

CHAPTER 1: DISTRICT POLICIES

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## **POLICY 1.1: GOVERNANCE BY POLICIES**

### **A. GOVERNANCE BY POLICIES**

**The primary duty and function of the Board of Directors is to establish policies for the governance of the District. It is the policy of the Board to delegate to the Chief Executive Officer and staff the responsibility for the day-to-day administration of the District, in a manner consistent with the policies and directions of the Board.**

### **B. COMPLIANCE WITH LAW**

Policies shall comply with all applicable federal, state and local laws and regulations. If any policy or portion thereof is found to conflict with any local, state, or federal law or regulation, such policy shall be deemed void without further Board action. It shall be the responsibility of all District personnel to bring any such conflict to the Board's attention immediately upon discovery.

### **C. COMPLIANCE WITH POLICIES**

All District personnel shall comply with the policies adopted by the Board of Directors. Any failure to comply shall constitute grounds for disciplinary action, including termination.

### **D. POLICIES DO NOT CREATE RIGHTS**

Policies of the District shall not create any enforceable right, contract, employment agreement or expectation on the part of any person; and any deviation from a District policy shall not in itself render any District action invalid, void or voidable, nor shall such deviation constitute evidence of negligence. The Board may deviate from policy when to do so serves the public interest or would avoid hardship as the Board may determine

## **POLICY 1.2: ADOPTION, AMENDMENT AND REPEAL OF POLICIES AND OTHER REGULATIONS**

### **A. BOARD ADOPTION, AMENDMENT AND REPEAL OF POLICIES AND OTHER REGULATIONS**

The Board shall base its regulations on the best available information and input from affected parties. Whenever the Board enacts, amends or repeals any policy or other regulation, it shall do so in accordance with ORS 198.510 to 198.600.

## **POLICY 1.3: MAINTENANCE AND DISTRIBUTION OF POLICY MANUALS**

### **A. COMPILATION AND REVIEW OF POLICY MANUALS**

The Fire Chief shall be responsible for the compilation of all of the policies adopted by the Board into a District Policy Manual.

The Board shall be responsible for reviewing and updating District policies by reviewing one or more policies at each monthly Board meeting. This shall be an ongoing process to ensure current, accurate, and effective policies.

### **B. DISTRIBUTION OF POLICY MANUALS**

Policy manuals will be distributed as follows:

1. Hard copies to Staff
2. Electronic updates to the District's Attorney
3. Electronic copy on the District server

### **C. DISTRICT POLICY MANUAL TO BE AVAILABLE TO THE PUBLIC**

The Policy Manual is public record. At least one copy of the updated manual shall be available for inspection and use by the public at the District's main business office during regular business hours.

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## **POLICY 2.1: MEMBERSHIP ON THE BOARD OF DIRECTORS**

### **A. POSITIONS AND TERMS**

1. The Board of Directors of the District shall consist of five members serving four year staggered terms. No person shall be eligible to be a Board member who is not at the time of election or appointment an elector or property owner within the District.
2. Oregon Revised Statutes Chapter 478 provides for each Board member to be identified by a position number. Position numbers shall be transferred to the successors of each Board member. *Policy Adopted 12/77*
3. All Board members shall serve at large.

### **B. ELECTION OF BOARD MEMBERS**

The election of Board members shall be conducted as provided by ORS Chapter 478.

### **C. QUALIFICATIONS**

No person elected or appointed to the Board shall be sworn in unless such person meets the qualifications for office set forth in ORS Chapter 478. If questions exist regarding the eligibility of any candidate, the Board shall obtain an opinion from legal counsel prior to swearing in such person.

No person shall be eligible to serve as a Director of the District if that person is a firefighter of the District, paid or otherwise, or otherwise employed by the District. *Ordinance 2 2/90*

### **D. 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.

### **E. TERM OF OFFICE -- STARTING DATE**

Except where the Board or the County Commission is filling a vacancy on the Board, terms of office shall start on July 1.

### **F. 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 Commission of Marion/Linn County. The period of service of a person appointed to fill a vacancy shall expire on the 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 next following his or her election.

## **POLICY 2.2: POWERS AND DUTIES OF THE DISTRICT'S BOARD OF DIRECTORS**

### **A. 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.

### **B. 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.

### **C. 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.

### **D. 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. As public officials they are required to comply with Oregon ethics laws. Each board member shall be provided with a copy of the Oregon Government Ethics Commissions Guide for Public Officials.

### **E. 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.

### **F. DISCIPLINE**

The Board has the right to enforce its rules and expect ethical and honorable conduct from its members. The Board will make every effort to resolve an issue by speaking to the individual privately. Should disciplinary action need to be taken, the following actions may be considered:

- A motion that the member must apologize;
- A motion that the member must leave for the remainder of the meeting;
- A motion to censure the member; or
- A motion to suspend a member's rights for a designated period of time.

### **G. MANAGEMENT AND COMMUNICATION BETWEEN BOARD AND STAFF**

The primary responsibility of the Board is to make policy level decision for the district. Management of the daily operations and staff is the responsibility of the Fire Chief. 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 or 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 president, who will then communicate the question, request or concern to the Fire Chief.

### **POLICY 2.3: BOARD MEMBER ORIENTATION**

#### **A. 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.

#### **B. 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:

1. New members shall be invited to attend and participate in public Board meetings prior to being sworn in.
2. The Chief Executive Officer shall provide material pertinent to District meetings and respond to questions regarding such material.
3. New members shall be invited to meet with the Chief Executive Officer and other District personnel to discuss the services each performs for the District.
4. The Chief Executive Officer shall give each new Board Member:
  - a. An updated copy of the District's Policy and Procedure Manual.
  - b. Copies of the minutes of all Board meetings, except for executive sessions, for the preceding twelve (12) months.
  - c. A copy of the fiscal year budget in effect at the time the Board member takes office.
  - d. Copies of all such documents as the attorney for the District may recommend with respect to any pending claims or lawsuits.
  - e. A list of all District personnel by position.
  - f. Such other materials as the Board may direct or the Chief Executive Officer deems appropriate.

### **POLICY 2.4: REIMBURSEMENTS OF BOARD MEMBER EXPENSES**

A. 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, presently set at \$15.00. Board Members shall also be reimbursed for their actual and reasonable travel and other expenses incurred in the performance of official District duties. *Policy Adopted 7/81*

B. REIMBURSEMENT DOCUMENTATION

Board Members incurring reimbursable expenses shall submit proper documentation of such expenses to the Chief Executive Officer or such officer's designee for reimbursement by the District.



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## **POLICY 3.1: DUTIES OF THE PRESIDENT**

### **A. DUTIES OF THE PRESIDENT**

1. 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.
2. The President shall consult with the Clerk of the Board regarding the preparation of each Board meeting agenda.
3. The President shall have the same right as other members of the Board to discuss and to vote on questions before the Board.
4. The President may call Special Meetings of the Board as described by the Oregon Public Meetings Law and Policy 4.4.
5. 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.

## **POLICY 3.2: DUTIES OF THE VICE-PRESIDENT**

### **A. DUTIES OF THE VICE-PRESIDENT**

1. 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 in Policy 3.1. The Vice-President shall have such other powers and duties as a majority of the Board may from time to time determine.

## **POLICY 3.3: DUTIES OF THE SECRETARY OF THE BOARD**

### **A. DUTIES OF THE SECRETARY OF THE BOARD**

1. The Secretary shall sign all records of proceedings approved by the Board.

## **POLICY 3.4: DUTIES OF THE CLERK OF THE BOARD**

### **A. DUTIES OF THE CLERK OF THE BOARD**

The Clerk of the Board shall be the Chief Executive Officer of the District and assisted by the Administrative Assistant as designated by the Board. The duties of the Clerk of the Board are:

1. Respond directly to routine correspondence.
2. Handle correspondence of special interest to the Board as follows:

- a. Draft replies in advance, when possible, for Board consideration.
  - b. Seek instruction for reply when necessary.
  - c. Prepare correspondence as the Board directs.
3. Prepare for Board meetings.
    - a. Prepare the agenda with the advice of the President.
    - b. Maintain a calendar for the Board's unfinished business.
    - c. Call to the Board's attention legal requirements and those matters for which the District is responsible.
    - d. Draft policy motions at the request of any Board member.
  4. Board meeting duties:
    - a. Attend Board meetings at the direction of the Board.
    - b. Make physical arrangements for Board meetings.
    - c. Provide notice of Board meetings in accordance with the Public Meetings Law.
  5. Maintain and update the District's Policy and Procedure Manual.

## **POLICY 3.5: GOVERNANCE RESPONSIBILITIES**

### **A COMMUNICATIONS**

1. Develop regular channels of communication with board members and staff.
2. Encourage participation of staff members on appropriate committees.
3. Develop procedures for bringing staff opinions and recommendations to the board, as well as board opinions and decisions to the staff.
4. Invite non-board members, other local governments, and group to board or committee meetings or other types of board sponsored assemblies to explore and develop approaches to common concerns.
5. Recognize that certain information obtained at board meetings may be non-public and confidential making disclosure a breach of trust.
6. Respect the opinion of other members and accept the principle of majority rule in board decisions.

### **B. FINANCIAL**

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

### **C. POLICIES, OBJECTIVES AND PLANS**

1. Abide by and become familiar with all laws and policies governing the operation of the district.
2. Approve the annual strategic plan or plan of operations.
3. Approve policies for the organization.

4. Recognize that the Fire Chief should have full administrative authority for properly discharging the duties of managing the operation with the limits of the established board policy. The board's basic function is policy making – not administrative.
5. Develop and approve long-range plan of growth and development for the district.
6. Approve specific important projects.
7. Approve any significant departure from established plans or policy.
8. Receive and pass on committee or other planning body recommendations.
9. Ensure that program objectives are assigned to the proper planning or implementing subgroups.
10. Where applicable, bring other local governments or community groups into the planning and decision-making process.
11. Approve contracts binding the district.
12. Approve major changes in the district's organization or structure.
13. Approve board plans of action.
14. Pass district resolutions or adopt ordinances.

D. MANAGEMENT

1. Select the district board president and other officers
2. Hire the Fire Chief
3. Define the duties and responsibilities for the Fire Chief
4. Select legal counsel and consultants for the board
5. Approve contracts for professional services required by and for the board
6. Authorize officers or board agents to enter into contracts or to sign other written instruments and to take financial actions.
7. Approve the plan, form, and amount of management compensation, that is, salaries, bonuses, vacation, travel and so on.
8. Evaluate the performance of the Fire Chief annually.
9. Approve the form and amount of reimbursement for board members.
10. Approve programs for management development
11. Provide advice and consultation to management on matters within the purview of the board's responsibilities.

E. EMPLOYEE RELATIONS

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

F. CONTROL

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

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

G. BOARD OF DIRECTORS

1. Motivate board members to accept positions of leadership and responsibility.
2. Appoint, change, or abolish committees of the board.
3. Define powers and responsibilities of committees of the board.
4. Do not make commitments on any matter that should come before the board as a whole.
5. Recognize that an individual board member has no legal status to act for the entire board.
6. 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.
7. Discussions on matters of overall policy outside of regular board meetings can violate the open meetings law.

H. PUBLIC ACCOUNTABILITY

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

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**POLICY 4.1: PREPARATION FOR BOARD MEETINGS**

**A. 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.

**B. DISTRIBUTION OF AGENDA TO THE PUBLIC**

The proposed Agenda will be simultaneously 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.

**POLICY 4.2: BOARD MEETING AGENDA**

**A. MEETING AGENDA**

The Clerk of the Board shall draft the Agenda after conferring with the President of the Board. The following format shall be observed:

<b>AGENDA</b>		
<b>STAYTON FIRE DISTRICT</b>		
<b>BOARD OF DIRECTORS REGULAR (SPECIAL) MEETING</b>		
<b>(Date)</b>	<b>(Room Location)</b>	<b>(Building/Station Location)</b>
		<b>(Address)</b>
		<b>(Time)</b>
<b>CALL TO ORDER:</b>		
<b>ROLL CALL:</b>		
<b>FLAG SALUTE:</b>		
<b>MINUTES:</b>	<b>(Approval of Prior Board Meeting Minutes)</b>	<b>ACTION</b>
<b>COMMENTS FROM THE PUBLIC/ITEMS NOT ON THE AGENDA:</b>		
<b>BUSINESS ITEMS:</b>		
A)		<b>DISCUSSION/ACTION/INFORMATION</b>
B)	(etc.)	<b>ACTION</b>
<b>DIRECTORS' REPORTS:</b>		
<b>CHIEF'S REPORT:</b>		
<b>ASSISTANT CHIEF'S REPORT:</b>		
<b>ADJOURNMENT:</b>		

**POLICY 4.3: NOTICE AND LOCATION OF MEETINGS**

**A. 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.

**B. COMPLIANCE WITH LAW**

All meetings shall be conducted in accordance with the Oregon Public Meetings Law, ORS 192.610-192.710, and 192.990.

**C. LOCATION OF MEETINGS**

All meetings shall be held within the geographic boundaries of the District, except for training sessions held without any deliberative action, except for special meetings held within the geographic boundaries of an adjoining District attending the meeting. 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.

**D. REGULAR MEETINGS**

The Board shall hold regular monthly meetings on the second Monday of each month. Such meetings shall be held at 7:30 p.m. in keeping with the following schedule, or at such other places and times as the Board may designate from time to time: *Adopted 12/94*

<b>Jan.</b>	Stayton Fire Station	<b>May</b>	Stayton Fire Station	<b>Sept.</b>	Marion Fire Station
<b>Feb.</b>	Stayton Fire Station	<b>June</b>	Stayton Fire Station	<b>Oct.</b>	Stayton Fire Station
<b>March</b>	Mehama Fire Station	<b>July</b>	Elkhorn Fire Station	<b>Nov.</b>	Stayton Fire Station
<b>April</b>	Stayton Fire District	<b>Aug.</b>	Stayton Fire District	<b>Dec.</b>	Stayton Fire District

**E. MEETINGS HELD BY TELEPHONE**

Meetings held by telephone or other electronic communication are 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 meetings held by telephone or other electronic means may be listened to by members of the public. ORS 192.670(2). The media shall be provided access to a listening location whenever executive sessions are conducted electronically, unless such executive sessions are exempt from media attendance pursuant to ORS 192.670(1) and 192.660(3).



F. SPECIAL MEETINGS

The Board shall hold special meetings at the request of the President or any two 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 forty-eight (48) hours' public notice. *Adopted 2/87*

G. 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.

H. 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:

U.S. Post Office (Stayton)

Stayton City Hall

Stayton Fire Hall

Written notice shall also be sent to any persons which 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.

I. 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.

**J. 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:

1. 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.
2. If a meeting is held upon less than 48 hours' notice, the District shall make reasonable efforts to have an interpreter present.
3. The requirement for an interpreter does not apply to emergency meetings.
4. 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.

**POLICY 4.4: CONDUCT OF BOARD MEETINGS**

**A. 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.

**B. AUTHORITY TO CONDUCT MEETINGS**

The President or other presiding officer at any Board meeting shall have full authority to conduct the meeting. Board members shall be respectful of one another and follow the direction of the presiding officer. They should avoid personal attacks and keep discussion on policy, not individuals. 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.

**C. 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.

D. ELECTRONIC EQUIPMENT

The authority to control the meetings of the District Board extends to control over equipment such as cameras, audio 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.

E. 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.

F. QUORUM REQUISITES

Three members shall constitute a quorum. If only a quorum is present, a unanimous vote shall be required to take final action.

G. 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.

H. CONFLICT OF INTEREST/EX PARTE CONTACTS

In the event of a conflict of interest, a member of the Board shall declare such conflict and abstain from voting. In the event any member of the Board has had any ex parte contact regarding a matter in which the Board is acting in a judicial capacity, the member shall declare such contact prior to participating in any vote on the matter.

I. 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.

1. Smoking Policy at Other Locations: If a meeting is held at a location other than one which is "rented, leased or owned" by the State or a political subdivision, 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.

2. 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.

J. ADJOURNMENT

The meeting shall be adjourned by a majority vote or as a result of the loss of a quorum.

**POLICY 4.5: EXECUTIVE SESSIONS**

A. NOTICE

Public notice of executive sessions shall be provided in accordance with Policy 4.3.

B. NO FINAL DECISIONS

The Board shall not take any votes during any executive session, nor make any final decisions during any executive session. This policy, however, shall not prohibit full discussion of Board members' views during executive sessions.

C. PURPOSES

Executive sessions shall be held only for the purposes allowed by State statutes (ORS 192.660(i)).

D. 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.

**POLICY 4.6: MINUTES OF MEETINGS**

A. 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:

1. All members of the Board present.
2. All motions, proposals, resolutions, orders, ordinances and measures proposed and their disposition.
3. Results of all votes, including the vote of each member by name.
4. The substance of any discussion on any matter.

5. Subject to ORS 192.410 - 192.505 relating to public records, a reference to any document discussed at the meeting.

**B. MINUTES OF EXECUTIVE SESSIONS**

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 audio recording. If minutes of an executive session are kept by audio recording, written minutes are not required, unless otherwise provided by law. ORS 192.650(2).

**C. 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).

**D. RETENTION**

Any audio 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 the State Archivist pursuant to ORS 192.105.

**E. 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).

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## **POLICY 5.1: PUBLIC RECORDS**

### **A. COMPLIANCE**

The District shall fully comply with the Oregon Public Records Law, ORS 192.410-192.505. A copy of this law is contained in the Appendices to this Manual.

1. 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.
2. 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 Board 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)*.
3. Certified Copies: Certified copies of non-exempt public records shall be furnished upon request, and receipt of payment therefore.

### **B. 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 of the District.

### **C. 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 paragraph B.4, 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.

### **D. UNAUTHORIZED ALTERATION, REMOVAL OR DESTRUCTION OF ORIGINALS**

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.

## E. PATIENT CONFIDENTIALITY

1. Policy: It is the responsibility of the District not to breach the confidentiality of a patient's medical records at any time. This applies to gaining medical information from the patient at the scene, written information on Patient Care Report Forms (PCRF), storing patient records and appropriate release of patient information as provided in OAR 333-550-090 and other applicable laws.
2. Prehospital Patient Care Forms Quality Assurance Review: To protect the confidentiality of patient information during quality improvement sessions, access to the PCRF shall be limited. For the purpose of formal case reviews, all information that may identify the patient shall be edited from the PCRF. This will be performed by the EMS Coordinator or IMS/Project Manager. All persons having access to PCRFs must sign a confidentiality statement.
3. Storage and Destruction of Prehospital Care Report Form Requirements:

**Storage:** To ensure the confidentiality of patient information by limiting access to PCRFs *all copies, with the exception of copy of PCRF provided to the transporting medic*, of the PCRFs shall be placed in the PCRF lock boxes that are provided at each station. The District EMS Coordinator will pick up PCRF forms on a regular basis and turn them into the IMS/Project Manager at the Main District office for record keeping

**Destruction:** Except for a minor patient, *unless a patient is notified*, the district may not destroy a medical record or report about a patient for 10 years after the record or report is made, or longer if required by law or regulation  
In the case of a minor patient, a medical record or report about a minor patient may not be destroyed until the patient attains the age of majority plus three years or for 10 years after the record or report is made, whichever is later, *unless the parent or guardian of the minor patient is notified*.

### *The notification must:*

- A. Be made by first class mail to the last known address of the patient;
- B. Include the date on which the record of the patient shall be destroyed; and
- C. Include a statement that the record or synopsis of the record, if wanted, must be retrieved at a designated location within 30-days of the proposed date of destruction.

The destruction of patient care forms shall be accomplished in the following manner. PCRFs that are past the date of required storage shall be shredded or destroyed in a manner that prevents patient information release to unauthorized personnel.



Under no circumstances shall an employee, volunteer or agent make a copy of a PCRf for their own personal record or remove the original or a copy of a completed PCRf from the files or facilities without having written approval of the District.

All PCRfs may be made available for inspection and duplication when requested by the Oregon Health Division as authorized by ORS 41.675 and 41.685.

4. Procedure Release of Patient Information:

A. The pre-hospital care report is considered privileged information and shall be treated as such. Access to same, upon completion, will be restricted to authorized staff only (treating medic personnel, EMS Officer, billing staff, Supervising Physician).

B. PHCR or detailed information concerning patient medical history shall not be copied except as required for CONFIDENTIAL quality improvement review EXCEPT that:

Copies may be provided to: upon receipt of a release form (see attached Patient Release of Information) to;

a. The patient (with identification)

b. The patient's legal representative, upon written request/release signed by the patient

c. The patient's legal guardian (with proof of guardianship and identification) or a written request from the legal guardian, along with proof of legal guardianship

d. Person providing a subpoena for the record

C. The department will cooperate within the above limits as much as possible to assist law enforcement investigative efforts; however, law enforcement agencies shall not be exempt from obtaining a subpoena for copies of the records. Law enforcement personnel may be given patient name, age, DOB, address, and relevant information verbally from the PHCR.

D. The release of information to the media shall be limited to the Chief, Assistant Chief, or designated representative thereof.

E. The following information may be released to the media:

a. Time of call

b. Nature of incident and number of patients

c. General statement concerning injuries (minor, serious, critical)

d. Hundred block and street of incident or nearest intersection

e. Transport destination

- f. Name (names of patients under 18 are confidential and shall not be released), age, and hometown of the patient if asked. (In the event of a fatality, name shall be withheld)
- F. The District will not release to the media
  - a. The full address of the patient
  - b. Specific medical history details
- G. Personnel are reminded to treat patient information as confidential and not discuss patient information outside the work place.

**STAYTON FIRE DISTRICT**

**CONSENT TO RELEASE CONFIDENTIAL MEDICAL INFORMATION**

**Name of Health Care Provider:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**The undersigned hereby authorizes and consents to the release and disclosure of medical information.**

I authorize \_\_\_\_\_

*(Name of Providing Agency)*

to release information contained in medical records of \_\_\_\_\_

*(Name of Patient)*

to \_\_\_\_\_

*(Name and Address of Requesting Agency)*

This consent may be revoked at any time, except to the extent that action has already been taken. This consent for release of medical information automatically expires ninety (90) days after the date of signature.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature of Patient or Legal Responsible Party*

\_\_\_\_\_  
*Title of Legal Responsible Party*

\_\_\_\_\_  
*Printed Name of Patient*

## **F. REQUEST FOR DISCLOSURE OF PUBLIC RECORDS PROCEDURE**

Procedure for making public record requests:

1. Person making the request shall obtain and complete a Public Records Request form from one of Stayton Fire District's Human Resource personnel.
2. Requests may be mailed, to Stayton Fire District, 1988 W. Ida St., Stayton OR 97383, or faxed to (503) 769-1487, emailed or dropped off in person.
3. Stayton Fire District will respond to all public records in accordance with current Oregon Public Records laws.

When a request is submitted in writing, the district must respond within five business days acknowledging the receipt of the request. Acknowledgment must include one of the following:

- Statement confirming that the public body is the custodian of some or all of the requested records;
- Statement informing the requester that the public body is not the custodian of the requested records;
- Statement notifying the requester that the public body is uncertain whether the public body is the custodian of the requested records.

The District will provide written notification of the estimated fees for providing the requested records if the cost is more than \$25 and receive confirmation from the requester to proceed with making the requested records available.

District has an additional 10 business days after acknowledging receipt of request, to fulfill the request or issue a written response estimating how long fulfillment will take.

The district is not subject to this response timeframe if it is awaiting a response from the requester seeking clarification of the inquiry or if the requester has not agreed to pay for the records or if other considerations that apply such as:

- Complicated requests
- Large volume of requests
- Requests involving documents not readily available or if the necessary staff are unavailable to fulfill the request

4. The district fee schedule will be used in calculating fees for public records requests. (see Policy 12.10)

**G. REQUEST FOR DISCLOSURE OF PUBLIC RECORDS FORM**

Request Type:  Fire/Incident Report  Other \_\_\_\_\_

**Person Requesting Record:**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_ Email: \_\_\_\_\_

Date of Request: \_\_\_\_\_ Estimated Cost: \$ \_\_\_\_\_

Requester confirmation to accept estimated cost and proceed: \_\_\_\_\_ (Initial)

Billing Preference - Send invoice by:  Email  Fax  Mail

**Record Request Information:**

I wish to \_\_\_ inspect \_\_\_ receive a copy of the following specific record(s) from Stayton Fire District, 1988  
W. Ida St. Stayton OR 97383:

\_\_\_\_\_  
\_\_\_\_\_

Record Date(s) From: \_\_\_\_\_ To: \_\_\_\_\_

Copy Format:  Paper copy  Electronic copy  CD

\*\*\*\*\*Business Office Use\*\*\*\*\*

\_\_\_ Allow access - Date/Time to review: \_\_\_\_\_

\_\_\_ We do not have the record(s)

\_\_\_ Deny access

The records you have requested are legally exempt from public disclosure by the following  
authority: \_\_\_\_\_

Fire District personnel contacted: \_\_\_\_\_

Date contacted: \_\_\_\_\_

Fire District personnel certifying the information provided is a true copy of the paper or electronic  
record: \_\_\_\_\_ Date: \_\_\_\_\_

# **PUBLIC CONTRACTING RULES**

## **2022**

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## PUBLIC CONTRACTING RULES 2022

### DIVISION 46

#### GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTING

##### 137-046-0100

###### **Application; Federal Law Supremacy**

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279A.065

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

##### 137-046-0110

###### **Definitions for the Rules**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **137-046-0120**

##### **Policy**

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

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

#### **137-046-0130**

##### **Application of the Code and Rules; Exceptions**

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

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

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

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

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

### **MINORITIES, WOMEN AND EMERGING SMALL BUSINESSES**

#### **137-046-0200**

##### **Affirmative Action; Limited Competition Permitted**

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

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

#### **137-046-0210**

##### **Subcontracting to and Contracting with Emerging Small Businesses; DBE Disqualification**

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

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

(b) A business enterprise that is:

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

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

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



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

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

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

(4) DBE Disqualification.

