may cause the employee to give up.
- Discuss personal goals and interest.
- Close the discussion by summarizing what has been covered and reviewing the specific steps to be taken by supervisors and the employee. If appropriate, set a follow-up date to discuss progress towards performance improvement.

Follow-Up

During the review, specific steps to improve performance were identified. If action needs to be taken by you, take it. If specific training has been recommended, it is important that it be undertaken. If parts of the job description have become obsolete, it should be rewritten.

PERFORMANCE REVIEW FORM – SAMPLE 1

Name:

Position Title:

Department:

Prepared by:

Date:

The purpose of the Performance Review process is to provide managers and employees a formal check-in with one another, where they can review past performance and plan for future performance. It is to be carried out with mutual respect and understanding that differences of opinion may occur and perceptions of expectations may need to be clarified. It is, in reality, an assessment of how the performance partnership is doing, and a thoughtful discussion of how future success can be achieved. It is intended to be a highly interactive conversation!

PERFORMANCE REVIEW

Essential Job Functions

Name:

Date:

1. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....
2. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

3. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....

4. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....

5. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....

6. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....

7. Essential Function:

Performance Standard:

Performance Level (check one): 4 3 2 1

Reviewer Comments:

.....

SUMMARY OF PERFORMANCE RELATIVE TO ESSENTIAL JOB FUNCTIONS:

PERFORMANCE REVIEW

Irregular or Unplanned Work

<u>Irregular or Unplanned Work Performed</u>	<u>Comments</u>
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

PERFORMANCE REVIEW

Behavioral/Traits

1. Initiative:

Consider the individual's willingness to actively influence events rather than passively accept them. Consider the ability or degree to which the employee operates as a self-starter in carrying out job tasks, duties and responsibilities. Evaluate the individual's ability to perform the job without having to be given directions or instructions, and to carry assignments through to their logical conclusion. Consider the employee's willingness to reach beyond the performance of assigned job responsibilities for the good of the organization. These "reaches" may include devising or recommending new or improved work methods, correcting errors and omissions observed, investigating and researching questionable situations, volunteering to take on additional assignments, and lending assistance to others without having to be asked or told.

- 4 – Volunteers or takes a leadership role in accepting assignments beyond the scope of regular job responsibilities.
- 3 – Works independently without specific work direction, recognizes needs of the job or the organization and actively works to fulfill these needs.
- 2 – Occasionally needs to be told what to do.

- 1 – Needs to be provided with specific work assignments and requires ongoing follow-up to assure that assignments are completed.

Comments/Examples:

2. Dependability:

Consider the individual's attendance and punctuality at work, to meetings and to events, and the

individual's willingness to conform to and support company standards. Consider the individual's conscientiousness in assuring appropriate work coverage and communicating about delays or changes in schedules, projects, etc. Consider reliability in carrying out instructions, meeting deadlines, and following through with commitments to clients as well as to other staff members; and honoring confidentiality.

- 4 – Little or no absenteeism, schedules personal appointments at times so as to minimize time away from work, and can be relied upon to meet or exceed obligations and commitments.
- 3 – Attendance is at an acceptable level and meets all work obligations.
- 2 – Attendance is sometimes below an acceptable level and/or work output and meeting commitments is inconsistent.
- 1 – Demonstrates little regard for how absenteeism and/or failure to carry out work assignments or commitments affect job performance, service to others and the overall performance of the organization.

Comments/Examples:

3. Job Knowledge:

Assess the individual's level, depth and breadth of knowledge and how it pertains to specific job assignments, processes procedures which are required for competent performance. Also consider the individual's ability to recognize any knowledge shortfall and take action to ensure that knowledge is current. Finally, consider the individual's willingness and ability to share knowledge with others.

- 4 – Knowledge is broad-based and incorporates own job as a whole; employee continues to improve knowledge base and willingly shares knowledge with others.
- 3 – Knowledge is that which is needed to competently perform the job; employee works to keep knowledge base current.
- 2 – Knowledge is insufficient in some areas; employee makes some efforts to increase knowledge base
- 1 – Knowledge is inadequate to competently perform the job. Makes little or no demonstrated effort to upgrade knowledge.

Comments/Examples:

4. Managing Change and Innovation:

Consider the individual's willingness to understand and support the underlying reasons for change. Consider the individual's active participation in the change process, including demonstrating leadership in the change process, soliciting input from others to clear up misunderstandings, offering solutions to help ensure a smooth transition, and maintaining a persistent and innovative approach to overcome obstacles while fostering a positive climate for change.

- 4 – Works as a change agent. Actively promotes needed changes and demonstrates a

leadership position.

- 3 – Demonstrates willingness and the ability to accept change and takes/shares in the responsibility for smooth transition.
- 2 – Recognizes that change is necessary to growth and success, but demonstrates hesitancy in accepting change.
- 1 – Resists change and promotes a status quo environment.

Comments/Examples:

5. Service Orientation:

(External) Consider the individual's willingness to prioritize the client's needs over internal issues and activities. Consider the individual's willingness to go the extra mile to deliver products and services that meet or exceed the client's expectations both in terms of timeliness and quality. Finally, consider the individual's ability to establish relationships with clients that promote or solidify lasting relationships.

(Internal) Consider the individual's ability and willingness to accept assignments and to provide support to co-workers in order to meet established deadlines within established standards of quality. Consider the individual's willingness to go the extra mile to deliver products and services that meet or exceed expectations of co-workers and supervision both in terms of timeliness and quality. Finally, consider the individual's ability to establish internal relationships that promote or solidify teamwork.

- 4 – Shows an overwhelming service to others. Demonstrates a willingness to reprioritize own work to provide service to others. Goes the extra mile. Often delivers more than is expected.
- 3 – Consistently demonstrates the willingness and ability to provide customer service and to build positive relationships around customer service.
- 2 – Recognizes the importance of customer service but is inconsistent in practicing/delivering customer service.
- 1 – Demonstrates self interest and makes only a superficial effort to satisfy the needs of external and internal customers.

Comments/Examples:

6. Communication:

Consider the individual's ability to clearly and effectively communicate with others both verbally and in writing. Consider the individual's ability to organize and transmit information in a logical/understandable order. If the position requires the person to persuade others, consider the employee's ability to influence others to take action. Finally, consider the individual's listening skills and precautions taken to assure that messages received/transmitted are understood.

- 4 – Communication skills are outstanding and the individual goes out of the way to assure that both clarity and understanding are involved in the transmission and receipt of information.

- 3 – Communication skills are good and generally result in clarity and understanding in both the transmission and receipt of information.
- 2 – Attention to communication processes appears inconsistent, resulting in some communication issues.
- 1 – Communication skills are inadequate or not fully used, resulting in frequent errors/omissions, misinformation (sent or received), misdirected actions, duplication of efforts.

Comments/Examples:

7. Operates within the Organizations Culture:

Consider the extent to which the individual functions within organizational guidelines and expectations, embraces “Prime Directives” and organizational values, displays enthusiasm for work and the organization, and contributes to a positive workplace.