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

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

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

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

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

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

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

(F) State the proposed DBE Disqualification period; and

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

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

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

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

(B) The grounds for DBE Disqualification; and

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279A.065

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

## CONTRACT PREFERENCES

### 137-046-0300

#### **Preference for Oregon Goods and Services; Nonresident Bidders**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **137-046-0310**

##### **Reciprocal Preferences**

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0320**

##### **Preference for Recycled Materials**

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

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

Stat. Auth.: ORS 279A.065

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

## **COOPERATIVE PROCUREMENT**

#### **137-046-0400**

##### **Authority for Cooperative Procurements**

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

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0410**

##### **Responsibilities of Administering Contracting Agencies and Purchasing Contracting Agencies**

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

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

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

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0420**

##### **Joint Cooperative Procurements**

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0430**

##### **Permissive Cooperative Procurements**

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0440**

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

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

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

- (a) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that the Purchasing Contracting Agency will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
- (b) The Purchasing Contracting Agency's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or
- (c) At the time the Purchasing Contracting Agency enters into the Contract or Price Agreement, the Purchasing Contracting Agency reasonably contemplates, based on historical or other data available to the Purchasing Contracting Agency, that the total payments it will make for Goods or Services or Personal Services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

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

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

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

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0450**

##### **Interstate Cooperative Procurements**

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0460**

##### **Advertisements of Interstate Cooperative Procurements**

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

(a) The Administering Contracting Agency;

(b) The Purchasing Contracting Agency;

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

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

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

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

Stat. Auth.: ORS 279A.065

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

#### **137-046-0470**

##### **Protests and Disputes**

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

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

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

Stat. Auth.: ORS 279A.065

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

**137-046-0480**

**Contract Amendments**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

## PUBLIC CONTRACTING RULES 2022

### DIVISION 47

#### PUBLIC PROCUREMENTS FOR GOODS OR SERVICES GENERAL PROVISIONS

##### 137-047-0100

###### Application

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

##### 137-047-0110

###### Definitions

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

#### SOURCE SELECTION

##### 137-047-0250

###### Methods of Source Selection

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.050

##### 137-047-0255

###### Competitive Sealed Bidding

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

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

(a) General Information.

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

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

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

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

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

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

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

- (E) A statement that each Bidder must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120(1);
- (F) Bidder's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3));
- (G) How the Contracting Agency will notify Bidders of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-047-0430);
- (b) **Contracting Agency Need.** The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.055, the Contracting Agency's description of its need to purchase must:
- (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
- (B) Outline the anticipated duties of the Contractor under any resulting Contract;
- (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
- (D) Unless the Contracting Agency for good cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services that the Contracting Agency is purchasing.
- (c) **Bidding and Evaluation Process.**
- (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
- (B) The Contracting Agency shall set forth objective evaluation criteria in the Solicitation Document in accordance with the requirements of ORS 279B.055(6)(a). Evaluation criteria need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall be reasonable estimates of actual future costs based on information the Contracting Agency has available concerning future use; and
- (C) If the Contracting Agency intends to Award Contracts to more than one Bidder pursuant to Rule 137-047-0600(4)(c), the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
- (d) Applicable preferences pursuant to ORS 279B.055(6)(b).
- (e) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385 and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
- (f) All Contract terms and conditions, including a provision indicating whether the Contractor can assign the Contract, delegate its duties, or subcontract the delivery of the Goods or Services without prior written approval from the Contracting Agency. Pursuant to ORS 279B.055, the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
- (A) The Contracting Agency's reduction or withholding of payment under the Contract;
- (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the statement of work or to meet the performance standards established by the resulting Contract; and
- (C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.
- (3) **Good Cause.** For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specification otherwise. A Contracting Agency will have Good Cause to specify otherwise under the following circumstances:
- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with or will operate efficiently or effectively with components, equipment, parts, Services or information technology including hardware, Services or software with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance, techniques, scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the



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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

### **137-047-0257**

#### **Multistep Sealed Bidding**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.055

### **137-047-0260**

#### **Competitive Sealed Proposals**

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

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

#### **(a) General Information.**

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

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

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

- (iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.
- (B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means (See Rule 137-047-0330 for required provisions of electronic Proposals);
- (C) The time, date and place of Opening;
- (D) The office where the Solicitation Document may be reviewed;
- (E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-046-0210(3)); and
- (F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See Rule 137-047-0430).
- (b) Contracting Agency Need. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. Pursuant to ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:
  - (A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;
  - (B) Outline the anticipated duties of the Contractor under any resulting Contract;
  - (C) Establish the expectations for the Contractor's performance of any resulting Contract; and
  - (D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning and land surveying services or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.
- (c) Proposal and Evaluation Process.
  - (A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process.
  - (B) The Contracting Agency may set forth selection criteria in the Solicitation Document per ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall:
    - (i) Afford the Contracting Agency the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;
    - (ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and
    - (iii) Permit the Contracting Agency to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the Contracting Agency of entering into a Contract based on each Proposal, considering information available to the Contracting Agency and subject to the understanding that the actual Contract costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the Contracting Agency contracts.
  - (C) If the Contracting Agency intends to Award Contracts to more than one Proposer pursuant to Rule 137-047-0600(4)(d), the Contracting Agency must identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award.
  - (d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2), 282.210, and Rules 137-046-0300 through 137-046-0330.
  - (e) For Contracting Agencies subject to ORS 305.385, Proposer's certification of compliance with the Oregon tax laws in accordance with ORS 305.385, as applicable and ORS 279B.110(2)(e). See, Rule 137-047-0640(1)(c)(F)(v).
  - (f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See Rule 137-047-0262.)
  - (g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:
    - (A) The Contracting Agency's reduction or withholding of payment under the Contract;
    - (B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

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

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract, and identify those contractual terms and conditions, if any, subject to negotiation per Rule 137-047-0262(3). Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under Rule 137-047-0550, but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable Contract terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under Rule 137-047-0420.

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

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

- (a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;
- (b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;
- (c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;
- (d) Any other circumstances in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods and Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065

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

### **137-047-0261**

#### **Procedures for Competitive Range, Multi-tiered and Multistep Proposals**

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

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

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

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

exclusion or Addendum. The failure to protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0262**

#### **Competitive Range, Discussions and Negotiations**

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

(a) Determining Competitive Range.

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

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

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

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

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

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

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

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

(A) Continue discussions with a particular eligible Proposer;

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

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

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

(a) The Contracting Agency may negotiate:

(A) The statement of Work;

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0263**

#### **Multistep Sealed Proposals**

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

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

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

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

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

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

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

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

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

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

- (F) That the Goods or Services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal.
- (G) Whether Proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through Addenda.
- (b) Addenda to the Request for Proposal. After receipt of un-priced technical Proposals, Addenda to the Request for Proposal shall be distributed only to Proposers who submitted un-priced technical Proposals.
- (c) Receipt and Handling of Un-priced Technical Proposals. Un-priced technical Proposals need not be opened publicly.
- (d) Evaluation of Un-Priced Technical Proposals. Un-priced technical Proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal.
- (e) Discussion of Un-priced Technical Proposals. The Contracting Agency may seek clarification of a technical Proposal of any Proposer who submits a qualified, or potentially qualified technical Proposal. During the course of such discussions, the Contracting Agency shall not disclose any information derived from one un-priced technical Proposal to any other Proposer.
- (f) Methods of Contractor Selection for Phase One. In conducting phase one, a Contracting Agency may employ any combination of the methods of Contractor selection that call for establishment of a Competitive Range or include discussions, negotiations, or best and final Offers as set forth in this rule.
- (g) Procedure for Phase Two. On the completion of phase one, the Contracting Agency shall invite each qualified Proposer to submit price Proposals. A Contracting Agency shall conduct phase two as any other competitive sealed Proposal Procurement except as set forth in this rule. No public notice need be given of the request to submit price Proposals because such notice was previously given.

Stat. Auth.: ORS 279A.065  
 Stats. Implemented: ORS 279B.060

**137-047-0265**  
**Small Procurements**

- (1) **Generally**. For Procurements of Goods or Services less than or equal to \$10,000 a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065 by direct selection or award without any competitive or solicitation process, subject to the procurement policies of Contracting Agency.
- (2) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as a small Procurement in accordance Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than \$12,500.

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

**137-047-0270**  
**Intermediate Procurements**

- (1) **Generally**. For Procurements of Goods or Services greater than \$10,000 and less than or equal to \$150,000, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.
- (2) **Written Solicitations**. For any intermediate Procurements, a Contracting Agency may use a Written solicitation to obtain quotes.
- (3) **Negotiations**. A Contracting Agency may negotiate with a Proposer to clarify its quote or offer or to effect modifications that will make the quote or offer acceptable or make the quote or offer more Advantageous to the Contracting Agency.
- (4) **Amendments**. A Contracting Agency may amend a Public Contract Awarded as an intermediate Procurement in accordance with Rule 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds \$150,000 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

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

**137-047-0275**  
**Sole-Source Procurements**

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

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

(2) **Public Notice.** If, but for the Contracting Agency's determination that it may enter into a Contract as a sole-source, a Contracting Agency would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, a Contracting Agency shall give public notice of the Contracting Agency's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055(4) and Rule 137-047-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The Contracting Agency shall give such public notice at least seven (7) Days before Award of the Contract, unless otherwise set forth in the notice.

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

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

Stats. Implemented: ORS 279B.075

#### **137-047-0280**

##### **Emergency Procurements**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080

#### **137-047-0285**

##### **Special Procurements**

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.085

#### **137-047-0290**

##### **Cooperative Procurements**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.205

## PROCUREMENT PROCESS

### 137-047-0300

#### Public Notice of Solicitation Documents

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

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

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

- (a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or
- (b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System pursuant to Rule 137-047-0330 instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b).

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

- (a) Where, when, how, and for how long the Solicitation Document may be obtained;
- (b) A general description of the Goods or Services to be acquired;
- (c) The interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with subsection 2(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;
- (d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class or classes of Goods or Services for which Persons must be prequalified;
- (e) The office where Contract terms, conditions and Specifications may be reviewed;
- (f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;
- (g) The scheduled Opening; and
- (h) Any other information the Contracting Agency deems appropriate.

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

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

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

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

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

### 137-047-0310

#### Bids or Proposals are Offers

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

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

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



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

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

Stat. Auth.: ORS 279A.065

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

### **137-047-0320**

#### **Facsimile Bids and Proposals**

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

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

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

- (a) A provision substantially in the form of the following: "A 'facsimile Offer,' as used in this Solicitation Document, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Contracting Agency via a facsimile machine";
- (b) A provision substantially in the form of the following: "Offerors may submit facsimile Offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A provision that requires Offerors to Sign their facsimile Offers;
- (d) A provision substantially in the form of the following: "The Contracting Agency reserves the right to Award the Contract solely on the basis of a facsimile Offer. However, upon the Contracting Agency's request the apparent successful Offeror shall promptly submit its complete original Signed Offer";
- (e) The data and compatibility characteristics of the Contracting Agency's receiving facsimile machine as follows:

- (A) Telephone number; and
- (B) Compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and

(f) A provision that the Contracting Agency is not responsible for any failure attributable to the transmission or receipt of the facsimile Offer including, but not limited to the following:

- (A) Receipt of garbled or incomplete documents;
- (B) Availability or condition of the receiving facsimile machine;
- (C) Incompatibility between the sending and receiving facsimile machine;
- (D) Delay in transmission or receipt of documents;
- (E) Failure of the Offeror to properly identify the Offer documents;
- (F) Illegibility of Offer documents; and
- (G) Security and confidentiality of data.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

**137-047-0330**

**Electronic Procurement**

**(1) Electronic Procurement Authorized.**

(a) A Contracting Agency may conduct all phases of a Procurement, including without limitation the posting of Electronic Advertisements and the receipt of Electronic Offers, by electronic methods if and to the extent the Contracting Agency specifies in a Solicitation Document, a request for quotes, or any other Written instructions on how to participate in the Procurement.

(b) The Contracting Agency shall open an Electronic Offer in accordance with electronic security measures in effect at the Contracting Agency at the time of its receipt of the Electronic Offer. Unless the Contracting Agency provides procedures for the secure receipt of Electronic Offers, the Person submitting the Electronic Offer assumes the risk of premature disclosure due to submission in unsealed form.

(c) The Contracting Agency's use of electronic Signatures shall be consistent with applicable statutes and rules. A Contracting Agency may limit the use of electronic methods of conducting a Procurement as Advantageous to the Contracting Agency.

(d) If the Contracting Agency determines that Bid or Proposal security is or will be required, the Contracting Agency should not authorize Electronic Offers unless the Contracting Agency has another method for receipt of such security.

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

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

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

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

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

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

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

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

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

(6) **Failure of the E-Procurement System.** In the event of a failure of the Contracting Agency's Electronic Procurement System that interferes with the ability of Persons to submit Electronic Offers, protest or to otherwise participate in the Procurement, the Contracting Agency may cancel the Procurement in

accordance with Rule 137-047-0660, or may extend the date and time for receipt of Electronic Offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

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

## BID AND PROPOSAL PREPARATION

### 137-047-0400

#### Offer Preparation

- (1) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the instructions set forth in the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to Opening in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.
- (2) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (3) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required by the Solicitation Document.
- (4) **Electronic Submissions.** If the Solicitation Document permitted Electronic Offers under Rule 137-047-0330, an Offeror may submit its Offer electronically. The Contracting Agency shall not consider Electronic Offers unless authorized by the Solicitation Document.

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

### 137-047-0410

#### Offer Submission

- (1) **Product Samples and Descriptive Literature.** A Contracting Agency may require product samples or descriptive literature if the Contracting Agency determines either is necessary or desirable to evaluate the quality, features or characteristics of an Offer. The Contracting Agency will dispose of product samples, or make them available for the Offeror to retrieve in accordance with the Solicitation Document.
- (2) **Identification of Offers.**
  - (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable. If the Contracting Agency permits Electronic Offers or facsimile Offers in the Solicitation Document, the Offeror may submit and identify Electronic Offers or facsimile Offers in accordance with these division 47 rules and the instructions set forth in the Solicitation Document.
  - (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (3) **Receipt of Offers.** The Offeror is responsible for ensuring the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

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

### 137-047-0420

#### Pre-Offer Conferences

- (1) **Purpose.** A Contracting Agency may hold pre-Offer conferences with prospective Offerors prior to Closing, to explain the Procurement requirements, obtain information, or to conduct site inspections.
- (2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer.
- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.

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

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

### **137-047-0430**

#### **Addenda to Solicitation Document**

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

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

(3) **Timelines; Extensions.**

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

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

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

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

### **137-047-0440**

#### **Pre-Closing Modification or Withdrawal of Offers**

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

(a) Bid (or Proposal) Modification; and

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

**(2) Withdrawals.**

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

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

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

(A) Bid (or Proposal) Withdrawal; and

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

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

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

Stats. Implemented: ORS 279B.055

**137-047-0450**

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

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

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

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

Stats. Implemented: ORS 279B.055

**137-047-0460**

**Late Offers, Late Withdrawals and Late Modifications**

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

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

Stats. Implemented: ORS 279B.055

**137-047-0470**

**Mistakes**

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

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

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

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

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

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

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

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

(A) The nature of the error;

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

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

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the most Advantageous Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 47 only to the extent permitted by applicable law.

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

Stats. Implemented: ORS 279B.055

### **137-047-0480**

#### **Time for Agency Acceptance**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

### **137-047-0490**

#### **Extension of Time for Acceptance of Offer**

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

## QUALIFICATIONS AND DUTIES

### 137-047-0500

#### Responsibility of Bidders and Proposers

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.110

### 137-047-0525

#### Qualified Products Lists

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.115

### 137-047-0550

#### Prequalification of Prospective Offerors

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.120

### 137-047-0575

#### Debarment of Prospective Offerors

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

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.130

## OFFER EVALUATION AND AWARD

### 137-047-0600

#### Offer Evaluation and Award

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

(a) Evaluation of Bids.

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

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

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

(b) Evaluation of Proposals.

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

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

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

(2) **Clarification of Bids or Proposals.** After Opening, a Contracting Agency may conduct discussions with apparent Responsive Offerors for the purpose of clarification to assure full understanding of the Offer. All Offers, in the Contracting Agency's sole discretion, needing clarification shall be accorded such an opportunity. The Contracting Agency shall document clarification of any Offer in the Procurement file.

(3) **Negotiations.**

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

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

(4) **Award.**

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

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

(c) Multiple Awards - Bids.

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

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

(d) Multiple Awards – Proposals.

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

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

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



- (A) The Contracting Agency may Award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
- (B) The Contracting Agency may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions and Specifications.
- (f) All or none Offers. A Contracting Agency may Award all or none Offers if the evaluation shows an all or none Award to be the lowest cost for Bids or the most Advantageous for Proposals of those submitted.

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

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

### **137-047-0610**

#### **Notice of Intent to Award**

- (1) **Notice of Intent to Award**. The Contracting Agency shall provide Written notice of its intent to Award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) Days before the Award of a Contract, unless the Contracting Agency determines that circumstances require prompt execution of the Contract, in which case the Contracting Agency may provide a shorter notice period in the Solicitation documents. The Contracting Agency shall document the specific reasons for the shorter notice period in the Procurement file.
- (2) **Finality**. The Contracting Agency's Award shall not be final until the later of the following:
- (a) The expiration of the protest period provided pursuant to Rule 137-047-0740; or
- (b) The Contracting Agency provides Written responses to all timely-filed protests denying the protests and affirming the Award.
- (3) If so provided in the Solicitation documents, said notice of intent to Award may be issued via facsimile or electronic data exchange.

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

Stats. Implemented: ORS 279B.135

### **137-047-0620**

#### **Documentation of Award**

- (1) **Basis of Award**. After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Procurement file.
- (2) **Contents of Award Record**. The Contracting Agency's record shall include:
- (a) For Bids:
- (A) Bids;
- (B) Completed Bid tabulation sheet; and
- (C) Written justification for any rejection of lower Bids.
- (b) For Proposals:
- (A) Proposals;
- (B) The completed evaluation of the Proposals;
- (C) Written justification for any rejection of higher scoring Proposals; and
- (D) If the Contracting Agency engaged in any of the methods of Contractor selection described in ORS 279B.060(6)(b) and Rules 137-047-0261 through 137-047-0263, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures the Contracting Agency used to select a Proposer to which the Contracting Agency Awarded a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

### **137-047-0630**

#### **Availability of Award Decisions**

- (1) **Contract Documents**. To the extent required by the Solicitation Document, the Contracting Agency shall deliver to the successful Offeror a Contract, Signed purchase order, Price Agreement, or other Contract documents as applicable.
- (2) **Availability of Award Decisions**. A Person may obtain tabulations of Awarded Bids or evaluation summaries of Proposals for a minimal charge, in person or by submitting to the Contracting Agency a Written request accompanied by payment. The requesting Person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, the Contracting Agency may make available tabulations of Bids and Proposals through the Electronic Procurement System of the Contracting Agency or the Contracting Agency's website.

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

Stat. Auth.: ORS 279A.065

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

**137-047-0640**

**Rejection of an Offer**

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

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

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

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

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

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

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

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

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

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified pursuant to Rule 137-046-0210(4) (DBE Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine pursuant to ORS 279B.110 that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities; and

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file pursuant to ORS 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency;

(v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state. Such certification demonstrates Offeror's compliance with such law in a credible and convenient way; and

(vi) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility upon any available information, or may find the Offeror non-Responsible.

(2) **Form of Business Entity.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

(3) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-047-0610.

Stat. Auth.: ORS 279A.065

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

### **137-047-0650**

#### **Rejection of All Offers**

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

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

(a) The content of or an error in the Solicitation Document, or the Procurement process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors are too costly or of insufficient quality to justify acceptance of any Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the Procurement or solicitation in accordance with Rule 137-047-0660; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

### **137-047-0660**

#### **Cancellation of Procurement or Solicitation**

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

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

(a) Identify the Solicitation Document;

(b) Briefly explain the reason for cancellation; and

(c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

### **137-047-0670**

#### **Disposition of Offers if Procurement or Solicitation Canceled**

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

Offeror. For Electronic Offers, the Contracting Agency shall delete the Offers from the Contracting Agency's Electronic Procurement System or information technology system.

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

(a) May return Proposals in accordance with ORS 279B.060(6)(c); and.

(b) Shall keep Bids in the Procurement file.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.100

## LEGAL REMEDIES

### 137-047-0700

#### Protests and Judicial Review of Special Procurements

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

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

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

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

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

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

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

Stats. Implemented: ORS 279B.400

### 137-047-0710

#### Protests and Judicial Review of Sole-Source Procurements

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

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

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

(a) A detailed statement of the legal and factual grounds for the protest;

(b) A description of the resulting harm to the Affected Person; and

(c) The relief requested.

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

protest in a timely manner. If the Contract Review Authority or designee upholds the protest, in whole or in part, the Contracting Agency shall not enter into a sole-source Contract.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.075

### **137-047-0720**

#### **Protests and Judicial Review of Multi-Tiered and Multistep Solicitations**

(1) **Purpose.** An Affected Offeror may protest exclusion from the Competitive Range or from subsequent tiers or steps of a solicitation in accordance with the applicable Solicitation Document. When such a protest is permitted by the Solicitation Document, then pursuant to ORS 279B.420(3)(f), before seeking judicial review, an Affected Offeror must file a Written protest with the Contracting Agency and exhaust all administrative remedies.

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

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

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

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.060

### **137-047-0730**

#### **Protests and Judicial Review of Solicitations**

(1) **Purpose.**

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

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

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

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

(4) **Contracting Agency Response.** The Contracting Agency shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this rule, or such different time period as may be provided in the Solicitation Document. The Contracting Agency shall consider the protest if it is timely filed and meets the conditions set forth in ORS 279B.405(4). The

Contracting Agency shall issue a Written disposition of the protest in accordance with the timeline set forth in ORS 279B.405(6). If the Contracting Agency upholds the protest, in whole or in part, the Contracting Agency may in its sole discretion either issue an Addendum reflecting its disposition under Rule 137-047-0430 or cancel the Procurement or solicitation under Rule 137-047-0660.

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

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

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

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

Stats. Implemented: ORS 279B.405

### **137-047-0740**

#### **Protests and Judicial Review of Contract Award**

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

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

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

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

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

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

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

### **137-047-0745**

#### **Protests and Judicial Review of Qualified Products List Decisions**

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

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

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

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

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

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.115

#### **137-047-0750**

##### **Judicial Review of Other Violations**

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

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.420

#### **137-047-0760**

##### **Review of Prequalification and Debarment Decisions**

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

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279B.425

#### **137-047-0800**

##### **Amendments to Contracts and Price Agreements**

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

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

(2) **Small or Intermediate Contract.** A Contracting Agency may amend a Contract Awarded as a small or intermediate Procurement pursuant to Section 1 of this rule, provided also that the total increased Contract Price does not exceed amendment allowances set forth in Rule 137-047-0265(2) for small Procurements and Rule 137-047-0270(4) for intermediate Procurements.

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

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

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

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

**137-047-0810**

**Termination of Price Agreements**

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

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

Stat. Auth.: ORS 279A.065

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



## PUBLIC CONTRACTING RULES 2022

### DIVISION 48

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

##### 137-048-0100

###### Application

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

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

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

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

##### 137-048-0110

###### Definitions

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

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

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

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

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

**137-048-0120**

[Reserved.]

**137-048-0130**

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

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

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

(3) A Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of Rule 137-048-0270 (Price Agreements).

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

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and Section (1) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and Section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and Divisions 46, 47 and 49 of these Rules that match the predominant purpose of the Contract.

(6) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes proposals submitted under these Division 48 Rules.

(b) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with proposers who submit proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agency may open proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agency may make proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant.

(c) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

(7) Per ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, and unless permitted by ORS 279C.307(3), Contracting Agency may not:

(a) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract from a Contractor or an affiliate of a Contractor who is a party to the Public

Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services; or

(b) Procure services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Services.

(8) The requirements of ORS 279C.307 and Section (7) of this rule apply in the following circumstances, except as provided in Section (9) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (8)(a) of this rule.

(9) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in Rule 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single "Construction Manager/General Contractor" Procurement, as defined in Rule 137-049-0610. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Contract or performance under such a Contract resulting from a Construction Manager/General Contractor Procurement.

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

Stats. Implemented: ORS 279A.065 & ORS 279C.100-279C.125

## **SELECTION PROCEDURES**

### **137-048-0200**

#### **Direct Appointment Procedure**

(1) Contracting Agency may enter into a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these rules if:

(a) Contracting Agency finds that an Emergency exists; or

(b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or

(c) The following requirements are met:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project

as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract; and

(B) Contracting Agency used either the formal selection procedure under Rule 137-048-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the Consultant at the time of original selection to select the Consultant for the earlier Contract.

(d) Continuation of Project With Extensive Estimated Fee. Where a Project is being continued under subsection 1(c) of this rule, and the Estimated Fee is expected to exceed \$250,000, the Contracting Agency must make written findings that entering into a Contract with the Consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(A) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency; and,

(B) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) Contracting Agency may select a Consultant for a Contract under this rule from any and all Consultants offering the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that the Contracting Agency reasonably can identify under the circumstances.

(3) The Contracting Agency shall direct negotiations with a Consultant selected under this rule toward obtaining written agreement on:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

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

Stats. Implemented: ORS 279C.110 & ORS 279C.115

### **137-048-0210**

#### **Informal Selection Procedure**

(1) Contracting Agency may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed \$250,000.

(2) If using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and/or qualifications, Contracting Agency shall:

(a) Create a Request for Proposals that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) Consultant's specialized experience, capabilities and technical competence, which may be demonstrated with Consultant's proposed approach and methodology to meet the project requirements;

(ii) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(iii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals;

(iv) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

- (v) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the Request for Proposals and design philosophy, if applicable;
  - (vi) A Consultant's geographic proximity to and familiarity with the physical location of the Project;
  - (vii) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
  - (viii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (ix) If the Contracting Agency complies with the additional requirements of Section (3) of this Rule or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.
  - (F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
  - (G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and
  - (H) A sample form of the Contract.
- (b) Provide a Request for Proposals to a minimum of three (3) prospective Consultants drawn from any and all Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing. If three (3) prospective Consultants cannot reasonably be located, Contracting Agency shall document its efforts in writing and provide the RFP to those Consultants that were located.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals.
- (3) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
- (a) States in the RFP:
    - (A) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
    - (B) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:
      - (i) Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
      - (ii) The relative weight in points or percentages the Contracting Agency will give each factor;
    - (C) An estimate of the cost of services the Contracting Agency seeks in the procurement;
    - (D) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
  - (b) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
  - (c) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
    - (A) Must include:
      - (i) A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
      - (ii) A reasonable estimate of hours that the Consultant will require to perform the services sought.
    - (B) May include, at the Contracting Agency's request, additional pricing information that is limited to:
      - (i) A description of each task proposed by Consultant;
      - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
      - (iii) A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
  - (d) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultants does not wish to provide a price proposal.
  - (f) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (4) If Contracting Agency does not cancel the RFP after it reviews and ranks each Consultant, Contracting Agency will begin negotiating a Contract with the highest ranked Consultant. Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (a) The Consultant's scope of services, performance obligations and performance schedule;
  - (b) Payment methodology, Consultant's rates and number of hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

- (c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (5) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Consultant, if the Contracting Agency and Consultant are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Consultant, and if necessary, with the third ranked Consultant, in accordance with Section (4) of this rule, and as limited by Section (3) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any of the Consultants do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under Rule 137-048-0220 (Formal Selection Procedure).
- (6) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under Rule 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000.

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

Stats. Implemented: ORS 279C.110

### **137-048-0220**

#### **Formal Selection Procedure**

- (1) Contracting Agency shall use the formal selection procedure described in this rule to select Consultants if the Consultants cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agency's discretion.
- (2) When using the formal selection procedure Contracting Agency shall obtain Contracts through public advertisement of Requests for Proposals, or Requests for Qualifications followed by Requests for Proposals.
- (a) Except as provided in subsection (b) of this section, Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as desired by Contracting Agency to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
- (A) Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.
- (B) Contracting Agency shall include a brief description of the following items in the advertisement:
- (i) The Project;
  - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
  - (iii) How and where Consultants may obtain a copy of the RFQ or RFP; and
  - (iv) The deadline for submitting a Proposal or response to the RFQ or RFP.
- (b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in Rule 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.
- (c) In addition to publishing notice under Subsections (a) and (b) of this Section, Contracting Agency may also choose to send the RFP or RFQ, or notice thereof, directly to qualified Consultants.
- (3) Request for Qualifications Procedure. Contracting Agency may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.
- (a) A Contracting Agency shall include the following, at a minimum, in each RFQ:
- (A) A brief description of the Project for which the Contracting Agency is seeking Consultants;
  - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;
  - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
  - (D) The deadline for submitting a response to the RFQ;
  - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;
  - (F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;
  - (G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation

Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may not request pricing policies, cost proposals, or other pricing information in the RFQ, but may request for any or all of the following:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist Contracting Agency in complying with the solar energy technology requirements of ORS 279C.527; and

(K) Any other information Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(d) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(e) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agency shall use the procedure described in this Section (4) of this rule when issuing an RFP for a Contract described in Section (1) of this rule.

(a) RFP Required Contents. Contracting Agency using the formal selection procedure shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed.

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

- (iv) The recent, current and projected workloads of the staff and resources referenced in subsection (4)(a)(B)(iii), above;
- (v) The proportion of time Proposers estimate that the staff referenced in subsection (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance;
- (vii) References and recommendations from past clients;
- (viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (xiii) If the Contracting Agency complies with the additional requirements of Section (4)(b) of this Rule, or is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and
- (xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;
- (D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;
- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;
- (I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;
- (J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;
- (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
- (L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
- (M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;
- (N) Where applicable, a statement requiring design compliance with ORS 279C.527, regarding green energy technology; and
- (O) A sample form of the Contract.
- (b) Pricing policies, proposals or other pricing information may be used as part of the Contracting Agency's screening and selection process, if Contracting Agency:
  - (A) States in the RFP:
    - (i) That the Contracting Agency will screen and select Consultants as provided in ORS 279C.110(5);
    - (ii) How the Contracting Agency will rank proposals from Consultants, with a specific focus on:



1. Which factors the Contracting Agency will consider in evaluating proposals, including pricing policies, proposals, or other pricing information; and
  2. The relative weight in points or percentages the Contracting Agency will give each factor;
  - (iii) An estimate of the cost of services the Contracting Agency seeks in the procurement;
  - (iv) A sufficiently detailed scope of work to enable a Consultant to prepare a responsive Proposal.
- (B) First evaluates each Consultant on the basis of the Consultant's qualifications to perform the services described in the solicitation document.
- (C) Announces the evaluation scores and rank of each Consultant according to the solicitation criteria. The Contracting Agency may identify up to three (3) of the top-ranked prospective Consultants as qualified to perform the services sought and may request a pricing proposal from each. The pricing proposals:
- (i) Must include:
    1. A schedule of hourly rates that the Consultant will charge for the work of each individual or each labor classification that will perform the services sought that is irrevocable for not less than ninety (90) days after the date of the Proposal; and
    2. A reasonable estimate of hours that the Consultant will require to perform the services sought.
  - (ii) May include, at the Contracting Agency's request, additional pricing information that is limited to:
    1. A description of each task proposed by Consultant;
    2. A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to each individual or labor classification; and
    3. A list of reimbursable expenses, including travel expenses, that the Consultant expects to incur when providing the proposed services.
- (D) Permits each top-ranked Consultant to withdraw from consideration for award if the Consultant does not wish to provide a price proposal.
- (E) Completes the evaluation and selects a Consultant from among the identified top-ranked Consultants, giving not more than fifteen (15) percent weight to each Consultant's price proposal.
- (c) RFP Evaluation Committee. The Contracting Agency shall either establish a committee or designate an individual to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agency with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of an evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. If formed, the Contracting Agency shall designate a member of the evaluation committee as the evaluation committee chairperson.
- (d) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;
- (e) If the Contracting Agency does not cancel the RFP after completing the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:
- (A) The Consultant's scope of services, performance obligations and performance schedule;
  - (B) Payment methodology, Consultant's rates and number hours, and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and
  - (C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.
- (f) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with subsection (4)(e), and as limited by subsection (4)(b) of this rule to the identified top-ranked Consultants, if price was an evaluation criteria, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.110 & ORS 279C.527

### 137-048-0230

#### Ties Among Proposers

(1) If Contracting Agency is selecting a Consultant on the basis of qualifications alone and determines after the ranking of Proposers that two or more Proposers are equally qualified, the Contracting Agency may select a candidate through any process that the Contracting Agency believes will result in the best value for the Contracting Agency taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by the Contracting Agency under this Section (1) cannot be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of the Contracting Agency and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, the Contracting Agency and the selected Proposer shall proceed with negotiations under Rules 137-048-0210(4) or 137-048-0220(4)(c), as applicable.

(2) If Contracting Agency is selecting a Consultant on the basis of price alone, or on the basis of price and qualifications, and determines after the ranking of Proposers that two or more Proposers are identical in terms of price or are identical in terms of price and qualifications, then the Contracting Agency shall follow the procedure set forth in Rule 137-046-0300 (Preferences for Oregon Goods and Services), to select the Consultant.

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

Stats. Implemented: ORS 279C.105 & ORS 279C.110

### 137-048-0240

#### Protest Procedures

(1) **RFP Protest and Request for Change.** Pursuant to ORS 279C.110(8), Consultants may submit a written protest of anything contained in an RFP and may request a change to any provision, specification or Contract term contained in an RFP, no later than seven (7) calendar days prior to the date Proposals are due, unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or Contract terms. The Contracting Agency may not consider any protest or request for change that is submitted after the submission deadline.

(2) **Protest of Consultant Selection.** Pursuant to ORS 279C.110(8), Consultants may protest Contracting Agency's Consultant selection for award, as follows:

(a) Single Award. In the event of an award to a single Proposer, the Contracting Agency shall provide to all Proposers a copy of the selection notice that the Contracting Agency sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(b) Multiple Award. In the event of an award to more than one Proposer, the Contracting Agency shall provide to all Proposers copies of the selection notices that the Contracting Agency sent to the highest ranked Proposers. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposers may submit a written protest of the selection to the Contracting Agency no later than seven (7) calendar days after the date of the selection notices, unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is one of the highest ranked proposers because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP, or because a sufficient number of Proposals of higher ranked Proposers failed to meet the requirements of the RFP. In the alternative, a Proposer submitting a protest must claim that the Proposals of all higher ranked Proposers, or a sufficient number of higher ranked Proposers, are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP.

(c) Effect of Protest Submission Deadline. A Contracting Agency may not consider any protest that is submitted after the submission deadline.

(3) **Resolution of Protests.** A duly authorized representative of the Contracting Agency shall resolve all timely submitted protests within a reasonable time following the Contracting Agency's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, the Contracting Agency shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

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

Stats. Implemented: ORS 279A.065 & 279C.110

### **137-048-0250**

#### **Solicitation Cancellation, Delay or Suspension; Rejection of All Proposals or Responses; Consultant Responsibility for Costs**

A Contracting Agency may cancel, delay or suspend a solicitation, RFQ or other preliminary Procurement document, whether related to a Direct Appointment Procedure (Rule 137-048-0200), the Informal Selection Procedure (Rule 137-048-0210), or the Formal Selection Procedure (Rule 137-048-0220), or reject all Proposals, responses to RFQs, responses to other preliminary Procurement documents, or any combination of the foregoing, if the Contracting Agency believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension or rejection, the Contracting Agency is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection. Consultants responding to either solicitations, RFQs or other preliminary Procurement documents are responsible for all costs they may incur in connection with submitting Proposals, responses to RFQs or responses to other preliminary Procurement documents. In the event of any such cancellation, Contracting Agency shall return Proposals to Proposers and keep a list of returned Proposals in the Solicitation file, in accordance with ORS 279C.107.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279C.110

### **137-048-0260**

#### **Two-Tiered Selection Procedure when State Agency is Lead Contracting Agency**

(1) If the Contracting Agency requires an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for a public improvement owned and maintained by that Local Contracting Agency, and a State Agency will serve as the lead Contracting Agency and will enter into Contracts with Architects, Photogrammetrists, Transportation Planners, Engineers or Land Surveyors for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for that public improvement, the State Contracting Agency shall utilize the two-tiered selection process described below to obtain these Contracts with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors.

(2) **Tier One.** The State Contracting Agency shall, when feasible, identify no fewer than the three (3) most qualified Proposers responding to an RFP pursuant to its own rules or, if permitted by state, by these Division 48 rules applicable selection procedures described in from among Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors, and shall notify the Local Contracting Agency of the Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors selected.

(3) **Tier Two.** In accordance with the qualifications-based selection requirements of ORS 279C.110, the Local Contracting Agency shall either:

(a) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor from the State Contracting Agency's list of Proposers to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement; or

(b) Select an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for Local Contracting Agency's public improvement through an alternative process adopted by the Local Contracting Agency, consistent with the provisions of the applicable RFP, if any, and these division 48 rules. The Local Contracting Agency's alternative process must be described in the applicable RFP, may be structured to take into account the unique circumstances of the Local Contracting Agency and may include provisions to allow the Local Contracting Agency to perform its tier two responsibilities efficiently and economically, alone or in cooperation with other Local Contracting Agencies. The Local Contracting Agency's alternative process may include, but is not limited to, one or more of the following methods:

(A) A general written direction from the Local Contracting Agency to the State Contracting Agency, prior to the advertisement of a Procurement or series of Procurements or during the course of the Procurement or series of Procurements, that the Local Contracting Agency's tier two selection shall be the highest-ranked firm identified by the State Contracting Agency during the tier one process, and that no further coordination or consultation with the Local Contracting Agency is required. However, the Local Contracting Agency may provide written notice to the State Contracting Agency that the Local Contracting Agency's general written direction is not to be applied for a particular Procurement and describe the process that the Local Contracting Agency will utilize for the particular Procurement. In order for a written direction from the Local Contracting Agency consistent with this subsection to be effective for a particular Procurement, it must be received by the State Contracting Agency with adequate time for the State Contracting Agency to revise the RFP in order for Proposers to be notified of the tier two process to be utilized in the Procurement. In the event of a multiple award under the terms of the applicable Procurement, the written direction from the Local Contracting Agency may apply to the highest ranked firms that are selected under the terms of the Procurement document.

(B) An intergovernmental agreement between the Local Contracting Agency and the State Contracting Agency outlining the alternative process that the Local Contracting Agency has adopted for a Procurement or series of Procurements.

(C) Where multiple Local Government Agencies are involved in a two-tiered selection procedure, the Local Government Agencies may name one or more authorized representative(s) to act on behalf of all the Local Government Agencies, whether the Local Government Agencies are acting collectively or individually, to select the Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the tier two selection process. In the event of a multiple award under the terms of the applicable Procurement, the authorized representative(s) of the Local Contracting Agencies may act on behalf of the Local Contracting Agencies to select the highest ranked firms that are required under the terms of the Procurement document, as part of the tier two selection process.

(4) The State Contracting Agency shall thereafter begin Contract negotiations with the selected Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor in accordance with the negotiation provisions in Rule 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure) as applicable.

(5) Nothing in these division 48 rules should be construed to deny or limit a Local Contracting Agency's ability to enter into a Contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), through a selection process established by that Local Contracting Agency.

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

Stats. Implemented: ORS 279C.110 & ORS 279C.125

### **137-048-0270**

#### **Price Agreements**

(1) Contracting Agency may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when the Contracting Agency cannot determine the precise quantities of those Services which the Contracting Agency will require over a specified time period.

(2) When establishing Price Agreements under this rule, a Contracting Agency shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with Rule 137-048-0130(1) or 137-048-0130(2), as applicable. Contracting Agency may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.

(3) Solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:

(a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or Proposer to decide whether to submit a bid or proposal;

(b) Specify whether the Contracting Agency intends to award a Price Agreement to one Consultant or to multiple Consultants. If the Contracting Agency will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures the Contracting Agency will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at the Contracting Agency's sole discretion. In accordance with Rule 137-048-0130(2) applicable to Related Services procurements, the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information requested for Price Agreements with any Division 48 Consultant may include the number of hours proposed for the services required, expenses, hourly rates, the number of hours, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of Rule 137-048-0200; and

(c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

(4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by the Contracting Agency. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:

(a) A clearly defined statement of work and performance schedule for any deliverables;

(b) The payment methodology, Consultant rates and number of hours, and a maximum, not-to-exceed price for the services required under the work order or task order that is fair and reasonable to the Contracting Agency, as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the services; and

- (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
- (d) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest.

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

Stats. Implemented: ORS 279A.065, ORS 279C.110 & ORS 279C.120

## **POST-SELECTION CONSIDERATIONS**

### **137-048-0300**

#### **Prohibited Payment Methodology; Purchase Restrictions**

- (1) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract which includes compensation provisions that expressly provide for payment of:
  - (a) Consultant's costs under the Contract plus a percentage of those costs; or
  - (b) A percentage of the Project construction costs or total Project costs.
- (2) Except as otherwise allowed by law, Contracting Agency shall not enter into any Contract in which:
  - (a) The compensation paid under the Contract is solely based on or limited to the Consultant's hourly rates for the Consultant's personnel working on the Project and reimbursable expenses incurred during the performance of work on the Project (sometimes referred to as a "time and materials" Contract); and
  - (b) The Contract does not include a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract.
- (3) Except in cases of Emergency or in the particular instances noted in the subsections below, Contracting Agency shall not purchase any building materials, supplies or equipment for any building, structure or facility constructed by or for Contracting Agency from any Consultant under a Contract with Contracting Agency to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, for the building, structure or facility. This prohibition does not apply if either of the following circumstances exists:
  - (a) The Consultant is providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under a Contract with a Contracting Agency to perform Design-Build services or Energy Savings Performance Contract services (see Rules 137-049-0670 and 137-049-0680); or
  - (b) That portion of the Contract relating to the acquisition of building materials, supplies or equipment was awarded to the Consultant pursuant to applicable law governing the award of such a Contract.

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

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

### **137-048-0310**

#### **Expired or Terminated Contracts; Reinstatement**

- (1) If Contracting Agency enters into a Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and that Contract subsequently expires or is terminated, the Contracting Agency may proceed as follows, subject to the requirements of subsection (2) of this rule:
  - (a) Expired Contracts. If the Contract has expired as the result of Project delay caused by the Contracting Agency or caused by any other occurrence outside the reasonable control of the Contracting Agency or the Consultant, and if no more than one year has passed since the Contract expiration date, the Contracting Agency may amend the Contract to extend the Contract expiration date, revise the description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract to reflect any material alteration of the Project made as a result of the delay, and revise the applicable performance schedule. Beginning on the effective date of the amendment, the Contracting Agency and the Consultant shall continue performance under the Contract as amended; or
  - (b) Terminated Contracts. If Contracting Agency or both parties to the Contract have terminated the Contract for any reason and if no more than one year has passed since the Contract termination date, then the Contracting Agency may enter into a new Contract with the same Consultant to perform the remaining Architectural, Engineering and Land Surveying Services, or Related Services not completed under the original Contract, or to perform any remaining Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services not completed under the Contract as adjusted to reflect a material alteration of the Project.
- (2) The Contracting Agency may proceed under either subsection (1)(a) or subsection (1)(b) of this rule only after making written findings that amending the existing Contract or entering into a new Contract with the Consultant will:
  - (a) Promote efficient use of public funds and resources and result in substantial cost savings to the Contracting Agency;

- (b) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement process by not encouraging favoritism or substantially diminishing competition in the award of Contracts; and
- (c) Result in a Contract that is still within the scope of the final form of the original Procurement document.

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

Stats. Implemented: ORS 279A.065 & ORS 279C.110

### **137-048-0320**

#### **Contract Amendments**

(1) A Contracting Agency may amend any Contract if the Contracting Agency, in its sole discretion, determines that the amendment is within the scope of the Solicitation Document and that the amendment would not materially impact the field of competition for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the final form of the original Procurement document. In making this determination, the Contracting Agency shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the Solicitation Document if the Contracting Agency reasonably believes that the number of Proposers would not significantly increase if the Procurement document were re-issued to include the additional services.

(2) The Contracting Agency may amend any Contract if the additional services are required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, which affect performance of the original Contract.

(3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and the Contracting Agency and must receive all required approvals before the amendments will be binding on the Contracting Agency.

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

Stats. Implemented: ORS 279A.065 & ORS 279C.110

## PUBLIC CONTRACTING RULES 2022

### DIVISION 49

#### GENERAL PROVISIONS RELATED TO PUBLIC CONTRACTS FOR CONSTRUCTION SERVICES

##### 137-049-0100

###### Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements. Rules that apply specifically to Public Improvement Contracts are so identified.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Rules).

(3) These division 49 Rules become effective upon adoption, and apply to the Contracts described in section (1) above first advertised, but if not advertised then entered into, on or after that date.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

##### 137-049-0110

###### Policies

In addition to the general Code policies set forth in ORS 279A.015, the ORS 279C.300 policy on competition and the ORS 279C.305 policy on least-cost for Public Improvements apply to these division 49 rules.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.300 & ORS 279C.305

##### 137-049-0120

###### Definitions

(1) **“Conduct Disqualification”** means a Disqualification pursuant to ORS 279C.440.

(2) **“Disqualification”** means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with Rule 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) **“Foreign Contractor”** means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See Rule 137-049-0480.

(4) **“Notice”** means any of the alternative forms of public announcement of Procurements, as described in Rule 137-049-0210.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065 & ORS 279A.110

##### 137-049-0130

###### Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required by these Rules, or pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see Rules 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods and the exemption process.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

##### 137-049-0140

###### Contracts for Construction Other than Public Improvements

(1) **Procurement Under ORS Chapter 279B.** Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, other than Emergency Contracts regulated under ORS 279C.335(6) and Rule 137-049-0150, may be procured and amended as general trade services under the provisions of ORS Chapter 279B and division 47 Rules, rather than under the provisions of ORS Chapter 279C and these division 49 rules.

(2) **Application of ORS Chapter 279C.** Non-procurement provisions of ORS Chapter 279C and these division 49 rules may still be applicable to the resulting Contracts. See, for example, particular statutes on Disqualification (ORS 279C.440, 445 and 450); Legal Actions (ORS 279C.460 and 465); Required Contract Conditions (ORS 279C.505, 515, 520 and 530); Hours of Labor (ORS 279C.540 and 545); Retainage (ORS 279C.550, 560 and 565); Subcontracts (ORS 279C.580); Action on Payment Bonds (ORS 279C.600, 605, 610, 615, 620 and 625); Termination (ORS 279C.650, 650, 660 and 670); and all of the Prevailing Wage Rates requirements (ORS 279C.800 through 870) for Public Works Contracts.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.320

### 137-049-0150

#### **Emergency Contracts; Bidding and Bonding Exemptions**

(1) **Emergency Declaration.** A Contracting Agency may declare that Emergency circumstances exist that require prompt execution of a Public Contract for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with the Contracting Agency's internal policies, by a written declaration that describes the circumstances creating the Emergency and the anticipated harm from failure to enter into an Emergency Contract. The Emergency declaration shall thereafter be kept on file as a public record.

(2) **Competition for Contracts.** Pursuant to ORS 279C.320(1), Emergency Contracts are regulated under ORS 279B.080, which provides that, for an emergency procurement of construction services, the Contracting Agency shall ensure competition that is reasonable and appropriate under the Emergency circumstances, and may include written requests for Offers, oral requests for Offers or direct appointments without competition in cases of extreme necessity, in whatever solicitation time periods the Contracting Agency considers reasonable in responding to the Emergency.

(3) **Emergency Contract Scope.** Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

(4) **Emergency Contract Modification.** Emergency Contracts may be modified by change order or amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.