- 4 – Displays unwavering enthusiasm for work; demonstrates high level of regard for expectations and guidelines; actively contributes to the development of a positive workplace; personally promotes organizational success.
- 3 – Work importance is regularly demonstrated; respect for expectations and organizational values is evident; understands and promotes a positive workplace; commitment to organizational success is apparent.
- 2 – Occasional enthusiasm displayed for organizational values and mission; inconsistently works within established guidelines and expectations; actions and words focus more on the negative rather than the positive aspects of work; support of organizational values and mission is not consistently evident.
- 1 – No work enjoyment displayed; often critical of internal processes without seeking or offering improvement; little respect for guidelines demonstrated.

Comments/Examples:

SUMMARY OF PERFORMANCE RELATIVE TO BEHAVIORAL/TRAITS:

DISCUSSION COMMENTS REGARDING WAYS THE MANAGER CAN BE OF GREATER ASSISTANCE OR IMPROVE IN HIS/HER SUPERVISORY ROLE:

Goal Setting and Planning

Name:

Date:

	Steps Necessary to <u>Achieve</u> <u>Goals</u>	Completion Date/ <u>Desired Outcomes</u>
<u>Job Related Goals:</u>		
<u>Professional Development Goals:</u>		

PERFORMANCE REVIEW SAMPLE 2 (MANAGER)

For the period beginning _____ and ending _____

Rating

U = Unsatisfactory

NI = Needs Improvement

ME = Meets Expectations

EE = Exceeds Expectations

O = Outstanding

PUBLIC RELATIONS	U	NI	ME	EE	O
Maintains a proactive image of district programs in the community through effective utilization					
Ensures that a public perception of service by the District is with courtesy and professionalism					
Remains accessible to the community					
Effectively handles citizen complaints/inquires					

COMMENTS:

ADMINISTRATION	U	NI	ME	EE	O
Plans and organizes implementation of programs and policies approved or adopted by the Board of Directors					
Provides a clear, concise budget document that funds District services					
Administers the adopted budget within approved revenue and expenditure allocations					
Plans and organizes the maintenance of District-owned facilities, buildings, and equipment to ensure maximum and safe utilization					
Plans for future staffing needs to meet District established service levels					
Plans and organizes programs to maintain quality staff					
Manages general District operations, including supervision of District staff					

COMMENTS:

RELATIONSHIP WITH BOARD OF DIRECTORS	U	NI	ME	EE	O
Maintains effective communications with the Board of Directors					
Plans and organizes materials to present comprehensive information to the Board that assist in decision making					

COMMENTS:

PERSONAL / PROFESSIONAL DEVELOPMENT	U	NI	ME	EE	O
Maintains relationships with professional associations and colleagues					

Attends conferences and seminars to remain aware of developments in the field of communication					
--	--	--	--	--	--

COMMENTS:

PUBLIC RELATIONS	U	NI	ME	EE	O
Maintains a proactive image of the District programs in the community through effective utilization					
Ensure that a public perception of service by the District is with courtesy and professionalism					
Remains accessible to the community					

COMMENTS:

ACCOMPLISHMENTS AND ACHIEVEMENT OF GOALS

FUTURE GOALS (Mutually Agreed Upon for Next Review Period)

 Manager

 Date

 President, Board of Directors

 Date

3. Narrative paragraph on employee achieving performance benchmarks, major tasks, new initiatives, during the review period.
2. Statement as to expectations by supervisor for next year. This should include any recommended training.
3. Recommendation if any merit step is to be granted.

Receipt acknowledged by

Name of Employee

Supervisor

Date

Date

cc: Personnel file

PERSONNEL ACTION FORM

Employment
 Termination

Salary Change
 Personal Information

Status Change

Employee: _____

Mailing address: _____

City

State

Zip

Phone: _____

Social Security number: _____ DOB: _____

Male

Female

Marital status: _____

Hourly rate: _____

Monthly salary (*if salaried*): _____

Exempt

Non-Exempt

Full Time

Part Time

Temporary

On-Call

Position: _____

Department: _____

Replaces: _____

New position

First day worked: _____

Shift (include am/pm): _____

Introductory period ends: _____

Date benefits effective: _____

Eligible for differential: Yes No

Date of last pay change: _____ From \$ _____ to \$ _____

Effective date: _____

Reason: _____

PERSONNEL STATUS CHANGE FORM

Instructions: Fill in all needed information as appropriate. Items 1 through 4 require officer approval prior to processing.

Employee Name: _____
Date of Hire: _____

1. Job Information

	<u>Current</u>	<u>New</u>	<u>Effective Date</u>
Department	_____	_____	_____
Job Title	_____	_____	_____
Classification (FT,PT,Temp)	_____	_____	_____
		<u>Effective Date</u>	<u>Return Date</u>
Leave of Absence (Attach written request for leave)		_____	_____

2. Compensation

	<u>Current</u>	<u>New</u>	<u>Effective Date</u>
Pay	_____	_____	_____
Pay Range	_____	_____	_____
FLSA Status	_____	_____	_____
Comments	_____	_____	_____

3. Performance Review

	<u>Scheduled Date</u>	<u>Next Review Date</u>
Performance Review	_____	_____

4. Separation

	<u>Effective Date</u>	<u>Last Day Worked</u>
Separation	_____	_____
Comments:	_____	_____

5. Personal

	<u>New Information</u>	<u>Effective Date</u>
Address	_____	_____
Home Phone	_____	_____

	<u>New Information</u>	<u>Effective Date</u>
Cell Phone	_____	_____
Home E-mail	_____	_____
Marital Status	_____	_____
Other	_____	_____
Emergency Contact (Name & Phone)	_____	_____
	_____	_____
<i>Supervisor's Signature & Date</i>	_____	_____
<i>Officer's Signature & Date</i>	_____	_____
<i>Payroll Initials & Date</i>	_____	_____
<i>HR Initials & Date</i>	_____	_____

RECEIPT OF ORGANIZATION PROPERTY ACKNOWLEDGEMENT

I, _____ acknowledge receipt of the following organization property and acknowledge my responsibility for the proper care and maintenance of said property. I understand that the property will be returned to the organization in the same condition as I received it. I understand that I will be financially responsible for any property lost, damaged, or destroyed while in my possession. Further, I authorize the replacement or actual cost of any property lost, damaged, or destroyed while in my possession to be deducted from my paycheck, or from my final paycheck if I fail to return any item at my separation or upon request.

Items received:

<u>Description</u>	<u>Value</u>	<u>ID Number</u> <i>if applicable</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Employee Signature

Date

Witness Signature

Date

REQUEST TO REVIEW/COPY PERSONNEL FILE

Employee name: _____

Work site: _____

Job title: _____

Supervisor's name: _____

- This is my request to review my personnel files.
- This is my request to allow my personal representative to whom I have given this form, to review my personnel file.
- I would like a complete copy of my personnel file. (Cost is ___¢ per page.)

My work hours are from _____ am/pm to _____ am/pm with breaks scheduled as follows:

Lunch: from _____ to _____

Other breaks: _____

Employee Signature *Date*

Dear _____,

We have arranged for you to review your personnel file at _____ on _____.