(5) **Excusing Bonds.** Pursuant to ORS 279C.380(4) and this rule, the Emergency declaration may also state that the Contracting Agency waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract. After making such an Emergency declaration the bonding requirements are excused for the procurement, but this Emergency declaration does not affect the separate Public Works bond requirement for the benefit of the Bureau of Labor and Industries (BOLI) in enforcing prevailing wage rate and overtime payment requirements. See Rule 137-049-0815 and BOLI rules at OAR 839-025-0015.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.080, ORS 279C.320 & ORS 279C.380

### 137-049-0160

#### **Intermediate Procurements; Competitive Quotes and Amendments**

(1) **General.** Public Improvement Contracts estimated by the Contracting Agency to cost \$10,000 or more, but not to exceed \$100,000 may be Awarded in accordance with this rule.

(2) **Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.

(3) **Request for Quotes.** Contracting Agencies shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote the Contracting Agency shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral requests for quotes may be utilized only in the event that Written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.

(4) **Number of Quotes; Record Required.** Contracting Agencies shall seek at least three competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available the Contracting Agency shall make a written record of the effort made to obtain those quotes.



(5) **Award.** If Awarded, the Contracting Agency shall Award the Contract to the prospective contractor whose quote will best serve the interests of the Contracting Agency, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, the Contracting Agency shall make a written record of the basis for Award.

(6) **Price Increases.** Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Contracting Agency issuance of a Change to the Work or Amendment, pursuant to Rule 137-049-0910, within the following limitations:

(a) Up to an aggregate Contract Price increase of 25% over the original Contract amount when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work, and;

(b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when a Contracting Agency's contracting officer determines that a price increase is warranted for additional reasonably related Work and a Contracting Agency official, board or governing body with administrative or review authority over the contracting officer approves the increase.

(7) **Amendments.** Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section (1) are specifically authorized by the Code, when made in accordance with this rule and Rule 137-049-0910. Accordingly, such amendments are not considered new procurements and do not require an exemption from competitive bidding.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.412.

## FORMAL PROCUREMENT RULES

### 137-049-0200

#### **Solicitation Documents; Required Provisions; Assignment or Transfer**

(1) **Solicitation Document.** Pursuant to ORS 279C.365 and this rule, the Solicitation Document shall include the following:

(a) General Information.

(A) Identification of the Public Improvement project, including the character of the Work, and applicable plans, Specifications and other Contract documents;

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

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

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

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

(C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;

(D) The name and title of the authorized Contracting Agency Person designated for receipt of Offers and contact Person (if different);

(E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 137-049-0300 regarding facsimile Bids or Proposals and Rule 137-049-0310 regarding electronic Procurement);

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

(G) The time and date of Closing after which a Contracting Agency will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement. Although a minimum of five Days is prescribed, Contracting Agencies are encouraged to use at least a 14 Day Solicitation period when feasible. If the Contracting Agency is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, the Contracting Agency shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 137-049-0360. For timing issues relating to Addenda, see Rule 137-049-0250;

(H) The office where the Specifications for the Work may be reviewed;

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

(J) If the Contract resulting from a Solicitation will be a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148), a statement that no Offer will be received or considered by the Contracting Agency unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.";

- (K) A statement that the Contracting Agency will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered and in good standing with the Construction Contractors Bd, or is licensed by the State Landscape Contractors Bd, as specified in Rule 137-049-0230;
- (L) Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (M) Contractor's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See Rule 137-049-0440(3));
- (N) How the Contracting Agency will notify Offerors of Addenda and how the Contracting Agency will make Addenda available (See Rule 137-049-0250); and
- (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 137-049-0360.
- (P) Where applicable, a statement requiring compliance with ORS 279C.527, green energy technology.
- (b) Evaluation Process:
- (A) A statement that the Contracting Agency may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and may reject for good cause all Offers after finding that doing so is in the public's interest;
- (B) The anticipated Solicitation schedule, deadlines, protest process and evaluation process, if any;
- (C) Evaluation criteria, including the relative value applicable to each criterion, that the Contracting Agency will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 137-049-0620), along with the process the Contracting Agency will use to determine acceptability of the Work;
- (i) If the Solicitation Document is an Invitation to Bid, the Contracting Agency shall set forth any special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information the Contracting Agency has available concerning future use;
- (ii) If the Solicitation Document is a Request for Proposals, the Contracting Agency shall refer to the additional requirements of Rule 137-049-0650 and 279C.400 to 279C.410; and
- (c) Contract Provisions. The Contracting Agency shall include all Contract terms and conditions, including warranties, insurance and bonding requirements, that the Contracting Agency considers appropriate for the Public Improvement project. The Contracting Agency must also include all applicable Contract provisions required by Oregon law as follows:
- (A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- (E) Payment of claims by public officers (ORS 279C.515(1));
- (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- (G) Person's right to file a complaint with the Construction Contractors Bd for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- (H) Hours of labor in compliance with ORS 279C.520;
- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));
- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- (L) Maximum hours, holidays and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(3));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);

(R) Contractor's relations with subcontractors (ORS 279C.580);  
(S) Notice of claim (ORS 279C.605);  
(T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and  
(U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Bd or licensed by the State Landscape Contractors Bd in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

(2) **Assignment or Transfer Restricted.** Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 305.385, ORS 468A.720, ORS 701.005 & ORS 701.055

### **137-049-0210**

#### **Notice and Advertising Requirements; Posting**

(1) **Notice and Distribution Fee.** A Contracting Agency may furnish "Notice" as set forth below in subsections (a) through (c), to a number of Persons sufficient for the purpose of fostering and promoting competition. The Notice may indicate where, when, how and for how long the Solicitation Document may be obtained; generally describe the Public Improvement project or Work; and may contain any other appropriate information. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document. The Contracting Agency may furnish Notice using any method determined to foster and promote competition, including:

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

(2) **Advertising.** Pursuant to ORS 279C.360 and this rule, a Contracting Agency shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless the exempted the Solicitation is otherwise exempt from the advertisement requirement under these rules or pursuant to a competitive bidding exemption adopted under ORS 279C.335.

(a) Unless the Contracting Agency publishes by Electronic Advertisement as permitted under subsection 2(b), the Contracting Agency shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in as many additional issues and publications as the Contracting Agency may determine to be necessary or desirable to foster and promote competition.

(b) Contracting Agency may publish by Electronic Advertisement if the Contract Review Authority for the Contracting Agency determines that Electronic Advertisement is likely to be cost effective and, pursuant to 137-049-0310(2), adopts rules authorizing Electronic Advertisement.

(c) In addition to the Contracting Agency's publication required under subsection 2(a) or 2(b), the Contracting Agency shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.

(d) All advertisements for Offers shall set forth:

- (A) The Public Improvement project;
- (B) The office or website where Contract terms, conditions and Specifications may be reviewed;
- (C) The date that Persons must file applications for prequalification under ORS 279C.430, if prequalification is a requirement, and the class or classes of Work for which Persons must be prequalified;
- (D) The scheduled Closing, which shall not be less than five Days after the date of the last publication of the advertisement;
- (E) The name, title and address of the Contracting Agency Person authorized to receive Offers;
- (F) The scheduled Opening; and

(G) If applicable, that the Contract is for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 to 3148).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360 & ORS 200.035

### **137-049-0220**

#### **Prequalification of Offerors**

(1) **Prequalification.** Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:

(a) **Mandatory Prequalification.** A Contracting Agency may require mandatory prequalification of Offerors on forms prescribed by the Contracting Agency's Contract Review Authority. The Contracting Agency shall determine prequalification status in accordance with 279C.430. A Contracting Agency must indicate in the Solicitation Document if it will require mandatory prequalification and establish the time for submitting the prequalification application. Mandatory prequalification is when a Contracting Agency conditions a Person's submission of an Offer upon the Person's prequalification. The Contracting Agency shall not consider an Offer from a Person that is not prequalified if the Contracting Agency required prequalification.

(b) **Permissive Prequalification.** A Contracting Agency may prequalify a Person for the Contracting Agency's Solicitation list on forms prescribed by the Contracting Agency's Contract Review Authority, but in permissive prequalification the Contracting Agency shall not limit distribution of a Solicitation to that list.

(2) **Prequalification Presumed.** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be rebuttably presumed qualified to perform similar Work for other Contracting Agencies.

(3) **Standards for Prequalification.** A Person may prequalify by demonstrating to the Contracting Agency's satisfaction:

(a) That the Person's financial, material, equipment, facility and personnel resources and expertise, or ability to obtain such resources and expertise, indicate that the Person is capable of meeting all contractual responsibilities;

(b) The Person's record of performance;

(c) The Person's record of integrity;

(d) The Person is qualified to contract with the Contracting Agency.

(See, Rule 137-049-0390(2) regarding standards of responsibility.)

(4) **Notice of Denial.** If a Person fails to prequalify for a mandatory prequalification, the Contracting Agency shall notify the Person, specify the reasons under section (3) of this rule and inform the Person of the Person's right to a hearing under ORS 279C.445 and 279C.450.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.430 & ORS 279C.435

### **137-049-0230**

#### **Eligibility to Bid or Propose; Registration or License**

(1) **Construction Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Bd at the time the Offer is made.

(2) **Landscape Contracts.** A Contracting Agency shall not consider a Person's Offer to do Work as a landscape contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape contractors license issued pursuant to ORS 671.560 by the State Landscape Contractors Bd at the time the offer is made.

(3) **Noncomplying Entities.** The Contracting Agency shall deem an Offer received from a Person that fails to comply with this rule nonresponsive and shall reject the Offer as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 671.530 & ORS 701.055

### **137-049-0240**

#### **Pre-Offer Conferences**

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

(2) **Required Attendance.** The Contracting Agency may require attendance at the pre-Offer conference as a condition for making an Offer. Unless otherwise specified in the Solicitation Document, a mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.

- (3) **Scheduled Time.** If a Contracting Agency holds a pre-Offer conference, it shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the Closing to allow Offerors to consider information provided at that conference.
- (4) **Statements Not Binding.** Statements made by a Contracting Agency's representative at the pre-Offer conference do not change the Solicitation Document unless the Contracting Agency confirms such statements with a Written Addendum to the Solicitation Document.
- (5) **Contracting Agency Announcement.** The Contracting Agency must set forth notice of any pre-Offer conference in the Solicitation Document in accordance with Rule 137-049-0200(1)(a)(B).

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.365 & ORS 279C.370

### 137-049-0250

#### **Addenda to Solicitation Documents**

- (1) **Issuance; Receipt.** The Contracting Agency may change a Solicitation Document only by Written Addenda. An Offeror shall provide Written acknowledgement of receipt of all issued Addenda with its Offer, unless the Contracting Agency otherwise specifies in the Addenda or in the Solicitation Document.
- (2) **Notice and Distribution.** The Contracting Agency shall notify prospective Offerors of Addenda consistent with the standards of Notice set forth in Rule 137-049-0210(1). The Solicitation Document shall specify how the Contracting Agency will provide notice of Addenda and how the Contracting Agency will make the Addenda available (see Rule 137-049-0200(1)(a)(N)). For example, "Contracting Agency will not mail notice of Addenda, but will publish notice of any Addenda on Contracting Agency's Web site. Addenda may be downloaded off the Contracting Agency's Web site. Offerors should frequently check the Contracting Agency's Web site until closing, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing."
- (3) **Timelines; Extensions.** The Contracting Agency shall issue Addenda within a reasonable time to allow prospective Offerors to consider the Addenda in preparing their Offers. The Contracting Agency may extend the Closing if the Contracting Agency determines prospective Offerors need additional time to review and respond to Addenda. Except to the extent required by public interest, the Contracting Agency shall not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- (4) **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, an Offeror may submit a Written request for change or protest to the Addendum, as provided in Rule 137-049-0260, by the close of the Contracting Agency's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under Rule 137-049-0260, whichever date is later. The Contracting Agency shall consider only an Offeror's request for change or protest to the Addendum; the Contracting Agency shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Offeror submits the request for change or protest before the deadline for the Contracting Agency's receipt of request for change or protests as set forth in Rule 137-049-0260(2) and (3).

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.395 & ORS 279A.065

### 137-049-0260

#### **Request for Clarification or Change; Solicitation Protests**

- (1) **Clarification.** Prior to the deadline for submitting a Written request for change or protest, an Offeror may request that the Contracting Agency clarify any provision of the Solicitation Document. The Contracting Agency's clarification to an Offeror, whether orally or in Writing, does not change the Solicitation Document and is not binding on the Contracting Agency unless the Contracting Agency amends the Solicitation Document by Addendum.
- (2) **Request for Change.**
- (a) **Delivery.** An Offeror may request in Writing a change to the Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the Written request for change to the Contracting Agency not less than 10 Days prior to Closing;
- (b) **Content of Request for Change.**
- (A) An Offeror's Written request for change shall include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
- (B) An Offeror shall mark its request for change as follows:
- (i) "Contract Provision Request for Change"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document).

(3) **Protest.**

(a) Delivery. An Offeror may protest Specifications or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a Written protest on those matters to the Contracting Agency not less than 10 Days prior to Closing;

(b) Content of Protest.

(A) An Offeror's Written protest shall include:

- (i) A detailed statement of the legal and factual grounds for the protest;
- (ii) A description of the resulting prejudice to the Offeror; and
- (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.

(B) An Offeror shall mark its protest as follows:

- (i) "Contract Provision Protest"; and
- (ii) Solicitation Document number (or other identification as specified in the Solicitation Document)

(4) **Contracting Agency Response.** The Contracting Agency is not required to consider an Offeror's request for change or protest after the deadline established for submitting such request or protest. The Contracting Agency shall provide notice to the applicable Person if it entirely rejects a protest. If the Contracting Agency agrees with the Person's request or protest, in whole or in part, the Contracting Agency shall either issue an Addendum reflecting its determination under Rule 137-049-0260 or cancel the Solicitation under Rule 137-049-0270.

(5) **Extension of Closing.** If a Contracting Agency receives a Written request for change or protest from an Offeror in accordance with this rule, the Contracting Agency may extend Closing if the Contracting Agency determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation Document.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345 & ORS 279C.365

**137-049-0270**

**Cancellation of Solicitation Document**

(1) **Cancellation in the Public Interest.** A Contracting Agency may cancel a Solicitation for good cause if the Contracting Agency finds that cancellation is in the public interest. The Contracting Agency's reasons for cancellation shall be made part of the Solicitation file.

(2) **Notice of Cancellation.** If the Contracting Agency cancels a Solicitation prior to Opening, the Contracting Agency shall provide Notice of cancellation in accordance with Rule 137-049-0210(1). Such notice of cancellation shall:

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

(3) **Disposition of Offers.**

(a) Prior to Offer Opening. If the Contracting Agency cancels a Solicitation prior to Offer Opening, the Contracting Agency shall return all Offers it received to Offerors unopened, provided the Offeror submitted its Offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the Contracting Agency shall open the Offer to determine the source and then return it to the Offeror.

(b) After Offer Opening. If the Contracting Agency rejects all Offers, the Contracting Agency shall retain all such Offers as part of the Contracting Agency's Solicitation file.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.395

**137-049-0280**

**Offer Submissions**

(1) **Offer and Acceptance.** The Bid or Proposal is the Bidder's or Proposer's offer to enter into a Contract.

(a) In competitive Solicitations, the Offer is always a "Firm Offer," i.e., the Offer shall be held open by the Offeror for the Contracting Agency's acceptance for the period specified in Rule 137-049-0410. The Contracting Agency's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Offeror to the Contract.

(b) Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified in Rule 137-049-0410, the Contracting Agency may elect to discuss or negotiate certain contractual provisions, as identified in these rules or in the Solicitation Document with Proposer. See Rule 137-049-0650 on Requests for Proposals and Rule 137-049-0290 on Bid or Proposal Security.

(2) **Responsive Offer.** A Contracting Agency may Award a Contract only to a Responsible Offeror with a Responsive Offer.

- (3) **Contingent Offers.** Except to the extent that an Offeror is authorized to propose certain terms and conditions pursuant to Rule 137-049-0650, an Offeror shall not make an Offer contingent upon the Contracting Agency's acceptance of any terms or conditions (including Specifications) other than those contained in the Solicitation Document.
- (4) **Offeror's Acknowledgement.** By signing and returning the Offer, the Offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the Request for Proposals permits proposal of alternative terms under Rule 137-049-0650, the Offeror's Offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by the Contracting Agency in Writing.
- (5) **Instructions.** An Offeror shall submit and Sign its Offer in accordance with the Solicitation Document. An Offeror shall initial and submit any correction or erasure to its Offer prior to the Opening in accordance with the requirements for submitting an Offer under the Solicitation Document.
- (6) **Forms.** An Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless an Offeror is otherwise instructed in the Solicitation Document.
- (7) **Documents.** An Offeror shall provide the Contracting Agency with all documents and descriptive literature required under the Solicitation Document.
- (8) **Facsimile or Electronic Submissions.** If the Contracting Agency permits facsimile or electronic Offers in the Solicitation Document, the Offeror may submit facsimile or electronic Offers in accordance with the Solicitation Document. The Contracting Agency shall not consider facsimile or electronic Offers unless authorized by the Solicitation Document.
- (9) **Product Samples and Descriptive Literature.** A Contracting Agency may require Product Samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The Contracting Agency will dispose of Product Samples, or return or make available for return Product Samples to the Offeror in accordance with the Solicitation Document.
- (10) **Identification of Offers**
- (a) To ensure proper identification and handling, Offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by the Contracting Agency, whichever is applicable.
- (b) The Contracting Agency is not responsible for Offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (11) **Receipt of Offers.** The Offeror is responsible for ensuring that the Contracting Agency receives its Offer at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Offer.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

### **137-049-0290**

#### **Bid or Proposal Security**

- (1) **Security Amount.** If a Contracting Agency requires Bid or Proposal security, it shall be not more than 10% or less than 5% of the Offeror's Bid or Proposal, consisting of the base Bid or Proposal together with all additive alternates. A Contracting Agency shall not use Bid or Proposal security to discourage competition. The Contracting Agency shall clearly state any Bid or Proposal security requirements in its Solicitation Document. The Offeror shall forfeit Bid or Proposal security after Award if the Offeror fails to execute the Contract and promptly return it with any required Performance Bond, Payment Bond and any required proof of insurance. See ORS 279C.365(4) and ORS 279C.385.
- (2) **Requirement for Bid Security (Optional for Proposals).** Unless a Contracting Agency has otherwise exempted a Solicitation or class of Solicitations from Bid security pursuant to ORS 279C.390, the Contracting Agency shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.365(5). The Contracting Agency may require Bid security even if it has exempted a class of Solicitations from Bid security. Contracting Agencies may also require Proposal security in RFPs. See ORS 279C.400(5).
- (3) **Form of Bid or Proposal Security.** A Contracting Agency may accept only the following forms of Bid or Proposal security:
- (a) A surety bond from a surety company authorized to do business in the State of Oregon;
- (b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
- (c) A cashier's check or Offeror's certified check.
- (4) **Return of Security.** A Contracting Agency shall return or release the Bid or Proposal security of all unsuccessful Offerors after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Offers have been rejected. The Contracting Agency may return the Bid or

Proposal security of unsuccessful Offerors prior to Award if the return does not prejudice Contract Award and the security of at least the Bidders with the three lowest Bids, or the Proposers with the three highest scoring Proposals, is retained pending execution of a Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.385 & ORS 279C.390

### **137-049-0300**

#### **Facsimile Bids and Proposals**

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

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

(2) **Provisions to be Included in Solicitation Document.** In addition to all other requirements, if the Contracting Agency authorizes a facsimile Offer for Bids or Proposals, the Contracting Agency shall include in the Solicitation Document (other than in a request for quotes) the following:

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

### **137-049-0310**

#### **Electronic Procurement**

(1) **General.** Contracting Agencies may utilize Electronic Advertisement of Public Improvement Contracts in accordance with ORS 279C.360(1) and Rule 137-049-0210(2)(b), provided that advertisement of such Contracts with an estimated Contract Price in excess of \$125,000 must also be published in a trade newspaper of general statewide circulation, and may post notices of intent to Award electronically as provided by ORS 279C.410(7).

(2) **Alternative Procedures.** In the event that a Contracting Agency desires to direct or permit the submission and receipt of Offers for a Public Improvement Contract by electronic means, as allowed under ORS 279C.365(1)(d), it shall first promulgate supporting procedures substantially in conformance with Rule 137-047-0330 (Electronic Procurement under ORS Chapter 279B), taking into account ORS Chapter 279C



requirements for written bids, opening bids publicly, bid security, first-tier subcontractor disclosure and inclusion of prevailing wage rates.

(3) **Interpretation.** Nothing in this rule shall be construed as prohibiting Contracting Agency from making procurement documents for Public Improvement Contracts available in electronic format as well as in hard copy when Bids are to be submitted only in hard copy.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365

### **137-049-0320**

#### **Pre-Closing Modification or Withdrawal of Offers**

(1) **Modifications.** An Offeror may modify its Offer in Writing prior to the Closing. An Offeror shall prepare and submit any modification to its Offer to the Contracting Agency in accordance with Rule 137-049-0280, unless otherwise specified in the Solicitation Document. Any modification must include the Offeror's statement that the modification amends and supersedes the prior Offer. The Offeror shall mark the submitted modification as follows:

(a) Bid (or Proposal) Modification; and

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

#### **(2) Withdrawals**

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

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

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

(A) Bid (or Proposal) Withdrawal; and

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

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.360(2), ORS 279C.365, ORS 279C.375 & ORS 279C.395

### **137-049-0330**

#### **Receipt, Opening and Recording of Offers; Confidentiality of Offers**

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

(2) **Opening and Recording.** A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to Rule 137-049-0320. In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, the Bid price(s), and such other information as the Contracting Agency considers appropriate. In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

(3) **Availability.** After Opening, the Contracting Agency shall make Bids available for public inspection, but, pursuant to ORS 279C.410, Proposals are not subject to disclosure until after notice of intent to award is issued. In any event, Contracting Agencies may withhold from disclosure those portions of an Offer that the Offeror designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the Contracting Agency determines such designation is not in accordance with applicable law, the Contracting Agency shall make those portions available for public inspection. The Offeror shall separate information designated as confidential from other nonconfidential information at the time of submitting its Offer. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and shall be publicly available regardless of an Offeror's designation to the contrary.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

### 137-049-0340

#### Late Bids, Late Withdrawals and Late Modifications

Any Offer received after Closing is late. An Offeror's request for withdrawal or modification of an Offer received after Closing is late. A Contracting Agency shall not consider late Offers, withdrawals or modifications except as permitted in Rules 137-049-0350 or 137-049-0390.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.375 & ORS 279C.395

### 137-049-0350

#### Mistakes

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

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

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

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

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

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

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

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

(A) The nature of the error;

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

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

(D) That the Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;

(E) That the Offeror acted without gross negligence in submitting an Offer that contained a claimed error;

(F) That the Offeror will suffer substantial detriment if the Contracting Agency does not grant the Offeror permission to withdraw the Offer;

(G) That the Contracting Agency's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the Contracting Agency or the public it represents; and

(H) That the Offeror promptly gave notice of the claimed error to the Contracting Agency.

(d) The criteria in subsection (2)(c) of this rule shall determine whether a Contracting Agency will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether a Contracting Agency will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Bid or Proposal security), or without liability to the Contracting Agency based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by the Contracting Agency, whether by Award to the next lowest Responsive and Responsible Bidder or the best Responsive and Responsible Proposer, or by resort to a new solicitation.

(3) **Rejection for Mistakes.** The Contracting Agency shall reject any Offer in which a mistake is evident on the face of the Offer and the intended correct Offer is not evident or cannot be substantiated from documents submitted with the Offer.

(4) **Identification of Mistakes after Award.** The procedures and criteria set forth above are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to this division 49 only to the extent permitted by applicable law.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375 & ORS 279C.395

### **137-049-0360**

#### **First-Tier Subcontractors; Disclosure and Substitution**

(1) **Required Disclosure.** Within two working hours after the Bid Closing on an ITB for a Public Improvement having a Contract Price anticipated by the Contracting Agency to exceed \$100,000, all Bidders shall submit to the Contracting Agency a disclosure form as described by ORS 279C.370(2), identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:

- (a) Five percent of the total Contract Price, but at least \$15,000; or
- (b) \$350,000, regardless of the percentage of the total Contract Price.

(2) **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the Contracting Agency shall:

- (a) Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m., except that these Bid Closing restrictions do not apply to an ITB for maintenance or construction of highways, bridges or other transportation facilities, and provided that the two-hour disclosure deadline described by this rule would not then fall on a legal holiday;
- (b) Open Bids publicly immediately after the Bid Closing; and
- (c) Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by the Contracting Agency.