If you will not be able to make this appointment, please call the _____ at

_____.

Signature *Date*

Title

RESIGNATION LETTER

I, _____, submit my voluntary
resignation to [ORGANIZATION] effective _____. I am resigning
because _____

I understand that I will be asked to participate in an Exit Interview which is designed to learn my opinions about my employment at [ORGANIZATION] and to provide me with important information regarding benefits and exiting procedures.

Employee Signature

Date

SEPARATION CHECKLIST

Name: _____

Date of separation: _____

Items returned/addressed:

- Computer Access (on-site and remote)
- Keys
- Organization property
- Building pass
- Phone or other credit cards
- Manual/handbook
- Insurance/COBRA conversion/MSA
- Reference determination
- Accrued vacation

- Pending insurance claims
- Dispute resolution procedures
- Time Sheets
- Expense accounts reconciled
- Final paycheck
- Forwarding address/W-2

Address: _____

SIGNATURE/INITIAL VERIFICATION FORM

As an employee of [ORGANIZATION], signatures are required in certain confidential areas and departments. My signature and initials as officially used for verification are below.

Date: _____

Full name: _____
please print

Signature: _____

TERMINATION LETTER

[DATE]

[NAME]
[STREET/PO BOX]
[CITY, STATE ZIP]

Dear [NAME]:

The purpose of this letter is to advise you that your employment with [ORGANIZATION] will terminate effective 5:00 PM on [DATE].

As a result of your termination, you are entitled to the following benefits:

- Your salary will be continued beyond the termination date for a period of [TWO WEEKS, etc.].
- You will receive payment for [DAYS UNUSED VACATION] days of unused vacation.
- You have certain rights to elect the continuation of health insurance benefits by making timely notification and payments. Your rights are explained in the attached form.
- Your rights regarding the monies in your 401(k) account and your rights regarding your past participation in the pension plan are as follows:

You may also wish to seek the advice of a tax expert regarding disposition of the funds in your 401(k) account and in the pension plan.

Sincerely,

[NAME]
[TITLE]
[DEPARTMENT]

[NOTE TO EMPLOYER: Tailor benefits discussed in termination letter to those offered by your organization.]

TIME OFF REQUEST

Name: _____

Department: _____ Date: _____

Request: _____

First work day off: _____ First work day return: _____

Request for: paid time unpaid time

I request: Personal Absence Vacation Pay Other

Reason: _____

Employee Signature

Date

Approved Denied

Supervisor Signature

Date

Copy: Supervisor
Employee
Personnel/Human Resources

RESOURCES

American with Disabilities Act Home Page - <http://www.ada.gov/>

Bureau of Labor and Industries Home Page - <http://www.oregon.gov/BOLI/pages/index.aspx>

Equal Employment Opportunity Commission (EEOC) Home Page
<http://www.eeoc.gov/facts/qanda.html>

U.S. Department of Labor - <http://www.dol.gov/>

Public Finance

(Chapter 11)

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INTRODUCTION

This particular section of the manual provides a general overview of special district public finance. Special districts in the State of Oregon utilize public financing for a variety of purposes but most generally, public financing by special districts is to finance the acquisition of capital construction or improvements to essential service assets, real property or the acquisition of essential use equipment.

A basic first step toward obtaining funding for the acquisition or improvement of special district facilities or equipment is identifying the types of essential service assets needed by the special district through the development or implementation of a capital improvement plan.

A capital improvement plan can be developed in a variety of ways or forms but should be developed as a working document that meets the district's needs and objectives while fulfilling the district's mission. The plan assists with identifying when essential service assets are needed, their useful life, and when equipment or facilities need to be improved or expanded. In addition, the plan will help the special district identify and determine how it will fund the components of its capital improvement plan either through built-up reserves, annual operating budget, grants, or through the use of public financing such as bonds or other financing mechanisms. Each special district should institute some form of a capital improvement plan for projects that range in phases from one year to as far as ten years or more into the future.

In conjunction with the development or the implementation of a capital improvement plan, enterprise master plan or equipment acquisition or replacement plan is developed, a district should analyze which funding tools or mechanisms are available in carrying out the various components or projects of the plan. Projects are often completed with a variety of financing instruments. For example, a district may utilize reserve funds for equipment acquisition or real property purchases. Additionally, districts may seek voter approval for general obligation bonds for larger capital costs and improvements or, if authorized by statute, issue revenue bonds, repaid by enterprise fund or utility revenues, to fund system improvements. A district may also enter into other forms of financing to acquire essential service and use real and personal property as further described throughout this chapter.

This chapter briefly describes the different types of financing vehicles available to special districts including general obligation bonds, lease-purchase or financing agreements, limited tax bonds, revenue bonds, short-term bonds, special assessment bonds (also referred to as Bancroft Bonds), citizen bonds, and system development charges. Determining the right financing vehicle and tools requires careful analysis and can be complicated. However, having a plan and resources in place can assist the district in delivering the essential services expected by the people you serve.

CAPITAL IMPROVEMENT PLANNING

A defined capital improvement plan includes several components. Implementing the capital improvement plan entails how to fund the plan whether it's funded through established reserves or financing the identified projects over a period of time. The frame work of a capital improvement plan or expenditure includes a responsible debt management or funding policy.

Within a capital improvement plan a special district should evaluate its past economic growth and financial performance, its current condition, and the implications of these trends for the future. Districts experiencing significant community growth usually require expenditures on a variety of projects with useful lives of several years. The following are some examples of capital projects:

- Major recreational projects or land acquisition.
- General community services such as wastewater treatment and distribution systems, water treatment plants and distribution systems, public safety facilities, fire protection equipment, and port facilities.
- Replacement and improvement of older facilities to meet the rising expectations and standards of the community, State or Federal government.

A carefully considered Capital Planning program is a composite of all the needs and desires for community facilities, tempered by the government's ability to serve its population. Districts must sort through these desires and expectations to determine what will be permitted by those paying the bill. The equation must also include a cost-benefit analysis that yields an objective measurement of what is the best choice, given the variables.

A capital improvement plan lists:

- Each proposed expenditure item.
- Estimated date in which the improvement or project will commence.
- A discussion on whether to pay for the improvements as you go or to finance improvements now from future revenues.
- Number of years to complete construction.
- Estimated or budgeted capital expenditures for each year.
- Financing methods proposed.

A capital improvement budget is adopted annually, based on the capital improvement plan, and includes enacting appropriations associated with the expenditures, resources to fund the plan expenditures and any associated financing payments on any borrowings. The capital improvement budget may differ from the capital improvement plan because of financial constraints. After adoption of the budget, the capital improvement plan must be updated to include any changes necessary in future years as a result of current budget revisions.

LEGAL AUTHORITY TO BORROW

Each special district has specific laws for issuing debt or borrowing money. Most types of special districts have authorization to issue general obligation bonds only after receiving an affirmative vote pursuant to Oregon election laws. Additionally, there are special districts that have the authority to issue revenue bonds. However, most, if not all special districts, have the authority to enter into financing agreements which do not require voter approval.