(3) **Bidder Instructions and Disclosure Form.** For the purposes of this rule, a Contracting Agency in its Solicitation shall:

(a) Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and

(b) Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure

Bidders are required to disclose information about certain first-tier subcontractors when the contract value for a Public Improvement is estimated by the Contracting Agency to be greater than \$100,000 (see ORS 279C.370). Specifically, when the contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) 5% of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission, or within two hours after Bid Closing:

- (1) The subcontractor's name,
- (2) The category of Work that the subcontractor would be performing, and
- (3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

THE CONTRACTING AGENCY MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see Rule 137-049-0360)."

(4) **Submission.** A Bidder shall submit the disclosure form required by this rule either in its Bid submission, or within two Working hours after Bid Closing in the manner specified by the ITB.

(5) **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and this rule is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and shall not be considered for Contract Award.

(6) **Contracting Agency Role.** Contracting Agencies shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this rule. Contracting Agencies shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. Contracting Agencies are not required to determine the accuracy or completeness of the information provided on disclosure forms.

(7) **Substitution.** Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. Contracting Agencies shall accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, Contracting Agencies

do not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.370, ORS 279C.585, ORS 279C.590 & ORS 279C.835

### 137-049-0370

#### Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection 1(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for DBE Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a DBE Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.

(B) For a DBE Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will perform or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform services under a contract or to provide supplies under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a DBE Disqualification under ORS 200.075, the affected Contracting Agency shall not permit such Person to participate in that Contracting Agency's Contracts.

(C) For a DBE Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

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

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

- (e) Include a reference to the particular sections of the statutes and rules involved;
  - (f) State the proposed Disqualification period; and
  - (g) State that the Person may be represented by legal counsel.
- (3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.
- (4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:
- (a) The effective date and period of Disqualification;
  - (b) The grounds for Disqualification; and
  - (c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a DBE Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, ORS 200.075, ORS 279A.110, ORS 279C.440, ORS 279C.445 & ORS 279C.450

### **137-049-0380**

#### **Bid or Proposal Evaluation Criteria**

- (1) **General.** A Public Improvement Contract, if Awarded, shall be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. See Rule 137-049-0390, and Rules for Alternative Contracting Methods at Rules 137-049-0600 to 137-049-0690.
- (2) **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.
- (a) **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids shall be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price shall be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.
- (b) **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price shall be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price shall govern. See Rule 137-049-0350(2)(b).
- (3) **Proposal Evaluation Criteria.** If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under ORS 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. See Rules 137-049-0650, 137-049-0650, ORS 279C.335 and 279C.405.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

### **137-049-0390**

#### **Offer Evaluation and Award; Determination of Responsibility**

- (1) **General.** If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract, see ORS 279C.375(3)(a), or is ineligible for Award as a Nonresident (as defined in ORS 279A.120) education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.
- (2) **Determination of Responsibility.** Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information

that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

- (a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
- (b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and Public Contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;
- (c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under Rule 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;
- (d) Is legally qualified to contract with the Contracting Agency;
- (e) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the Work specified in the Contract;
- (f) Is covered by liability insurance and other insurance in amounts the Contracting Agency requires in the Solicitation Documents;
- (g) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128;
- (h) Has made the disclosure required under ORS 279C.370; and
- (i) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility upon any available information, or may find the Offeror not Responsible.

(3) **Documenting Agency Determinations.** Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in ORS 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) **Contracting Agency Evaluation.** The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) **Offeror Submissions.**

(a) The Contracting Agency may require an Offeror to submit Product Samples, descriptive literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) **Evaluation of Bids.** The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

- (a) **Nonresident Bidders.** In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with Rule 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
- (b) **Clarifications.** In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.
- (c) **Negotiation Prohibited.** The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.
- (7) **Evaluation of Proposals.** See Rule 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279C.365, ORS 279C.375 & ORS 279C.395

### **137-049-0395**

#### **Notice of Intent to Award**

- (1) **Notice.** At least seven days before the Award of a Public Improvement Contract, unless the Contracting Agency determines that seven days is impractical and documents its reasons therefore in the procurement file, the Contracting Agency shall issue to each Bidder (pursuant to ORS 279C.375(2)) and each Proposer (pursuant to ORS 279C.410(7)), or post, electronically or otherwise, a notice of the Contracting Agency's intent to Award the Contract. This requirement does not apply to Award of a small (under \$10,000), intermediate (informal competitive quotes) or emergency Public Improvement Contract awarded under ORS 279C.335(1)(c) or (d) or (6).
- (2) **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the Contracting Agency's procurement system, and may be made electronically.
- (3) **Finalizing Award.** The Contracting Agency's Award shall not be final until the later of the following:
- (a) Seven Days after the date of the notice, unless the Solicitation Document provided a different period for protest; or
- (b) The Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the Award.
- (4) **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the Contracting Agency determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reason for the determination, and posts notice of that action as soon as reasonably practical.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

### **137-049-0400**

#### **Documentation of Award; Availability of Award Decisions**

- (1) **Basis of Award.** After Award, the Contracting Agency shall make a record showing the basis for determining the successful Offeror part of the Contracting Agency's Solicitation file.
- (2) **Contents of Award Record for Bids.** The Contracting Agency's record shall include:
- (a) All submitted Bids;
- (b) Completed Bid tabulation sheet; and
- (c) Written justification for any rejection of lower Bids.
- (3) **Contents of Award Record for Proposals.** Where the use of Requests for Proposals is authorized as set forth in Rule 137-049-0650, the Contracting Agency's record shall include:
- (a) All submitted Proposals.
- (b) The completed evaluation of the Proposals;
- (c) Written justification for any rejection of higher scoring Proposals or for failing to meet mandatory requirements of the Request for Proposal; and
- (d) If the Contracting Agency permitted negotiations in accordance with Rule 137-049-0650, the Contracting Agency's completed evaluation of the initial Proposals and the Contracting Agency's completed evaluation of final Proposals.
- (4) **Contract Document.** The Contracting Agency shall deliver a fully executed copy of the final Contract to the successful Offeror.
- (5) **Bid Tabulations and Award Summaries.** Upon request of any Person the Contracting Agency shall provide tabulations of Awarded Bids or evaluation summaries of Proposals for a nominal charge which may be payable in advance. Requests must contain the Solicitation Document number and, if requested, be accompanied by a self-addressed, stamped envelope. Contracting Agencies may also provide tabulations

of Bids and Proposals Awarded on designated Web sites or on the Contracting Agency's Electronic Procurement System.

(6) **Availability of Solicitation Files.** The Contracting Agency shall make completed Solicitation files available for public review at the Contracting Agency.

(7) **Copies from Solicitation Files.** Any Person may obtain copies of material from Solicitation files upon payment of a reasonable copying charge.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365 & ORS 279C.375

#### **137-049-0410**

##### **Time for Contracting Agency Acceptance; Extension**

(1) **Time for Offer Acceptance.** An Offeror's Bid, or Proposal submitted as a Firm Offer (see Rule 137-049-0280), is irrevocable, valid and binding on the Offeror for not less than 30 Days from Closing unless otherwise specified in the Solicitation Document.

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

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375

#### **137-049-0420**

##### **Negotiation With Bidders Prohibited**

(1) **Bids.** Except as permitted by ORS 279C.340 and Rule 137-049-0430 when all bids exceed the cost estimate, a Contracting Agency shall not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the Contracting Agency and Contractor may modify the Contract only by change order or amendment to the Contract in accordance with Rule 137-049-0910.

(2) **Requests for Proposals.** A Contracting Agency may conduct discussions or negotiations with Proposers only in accordance with the requirements of Rule 137-049-0650.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.340 & ORS 279C.375

#### **137-049-0430**

##### **Negotiation When Bids Exceed Cost Estimate**

(1) **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the Contracting Agency's Cost Estimate, prior to Contract Award the Contracting Agency may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the Contracting Agency's Cost Estimate. The subcontractor disclosure and substitution requirements of Rule 137-049-0360 do not apply to negotiations under this rule.

(2) **Definitions.** The following definitions apply to this administrative rule:

(a) **"Cost Estimate"** means the Contracting Agency's most recent pre-Bid, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) **"Other Options"** means those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance as specified in Rule 137-049-0650, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

(c) **"Project"** means a Public Improvement.

(d) **"Value Engineering"** means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.



- (3) **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the Contracting Agency, shall be excluded from consideration.
- (4) **Scope of Negotiations.** Contracting Agencies shall not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Bidders would have been expected by the Contracting Agency to participate in the bidding process had the change been made during the Solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.
- (5) **Discontinuing Negotiations.** The Contracting Agency may discontinue negotiations at any time, and shall do so if it appears to the Contracting Agency that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, shall be considered a lack of good faith.
- (6) **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.
- (7) **Public Records.** To the extent that a Bidder's records used in Contract negotiations under ORS 279C.340 are public records, they are exempt from disclosure until after the negotiated Contract has been awarded or the negotiation process has been terminated, at which time they are subject to disclosure pursuant to the provisions of the Oregon Public Records Law, ORS 192.410 to 192.505.

Stat. Auth.: ORS 279C.340 & ORS 279A.065  
 Stats. Implemented: ORS 279C.340

#### **137-049-0440**

##### **Rejection of Offers**

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

- (a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.
- (b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:
- (A) Is contingent upon the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
  - (B) Takes exception to terms and conditions (including Specifications);
  - (C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;
  - (D) Offers Work or goods that fail to meet the Specifications of the Solicitation Document;
  - (E) Is late;
  - (F) Is not in substantial compliance with the Solicitation Documents;
  - (G) Is not in substantial compliance with all prescribed public Solicitation procedures.
- (c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:
- (A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;
  - (B) Has been Disqualified;
  - (C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
  - (D) Is listed as not qualified by the Construction Contractors Bd, if the Contract is for a Public Improvement;
  - (E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;
  - (F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;
  - (G) Has failed to provide the certification required under section 3 of this rule;
  - (H) Is not Responsible. See Rule 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.
- (2) **Form of Business.** For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and Rule 137-049-0370.
- (3) **Certification of Non-Discrimination.** The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) **Notice.** Contracting Agency need not provide an Offeror with any notice in the event that its Offer is rejected. However, Contracting Agency will provide all Offerors with a Notice of Intent to Award, as required, pursuant to Rule 137-049-0395.

(5) **Rejection of all Offers.** A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) **Criteria for Rejection of All Offers.** The Contracting Agency may reject all Offers upon a Written finding that:

- (a) The content of or an error in the Solicitation Document, or the Solicitation process unnecessarily restricted competition for the Contract;
- (b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;
- (c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
- (d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;
- (e) The Contracting Agency cancels the Solicitation in accordance with Rule 137-049-0270; or
- (f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.105, ORS 279A.110, ORS 279C.375, ORS 279C.380 & ORS 279C.395,

#### **137-049-0450**

##### **Protest of Contractor Selection, Contract Award**

(1) **Purpose.** An adversely affected or aggrieved Offeror must exhaust all avenues of administrative review and relief before seeking judicial review of the Contracting Agency's Contractor selection or Contract Award decision. These administrative remedies apply to all public contracts awarded by Contracting Agency, including those awarded pursuant to an intermediate procurement.

(2) **Notice of Competitive Range.** Unless otherwise provided in the RFP, under Rule 137-049-0650, the Contracting Agency shall provide Written notice to all Proposers of the Contracting Agency's determination of the Proposers included in the Competitive Range. The Contracting Agency's notice of the Proposers included in the Competitive Range shall not be final until the later of the following:

- (a) Seven (7) Days after the date of the notice, unless otherwise provided therein; or
- (b) Until the Contracting Agency provides a Written response to all timely-filed protests that denies the protest and affirms the notice of the Proposers included in the Competitive Range.

(3) **Notice of Intent to Award.** The Contracting Agency shall provide Written notice to all Offerors of the Contracting Agency's intent to Award the Contract, as provided in Rule 137-049-0395.

##### **(4) Right to Protest Award.**

(a) To protest an Award, an adversely affected or aggrieved Offeror must submit to the Contracting Agency a Written protest within seven (7) Days after issuance of the notice of intent to Award the Contract, or Award of a Contract, whichever occurs first, unless a different protest period is provided under the Solicitation Document.

(b) The Offeror's protest must be in Writing and must specify the grounds upon which the protest is based.

(c) An Offeror is adversely affected or aggrieved only if the Offeror is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid or the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Offeror must claim that all lower Bidders or higher-scored Proposers are ineligible for Award:

- (A) Because their Offers were nonresponsive; or
- (B) The Contracting Agency committed a substantial violation of a provision in the Solicitation Document or of an applicable Procurement statute or administrative rule, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Bid or the Responsible Proposer offering the highest-ranked Proposal.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

##### **(5) Right to Protest Competitive Range.**

(a) An adversely affected or aggrieved Proposer may submit to the Contracting Agency a Written protest of the Contracting Agency's decision to exclude the Proposer from the Competitive Range within seven Days

after issuance of the notice of the Competitive Range, unless a different protest period is provided under the Solicitation Document. (See procedural requirements for the use of RFPs at Rule 137-049-0650.)

(b) The Proposer's protest shall be in Writing and must specify the grounds upon which the protest is based.

(c) A Proposer is adversely affected only if the Proposer is responsible and submitted a Responsive Proposal and is eligible for inclusion in the Competitive Range, i.e., the protesting Proposer must claim it is eligible for inclusion in the Competitive Range if all ineligible higher-scoring Proposers are removed from consideration, and that those ineligible Proposers are ineligible for inclusion in the Competitive Range because:

(A) Their Proposals were not responsive; or

(B) The Contracting Agency committed a substantial violation of a provision in the RFP or of an applicable Procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated and would have, but for such substantial violation, been included in the Competitive Range.

(d) The Contracting Agency shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the Solicitation Document. A Proposer may not protest a Contracting Agency's decision not to increase the size of the Competitive Range above the size of the Competitive Range set forth in the RFP.

(6) **Authority to Resolve Protests.** The head of the Contracting Agency, or such Person's designee, may settle or resolve a Written protest submitted in accordance with the requirements of this rule.

(7) **Decision.** If a protest is not settled, the head of the Contracting Agency, or such Person's designee, shall promptly issue a Written decision on the protest. Judicial review of this decision will be available if provided by statute.

(8) **Award.** The successful Offeror shall promptly execute the Contract after the Award is final. The Contracting Agency shall execute the Contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380, ORS 279C.385 & ORS 279C.460

### **137-049-0460**

#### **Performance and Payment Security; Waiver**

(1) **Public Improvement Contracts.** Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of emergency under ORS 279C.380(4), or unless the Contracting Agency's Contract Review Authority exempts a Contract or classes of contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the Contracting Agency a performance bond and a payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the Contracting Agency, of more than \$100,000 or, in the case of Contracts for highways, bridges and other transportation projects, more than \$50,000. See ORS 279C.380(5). Under ORS 279C.390(3)(b) the Director of the Oregon Department of Transportation may reduce the performance bond amount for contracts financed from the proceeds of bonds issued under ORS 367.620(3)(a). Also see Rule 137-049-0815 and BOLI rules at OAR 839-025-0015 regarding the separate requirement for a Public Works bond.

(2) **Other Construction Contracts.** A Contracting Agency may require performance security for other construction Contracts that are not Public Improvement Contracts. Such requirements shall be expressly set forth in the Solicitation Document.

(3) **Requirement for Surety Bond.** The Contracting Agency shall accept only a performance bond furnished by a surety company authorized to do business in Oregon unless otherwise specified in the Solicitation Document (i.e., the Contracting Agency may accept a cashier's check or certified check in lieu or all or a portion of the required performance bond if specified in the Solicitation Document). The payment bond must be furnished by a surety company authorized to do business in Oregon, and in an amount equal to the full Contract Price.

(4) **Time for Submission.** The apparent successful Offeror must promptly furnish the required performance security upon the Contracting Agency's request. If the Offeror fails to furnish the performance security as requested, the Contracting Agency may reject the Offer and Award the Contract to the Responsible Bidder with the next lowest Responsive Bid or the Responsible Proposer with the next highest-scoring Responsive Proposal, and, at the Contracting Agency's discretion, the Offeror shall forfeit its Bid or Proposal security.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.375, ORS 279C.380 & ORS 279C.390

**137-049-0470**

**Substitute Contractor**

If the Contractor provided a performance bond, the Contracting Agency, in its sole discretion, may afford the Contractor's surety the opportunity to provide a substitute contractor to complete performance of the Contract. A substitute contractor shall perform all remaining Contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive Procurement provisions of ORS Chapter 279C.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.365, ORS 279C.370, ORS 279C.375, ORS 279C.380 & ORS 279C.390

**137-049-0490**

**Foreign Contractor**

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to the Contracting Agency. The Contracting Agency Awarding the Contract shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.120

**ALTERNATIVE CONTRACTING METHODS**

**137-049-0600**

**Purpose**

Rules 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. Alternative Contracting Methods include, but are not limited to, Design-Build, Energy Savings Performance Contract (ESPC) and Construction Manager/General Contractor (CM/GC) forms of contracting. To the extent any such Alternative Contracting Methods (with the exception of CM/GC) are utilized within the competitive bidding process set forth at ORS 279C.335(1), Rules 137-049-0600 to 137-049-0690 are advisory only and need not be followed.

Stat. Auth.: ORS 279C.335, ORS 279A.065 & ORS 351.086

Stats. Implemented: ORS 279C.335, ORS 279C.337, ORS 279A.065 & ORS 351.086

**137-049-0610**

**Definitions for Alternative Contracting Methods**

The following definitions shall apply to these 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) "**Alternative Contracting Methods**" means innovative Procurement techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional method of Design-Bid-Build (with Award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid Awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting *and* CM/GC forms of contracting, which are specifically addressed in these 137-049-0600 to 137-049-0690 rules, as well as other developing techniques such as general "performance contracting" and "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements are identified under these 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(2) "**Construction Manager/General Contractor (or "CM/GC")**" has the meaning set forth in ORS 279C.332(2).

(3) **“Construction Manager/General Contractor Method (or “CM/GC Method)”** means the Alternative Method which involves a Contracting Agency’s selection of a CM/GC to perform CM/GC Services for a project or projects.

(4) **“Construction Manager/General Contractor Services (or CM/GC Services)”** has the meaning set forth in ORS 279C.332(3).

(5) **“Design-Build”** means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(6) **“Guaranteed Maximum Price (or “GMP)”** has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, “Guaranteed Maximum Price” (or “GMP”) means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.332, ORS 279C.335 & ORS 279A.065

### **137-049-0620**

#### **Use of Alternative Contracting Methods**

(1) **Competitive Bidding Exemptions.** ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts unless a statutory exception applies, a class of Contracts has been exempted or an individual Contract has been exempted in accordance with ORS 279C.335 and any applicable Contracting Agency rules. Use of Alternative Contracting Methods may be directed by a Contracting Agency’s Contract Review Authority as an exception to the prescribed Public Contracting practices in Oregon, and their use must be justified in accordance with the Code and these 137-049-0600 to 137-049-0690 rules. See Rule 137-049-0630 regarding required Findings and restrictions on class exemptions. Contracting Agency’s Contract Review Authority has duly adopted class exemptions for the use of Requests for Proposals (RFP) and ESPC forms of contracting and authorized Contracting Agency to approve use of these alternative solicitation and contracting methods in accordance with Rules 137-049-0600 to 137-049-0690, as applicable.

(2) **Post-Project Evaluation.** Per ORS 279C.355 the Contracting Agency shall prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency’s best interest to use an Alternative Contracting Method. The evaluation must be delivered to the Contracting Agency’s Contract Review Authority within 30 Days of the date the Contracting Agency “accepts” the Public Improvement project, as defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Work. The evaluation shall address:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.355 & ORS 351.086

### **137-049-0630**

#### **Findings, Notice and Hearing**

(1) **“Cost Savings” and Other Substantial Benefits Factors.** When Findings are required under ORS 279C.335(2)(b) to exempt a Contract or class of Contracts from the competitive bidding requirements, the “substantial cost savings and other substantial benefits” criterion at 279C.335(2)(b) requires consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the local contract review board need not consider nor address that factor.

(2) **Required Information.** The statutory definition of “Findings” at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting

Agency's conclusion regarding the factors listed in both ORS 279C.335(2)(a) and either 279C.335(2)(b) or 279C.335(2)(c).

(3) **Addressing Cost Savings.** Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, Contracting Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c).

(4) **Favoritism and Competition.** The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed for Alternative Contracting Methods by specifying: (a) the manner in which an RFP process will be utilized; (b) that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method; (c) that competition will be encouraged; and (d) that Award will be made based upon identified selection criteria and an opportunity to protest that Award provided.

(5) **Class Exemptions.** In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279.335(3). Those characteristics shall include some combination of Project descriptions or locations, time periods, contract values, method of procurement, or other factors that distinguish the limited and related class of Projects from a Contracting Agency's overall construction program. The Contracting Agency may not identify a class solely by funding source, such as a particular bond fund, or by the method of procurement, but shall identify the class using characteristics that reasonably relate to the exemption criteria of ORS 279C.335(2).

(6) **Public Hearing.** Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency shall give notice and may hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's draft Findings.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335 & ORS 279A.065

### **137-049-0640**

#### **General Alternative Contracting Procedures**

(1) **Proposal Evaluation.** Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305.

#### **(2) Evaluation Factors.**

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that affect cost or quality.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include any factors required by ORS 279C.337 and OAR 137-049-0690.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that affect cost or quality.

(3) **Contract Negotiations.** Contract terms may be negotiated to the extent allowed by the RFP and Rules 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See Rule 137-049-0650. Terms that may be negotiated consist of details of Contract

performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of Rule 137-049-0680.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065 & ORS 351.086

### **137-049-0650**

#### **Requests for Proposals (RFP)**

##### **(1) Generally.**

(a) Contracting Agency may utilize the following RFP process for public improvement contracts to allow flexibility in both proposal evaluation and contract negotiation, subject to ORS 279C.400 to 279C.410, Rules 137-049-0200 to 137-049-0480, and 137-049-0640 to 137-049-0660, unless other applicable statutes or rules control a Contracting Agency's use of competitive proposals for public improvement contracts.

(b) Contracting Agency may issue a request for information, a request for interest, a request for qualifications or other preliminary documents to obtain information useful in the preparation or distribution of a Request for Proposals. ORS 279C.410(9).

(2) **Solicitation Documents.** In addition to the Solicitation Document requirements of Rule 137-049-0200, Public Improvement Contract Requests for Proposals shall include:

(a) Whether Contracting Agency reserves the right to Award to and Contract with more than one Proposer.

(b) All evaluation factors that will be considered by the Contracting Agency when evaluating the proposals, including the relative importance of price and any other evaluation factors. Evaluation factors may include, but are not limited to, such considerations as price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions.

(c) The method of contractor selection, which may include, but is not limited to, Award without negotiation, negotiation with the highest ranked Proposer, competitive negotiations, multiple-tiered competition designed to either identify a class of Proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked Proposers, or any combination of these methods;

(d) All required contractual terms and conditions. The Request for Proposals also may: (i) identify those contractual terms or conditions that Contracting Agency reserves, in the Request for Proposals, for negotiation with Proposers; (ii) request that Proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the Request for Proposals; and (iii) contain or incorporate the form and content of the contract that the Contracting Agency will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with Proposers.

##### **(3) Evaluation of Proposals.**

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its Request for Proposals, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work.

(iii) The process outlined in subsections (5)(b) and (6) of this rule do not apply to this limited negotiation.

(b) Discussions; Negotiations. The Contracting Agency shall evaluate Proposals and, if applicable, establish the Competitive Range, before conducting discussions or negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency may establish a negotiation committee which may include members with legal, technical or negotiating expertise.  
(c) Cancellation/Rejection. Cancellation of the Solicitation or rejection of proposals shall be in accordance with ORS 279C.395.

**(4) Competitive Range; Protest; Award.**

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the Solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals and rank the Proposers in the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Notice/Protests. Notice of Competitive Range and Award, and associated protest rights will be as established in Rule 137-049-0450.

(c) After the protest period provided in accordance with Rule 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) **Discussions; Revised Proposals**. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

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

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

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

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the Solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall score the revised Proposals based upon the evaluation criteria set forth in the Request for Proposals, and rank the revised Proposals based on the Contracting Agency's scoring.



(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the Request for Proposals.

(d) Intent to Award; Protest. Written notice of intent to Award and associated protest rights are as established in Rule 137-049-0450. After the protest period expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may commence final Contract negotiations.

**(6) Negotiations.**

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations.

(A) Scope. The Contracting Agency may negotiate:

(i) The statement of Work;

(ii) The Contract Price as it is affected by negotiating the statement of Work; and

(iii) Any other terms and conditions reasonably related to those authorized for negotiation in the Request for Proposals.