The following table lists the various Oregon Revised Statutes whereby Oregon special districts derive their borrowing authority

Authorization to Borrow					
Borrower or Issuer	General Obligation Bonds	Revenue Bonds	Financing Agreement	Tax and Revenue Anticipation Notes (Interim Borrowings)	General Obligation Bond Debt Limitations (As a % of Real Market Value) ORS 308.207
Airport District	ORS 838.065(1)	ORS 838.065(2)	ORS 271.390	ORS Chapter 287	10% ORS 838.065
Counties: Service Districts "Zone" 2 Fire Roads	ORS 287 451.545(1)(County Charter)	ORS 287A	ORS 271.390 (Debt Limit - 1.00%) ORS 287.053	ORS Chapter 287	2% ORS 287 13% aggregate ORS 451.545(3) 1.25% ORS 476.330(5) No limit ORS 370.010
Drainage Districts	ORS 547.555	ORS 287A	ORS 271.390	ORS Chapter 287	No limit (ORS 547.555)
Hospital/Health Districts	ORS 440.375	ORS 287A	ORS 271.390	ORS Chapter 287	Population < 300: 2.5% Aggregate ORS 440.375(3) Population > 300: 10% Aggregate ORS 440.375(4)
Irrigation Districts	ORS 545.511	ORS 287A	ORS 271.390	ORS 287	No limit. As board deems necessary & voter approved ORS 545.511
Library Districts	ORS 357.261	ORS 287A	ORS 271.390	ORS 287	2.5% ORS 357.261(9)
Mass Transit Districts	ORS 267.330	ORS 267.335	ORS 271.390	ORS 287	2.5% ORS 267.330 in the aggregate
Metro Service District	ORS 268.520	ORS 268.600- 268.660	ORS 271.390 ORS 268.600	ORS 287	10% ORS 268.520(1)
Parks & Recreation Districts	ORS 266.512(1)	ORS 266.514	ORS 271.390	ORS 287	2.5% ORS 266.512(2)
People's Utility Districts	ORS 261.360(1)	ORS 261.355	ORS 271.390	ORS 287	2.5% ORS 261.360(2)
Port Districts Water Transport Port of Coos Bay Port of Portland	ORS 777.410 LID: ORS 777.530	ORS 777.560	ORS 271.390	ORS 287	2.5% ORS 777.410(1) 0.25% ORS 777.725(1) 1.75% ORS 777.940, ORS 777.947 1.75% ORS 778.030
Rural Fire Protection Districts	ORS 478.410(2)	ORS 478.845	ORS 478.410(3) ORS 271.390	ORS 287	1.25% ORS 478.410(2) Includes general obligation bonds and other financing liabilities.
Sanitary Districts	ORS 450.075	ORS 288.805- 288.945	ORS 271.390	ORS 287	13% ORS 450.120, 450.900 Aggregate including improvement and revenue bonds.
Urban Renewal Districts	Borrowings authorized under ORS 457				N/A ORS 457.420
Domestic Water Supply Districts	ORS 264.250 LID 264.362/ 223	ORS 264.260/ ORS 287A	ORS 271.390	ORS 287	Population < 300 2.5% ORS 264.250(1) Population > 300 10% ORS 264.250(3)
Water Control Districts	ORS 553.610	ORS 287A	ORS 271.390	ORS 287	NA
Water Improvement Districts	ORS 552.645	ORS 287A/552.325	ORS 271.390	ORS 287	2.5% ORS 552.645(1)

FORMS OF FINANCING MECHANISMS

GENERAL OBLIGATION BONDS

General obligation bonds (GO Bonds) are a long-term borrowing backed by the “full faith and credit” pledge of the municipality’s unlimited ad valorem property taxing power.

There are two primary types of general obligation bonds:

- A GO Bond bonds paid solely from property taxes levied annually by the local government.
- A GO Bond paid from another revenue source, such as sewer or water rates (often called “double barreled” or “self-supporting” G.O. bonds), but provide the general obligation taxing power of the issuer as additional security if, in the event, revenues are insufficient to repay debt service on the GO Bond.

The issuance of “unlimited tax” General Obligation Bonds is subject to voter approval in Oregon.

Advantages of G.O. Bonds:

- Lower interest costs.
- Lower cost of issuance.
- Exempt from Measure 5 (“M5”) and Measure 50 (“M50”) limitations.

Disadvantages of G.O. Bonds:

- Subject to the voter approval requirement of Measure 5 and 50 (“M50”).
- Subject to debt limits of a special district. State law limits the total amount of unlimited general obligation debt special districts can issue (“See “Authorization to Borrow” chart above).
- Restricted to definition of capital construction and improvements (See “Post-Measure 50”).

What is a General Obligation Bond?

A GO bond is a loan between borrowers and investors for specific capital projects.

• General Features

- Fixed maturity date
- Fixed interest rate
- Principal paid annually

• Issue-Specific Features

- Security provisions
- Tax status
- Repayment source
- Full Faith and Credit Pledge

Who Generally Issues General Obligation Bonds?

Generally, most local governments, including the State, issue some form of General Obligation Bonds:

- Drainage Districts
- Emergency Communication Districts
- Rural Fire Protection Districts
- Health and Hospital Districts
- Irrigation Districts
- Library Districts
- Port Districts
- Sanitary Authorities and Districts
- Water Districts
- Water Control Districts
- Cities
- Counties
- Park and Recreation Districts

Why Issue General Obligation Bonds?

- To finance capital expenditures.
 - a. Preserves existing resources for other purposes.
 - b. Spreads costs of improvements over all classes of taxable real property
 - c. Allows leverage of existing resources.
 - d. Matches repayment period to useful life of project.
- Debt service exempt from Measure 5 and Measure 50 limits.
- Tax exemption lowers costs of financing.

General Obligation Bonds - Post-Measure 50 and Recent Constitutional/Legislative Changes

- Payable from unlimited ad valorem property taxes.
- At the January 2010 Special Election, voters approved Measure 68 which broadened the definition of capital construction and improvements so GO Bonds may now be used for capital costs, including acquisition, construction, repair and improvements, but not routine maintenance or supplies.
- Article XI, Section 11 of the Oregon Constitution (“Article XI, Section 11”), requires majority voter approval for new or additional ad valorem property taxes, except in March and September elections, which have the additional requirement that at least fifty percent (50%) of registered voters eligible to vote cast a ballot (the so-called “Double Majority”).
- Generally used for large, non-self-supporting capital construction and capital improvements such as parks, fire stations, libraries, purchase of real property, public safety, and law enforcement vehicles with a useful life over 5 years.

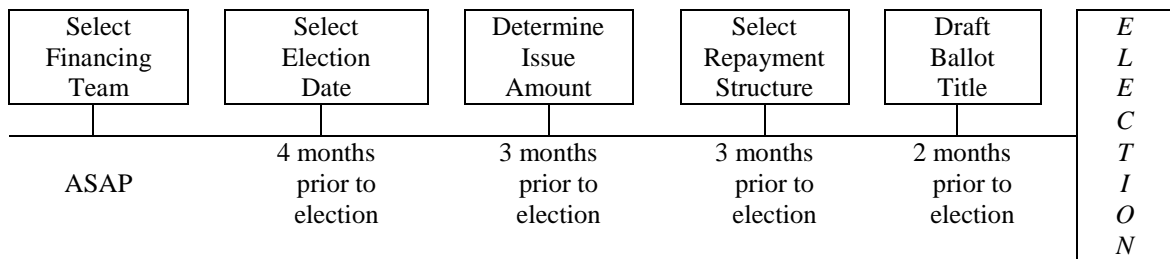
Likely Eligible Use of General Obligation Bond Proceeds

- Purchase land
- Construct new buildings
- Additions/Renovations
- Major repairs for unanticipated structural or maintenance problems, natural disasters, vandalism
- Furnishing and equipping a facility or equipment
- New wiring
- Public safety vehicles with useful life over 5 years

Unlikely to be Eligible Use of General Obligation Bond Proceeds

- Routine plumbing & electrical work
- Athletic equipment
- Free standing computers
- Minor roofing

SAMPLE TIME FRAME FOR A GENERAL OBLIGATION BOND FINANCING DECISION



SELECTING THE REPAYMENT STRUCTURE

Basic Structuring Options

- Level Debt Service Repayment Structure.
 - a. Provides approximately equal annual debt service payments.
 - b. Generally produces higher tax rates in early years, declining in later years (Assuming a constant growth rate in annual taxable assessed real property values).

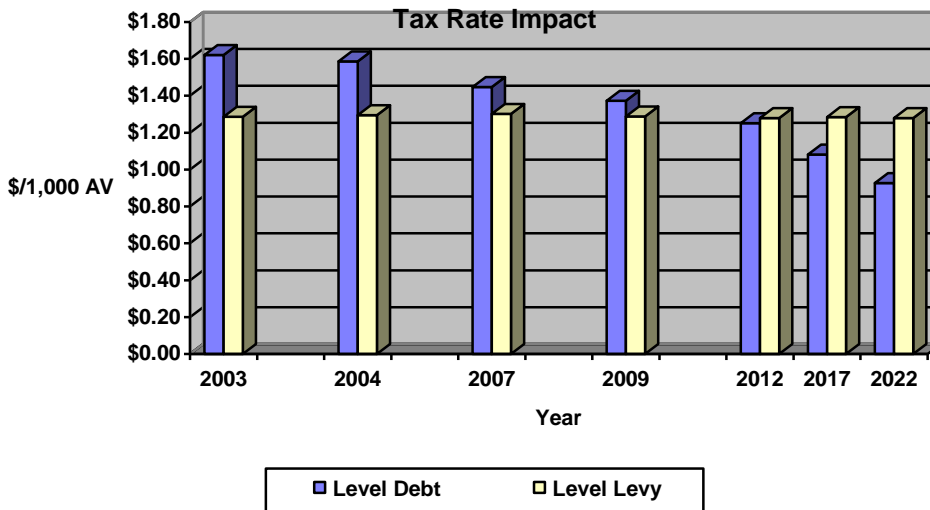
- Level Levy Rate Repayment Structure (Assuming a general increase in annual taxable assessed real property values).
 - a. Provides increasing annual debt service payments.
 - b. Generally produces a consistent annual property tax rate.

Basic Structuring Choices

A Hypothetical 20-Year, \$5 million General Obligation issue for The Mighty Oregonian Rural Fire Protection District with assessed value of \$250 million.

<u>Structure</u>	<u>Est. First Yr Tax Rate.</u>	<u>Est. Last Yr. Tax Rate</u>	<u>Est. Total Interest Cost</u>
Level Debt	\$1.6204	\$0.9272	\$3.4 million
Level Levy	\$1.2866	\$1.2793	\$3.9 million

**Expressed as \$/1,000 Assessed Value
(Assumes 3.00% Assessed Valuation Growth Per Year)**

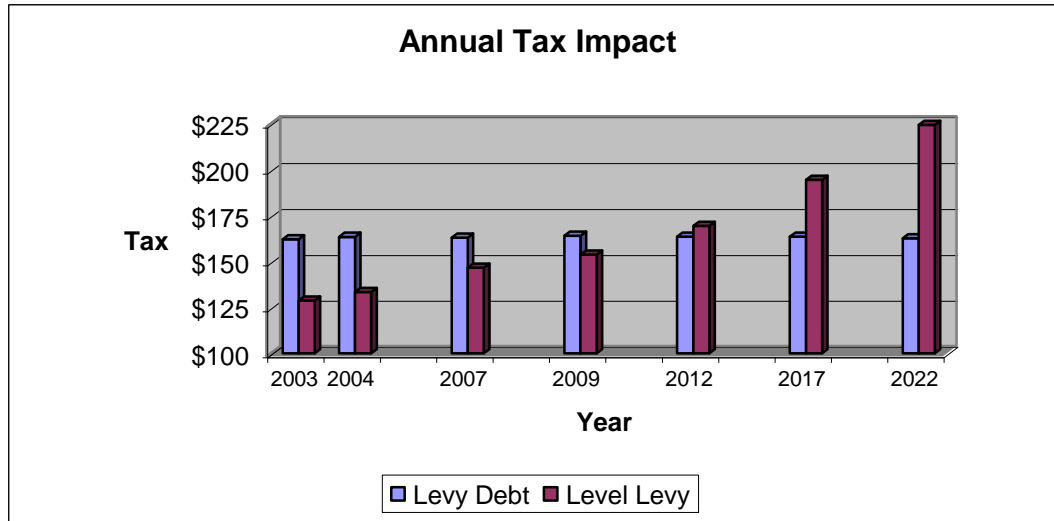


Yearly Estimated Cost to Homeowner

Estimated annual property tax impact of the owner of a \$100,000 home starting in year one increasing 3.00% per year in Assessed Valuation.

<u>Structure</u>	<u>First Yr.</u>	<u>20th Yr.</u>
Level Debt	\$162.04	\$162.58
Level Levy	\$128.66	\$224.33

Assumes a 20-Year General Obligation Bond



Factors Influencing the Repayment Structure

- 2%-3% assessed value growth rates with certain exceptions
- Amount of new construction
- Historical tax collection rates
- Market interest rates
- Project amortization
- Input from rating agencies and insurers

FULL FAITH & CREDIT OBLIGATIONS (ALSO KNOWN AS LIMITED TAX OBLIGATIONS)

Full Faith & Credit Obligations or Limited Tax Obligations are similar to general obligation bonds except the special district does not have the legal ability or authority to levy unlimited ad valorem taxes to repay the obligations and are issued without voter approval. The obligations are secured by any and all legally available general fund revenues and whatever taxing power the special district legally has (i.e., subject to Measure 5 and Measure 50 limitations).

There is no specific legal authorization for "limited tax general obligation bonds" in Oregon, unlike some other states. There is, however, statutory authority under ORS Chapter 287A, for a public body to pledge its full faith and credit and taxing power. Therefore, the term "limited tax obligation" describes the type of security pledge commonly used to secure obligations such as:

- Certificates of Participation (COPS)
- Full Faith & Credit Obligations
- Limited Tax Revenue Bonds
 - Limited Obligation Assessment Bonds

Full Faith & Credit Obligations or Limited Tax Obligations do not require voter approval and do not count toward the municipal debt limitations with the exception of counties and rural fire protection districts, which generally a limit based as a percentage the local governments real market value and those cities and counties with charter limitations.