(c) Terminating Negotiations. The Contracting Agency may terminate negotiations with any Proposer at any time, if the Contracting Agency reasonably believes that:

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

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

(d) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has either:

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

(B) Completed at least one round of negotiations with all Proposers in the Competitive Range.

**(7) Post Project Evaluation.** For projects over \$100,000, Contracting Agency shall complete a post project evaluation in compliance with ORS 279C.355 and Rule 137-049-0620(3).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 to ORS 279C.410

**137-049-0660**

**RFP Pricing Mechanisms**

(1) A Request for Proposals may result in a lump sum Contract Price, as in the case of competitive bidding. Alternatively, a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract may be negotiated.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price (GMP) *may be* used as the pricing mechanism for CM/GC where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design Work has been completed.

(a) If this collaborative process is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If this collaborative process is not successful, and no mutually agreeable resolution on GMP can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.335

## 137-049-0670

### Design-Build Contracts

(1) **General.** The Design-Build form of contracting, as defined in Rule 137-049-0610(3), has technical complexities that are not readily apparent. Contracting Agencies shall use this contracting method only with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to use the Design-Build process, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

- (a) Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control and required documentation as a fully integrated function with a single point of responsibility;
- (b) Integrating value engineering suggestions into the design phase, as the construction Contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- (c) Reducing the risk of design flaws, misunderstandings and conflicts inherent in construction Contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- (d) Shortening project time as construction activity (early submittals, mobilization, subcontracting and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- (e) Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

(2) **Authority.** Contracting Agencies shall utilize the Design-Build form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules. See particularly Rule 137-049-0620 on "Use of Alternative Contracting Methods" and Rule 137-049-0680 pertaining to ESPCs.

(3) **Selection.** Design-Build selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b) and (c).

(4) **QBS Inapplicable.** Because the value of construction services predominates the Design-Build form of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(5) **Licensing.** If a Design-Build Contractor is not an Oregon licensed design professional, the Contracting Agency shall require that the Design-Build Contractor disclose in its Written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

(6) **Performance Security.** ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related professional services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of professional services and related design revisions, corrective Work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance, and does not include errors and omissions or latent defects coverage.

(7) **Contract Requirements.** Contracting Agencies shall conform their Design-Build contracting practices to the following requirements:

- (a) **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- (b) **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and the Contracting Agency, as well as requirements for professional liability insurance.
- (c) **Risk Allocation.** The Contract shall clearly identify the extent to which the Contracting Agency requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations and faulty Work claims.
- (d) **Warranties.** The Contract shall clearly identify any express warranties made to the Contracting Agency regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- (e) **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply and their relationship to other financial elements of the Contract.

(f) Honoraria. If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the Solicitation process on the basis that the Contracting Agency is benefited from such deliverables.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

### **137-049-0680**

#### **Energy Savings Performance Contracts (ESPC)**

(1) **Generally**. These 137-049-0600 to 137-049-0690 rules include a limited, efficient method for Contracting Agency to enter into ESPCs outside the competitive bidding requirements of ORS 279C.334. See ORS 279C.335(1)(f). If a Contracting Agency chooses not to utilize the ESPC Procurement method provided for by these 137-049-0600 to 137-049-0690 rules, the Contracting Agency may still enter into an ESPC by complying with the competitive bidding exemption process set forth in ORS 279C.335, or by otherwise complying with the Procurement requirements applicable to any Contracting Agency not subject to all the requirements of ORS 279C.335.

(2) **ESPC Contracting Method**. The ESPC form of contracting, as defined at Rule 137-049-0610(6), has unique technical complexities associated with the determination of what ECMs are feasible for the Contracting Agency, as well as the additional technical complexities associated with a Design-Build Contract. Contracting Agencies shall only utilize the ESPC contracting method with the assistance of knowledgeable staff or consultants who are experienced in its use. In order to utilize the ESPC contracting process, the Contracting Agency must be able to reasonably anticipate one or more of the following types of benefits:

(a) Obtaining, through an ESCO, the following types of integrated Personal Services and Work: facility profiling, energy baseline studies, ECMs. Technical Energy Audits, project development planning, engineering design, plan preparation, cost estimating, life cycle costing, construction administration, project management, construction, quality control, operations and maintenance staff training, commissioning services, Measurement and Verification (M & V) services and required documentation as a fully integrated function with a single point of responsibility;

(b) Obtaining through an ESCO, an Energy Savings Guarantee;

(c) Integrating the Technical Energy Audit phase and Project Development Plan phase into the design and construction phase of Work on the project;

(d) Reducing the risk of design flaws, misunderstandings and conflicts inherent in the construction process, through the integration of ESPC Personal Services and Work;

(e) Obtaining innovative design solutions through the collaboration of the members of the ESCO integrated ESPC team;

(f) Integrating cost-effective Energy Conservation Measures (ECMs) into an existing building or structure, so that the ECMs pay for themselves through savings realized over the useful life of the ECMs;

(g) preliminary design, development, implementation and an Energy Savings Guarantee of ECMs into an existing building or structure that is being performed under a separate remodeling Contract; and

(h) Satisfying local energy efficiency design criteria or requirements.

(3) **Authority**. Contracting Agency may utilize the ESPC form of contracting only in accordance with the requirements of these 137-049-0600 to 137-049-0690 rules.

(4) **No Findings Required**. A Contracting Agency is only required to comply with the ESPC contracting procedures set forth in these 137-049-0600 to 137-049-0690 rules in order for the ESPC to be exempt from the competitive bidding process of ORS 279C.335. No Findings are required for an ESPC to be exempt from the competitive bidding process for Public Improvement Contracts pursuant to ORS 279C.335, unless the Contracting Agency is subject to the requirements of ORS 279C.335 and chooses not to comply with the ESPC contracting procedures set forth in 137-049-0600 to 137-049-0690 of these rules.

(5) **Selection**. ESPC contracts may be directly awarded or solicited via an informal or formal RFP process. ESPC selection criteria may include those factors set forth above in Rule 137-049-0640(2)(a), (b), and (c). Since the Energy Savings Guarantee is such a fundamental component in the ESPC contracting process, prior to award, potential awardees must identify any Person providing (directly or indirectly) any Energy Savings Guarantee that may be offered by the successful ESCO during the course of the performance of the ESPC, along with any financial statements and related information pertaining to any such Person.

(6) **QBS Inapplicable**. Because the value of construction Work predominates in the ESPC method of contracting, the qualifications based selection (QBS) process mandated by ORS 279C.110 for State Contracting Agencies in obtaining certain consultant services is not applicable.

(7) **Licensing**. If the ESCO is not an Oregon licensed design professional, the Contracting Agency shall require that the ESCO disclose in the ESPC that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5)

regarding the offer of architectural services, and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction Work.

(8) **Performance Security.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the ESCO must provide a performance bond and a payment bond, each for 100% of the full Contract Price, including the construction Work and design and related Personal Services specified in the ESPC Design-Build Contract, pursuant to ORS 279C.380(1)(a). For ESPC Design-Build Contracts, these “design and related services” include conventional design services, commissioning services, training services for the Contracting Agency’s operations and maintenance staff, and any similar Personal Services provided by the ESCO’s Energy Savings Guarantee are not included in these 279C.380(1)(a) “design and related services.” Nevertheless, a Contracting Agency may require that the ESCO provide performance security for M & V services and any Personal Services or Work associated with the ESCO’s Energy Savings Guarantee, if the Contracting Agency so provides in the RFP.

(9) **Contracting Requirements.** Contracting Agencies shall conform their ESPC contracting practices to the following requirements:

(a) **General ESPC Contracting Practices.** An ESPC involves a multi-phase project, which includes the following contractual elements:

(A) A contractual structure which includes general Contract terms describing the relationship of the parties, the various phases of the Work, the contractual terms governing the Technical Energy Audit for the project, the contractual terms governing the final design and construction of the project, the contractual terms governing the performance of the M & V services for the project, and the detailed provisions of the ESCO’s Energy Savings Guarantee for the project.

(B) The various phases of the ESCO’s Work will include the following:

(i) The Technical Energy Audit phase of the Work;

(ii) The Project Development Plan phase of the Work;

(iii) A third phase of the Work that constitutes a Design-Build Contract, during which the ESCO completes any plans and Specifications required to implement the ECMs that have been agreed to by the parties to the ESPC, and the ESCO performs all construction, commissioning, construction administration and related Personal Services or Work to actually construct the project; and

(iv) A final phase of the Work, whereby the ESCO, independently or in cooperation with an independent consultant hired by the Contracting Agency, performs M & V services to ensure that the Energy Savings Guarantee identified by the ESCO in the earlier phases of the Work and agreed to by the parties has actually been achieved.

(b) **Design-Build Contracting Requirements in ESPCs.** At the point in the ESPC when the parties enter into a binding Contract that constitutes a Design-Build Contract, the Contracting Agency shall conform its Design-Build contracting practices to the Design-Build contracting requirements set forth in Rule 137-040-0560(7) above.

(c) **Pricing Alternatives.** The Contracting Agency may utilize one of the following pricing alternatives in an ESPC:

(A) A fixed price for each phase of the Personal Services and Work to be provided by the ESCO;

(B) A cost reimbursement pricing mechanism, which a maximum not-to-exceed price or a GMP; or

(C) A combination of a fixed fee for certain components of the Personal Services to be performed, a cost reimbursement pricing mechanism for the construction Work to be performed with a GMP, a single or annual fixed fee for M & V services to be performed for an identified period after final completion of the construction Work, and a single or annual Energy Savings Guarantee fixed fee payable for an identified time period after final completion of the construction Work that is conditioned on certain energy savings being achieved at the facility by the ECMs that have been implemented by the ESCO during the project (in the event an annual M & V services fee and annual Energy Savings Guarantee fee is utilized by the parties, the parties may provide in the Design-Build Contract that, at the sole option of the Contracting Agency, the ESCO’s M & V services may be terminated prior to the completion of the M & V/Energy Savings Guarantee period and the Contracting Agency’s future obligation to pay the M & V services fee and Energy Savings Guarantee fee will likewise be terminated, under terms agreed to by the parties).

(d) **Permitted ESPC Scope of Work.** The scope of Work under the ESPC is restricted to implementation and installation of ECMs, as well as other Work on building systems or building components that are directly related to the ECMs, and that, as an integrated unit, will pay for themselves over the useful life of the ECMs installed. The permitted scope of Work for ESPCs resulting from a solicitation under these 137-049-0600 to 137-049-0690 rules does not include maintenance services for the project facility.

Stat. Auth.: ORS 279C.335 & ORS 279A.065

Stats. Implemented: ORS 279C.335, ORS 279A.065, ORS 279C.110 & ORS 351.086

**137-049-0690**

**Construction Manager/General Contractor (CM/GC)**

Contracting Agency shall use a Construction Manager/General Contractor (CM/GC) form of contracting, as defined in Rule 137-049-0610(3), only in accordance with ORS 279C.337 and OAR 137-049-0690.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.335, ORS 279C.337 & ORS 279C.380(2)

**CONTRACT PROVISIONS**

**137-049-0800**

**Required Contract Clauses**

Contracting Agencies shall include in all formal Solicitations for Public Improvement Contracts all of the ORS Chapter 279C required Contract clauses, as set forth in the checklist contained in Rule 137-049-0200(1)(c) regarding Solicitation Documents. The following series of rules provide further guidance regarding particular Public Contract provisions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 297C.505 to ORS 279C.545 & ORS 279C.800 to 279C.870

**137-049-0810**

**Waiver of Delay Damages Against Public Policy**

Contracting Agencies shall not place any provision in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from a Contracting Agency's unreasonable delay in performing the Contract. However, Contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration (where allowable) or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are permissible.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.315

**137-049-0815**

**BOLI Public Works Bond**

Pursuant to ORS 279C.830(3), the specifications for every Public Works Contract shall contain a provision stating that the Contractor and every subcontractor must have a Public Works bond filed with the Construction Contractors Board before starting Work on the project, unless otherwise exempt. This bond is in addition to performance bond and payment bond requirements. See BOLI rule at OAR 839-025-0015.

Stat. Auth. ORS 279A.065

Stats. Implemented: ORS 279C.830

**137-049-0820**

**Retainage**

(1) **Withholding of Retainage.** Except to the extent a Contracting Agency's enabling laws require otherwise, a Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) **Form of Retainage.** Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond, security, or other instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond, security, or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) **Deposit in interest-bearing accounts.** Either upon election of the Contractor pursuant to ORS 279C.560(5) or as required when the Contract Price exceeds \$500,000 pursuant to ORS 279C.570(2), a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, or interest-bearing escrow account pursuant to ORS 279C.570(2). Earnings on such an account shall accrue to the Contractor from the date the Contractor's related payment request is fully approved by the Contracting Agency, until the date the retainage is paid to the Contractor. For purposes of this Section, a payment of retainage is deemed to be "paid" by a Contracting Agency when the payment is transmitted to the Contractor or otherwise applied against an obligation of the Contractor under the Contract.

(4) **Alternatives to cash retainage.** In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) **Recovery of Costs.** Pursuant to ORS 279C.560(3), a Contracting Agency may reduce the final payment to recover from the Contractor all additional costs incurred as a result of Contractor's election to:

(i) submit an alternative to cash retainage pursuant to section (4) of this rule; or (ii) to deposit cash retainage in an interest-bearing account pursuant to section (3) of this rule for Contracts not in excess of \$500,000 by reducing the final payment.

(6) **Additional Retainage When Certified Payroll Statements Not Filed.** Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see ORS 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & ORS 279C.845

Stats. Implemented: ORS 279C.560, ORS 279C.570 & ORS 701.420

### 137-049-0830

#### Contractor Progress Payments

(1) **Request for progress payments.** Each month the Contractor shall submit to the Contracting Agency its Written request for a progress payment based upon an estimated percentage of Contract completion. At the Contracting Agency's discretion, this request may also include the value of material to be incorporated in the completed Work that has been delivered to the premises and appropriately stored. The sum of these estimates is referred to as the "value of completed Work." With these estimates as a base, the Contracting Agency will make a progress payment to the Contractor, which shall be equal to: (i) the value of completed Work; (ii) less those amounts that have been previously paid; (iii) less other amounts that may be deductible or owing and due to the Contracting Agency for any cause; and (iv) less the appropriate amount of retainage.

(2) **Progress payments do not mean acceptance of Work.** Progress payments shall not be construed as an acceptance or approval of any part of the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.570

#### **137-049-0840**

##### **Interest**

(1) **Prompt payment policy.** A Contracting Agency shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

(2) **Interest on progress payments.** Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after Contracting Agency approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent.

(3) **Interest on final payment.** Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.

(4) **Settlement or judgment interest.** In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to the Contracting Agency in Writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.570

#### **137-049-0850**

##### **Final Inspection**

(1) **Notification of Completion; inspection.** The Contractor shall notify the Contracting Agency in Writing when the Contractor considers the Contract Work completed. Within 15 Days of receiving Contractor's notice, the Contracting Agency will inspect the project and project records, and will either accept the Work or notify the Contractor of remaining Work to be performed.

(2) **Acknowledgment of acceptance.** When the Contracting Agency finds that all Work required under the Contract has been completed satisfactorily, the Contracting Agency shall acknowledge acceptance of the Work in Writing.

Stat. Auth.: ORS 279A.065  
Stats. Implemented: ORS 279C.570(8)

#### **137-049-0860**

##### **Public Works Contracts**

(1) **Generally.** ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in 279C.800(6), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

(2) **Required Contract Conditions.** As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

(a) Contracting Agency authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

(b) Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

(c) Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

(d) Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.

(e) A requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1). If both state and federal prevailing rates of wage apply, the contract and every subcontract must provide that all workers must be paid the higher of the applicable state or federal prevailing rate of wage.

(f) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

(3) **Requirements for Specifications.** The Specifications for every Public Works Contract, consisting of the procurement package (such as the project manual, Bid or Proposal booklets, request for quotes or similar procurement Specifications), must contain the following provisions:

(a) The state prevailing rate of wage, and, if applicable, the federal prevailing rate of wage, as required by ORS 279C.830(1)(a):

(A) Physically contained within or attached to hard copies of procurement Specifications;

(B) Included by a statement incorporating the applicable wage rate publication into the Specifications by reference, in compliance with OAR 839-025-0020; or,

(C) When the rates are available electronically or by Internet access, the rates may be incorporated into the Specifications by referring to the rates and providing adequate information on how to access them in compliance with OAR 839-025-0020.

(b) If both state and federal prevailing rates of wage apply, a requirement that the contractor shall pay the higher of the applicable state or federal prevailing rate of wage to all workers. See BOLI rules at OAR 839-025-0020 and 0035.

(c) A requirement for filing a public works bond by contractor and every subcontractor, as set forth in ORS 279C.830(2).

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.800 – ORS 279C.870

### 137-049-0870

#### **Specifications; Brand Name Products**

(1) **Generally.** The Contracting Agency's Solicitation Document shall not expressly or implicitly require any product by brand name or mark, nor shall it require the product of any particular manufacturer or seller, except pursuant to an exemption granted under ORS 279C.345(2).

(2) **Equivalents.** A Contracting Agency may identify products by brand names so long as the following language: "approved equal"; "or equal"; "approved equivalent" or "equivalent," or similar language is included in the Solicitation Document. The Contracting Agency shall determine, in its sole discretion, whether an Offeror's alternate product is "equal" or "equivalent."

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.345

### 137-049-0880

#### **Records Maintenance; Right to Audit Records**

(1) **Records Maintenance; Access.** Contractors and subcontractors shall maintain all fiscal records relating to Contracts in accordance with generally accepted accounting principles ("GAAP"). In addition, Contractors and subcontractors shall maintain all other records necessary to clearly document (i) their performance; and (ii) any claims arising from or relating to their performance under a Public Contract. Contractors and subcontractors shall make all records pertaining to their performance and any claims under a Contract (the books, fiscal records and all other records, hereafter referred to as "Records") accessible to the Contracting Agency at reasonable times and places, whether or not litigation has been filed as to such claims.

(2) **Inspection and Audit.** A Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person that has submitted cost or pricing data according to the terms of a Contract to the extent that the Records relate to such cost or pricing data. If the Person must provide cost or pricing data under a Contract, the Person shall maintain such Records that relate to the cost or pricing data for 3 years from the date of final payment under the Contract, unless a shorter period is otherwise authorized in Writing.

(3) **Records Inspection; Contract Audit.** The Contracting Agency, and its authorized representatives, shall be entitled to inspect, examine, copy, and audit any Contractor's or subcontractor's Records, as provided in section 1 of this rule. The Contractor and subcontractor shall maintain the Records and keep the Records accessible and available at reasonable times and places for a minimum period of 3 years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized in Writing.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030, ORS 279C.375, ORS 279C.380 & ORS 279C.440



**137-049-0890**

**Contracting Agency Payment for Unpaid Labor or Supplies**

(1) **Contract incomplete.** If the Contract is still in force, the Contracting Agency may, in accordance with ORS 279C.515(1), pay a valid claim to the Person furnishing the labor or services, and charge the amount against payments due or to become due to the Contractor under the Contract. If a Contracting Agency chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

(2) **Contract completed.** If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. The Contracting Agency shall not make payments to subcontractors or suppliers for Work already paid for by the Contracting Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.515

**137-049-0900**

**Contract Suspension; Termination Procedures**

(1) **Suspension of Work.** In the event a Contracting Agency suspends performance of Work for any reason considered by the Contracting Agency to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of Contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

(2) **Termination of Contract by mutual agreement for reasons other than default.**

(a) Reasons for termination. The parties may agree to terminate the Contract or a divisible portion thereof if:

(A) The Contracting Agency suspends Work under the Contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the Work filed to resolve a labor dispute); and

(B) Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Work.

(b) Payment. When a Contract, or any divisible portion thereof, is terminated pursuant to this section (2), the Contracting Agency shall pay the Contractor a reasonable amount of compensation for preparatory Work completed, and for costs and expenses arising out of termination. The Contracting Agency shall also pay for all Work completed, based on the Contract Price. Unless the Work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of Contract completed. No claim for loss of anticipated profits will be allowed.

(3) **Public interest termination by Contracting Agency.** A Contracting Agency may include in its Contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event the Contracting Agency unilaterally terminates the Contract for any reason considered by the Contracting Agency to be in the public interest.

(4) **Responsibility for completed Work.** Termination of the Contract or a divisible portion thereof pursuant to this rule shall not relieve either the Contractor or its surety of liability for claims arising out of the Work performed.

(5) **Remedies cumulative.** The Contracting Agency may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

(6) Application of this rule does not apply to suspension of the work or termination of the Contract as a result of Contractor's violation of any provision of law or Contract term.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.650, ORS 279C.655, ORS 279C.660, ORS 279C.665 & ORS 279C.670

**137-049-0910**

**Changes to the Work and Contract Amendments**

(1) **Definitions for Rule.** As used in this rule:

(a) "**Amendment**" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general scope of the original Procurement that requires mutual agreement between the Contracting Agency and the Contractor.

(b) "**Changes to the Work**" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Contracting Agency or its authorized representatives to the Contractor requiring a change in the Work within the general scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed work.

(2) **Changes Provisions.** Changes to the Work are anticipated in construction and, accordingly, Contracting Agencies shall include changes provisions in all Public Improvement Contracts that detail the

scope of the changes clause, provide pricing mechanisms, authorize the Contracting Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Contracting Agencies.

(3) **Change Order Authority.** Contracting Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(4) **Contract Amendments.** Contract Amendments within the general scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work reasonably related to the work described in the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(a) They are within the general scope of the original Procurement;

(b) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through competitive bidding, competitive Proposals, competitive quotes, sole source or Emergency contract;

(c) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(d) The Amendment is made consistent with applicable legal requirements.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, ORS 279C.335 & ORS 279C.400(1)

## PUBLIC CONTRACTING RULES - 2022

### CLASS EXEMPTIONS

#### **E-1 Purpose and Statutory Authority**

These rules establish classes of public contracts which are exempt from the formal competitive solicitation requirements of the Public Contracting Code. These exemptions may be used by Contracting Agency without additional findings of fact except as otherwise set forth herein. These exemptions are in addition to all contracting exemptions as set forth in the Code and Contracting Agency's Public Contracting Rules, Divisions 46, 47, 48, and 49. Additional contracts or classes of contracts may be expressly exempted from competitive solicitation requirements by ordinance or resolution of Contracting Agency pursuant to Contracting Agency Rules and ORS 279B.085 or 279C.335.

#### **E-2 Advertising Contracts**

Contracting Agency may purchase advertising without a competitive process, regardless of dollar value and including that intended for the purpose of giving public or legal notice.

#### **E-3 Equipment Repair and Overhaul**

Contracting Agency may enter into a public contract for the purchase of services, equipment or supplies for maintenance, repair or conversion of existing equipment, if required for efficient utilization of such equipment.

#### **E-4 Contracts for Price Regulated Items**

Contracting Agency may, regardless of dollar value and without competitive bidding, contract for the direct purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

#### **E-5 Copyrighted Materials**

Contracting Agency may, without competitive bidding and regardless of dollar amount, purchase copyrighted materials if there is only one supplier available within a reasonable purchase area for such goods. Examples of copyrighted materials covered by this exemption may include, but are not necessarily limited to, new books, periodicals, workbooks, curriculum materials, reference materials, audio and visual media, and non-mass-marketed software.

#### **E-6 Investment Contracts**

Contracting Agency may, without competitive bidding, and regardless of dollar amount, contract for the purpose of the investment of public funds or the borrowing of funds by Contracting Agency when such investment or borrowing is contracted pursuant to duly enacted statute, ordinance, charter, or Constitution.

#### **E-7 Requirements Contracts**

(1) For purposes of this rule, "Requirements Contract" means a contract whereby the Contracting Agency has agreed to purchase as much of an identified Good or Service at a predetermined price as it requires to meet an anticipated need. Contracting Agency may enter into requirements contracts whereby it is agreed to purchase goods or services for an anticipated need at particular prices, provided the original contract is let by a competitive procurement process.

- (2) Purchase may also be made at prices established by a requirement contract or other agreement between another public body and a contractor, if the requirement contract was established by a competitive procurement process.
- (3) The term of any requirement contract, including renewals, shall not exceed five years.

**E-8 Office Copier Purchases**

- (1) Contracting Agency may enter into multiple requirements contracts for either the purchase, rental or lease of office copying equipment. Except for this multiple award exemption, such contracts shall otherwise conform to the requirements of Public Contracting Rule E-7.
- (2) In exercising this exemption, Contracting Agency shall fully consider the operating capabilities, limitations and cost of each brand or model and select the brand which will produce the best combination of performance and cost per copy for each application.

**E-9 Manufacturer Direct Supplies**

Contracting Agency may purchase goods directly from a manufacturer without a competitive solicitation process if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis, and are not requirements contracts.