Full Faith & Credit Obligations or Limited Tax Obligations are perceived to have a higher risk and therefore will carry a higher interest rate than unlimited tax general obligation bonds. The magnitude of this difference in interest rates depends on the financial condition of the issuer, the revenue stream used to pay the borrowing, the security (and presence or lack of a non-appropriation clause), and the nature of the asset being financed.

Rating agencies will typically rate Full Faith & Credit Obligations or Limited Tax Obligations one step or notch below the unlimited tax general obligation bond rating. The presence of a non-appropriation clause usually causes the rating to be lower. If the financing is for depreciating equipment or facilities, rather than appreciating assets, the rating may be two steps or notches lower, especially if the equipment or facilities being financed are considered not to be "essential."

**SPECIAL ASSESSMENT (GENERALLY APPLIES TO CITIES, COUNTIES, PORT DISTRICTS)
Bonds/Limited Obligations Bonds
("Bancroft Bonds")**

Special Assessment Bonds are a type of bond used to finance local improvements such as streets, sewer, water, and storm drainage. The bonds are payable primarily from special assessments upon property owners who benefit from the project.

Establishment of Local Improvement Districts

For the purposes of collecting the charges (known as "assessments") made to property owners benefiting from a specific capital improvement, areas are grouped into local improvement districts (LIDs) and charges are directly levied or apportioned to all properties within the LID. The governmental unit must establish the LID's boundaries and publish the intention of establishing the LID to allow LID property owners the opportunity to remonstrate or object to the LID. After determining that the LID is to be established, the governmental unit will develop an estimate for the costs of the local improvement and calculate the assessments on the basis of the degree to which each property is benefited by the improvement. Formulas are usually based upon footage, square footage, or a combination of the two.

Property owners have the right to pay the assessment in installments over a period of years (at least ten years in Oregon). The governmental unit may charge a reasonable interest rate on installments. The agreement between the governmental unit and the property owner to pay the assessment in installments is called the assessment contract.

Bonding Mechanism

Special assessment bonds ("Bancroft Bonds") may be issued for the amount of the unpaid final assessments including amounts necessary to establish a debt service reserve and pay financing costs. These bonds are payable from assessments received from the LID property owners. The final assessment cannot be made, however, until the project is completed. Thus, unless the local government has its own funds to build the projects, the local government must do an interim financing based on estimated assessments.

The governmental unit has the right to:

- Pledge the assessments.
- Pledge to make a general obligation tax levy not subject to tax limitation for shortfalls in assessments collected to pay debt service (a full general obligation pledge), if the bonds are voter-approved.
- Pledge to pay shortfalls in assessments with property tax receipt subject to tax limitation (a limited obligation pledge), if the bonds are not voter-approved.

Credit Limitations

The tax-exempt finance markets measure the risk of government credit on the basis of certainty of the stream of revenue pledged to repay the debt service. The less certain the revenue stream, the higher the interest rate on the borrowing demanded by the market.

A pledge of revenue derived from the provision of essential services such as sewer and water, spread over a large number of users, is also regarded as low-risk, although somewhat riskier than a general obligation pledge. Other pledges of revenue, such as

special assessment bonds and certificates of participation, are considered relatively high-risk and sometimes subject to specific conditions.

Bond purchasers typically demand an interest rate premium on special assessment bonds issued without a backup general obligation pledge. The credit-worthiness of special assessment bonds is determined by:

- The number and size of properties that will be the basis for assessments.
- The financial situation of the property owners.
- The strength of the back-up pledge of the local government.

If the LID includes only a few properties, the financing will require information on the creditworthiness of the property owners and the issuer's interest rate will be determined by their underlying credit

Bancroft Bond Act

Oregon Revised Statute entitled *Financing Local Improvements (Bancroft Bond Act)*, contained in ORS 223.205 through 223.295, defines the circumstances under which special assessment (or Bancroft) bonds can be issued. Special assessment bonds are secured by charges to property owners equal to the "actual cost" of public improvements that benefit the property owners. The statutes contain several definitions critical in understanding this approach to debt financing.

All assessments which are secured by a lien or on the basis of property ownership or use will be subject to Measure 5 and Measure 50 limitations. The exception to this is assessments that are:

- For capital construction.
- Special benefits.
- Limited to the "actual cost".
- Assessed in a single assessment upon completion of the project.
- Provide for repayment over at least a ten-year period.

REVENUE BONDS

Revenue bonds are long-term obligations that are payable solely from a designated source of revenue (such as water or wastewater rates and charges) which are usually the revenues generated by the project which was financed. No taxing power or general fund pledge is typically provided as security.

Unlike general obligation bonds, revenue bonds may not be subject to a jurisdiction's statutory debt limitation nor is voter approval required unless, for those issued under the Oregon Revised Statute ORS 287A, unless sufficient signatures (5% or more of eligible voters) are collected during the 60-day notice period or 30-day ordinance period to require an election (See ORS 287A.150).

The interest rate paid on revenue bonds reflects the quality of the revenue stream supporting repayment of the bonds. Revenue bonds have been used to fund projects such as water, sewer, storm drainage facilities and improvements, and revenue-producing facilities such as electric facilities.

Advantages of Revenue Bonds

- Voter approval is generally not required.
- Generally, only users of the project pay.
- Can specifically mortgage or provide a security interest in the facility being financed.

Disadvantages of Revenue Bonds

- Interest rates can be substantially higher than GO bonds. Due to the limited security offered to bond holders, revenue bonds usually carry a higher rate of interest than that which is paid on general obligation bonds. However, a number of approaches are used to further secure the bonds and thus obtain better interest rates.
- There is a greater risk of default, which could impair a local government's ability to issue any type of bonds in the future.
- There is a 60 or 30 day referendum period prior to the issuance of the revenue bond and the possibility that electors may file a petition to refer the question of whether to issue the revenue bonds to a vote.
- Due to the higher risk, there are more bond covenants and other restrictions upon the use of revenues which secure the bonds and upon operation of the facility.
- Amount of issue depends on revenues generated.
- Higher issuance costs than GO Bonds.

SHORT-TERM DEBT FINANCING

Short-term debt is available to Oregon special districts pursuant to Oregon Revised Statute 287A. General obligation and revenue bonds are classified as long-term debt, whereas short-term debt instruments are usually referred to as notes or warrants. Several types of short-term instruments are described below:

Bond Anticipation Notes (BANs)

BANs are generally issued to provide interim funding to construct a project, acquire real property or other capital costs prior to the issuance of a long-term financing.

Revenue Anticipation Notes (RANs)

RANs are used as interim financing prior to collection of revenues which will be generated once a project is completed. RANs may also be used for operating purposes prior to collection of specific revenue.

Tax Anticipation Notes (TANs) or Tax and Revenue Anticipation Notes (“TRANS”)

Much like a RAN, a TAN would be issued by a local government in anticipation of the collection of levied property taxes or other legally available and budgeted revenues to fund current operating expenses. Many Oregon special districts face short-term cash flow deficits, primarily between the beginning of the fiscal year, July 1, and the first receipt of property tax revenue in late November.

Grant Anticipation Notes (GANs)

GANs may be used to finance a project for which a state or federal grant has been committed.

Short-term interim financings issued to finance capital construction and improvement projects may be issued but must mature no later than two (2) years after the project is completed.

CERTIFICATES OF PARTICIPATION/LEASE-PURCHASE FINANCING/FINANCING AGREEMENTS – (See also Full Faith & Credit Obligations Above)

Certificates of Participation (COPs) or Lease Purchase or Financing Agreements are a financing technique for facilities, property, and/or equipment that utilizes the leasing power of local governments. Unlike general obligation bonds, there is no new tax levy authorized therefore, there is no voter approval requirement. COPs may be subject to statutory debt limits (“See “Authorization to Borrow” chart above)..

In general, Certificates of Participation represent "participation" in a tax-exempt lease or financing agreement, which is an agreement between a municipal government and a governmental agency, authority, or commercial bank trust department. The authority for these leases or financing agreements is ORS 271.390 which allows financing of any real or personal property as long as the estimated weighted average life of the financing contract does not exceed the estimated dollar weighted average life of the real or personal property that is being financed with the contract.

ISSUING BONDS OR BORROWING MONEY

Preliminary analysis involves:

- Project viability (a cost benefit analysis),
- Various financing options, and
- Advantages and disadvantages of each type of financing options available.

As a general rule, the debt redemption schedule should be roughly comparable to the useful life of the project being financed.

The Capital Improvement Plan identifies the needs of the special district that are appropriate capital expenditures and candidates for debt financing. Debt is theoretically justified on the basis of several factors such as the following:

- The debt distributes payment for a project to those who will benefit from it over its useful life, rather than requiring today's taxpayers or ratepayers to pay for future use.
- During times of inflation, debt allows future repayment of borrowed money in cheaper dollars.
- The debt does not immobilize current revenues, thus allowing such revenues to be used for operating expenses or investments.
- In the case of general obligation bonds, voter approval is required.

Future operating costs must be determined once a capital project has been selected. These costs include debt service and the maintenance and operation expense of any physical facility.

A review of financing options and when to use them can be made after a decision has been reached to fund a capital project. See "Summary Checklist for Issuing Bonds" later in this chapter.

MATURITY SCHEDULE

The first step after deciding what type of financing to use is to decide on a maturity schedule. When determining the maturity schedule for a financing, it is important to match principal and interest payment dates to available cash flow. If the financing is self-supporting, the principal repayment dates should be scheduled to coincide with revenue collections. If the financing is dependent on tax collections, plan payment dates to match historical collection experience.

After matching debt service to available cash flow, a second factor in designing a maturity schedule is overall cash flow. Decide how the new debt service schedule will impact the existing maturity schedules. Project future borrowing needs as defined in the capital improvement plan. Make sure the new maturity schedule has been optimally designed to match cash flow capacity.

Maturity schedules can be designed in a variety of ways and is generally dependent on the characteristics of the special district, current and future cash flows and existing or outstanding obligations. For special districts that are infrequent issuer of bonds or borrower of funds there are typically two types of maturity schedules (structures) to consider: 1.) a maturity schedule that structures the financing with level debt (roughly equal installment) payments or 2.) level principal (declining installment) payments.

- Debt service that is scheduled as "level debt" means , the sum of principal and interest remains relatively constant throughout the life of the financing. Thus, principal payments begin low and increase, while interest payments decrease.
- Debt Service that is scheduled as "level principal" means the principal component of the debt service payments are equal or relatively the same at each payment date.

- Both “level debt” and “level principal” structuring types are called serial maturities. Bond issues may also be structured as “term” bonds. In the instance of term bonds the entire principal amount is paid at a single maturity date. With term bonds, issuers are usually required to make annual sinking fund payments to provide for principal repayment when due.

ADDITIONAL INFORMATION (OTHER CONSIDERATIONS) WHEN BORROWING

(The following information, although centered towards the issuance of bonds, should be considered whenever a special district is considering the borrowing of money no matter the financing instrument)

PREPARING FOR BOND SALE

After gaining the necessary approval(s) to issue the bonds (i.e., from votes, a district resolution, or ordinance), the actual bond sale must be planned. All bond sales require the preparation of several legal documents. Preparation of a bond sale calendar or checklist is useful in coordinating the timing of the sale and will include, but not limited to, the following:

- Determination of the amount of the issue.
- Decision upon a sale date and notification to the Municipal Debt Advisory Commission in the State Treasury of the sale date.
- Publication of the preliminary official statement.
- Choice of date for settlement of the bond deal.

SUMMARY CHECKLIST FOR ISSUING BONDS

- Select and retain nationally recognized bond counsel.
- Select and retain an investment banker or financial advisor to assist with the planning and authorization of the bond sale.
- Determine legal statute and authority to issue bonds or other financing mechanism.
- Determine the amount of funds needed and the corresponding size of the issue. Include, as a minimum, the following:
 - a. Capital costs such as land, building construction, permits, furnishings and equipment, architect and engineer fees, etc. If borrowing is for cash flow purposes, size according to IRS requirements.
 - b. Bond issuance costs such as bond counsel and attorney fees, underwriter and financial advisor fees, Oregon State Treasury fee, credit rating agency fee, disclosure expenses, underwriter’s counsel, registration costs, principal and interest paying costs, bond insurance, if applicable, and printing and advertising costs, etc.
 - c. When estimating debt service and revenues, include an estimate for uncollected taxes and revenues. For revenue bonds the bond proceeds

should be enough to fund a reserve account that is adequate to cover debt service in the next fiscal year.

- d. Determine available cash flows and alternatives to pay debt service on the bonds. Determine financing options and alternatives.
 - e. Structure the bonds to match needs with cash flow and minimize costs and other considerations. (Example: General Obligations Bonds, try to structure the issue where the levied ad valorem property taxes are received prior to the GO Bond payment).
- Determine the role the public will play in the issuance.
 - a. Will a citizen advisory committee be formed?
 - b. Will or could property taxes or public user fees be affected?
 - c. Will the issue require a public vote?
 - Adopt resolution authorizing the sale of the bonds or (if necessary) an election and ballot title.
 - a. Ensure bond counsel and the investment banker review the resolution and ballot title before adoption.
 - b. If applicable, determine whether issue is subject to the tax limits imposed by Article XI, Sections 11 and 11b of the Oregon Constitution (Measures 5 and 50).
 - Budget for the bonds.
 - a. Use a Capital Improvement Fund to expend the bond proceeds on the projects and to collect the earnings on the investment of proceeds.
 - b. Use a Debt Service Fund to pay the principal and interest. Ensure there is a carry-over for the next fiscal year's first payment, since it may occur prior to the collection of taxes.

Reasons to Issue Debt-Justification

Local government debt should not be viewed as revenue to supplement local government or municipal operating budgets. Rather, bonds are loans with significant costs and are incurred with an obligation for current and "future" taxpayers to repay, or revenues from system users. Issuing debt is theoretically justified on the basis of several factors, for example:

- Borrowing distributes costs and payments for a project or improvement to those who will benefit from it over its useful life, rather than requiring today's taxpayers or rate payers to pay for future use.