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

Contracting Agency is exempt from formal competitive procurement requirements for the purchase of gasoline, diesel fuel, heating oil, lubricants and asphalts if Contracting Agency conducts an intermediate procurement and Contracting Agency awards the Contract to the Offeror offering the least expensive goods, and retains written justification for the purchase made.

**E-11 Hazardous Material Removal; Oil Cleanup**

Contracting Agency may enter into public contracts without competitive bidding, regardless of dollar amount, when ordered to clean up oil or hazardous waste pursuant to the authority granted the Department of Environmental Quality (DEQ) under ORS Chapter 466, and such DEQ order necessitates the prompt establishment and performance of the contract in order to comply with the statutes regarding spill or release of oil or hazardous material that have created an emergency condition. Comprehensive cleanup rules are set forth at OAR 340-122-205 to 340-122-360. In exercising its authority under this exemption Contracting Agency shall:

- (a) To the extent reasonable under the circumstances, encourage competition by attempting to make informal solicitations or to obtain informal quotes from potential suppliers of goods or services;
- (b) Make written findings describing the circumstances requiring cleanup or a copy of the DEQ order ordering such cleanup;
- (c) Record the measures taken under subsection (a) of this section to encourage competition, the amount of the quotes or proposals obtained, if any, and the reason for selecting the contractor selected.

**E-12 Insurance, Employee Benefit**

Contracting Agency may purchase employee benefit insurance without a competitive solicitation process, regardless of dollar amount.

### **E-13 Medical and Laboratory Supplies**

Contracting Agency is not required to purchase the following specified laboratory and medical supplies on the basis of a single award to the lowest responsible bidder, but instead may purchase different brands of the same item by awarding contracts, after competitive bidding, to the lowest responsible bidder for each brand. The laboratory and medical supplies affected by this rule include, but are not limited to:

- (1) Drugs, biologicals, blood fractions, and blood components;
- (2) Intravenous solutions and associated supplies for administration;
- (3) Microbiologicals, biochemicals, and diagnostic reagents;
- (4) Surgical dressings;
- (5) Heart valves;
- (6) E.E.G., E.K.G., electrodes, charts, and associated supplies;
- (7) Sterilizing wraps;
- (8) Catheters, medical tubes, and associated supplies;
- (9) Surgical and orthopedic instruments;
- (10) Hearing aids;
- (11) Pacemakers;
- (12) Dental supplies;
- (13) Laboratory small package chemicals;
- (14) Biology supplies; and
- (15) Therapeutic or cosmetic implants.

### **E-14 Concession Agreements**

(1) A concession agreement is a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from a site within a building or upon land owned or controlled by Contracting Agency, and under which the concessionaire makes payments to Contracting Agency based, in whole or in part, on the concessionaire's sales revenues. The term "concession agreement" does not include an agreement which is merely a flat-fee or per-foot rental, lease, license, permit, or other arrangement for the use of public property.

(2) Concession agreements are not required to be competitively bid. However, when it is in Contracting Agency's best interests to do so and in Contracting Agency's sole discretion, Contracting Agency may obtain competitive proposals for concession agreements using the procedures described in ORS 279B.060.

## **USED PERSONAL PROPERTY**

### **E-15 Used Personal Property, Purchase of**

(1) Subject to the provisions of this rule, Contracting Agency may purchase used property or equipment without competitive bidding and without obtaining competitive quotes, if it has determined that the purchase will be unlikely to encourage favoritism or substantially diminish competition, and will either result in cost savings to Contracting Agency or the public, or otherwise promote the public interest in a manner that could not be realized by a formal competitive solicitation process.

(2) "Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of Contracting Agency purchase. "Used personal property or equipment" generally does not include property or equipment if Contracting Agency was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

(3) For purchases of used personal property or equipment, Contracting Agency shall, where feasible, obtain three competitive quotes, unless Contracting Agency has determined and documented that a purchase without obtaining competitive quotes will be unlikely to encourage favoritism or substantially diminish competition and will either result in substantial cost savings to Contracting Agency or the public, or otherwise promote public interest in a manner that could not be realized by a formal competitive solicitation process.

#### **E-16 Surplus Personal Property, Disposition of**

(1) Contracting Agency may dispose of surplus personal property by any means determined to be in the best interest of Contracting Agency, including but not limited to: transfer to other departments; donation to other government agencies, or non-profit organizations; negotiated or advertised sale; trade; auction; liquidation through commercially recognized third party liquidator; or destruction.

(2) Unless transfer or donation is otherwise exempt from public contracting, prior to surplus property, Contracting Agency must find that the chosen disposition will substantially promote the public interest in a manner that could not practicably be realized by a competitive solicitation process and either that the disposition will result in a cost savings to Agency or will probably result in a higher net return than if the property were sold by a competitive solicitation process.

(3) All items of personal property having a residual value of more than \$10,000 are subject to prior authorization of the Contract Review Authority.

### **PERSONAL SERVICES**

#### **E-17 Personal Services for Other than Architect, Engineer, Photogrammetrist, Transportation Planner, and Land Surveying Services**

(1) Either the following procedures or those set forth in Contracting Agency's Public Contracting Rules, Division 47, will be used to retain the services of independent contractors, other than architects, engineers, land surveyors, or other professionals otherwise exempt from these Rules or the Code.

(2) Nothing in this section shall apply to the employment of regular Contracting Agency employees unless otherwise approved by the Contract Review Authority or its designee, or personal service contract.

(3) Unless otherwise approved by Contracting Agency, personal service contracts shall require the contractor to defend, indemnify, and hold harmless Contracting Agency, its officers, agents and employees from and against any and all claims or demands for damages of any kind arising out of or connected in any way with the contractor's performance thereunder and shall include a waiver of contractor's right to indemnification and defense under the Oregon Tort Claims Act.

(4) Unless otherwise approved by Contracting Agency, all personal service contracts shall contain a provision requiring the person or entity providing the service to obtain and maintain liability insurance coverage in at least Contracting Agency's tort liability limits, naming Contracting Agency as an additional named insured during the life of the contract.

(5) All personal service contracts shall contain all contract provisions mandated by State law. These provisions may be incorporated in the personal service contract by reference to State law, unless State law provides otherwise. Contracting Agency's Attorney's Office will prepare model contract provisions for use in Contracting Agency personal service contracts.

- (6) The following procedure shall be observed in the selection of personal service contractors:
- (a) For personal service contracts involving an anticipated fee of \$10,000 or less per annum, Contracting Agency may negotiate a contract for such services with any qualified contractor it selects.
  - (b) For personal service contracts involving an anticipated fee of more than \$10,000 per annum, Contracting Agency shall solicit at least three (3) prospective contractors who shall appear to have at least minimum qualifications for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractor's interest and ability to perform the proposed assignment.
  - (c) Contracting Agency may arrange for any or all interested prospective contractors to be interviewed for the assignment by an appropriate Contracting Agency employee or by an interview committee.
  - (d) Following a review of the qualifications and interview, where conducted, of the interested prospective contractors, Contracting Agency may select the prospective contractor, and shall prepare a personal service contract.
- (7) The above provisions regarding selection procedures do not apply to extensions, amendments, modifications or supplements to executed personal service contracts.
- (8) Criteria to be considered in the evaluation and selection of a personal service contractor may include, but is not limited to:
- (a) Total cost of services to Contracting Agency.
  - (b) Specialized experience in the type of work to be performed.
  - (c) Capacity and capability to perform the work, including any specialized services within the time limitations for the work.
  - (d) Educational and professional record, including past record of performance on contracts with governmental agencies and private parties with respect to cost control, quality of work, ability to meet schedules, and contract administration, where applicable.
  - (e) Availability to perform the assignment and familiarity with the area in which the specific work is located, including knowledge of design or techniques peculiar to it, where applicable.
  - (f) Any other factors relevant to the particular contract.
- (9) The selection procedures described in this section may be waived by Contracting Agency, in its discretion, where an emergency exists that could not have been reasonably foreseen which requires such prompt execution of a contract to remedy the situation that there is not sufficient time to permit utilization of these selection procedures.
- (10) Contracting Agency or its designee is authorized to sign all personal service contracts, unless otherwise established by Contracting Agency policy.
- (11) Nothing contained in this section shall preclude Contracting Agency from complying with provisions of Federal or State law that require Contracting Agency to utilize a different selection or contracting procedure.

#### **E-18 Liability Insurance Contracts**

Contracts for insurance where either the annual or aggregate premium exceeds \$10,000 must be let using one of the following procedures:

- (1) Agent of Record: Contracting Agency may appoint a licensed insurance agent ("agent of record") to perform insurance services in connection with more than one insurance contract. Among the services to be provided is the securing of competitive proposals from insurance carriers for all coverages for which the agent of record is given responsibility.

(a) Prior to the selection of an agent of record, Contracting Agency shall make reasonable efforts to inform known insurance agents in the competitive market area that it is considering such a selection. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website. Any such notice shall generally describe the nature of the insurance that the Contracting Agency will require.

(b) Any appointment period shall not exceed five years. Agents may serve more than one appointment period. Agents must qualify for appointment prior to each period as if each appointment period were the first.

(c) In selecting an agent of record, Contracting Agency shall select the agent(s) most likely to perform the most cost-effective services.

(2) Specific Proposals for Insurance Contracts: Contracting Agency may solicit proposals from licensed insurance agents or licensed insurers for the purpose of acquiring specific insurance contracts subject to the following conditions:

(a) Contracting Agency shall make reasonable efforts to inform known insurance agents or insurers in the competitive market area of the subject matter of the contract, and to solicit proposals for providing the services required in connection with the contract. Such efforts may include one or more of the following methods: direct mailed notice, publishing notice in a newspaper of general circulation, or posting notice on Contracting Agency's website.

(b) Contracting Agency shall select an agent or insurer on the basis of the most competitive offer considering coverage, premium cost, and service to be provided.



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## **POLICY 7.1: DISTRICT COMPLIANCE WITH LOCAL BUDGET LAW**

### **A. COMPLIANCE WITH LOCAL BUDGET LAW**

Compliance with Oregon's Local Budget Law (ORS 294.305 - 294.565), is required prior to the expenditure of any monies or the levy of any tax upon property located within the District. ORS 294.326. The District shall comply with the provisions of the Local Budget Law, and with the instructions and requirements of the Department of Revenue, which has been charged by the Legislature with responsibility to interpret and administer the Local Budget Law. In preparing and adopting its Budget, the District shall be guided by the Budget Manual for Municipal Corporations, published by the Department of Revenue, and the Department's various forms and instructions.

### **B. APPOINTMENT OF BUDGET OFFICER**

Pursuant to ORS 294.331, the District Board of Directors shall designate a Budget Officer to prepare or supervise the preparation of the District's Budget. The Budget Officer shall fully acquaint himself/herself with the Local Budget Law and the budget preparation process. The Budget Officer shall act under the direction of the Board. *Adopted 12/86*

1. The Fire Chief is appointed as the District's Budget Officer.
2. Within the Budget process, the Board shall approve the budget calendar, appoint the Budget Committee membership and adopt the Budget.

### **C. PREPARATION OF THE PROPOSED BUDGET**

The Budget Officer shall prepare or supervise preparation of the proposed Budget. The Budget Officer shall then publish a "Notice of Budget Committee Meeting" as set forth in ORS 294.401(1).

### **D. BUDGET COMMITTEE**

Pursuant to ORS 294.336, the District shall establish a Budget Committee consisting of the members of the Board of Directors and an equal number of qualified electors of the District. Any increase or reduction in the number of the members of the District's Board of Directors shall cause a like increase or reduction to be made in the number of the appointive citizen members of the Budget Committee. At its first meeting, the Budget Committee shall elect a chairperson and a secretary. The Committee shall meet from time to time to review and revise or approve the proposed Budget presented by the Budget Officer. All meetings of the Budget Committee are subject to Oregon's Public Meetings Law. Members of the Budget Committee shall receive no compensation for their services. The appointive members of the Budget Committee shall not be considered officers, agents, or employees of the District. Each member shall serve a three-year term. Terms of office on the Budget Committee shall be staggered as the Board of Directors shall determine.

E. PUBLICATION OF BUDGET SUMMARY AND NOTICE OF BUDGET HEARING  
(ORS 294.421)

After the budget has been approved by the Budget Committee, a budget hearing shall be held by the Board of Directors of the District. Fifteen to twenty-five days before the scheduled hearing, the Board of Directors shall publish a "Financial Summary and Notice of Budget Hearing." This information must appear in a newspaper of general circulation published in the District. Eight to fourteen days before the scheduled hearing, a second notice of budget hearing shall be published. It need not contain the summarized financial information found in the first notice. However, the second notice shall repeat significant information about the scheduled budget hearing, and set forth the date on which the Financial Summary was first published.

1. The responsibilities of the Budget Committee are:
  - a. Approve the level of expenditures and set the corresponding tax levy requirements to balance each fund requiring a tax levy.
  - b. Review and, if necessary, revise the proposed budget.
  - c. Be aware of the legal constraints imposed upon the District.
  - d. Be familiar with the Budget Document and what it means.
2. Fiscal powers of the Budget Committee include the authority to:
  - a. Limit the amount of tax which may be levied.
  - b. Establish a tentative maximum for total permissible expenditures for each fund.
  - c. Approve the budget.
  - d. Be involved in the same capacity in the supplemental budget activity as in the regular budget procedure.

F. BUDGET HEARING (ORS 294.430)

The Board of Directors of the District shall hold the scheduled budget hearing on the date specified in the public notices given. The purpose of the hearing is to take citizen testimony on the Budget approved by the Budget Committee. Additional hearings may be held if necessary. All hearings are open to the public, and subject to Oregon's Public Meetings Law.

G. BUDGET ADOPTION, APPROPRIATIONS, AND TAX LEVY

The District's Board of Directors may make changes in the approved budget before it is adopted, subject to the limitations set forth in ORS 294.435. These limitations cannot be exceeded without first publishing a revised Financial Summary and holding another budget hearing. Once all budget hearings have been concluded, and upon consideration of relevant testimony received at such hearings, the District's Board of Directors shall adopt the Budget. The District's Board of Directors shall prepare a resolution or ordinance formally adopting

the Budget; making appropriations; and determining, making and declaring the ad valorem tax levy for each fund.

#### H. CERTIFICATION OF LEVY

The District shall send a certified copy of the ordinance or resolution to the County Commission within 15 days after its adoption. The following shall be submitted to the County Assessor's office by July 15 of each year:

1. The original and one copy of the notice of levy;
2. Two true copies of the budget as finally adopted;
3. A copy of the notice of publication per ORS 294.421; and
4. Two copies of the resolution adopting the budget and of the resolution making appropriations.

On or before July 15 of each year the District shall forward the following to the Department of revenue:

1. A true copy of the budget as finally adopted;
2. A copy of the notice of publication per ORS 294.421;
3. A copy of the resolution adopting the budget and of the resolution making appropriations; and
4. Copies of any notices pursuant to ORS 294.421(4), (5) or (6).

#### I. POST-ADOPTION CHANGES TO THE BUDGET

Post-adoption changes to the budget are restricted by statute. ORS 294.450 governs the transfer of appropriations within a fund or from one fund to another. ORS 294.455 governs the appropriation of funds to repair or replace property involuntarily converted or destroyed. ORS 294.460 governs loans from one fund to another. ORS 294.480 specifies the conditions under which the District shall adopt a supplemental budget.

#### J. ADOPTED BUDGET

The adopted Budget Document shall serve as the financial plan of operation and provide guidelines for carrying out the goals and objectives of the District.

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## POLICY 8.1 PERSONNEL POLICIES AND PROCEDURES

### A. PURPOSE OF PERSONNEL POLICIES

These policies provide rules and regulations for all employees of the STAYTON FIRE DISTRICT (which is referred to as "the District" throughout these policies) relative to matters of personnel administration, except that the Fire Chief serves at the pleasure of the Board of Directors and is the Board of Directors' 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 Fire Chief and not limiting in any way the prerogatives of the Board in its relationship with the Fire Chief.

### B. DEFINITIONS

As used in this Manual, the following terms will have the meanings indicated:

Advancement: A salary increase within the limits of a pay range established for a position.

Anniversary Date: The yearly return of the first day of employment with the District for insurance purposes and calculation of vacation and sick leave. The anniversary date for employees hired on the first day of the month will be that date and for employees hired after the first day of the month, the anniversary date will be the first day of the following month.

Appeal: A request to a supervisor, Fire Chief or Board of Directors for consideration of and a decision or ruling on a problem or situation affecting the employee, including an alleged violation of the employee's rights, for the purpose of attempting to gain an adjustment of the management decision or ease the employee's dissatisfaction.

Appointing Power: The Fire Chief to whom authority is delegated to make the appointment to fill a vacant position.

Appointment: The hiring of a person to fill a vacant position.

Assessment Center: A structured interview and testing process designed to evaluate an individual's skills and qualifications for a position.

At-Will Employee: An employee who serves at the pleasure of the District, who has no property rights in employment, no expectation or promise of the duration of employment with the District, and who may be dismissed without cause or hearing.

Calendar Year: The twelve (12) month period beginning January 1st and ending December 31st.

Central Personnel File: A file maintained in the District Office, which contains complete personnel records of all District employees.



C.O.B.R.A.: Consolidated Omnibus Budget Reconciliation Act: Federal plan that permits an employee and/or his/her family members to continue medical insurance benefits, under certain circumstances.

Compensatory Time Off (Comp Time): Time off work to compensate the employee for overtime worked.

Continuous Service: Uninterrupted employment with the District, less time off for leaves of absence without pay. Reasonable absences due to military service or expended leaves approved by the Fire Chief or Board of Directors do not constitute a break in continuous employment.

Demotion: Transfer of an employee from one position to another position which has a lower maximum salary.

Department: A major functional unit of the District.

Dependent: Child/step child/foster/child under the age of 19, or 23 if full time student living with a parent

District Administrator: Any reference to District Administrator in this manual is to automatically mean Fire Chief.

Disciplinary Action: Imposition of certain personnel actions (i.e. suspension, demotion or dismissal).

Dismissal: Termination of employment with the District for cause or termination of an at-will employee.

Division Chief: A person in charge of a department of the District who is directly responsible to the Fire Chief.

Duty Day: A day or shift when an employee is scheduled to be available for work.

Examination: A test for the purpose of evaluating an applicant for an employment vacancy, promotion or for advancement or maintenance of position.

Fire Chief: The Fire Chief of the District who is directly responsible to the Board of Directors for the proper administration of all affairs of the District.

Fiscal Year: Twelve (12) month period starting July 1st and ending June 30th.

Flex scheduling: Scheduled time off for Full-time employees to maintain 40-hour workweeks. All flex time is taken in the week in which it occurred and is calculated hour for hour.

F.L.S.A.: Federal Labor Standards Act.

Employee: In this manual, the term employee refers to all Part Time, Shift, and Full-Time personnel of the district.

Full-Time Employee: An employee who works the normal number of working hours for the position assigned, to be not less than 40 hours per week.

Gender: The masculine gender includes the feminine and the feminine gender includes the masculine.

Hourly Rate: The rate of compensation for each hour of work performed. It is determined by dividing the annual regular monthly salary by the regular number of hours worked each month.

Human Resource Personnel: The positions of Administrative Assistant and Information Management Systems Manager.

Immediate Family: The spouse, son, daughter, stepchild, father, mother, brother, sister, father-in-law, mother-in-law, grandparent and grandchild of the employee. In addition, any other relative living in the employee's household will be considered a member of the immediate family.

Job Right: A right to any job or benefit of employment established in the Stayton Fire District Policy Manual.

Layoff: A temporary or permanent separation from employment because of organizational changes, lack of funds, or other reasons not reflecting discredit upon an employee.

Leave of Absence: Time off from work for reasons within the scope and purpose of these rules and regulations upon prior approval of the employee's supervisor, department head or the Fire Chief.

Military Leave: Leave of absence for an employee in active military training or active military duty.

Month: One calendar month.

Nepotism: Showing favoritism by giving an appointive position or task on the basis of a family relation. Relatives under this definition are described by Oregon Statute as wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild. *ORS 659.340(d)(b)*

Non-Occupational Disability: Disability from an accident or sickness suffered or contracted by the employee which cannot be attributed to the performance of assigned duties.

Occupational Disability: Disability from an accident or sickness suffered or contracted as a result of the performance of assigned duties.

Overtime: Overtime will be considered as time worked in excess of the regularly scheduled work day, work week or work period unless an employee is exempted from overtime because of the executive, administrative, supervisory or professional nature of his/her employment.

Parent: An employee with parental rights and duties as defined by law who is responsible for the care and nurture of a child, and includes the adoptive mother or the adoptive father of a newly adopted child under six (6) years of age. The term “parent” does not include:

- a. An employee who has contracted to carry a child to term and to renounce parental rights at the birth of the child;
- b. An employee who has worked for the District for fewer than ninety (90) days prior to the first day of the requested parental leave

Part-Time Employee: An employee who is employed regularly for less than forty (40) hours per week and who normally follows a predetermined, fixed pattern of working hours.

Personnel Action: Any action taken with reference to appointment, compensation, promotion, transfer, layoff, disciplinary action, dismissal, or other action affecting the status of employment.

Plurality: The singular will include the plural and the plural will include the singular.

Promotion: The change of position for an employee from one position to another position that has a higher maximum salary.

Reprimand: A written statement from a supervisor to an employee which identifies violations of work rules or repeated deficiencies of performance or failures to improve, intended by the supervisor to be an admonishment and to be disciplinary rather than corrective in nature.

S.F.D.: Stayton Fire District.

Seniority: The length of continuous service to the District since an employee’s last date of hire.

Split Shift: The division of a workday into two or more nonconsecutive time periods. (Example: work hours assigned 8:00 a.m. to noon; 4:00 p.m. to 8:00 p.m.)

Supervisor: Any person who is responsible to a higher divisional or departmental level of authority and who directs the work of others.

Shift Employee – An employee who works a shift schedule on a continuing basis.

Shift Schedule: The shift schedule for Stayton Fire District's Shift Employees will be 48 hours on duty and 96 hours off duty.

Shift Trading & Trading of Days Off: Shift trading and trading of days off between shift employees shall be permitted so long as:

1. The affected supervisors are given 24-hours advance notice. Notice of a lesser time will be permitted when approved by the supervisor. Such approval shall not unreasonably be withheld
2. No employee shall be on shift for longer than a 96-hour period, except for during major emergencies.
3. Employees must possess equivalent certification and job skills.
4. Trades shall be the responsibility of the involved employees.
5. Trading of shifts will not constitute or create overtime.

Suspension: Temporary separation of an employee from District service, with or without pay, for disciplinary purposes or purposes of an investigation which may lead to disciplinary action.

Temporary Employee: An employee who has been appointed for a job of limited duration arising out of special projects, abnormal workloads or emergencies.

Transfer: A change of an employee from one position to another within the District service.

Trial Service Period: A working test and training period during which an employee is required to demonstrate his or her fitness for the duties to which he or she is appointed by actual performance of the duties of the position.

Uniformed Personnel: Any reference to personnel regularly issued uniforms to display a position assigned in the District operation.

Volunteer: A firefighter or support person whose position does not receive salary or hourly compensation as gainful employment.

Warning: An oral statement which outlines violations or work rules or deficiencies in the employee's job performance for which a memorandum may be placed in the employee's personnel file.

Work Day – Full-time Employee: The regularly scheduled work day is eight (8) hours for employees working a five-day workweek and ten (10) hours per day for employees working a four-day workweek.

Work Period – Full-time Employee: The work period is defined as a maximum of forty (40) non-overtime hours in a seven (7) day period.

Work Week – Full-time Employee: The regularly scheduled workweek is forty (40) hours (Example: five 8-hour or four 10-hour shifts) and begins on Sunday at 12:01 a.m.

Work Period– Shift Employee: The Stayton Fire District has established a 24-day /182-hour work period for the purpose of overtime under the FLSA 29 Code §207k for Shift Employees.

## C. 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 day-to-day 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 express or implied contract, or to give rise to a binding past practice under any collective bargaining agreement.

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 Fire Chief, 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.

Each employee can assist in keeping the District personnel program up to date by notifying the Fire Chief whenever problems are encountered or improvements can be made. When the need for a new or revised policy presents itself, a recommendation should be submitted to the Fire Chief for consideration.

The Fire Chief 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.

## D. PERSONNEL ADMINISTRATION GENERALLY

The Board of Directors and Fire Chief 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 Fire Chief is charged with responsibility for the interpretation and application of the policies.

The Fire Chief may specifically delegate in writing the authority for the enforcement of rules and policies.

The Fire Chief shall be responsible for insuring 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 of any changes concerning these rules and regulations. The Board delegates to the Fire Chief 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.