- During times of inflation, debt allows future repayment of borrowed money in cheaper dollars.
- Borrowing can improve a municipality's liquidity to purchase needed equipment or for project construction and improvements. Debt issuance also does not exhaust current cash-on-hand, allowing such general fund revenues to be used for operating expenses.

Purposes for Which Tax-Exempt Debt Can Be Issued

- Tax-exempt financing has traditionally been used to finance services, projects, and infrastructures that specifically benefit the "public." Typically, they have included schools, bridges, equipment or apparatus, roads, sewer, and water facilities. These facilities and services have usually been owned and/or operated by municipalities and local governments. In today's municipal debt market, tax-exempt securities are frequently used for non-traditional purposes that primarily serve to benefit non-governmental organizations and individuals. These include commercial and industrial businesses, residential home mortgages, housing developments, hospitals, convention centers, sports stadiums, and industrial pollution abatement programs.
- If a district wants to get the benefit of the lower tax exempt interest rate, bond counsel needs to make a determination that there is no private use (including use by the federal government) and that the other rules of the federal tax code are followed.
- A tax exempt bond issue will require that the district comply with certain restrictions on the use of proceeds and the investment of proceeds. In particular, unless the district meets the small issuer exception (less than 5 million of tax exempt debt in a calendar year), the ability of the district to earn more on its investment of bond proceeds than it pays, will be limited. This difference between the rate that the district invests at (e.g. 5%) and the rate that that district pays on its debt (e.g.4%) is called the "arbitrage". The 1% arbitrage in this example will need to be rebated to the federal government unless the district meets one of the rebate exceptions.
- There are also restrictions on when you are allowed to reimburse yourself from bond proceeds, how far ahead of the start of construction you can issue bonds (you must have the reasonable expectation to spend the proceeds in 3 years) and a variety of other federal tax rules that you must consult with bond counsel on if you want your bond issue to be tax exempt.

CONSTITUTIONAL AND STATUTORY REQUIREMENTS

Authorization - Voter Approval

Oregon Law requires that all Unlimited-Tax General Obligation (ULTGO) bonds be authorized by a vote of the people. It is recommended that municipalities hire a bond counsel prior to the bond election to ensure that all requirements are met for a legal bond election. In Oregon, a ULTGO must be used for capital construction and improvements.

Securing approval of ULTGO bond authority requires considerable effort. A variety of approaches are available to gain public support for bond issues. The following are some examples:

- Attitude polls within a community may be helpful in determining aspects of a project which will require further justification, research, or redesign.
- Civic groups may be helpful in organizing campaigns.
- A bond issue citizens' committee that represents various interests might be formed to assist with the campaign.
- Public meetings should be held to present the issue to the community.
- Question and answer leaflets based on attitude polls may be prepared and distributed.
- As Election Day approaches, door-to-door canvassing is helpful to answer questions and encourage a favorable vote.

Of course, under Oregon law, no public resources (i.e., funds or employee time) may be used to advocate a pro or con position regarding a ballot measure. Accordingly, any printed materials must be purely informational or explanatory in nature. Note that bond issues may be resubmitted to the voters if they are not initially approved. Revenue bonds may be issued under the authority of Oregon Revised Statute Chapter 287A without voter approval, unless the electorate exercises the right of referendum. An exception is People's Utility Districts (ORS 261.355), which must hold an election for the authorization of certain revenue bonds.

Resolutions

The undertaking of an eligible project and subsequent issuance of bonds in their support must be initiated by official action of the local government or municipality's governing body. Generally, this is accomplished by the board of directors or commissioners of a special district or other elected or appointed public body adopting a resolution, order, or ordinance authorizing the project and the sale of bonds.

In the case of an ULTGO bond, the issue must also be put to the voters of the municipality for approval. The resolution authorizing the issuance and sale of bonds should be prepared by bond counsel and reviewed by the municipality's investment banker and local attorney, as applicable.

The resolution should include at least the following:

- The purpose in general terms, for which the bond proceeds are to be expended. For example, whether the debt is incurred for capital construction or capital improvements.

- Whether the issue is expected to be taxable or tax-exempt and whether or not it will qualify for bank qualified status.
- The estimated total outlay or maximum par amount of the issue.
- The time period authorized, maturity, or maximum life of the issue.
- The classification of the indebtedness. Whether or not the proposed indebtedness is outside the limitation imposed by Article XI, Section 11, Oregon Constitution (subject to or not subject to Measures 5 and 50 limits and restrictions).
- Type of sale (e.g., competitive or negotiated).
- Maximum effective rate of interest the issues will bear (e.g., 7% -- this will vary depending on market conditions).
- Terms and conditions by which the bonds may be redeemed prior to maturity.
- Form and denominations of the issues (e.g., registered form and in \$5,000 denominations).
- Other terms and conditions related to the bond sale.
- Delegation to any elected, appointed official or other public body the authority to determine particulars of the issue (e.g., maturity dates, principal amounts, interest rates, etc.). (ORS 287A)
- In the case of revenue bonds issued, the authorizing resolution must provide that no bonds may be sold or purchase agreement executed, for at least 60 days following the publication of public notice or after the 30 day ordinance period. (ORS 287A).
- The authorizing resolution must provide that electors can file a petition asking the question of whether to issue revenue bonds referred to a vote. (ORS 287A)
- The initial resolution should also include reimbursement language if the local government intends to reimburse itself from revenue bond proceeds for expenditures made from other funds.

Debt Limits (See “Legal Authority” Above)

There are numerous statutory and constitutional limitations that affect the amount of debt that can be issued by a given local government, municipality, district, or agency.

A statewide limitation is Section 11b, Article XI of the Oregon Constitution, which limits the amount of property taxes that can be imposed by local governments. This limit may be raised, however, to pay for voter approved general obligation bonds used for capital

construction or improvements. There are also debt limitations mandated by Oregon law and statutes that are specific to the various state and local government agencies.

The final level of debt limitation for Oregon local governments are imposed by covenants, municipal charters, and local ordinances. To assist local government officials and debt managers in making decisions regarding bonded debt issues, it is recommended that local governments include a provision detailing applicable statutory debt limitations in their formal debt policy.

The Oregon State Treasury Debt Management Division prepares overlapping debt reports. The report provides assessed valuation, percent of overlap, overlapping gross bonded debt, and overlapping net direct debt for all districts that overlap a specific district. Overlapping debt reports may be obtained on request from the Debt Management Division (OAR 170-061-015).

RESOURCES

Local Improvements and Works Generally (ORS 223):

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors223.html

Public Borrowing and Bonds Generally (ORS 287A):

http://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors287A.html

Questions regarding special district finance issues contact:

Mr. David Ulbricht, Managing Director (503.472.9965 or dulbricht@rwbaird.com)

Ms. Johanna Perrini, Vice President (414.298.7780 or jperrini@rwbaird.com)

Ms. Claire Peterchak, Vice President (425.828.4060 or cpeterchak@rwbaird.com)

Ms. Rebecca Moskonas (414.765.3928 or rmoskonas@rwbaird.com)

Robert W. Baird & Co., Inc.

Public Finance

328 NE Davis Street, Suite 3

McMinnville, Oregon 97128

www.rwbaird.com/publicfinance