#### E. EQUAL EMPLOYMENT OPPORTUNITY

The District is an Equal Opportunity Employer. We believe every employee has the right to work in an environment free from all forms of unlawful discrimination. It is the policy of the District that employment decisions for all applicants and employees will be made without regard to race, color, religion, sex, age, national origin, marital status, veteran status, disability or other characteristics protected under state or federal law. No employee will be retaliated against for raising concerns under this policy. We seek each employee's cooperation and assistance in helping us maintain equal employment opportunity

#### F. HARRASSMENT

All employees are expected and required to treat co-workers, supervisors and managers in a courteous and respectful manner.

Harassment of any kind is prohibited. This specifically includes sexual harassment and other harassment based upon characteristics protected under state and federal discrimination regulations.

**Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors or sexual suggestive conduct or statements are sexual harassment when:

1. Submission to the advance is either an explicit or implicit term or condition of employment;
2. Submission to or rejection of the advance affects the basis of employment decisions for the employee; or
3. Such conduct or statements have the purpose or effect of interfering with the employee's work performance or create an intimidating, hostile or offensive working environment.

Examples of harassment, which may violate this policy, also include:

1. Verbal harassment such as epithets, derogatory comments or slurs, demeaning or sexually explicit jokes;

2. Physical harassment such as assault, impeding or blocking movement, unauthorized touching or any physical interference with normal work or movement when directed at any individual;
3. Visual forms of harassment such as derogatory, offensive or sexually suggestive posters, cartoons, pictures or drawings displayed in the workplace; and,
4. Behavioral forms of harassment such as suggestive facial expressions or noises, leering or obscene gestures.

Retaliation against employees for complaints regarding behaviors described above or other conduct addressed by this policy will not be tolerated.

These forms of misconduct undermine morale and the integrity of the employment relationship, and interfere with productivity. Employees found to be harassing other employees will be immediately and appropriately disciplined, up to and including immediate discharge.

If you feel you have been the victim of harassment by customers, co-workers, or supervisors, or, if you observe conduct which may be harassment prohibited by this policy, please contact your supervisor or any manager immediately. Confidential investigations will be conducted promptly. Appropriate corrective actions will be taken upon completion of our investigation. If you are uncomfortable speaking to your immediate supervisor, please feel free to bring your concerns to any manager.

The District will not tolerate harassment.

#### G. VIOLENCE IN THE WORKPLACE

The District is committed to providing a workplace free of harassment, intimidation, threats or acts of violence. Each member of the District, as well as visitors to the District, is entitled to come to work or visit without fear of being subject to, or targeted by, such actions. It is the responsibility of all members and all visitors to maintain a safe and comfortable work environment.

The District has a zero-tolerance policy towards such acts. Such prohibited acts include, but are not limited to, verbal or physical harassment, verbal or physical threats, any menacing behavior, any actual aggressive or angry touching of another person, verbal confrontations, name calling or profanity directed against any person or persons, explosions of anger, and any others actions that cause others to feel unsafe, harassed, or threatened.

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 or intimidated; members “ganging up” to ridicule or tease another who does not “fit in” with the rest of the group; members refusing to train, work with, help or cooperate with another person when necessary; off the job harassment, threats, unwelcome advances or stalking of others which cause workplace consequences; and other conduct which causes a tense and stressful workplace.

For the purpose of this policy, violent behavior is defined as:

The actual or implied threat of harm to any individual, group of individuals, or associates of those individuals

Loud, angry, or disruptive behavior (“temper tantrums”). Such outbursts are clearly not an acceptable part of the Fire District’s work environment.

Negligent or intentional disregard for the physical safety or well-being of others.

Willful destruction of District or others personal property.

Commission of any violent crime on the Fire District’s 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 another person will be subject to discipline, up to and including immediate termination.

This policy is not intended to take away members or visitors’ freedom of speech or to keep members ever from engaging in light-hearted banter in the workplace. However, there is a clear line between lighthearted kidding and banter, and subjecting another to ridicule, threats or other intimidating action, which makes for a hostile or violent workplace. It takes only a little common sense to realize, if another person would be uncomfortable in the same situation, the line has been crossed and the member’s behavior is inappropriate. Each member should respect the other person’s feelings, as they would expect their own feelings to be respected.

Any person who is subject to, witnesses, or has knowledge of actions that could be perceived as harassment, threats, intimidation, or violence, or has reason to believe that such action has or may occur, is encouraged and requested to report them immediately to an officer of the District. Members shall be able to raise concerns and make reports without fear of reprisal or prejudice. Such communications will be kept confidential to the full extent possible under the prevailing circumstances.

## H. IMMIGRATION AND NATIONALITY PROGRAM

1. 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 further recognizes that it is an unfair immigration-related employment practice to discriminate against an individual, other than an unauthorized alien, based on national origin or citizenship status.

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.

2. 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 using an I-9 Form; and

Maintain complete and accurate documentation of all decisions.

3. Appeal Procedure. Special Counsel for Unfair Immigration-Related Employment Practices has been established within the Department of Justice. Regional Offices of the Immigration and Naturalization Service handle the investigation and prosecution of cases. Individuals wishing to file a complaint may contact the Immigration and Naturalization Service, between the hours of 8:30 a.m. and 3:00 p.m., Monday through Friday

## **I. PREVENTION OF WORKPLACE DISCRIMINATION, HARASSMENT AND RETALIATION**

Stayton Fire District is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal opportunities and prohibits unlawful discriminatory practices, including harassment and retaliation. Therefore, Stayton Fire District expects that all relationships among persons will be respectful and professional, free of bias, prejudice and harassment in the workplace, at work related events, or any activity coordinated by or through the organization. This policy applies to all employees, elected officials, board or commission members, volunteers, interns and any members of the public we interact with in the course of accomplishing the work of the organization.

Stayton Fire District has developed this policy to ensure that all its members can work, and the public can interact, in an environment free from unlawful harassment, discrimination and retaliation. Stayton Fire District will make every reasonable effort to ensure that all concerned are familiar with these policies and are aware that any complaint in violation of these policies will be investigated and resolved appropriately.

Discrimination, harassment and retaliation are not acceptable.

Any member of the district, or the public, who has questions or concerns about these policies should talk with the Fire Chief; as an alternative you they may reach the Assistant Chief, or station officer.

### **EQUAL EMPLOYMENT OPPORTUNITY**

It is our policy to ensure equal opportunity without discrimination or harassment on the basis of race, color, religion, sex, sexual orientation, gender identity or expression, age, disability, marital status, citizenship, national origin, genetic information, or any other characteristic protected by law.

### **RETALIATION**

We encourage reporting of all perceived incidents of discrimination or harassment. It is the policy of Stayton Fire District to promptly and thoroughly investigate such reports. We prohibit retaliation against any individual who reports discrimination or harassment or participates in an investigation of such reports.

### **SEXUAL HARASSMENT**

Sexual harassment constitutes discrimination and is illegal under federal and state laws. For the purposes of this policy, "sexual harassment" is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example: a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or c) such conduct has the

purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Title VII of the Civil Rights Act of 1964 recognizes two types of sexual harassment: a) quid pro quo and b) hostile work environment. Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature.

Oregon Law provides further protection from sexual assault defined as unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation.

## **HARASSMENT**

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her race, color, religion, sex, sexual orientation, gender identity or expression, national origin, age, disability, marital status, citizenship, genetic information, or any other characteristic protected by law, or that of his or her relatives, friends or associates, and that: a) has the purpose or effect of creating an intimidating, hostile or offensive work environment, b) has the purpose or effect of unreasonably interfering with an individual's work performance, or c) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes labels, insults or negative stereotyping; threatening, intimidating or hostile acts; demeaning jokes; and written or graphic material that belittles or shows hostility or dislike toward an individual or group that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on District time or using District equipment by e-mail, phone (including voice messages), text messages, social networking sites or other means.

## **REPORTING AN INCIDENT OF HARASSMENT, DISCRIMINATION OR RETALIATION**

Stayton Fire District encourages reporting of all perceived incidents of discrimination, harassment or retaliation, regardless of the offender's identity or position. Individuals who believe that they have been the victim of such conduct should discuss their concerns with the Fire Chief, Assistant Fire Chief, or station officer. See the complaint procedure described below.

In addition, we encourage individuals who believe they are being subjected to such conduct to promptly advise the offender that their behavior is unwelcome and to request that it stop. Often this action alone will resolve the problem. We recognize, however, that an individual may prefer to pursue the matter through complaint procedures.

Following receipt of a complaint or concern, management will follow-up every three months for one year to ensure no further concerns or retaliation are experienced. Employees should not wait for the management follow-up to share related experiences. If an employee would like the follow-up process to be discontinued, a request must be submitted in writing to the Fire Chief.

### **INTERNAL/EXTERNAL COMPLAINT PROCEDURE**

Individuals, including members of the public, who believe they have been the victims of conduct prohibited by this policy or believe they have witnessed such conduct, should discuss their concerns with the Fire Chief. If you are unable to reach the primary contact, please reach out to the Assistant Fire Chief or station officer. If the subject of the complaint is the Fire Chief a person should contact the Fire District Board Chairperson with their concern. The District encourages its members, and members of the public, to document the event(s), associated date(s), and potential witnesses.

The Fire Chief is responsible for overseeing recipient compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title IX of the Educations Amendments of 1972. The Fire Chief will notify DHS CRCL <https://www.dhs.gov/file-civil-rights-complaint> . The Assistant Chief's responsibilities include overseeing the discrimination complaints process, developing and updating civil rights policies and procedures. The Office Administrator's responsibilities include processing request for reasonable accommodations, coordinating the translation of vital documents and processing request for language interpretation.

Stayton Fire District encourages the prompt reporting of complaints or concerns so that quick and helpful action can be taken before relationships become irreparably broken. Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment or discrimination. However, complaints and concerns may be brought forward within four years of the alleged violation. The District encourages its members, and members of the public, to document the events, associated dates, and potential witnesses.

Any reported allegations of harassment, discrimination or retaliation will be investigated with due urgency. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the event(s) or may have other relevant knowledge. When appropriate a third-party investigation may be initiated by the District.

Stayton Fire District will maintain confidentiality throughout the investigatory process to the extent possible with acceptable investigation and appropriate corrective action.

Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately. Responsive action may include, for example, training, referral to counseling or corrective action such as [Identify potential options: warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay, or termination] as Stayton Fire District believes appropriate under the circumstances.

False and malicious complaints of harassment, discrimination or retaliation (as opposed to complaints that, even if erroneous, are made in good faith) may be the subject of appropriate disciplinary action.

The District encourages its members, and members of the public, to bring their concerns and complaints to the organization, and understand that, at times, this may not be the choice of the person. Below is a list of the external complaint options. Please reach out to the preferred choice to determine the appropriate timelines for their processes.

- Oregon Bureau of Labor and Industries at the following web address:  
[https://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](https://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx)
- Civil or Criminal Action. In these circumstances, a Notice of Claim must be provided to the Fire District in accordance with ORS 30.275.
- Civil Rights: <https://www.oregon.gov/boli/civil-rights/>
- [Make a Civil Rights Complaint | Homeland Security \(dhs.gov\)](#)

### **EMPLOYMENT AGREEMENTS**

No employee will be required or invited to sign an agreement requiring the non-disclosure of information related to discrimination or sexual assault as a condition of employment, continued employment, promotion, compensation or the receipt of benefits. An employee may request this type of agreement and, upon request, will be provided at least seven (7) days to change their mind.

### **ADDITIONAL MEMBER SUPPORT SERVICES**

Members may choose to use other support services throughout and following instances related to concerns and complaints. The organization provides the following for additional assistance:

- Legal Resources
- Counseling and Support Services and/or Employee Assistance Program

### **J. NOTICE FOR REQUESTING REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES**

Stayton fire District is committed to providing individuals with disabilities an *equal opportunity* to participate in and benefit from Stayton Fire District meeting, programs, activities and service.

Individuals may request *reasonable accommodations* from Stayton Fire District that they believe will enable them to have such equal opportunity to participate in our meetings, programs, activities and services.

To request reasonable accommodations, contact Stayton Fire District's administrative office located at 1988 West Ida St. in Stayton Oregon 97383. You may also contact us by phone at 503-769-2601, email at [staytonfire.org](http://staytonfire.org), fax at 503-769-1487, or by TTY phone line.

### **FREQUENTLY ASKED QUESTIONS (FAQ)**

The following FAQ provide information on requesting reasonable accommodations from Stayton Fire District to have equal opportunity to participate in meetings, programs, activities and services.

#### **1. What is a reasonable accommodation in Stayton Fire District's program?**

A reasonable accommodation is a change or modification to afford a qualified individual with a disability full enjoyment of Stayton Fire District's meetings, programs, activities and services, unless modifications of policies, practices, or procedures would fundamentally alter the nature of the meeting, program, activity or service, or result in undue financial and administrative burdens to Stayton Fire District.

#### **2. How do I request a reasonable accommodation?**

If you need a reasonable accommodation, please contact Stayton Fire District's administrative office located at 1988 West Ida St. in Stayton Oregon 97383. You may also contact us by phone at 503-769-2601, email at [staytonfire.org](http://staytonfire.org), fax at 503-769-1487, or by TTY phone line.

#### **3. Does my request for a reasonable accommodation need to be in writing?**

No, you do not need to put your request in writing, however, making a written request can be helpful documentation for ensuring Stayton Fire District provides the desired accommodations. In addition, you do not need to use the specific words "reasonable accommodations" when making your request.

#### **4. When should I request a reasonable accommodation?**

You may request a reasonable accommodation from Stayton Fire District at any time. However, making the request in advance of a meeting, conference call, or a visit will help ensure that Stayton Fire District is able to fulfill the request for an accommodation. For certain requests, such as requests for sign language interpretation, Stayton Fire District requests at least two week's advanced notice.

#### **5. May someone request a reasonable accommodation on my behalf?**

Yes, anyone can request a reasonable accommodation on behalf of an individual with a disability who seeks to interact with Stayton Fire District staff or participate in its meetings, programs, activities, or services.

#### **6. What will Stayton Fire District do upon receiving my request for a reasonable accommodation?**

Stayton Fire District will contact you to obtain more information about your request and to better understand your needs. In addition, Station Fire District may review your request to determine:

- Whether the requested accommodation will be effective in allowing you to participate in the meeting, program, activity, or service in which you are seeking participation;
- Whether the requested accommodation is reasonable, or an equally effective alternative to the requested accommodation is available; and
- Whether providing you with the requested accommodation would fundamentally alter the nature of Stayton Fire District's meeting, program, activity or service, or impose undue financial or administrative burdens on Stayton Fire District.

In addition, in some cases, Stayton Fire District may consult with you in an interactive process to determine, on a case-by-case basis, what accommodations can be made.

If Stayton Fire District determines that your requested accommodations would fundamentally alter the nature of the meeting, program, activity, or service, or impose an undue financial or administrative burden, Stayton Fire District may deny your request. However, in the unlikely event that this occurs, Stayton Fire District will work with you to identify an alternative accommodation that allows you to effectively participate in Stayton Fire District's meetings, programs, activities, or services.

**7. May Stayton Fire District request medical documentation from you after receiving your request for a reasonable accommodation?**

No, Stayton Fire District may not request medical documentation after receiving your request for a reasonable accommodation. Stayton Fire District's questions will be limited to understanding the barrier to your ability to participate in the meeting, program, activity or service in which you are interested and the nature of an accommodation that will remove this barrier.

**8. May Stayton Fire District charge you the cost of providing the reasonable accommodation?**

No, you are not responsible for the cost of an auxiliary aid or service Stayton Fire District provides for you.

**9. What are some examples of reasonable accommodations?**

There are many types of reasonable accommodations. Some examples of how Stayton Fire District provides reasonable accommodations include, but are not limited to:

- Arranging for qualified sign language interpreters
- Provide on-site captioning
- Providing alternate formats of printed materials in braille, large print, or in an electronic format
- Provide remote conference captioning service

- Furnishing a temporary ramp to access the dais or other areas with one or more stairs to ensure accessibility for individuals who have physical disabilities and may be using a wheelchair or walker.

In addition, Stayton Fire District will provide reference to accessing its policy on requesting Reasonable Accommodations to its monthly Board Agenda, post it at the entrance of our main administrative office, and on our website.



## POLICY 8.2 EMPLOYMENT POLICIES (POLICY ADOPTED 4/87)

### A. JOB ANNOUNCEMENT

A job announcement will be made for any vacant position within the District and shall be initiated upon the request of the department head to the Fire Chief. 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.

### B. 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.

Applications shall be available in the Administrative Assistant'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 Fire Chief makes all appointments to positions authorized by the Board.

### C. 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.

### D. RESIDENCE REQUIREMENT

Residency will not be a general condition of employment with the District. Employees are encouraged to live within the District; however, the District may require any employee to reside within four (4) driving miles of the principal place of employment if the employee's job responsibilities include duties which are to be performed outside of the regular workday on an emergency basis. The positions requiring District residency will be specified at the time the job vacancies are announced.

### E. SELECTION

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 department head and the Fire Chief 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 the department head for an employment interview.

F. ORIENTATION

Upon appointment, the immediate supervisor and the Fire Chief are responsible for orientation of new employees. Orientation may include organization and services of the District, work rules, personnel policies and procedures, safety training, completion of payroll forms, and introduction to other District personnel.

G. TRIAL SERVICE PERIOD

New and rehired employees serve a trial service period of six (6) months commencing with their first day of employment. Upon promotion, the trial service period is six (6) months unless otherwise specified in the position or at the time of the promotion opportunity.

The trial service period is part of the selection process used to confirm the initial employment decision and to dismiss those whose performance is not satisfactory. During this evaluation period, the employee and the District have an opportunity to determine whether further employment with the District is appropriate.

The District may extend the duration of the trial service period up to six (6) months if it's determined that such an extension is appropriate. An employee who successfully completes the trial service 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.

H. EMPLOYEE STATUS

1. 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 trial service period, is considered a regular full-time employee. These employees are generally eligible for all District provided benefits.

2. Part-Time Employees. An employee who regularly works less than forty (40) hours a week is considered a part-time employee. The District will provide the following benefits to part-time employees:

- a. Employer portion of FICA contributions
- b. Workers' Compensation Insurance

3. Temporary Employees. Temporary employees are defined as those employees holding jobs of limited duration arising out of special projects, abnormal workloads or emergencies. Temporary employees are covered by the District with the following benefits:

- a. Employer portion of FICA contributions
- b. Workers' Compensation Insurance

4. Volunteers. Volunteers receive only those benefits expressly conferred in writing or by law. 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. The benefits related to a Volunteer's association with the District (or through a Volunteer association) are set forth in Policy 12. Volunteers serve at the pleasure of the District and the Volunteer and either may end the Volunteer arrangement at any time.

5. Inactive Status. An employee who is on an unpaid leave of absence for thirty (30) days or more is considered to have an inactive status. Inactive employees are covered by these personnel policies, but are generally ineligible for employer-paid benefits.

6. Shift Employees: An employee who works a shift schedule on a continuing basis, and has completed the trial service period. These employees are generally eligible for all District provided benefits.

#### I. EMPLOYMENT OF RELATIVES

We do not discriminate on the basis of family status unless employment would create a direct supervisory-subordinate relationship. (*ORS 659.340*). Current employees who marry are permitted to continue work only if they do not work in a direct supervisory relationship with one another. Employees are allowed to accept a demotion to an available and suitable position to avoid direct supervision by a relative. If this cannot be accomplished, the least senior employee may be terminated. Member of an individual's family means the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent or stepchild of the individual.

#### J. 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.

In order to insure 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.

#### K. 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. 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 are to notify the Fire Chief of any change in license status, and all traffic violations in a timely manner. Failure to report a traffic violation or change in license status to the Fire Chief 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.

#### L. LAYOFFS

Should a reduction in the District work force become necessary, the following procedures will generally 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, we will consider the following factors:

- Temporary and on-call employees;
- Employees in trial service period;
- 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.

#### M. VOLUNTARY RESIGNATIONS

To voluntarily resign in good standing, an employee must submit a written letter of resignation to the Fire Chief allowing at least ten working days' advance notice. Failure to submit a timely written resignation may preclude the individual from future employment opportunities with the District.

#### N. PERSONNEL RECORDS

(The term "employee" in this section refers to paid employees and volunteers.)

1. Maintenance of Files. Official personnel records of employees shall be maintained by District Human Resource personnel. The District will request and retain only that information required for operational and legal purposes. Information will be accurate, timely and have a clearly defined purpose. If there is a change of name, address, telephone number, marital status, or number of dependents, Human Resource personnel should be notified.

No material of a negative or derogatory nature shall be placed in an employee's file unless the employee has had an opportunity to review the material, which shall be noted on the documents.

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.

Employees may protest or comment in writing upon any materials placed in their personnel file. Such protest and/or comments shall be placed in the personnel file.

2. Removal. Documents shall not be removed from a personnel file, except pursuant to a determination by the Fire Chief 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.
3. Medical Records. Documents containing medical information shall be kept in a separate, confidential file that is not part of the employee's personnel file. An employee's confidential medical file can only be viewed by the employee and the Human Resource person that files the information except as stated in item 9 of this section. 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, and government officials investigating compliance with discrimination laws shall be provided relevant information on request.
7. Workers Comp. Files. Files documenting Workers Compensation claims, occupational injury reports and related information shall be kept in a separate, confidential file that is not part of the employee's personnel file.
8. Training Records: As appropriate, copies of employees training records and certifications may be maintained and kept on-file with the Training Division.
9. Payroll Files: The Administrative Assistant shall maintain all payroll records for District employees.
10. Personnel Files: Non-sensitive documentation and material related to employee's tenure with the District.
8. Other Confidential Files: Confidential records other than medical and worker s compensation related to employee's tenure with the District  
The following is a sample list of files kept in employee's personnel, training, medical and other confidential files.

**Personnel File**

- Resignation Letters
- Routing slip
- FIT Test
- Equipment Issue form
- Point Changes
- Biography
- Request Letters
- Awards
- Green Cross Awards
- Changes in Rank
- Competencies
- Interest Card
- Sign-off Sheets
- Promotional Tests
- Application -Non-confidential page
- Resume, Employment offer letter
- Employment agreements

**FF Training**

- DPSST Certificates
- Course Completions
- District Annual Training Report
- CPR Certificates
- EMS Training Certificates
- All other training

**Payroll**

- Timesheets
- Leave Requests
- Vacation Accrual
- Notice of pay changes

**Other Confidential**

- Beneficiary Designation Forms
- Application – Confidential Page
- DMV Check
- Criminal Background Check
- Reprimands (misconduct, complaints & investigation notes)
- Personnel Evaluations
- I-9, W4, W2
- EEO / AA information
- PERS forms

**Medical**

- Respiratory Medical Evaluations
- Medical Exam
- Physical Agility
- Drug Screen
- Exposure Records
- Hearing Tests
- Dr.’s Notes & Releases
- ADA Accommodations
- Medical Leave
- Medical Insurance Applications
- Employee Medical Complaints
- First Aid Records

**Workers Comp**

- Supervisory Injury Reports
- Workers Comp. Claim Records
- Related Information

9. Employee Access:
  - a. As per state law, employees have the right to reasonable and timely access to personal information in their records. Employees are permitted to copy any documents in the file, but are not allowed to remove anything therein. Employees wishing to inspect/review their personnel file shall make an appointment in advance with Human Resource personnel.
  - b. An employee may receive a copy of such records. The employee will be charged the actual cost of providing this service.
  
10. Access to Personnel Files - Persons Other Than Employee
  - a. Personnel records 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.

- b. 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.
- c. 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. 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. This decision shall be made by the Chief Executive of the District.
- d. Access to personnel files is limited to the employee, the Human Resource personnel and others with a clearly defined business need for access to the information including, but not limited to District executives, District legal counsel and/or any duly authorized audit staff. All information viewed within a file is to remain confidential. Those authorized to review personnel files will maintain the confidentiality of their contents at all times
- e. All requests for information about current, retired or terminated employees must be referred to Human Resources. The written consent of the employee must generally be obtained prior to the release of information with the following exceptions:
  - i. Responses to written or telephoned requests for simple verification of employments which will generally be limited to facts of current or previous employment, job title, and employment dates.
  - ii. Duly authorized and served request from law enforcement, state and federal regulatory agencies, or court orders, in which case the employee must be notified.
  - iii. Outside organizations performing services (such as legal representation) for the District, with the express approval of the Human Resources Department.
- f. Requests for confidential information must be in writing, signed by the employee, authorizing release of specific information.
- g. Work reference requests, for both present and terminated employees, must be in writing and signed by the employee, authorizing release of information.

11. Management Review of Personnel Files.

- a. All personnel files will generally be reviewed by the Fire Chief every five years for material reflecting caution, warning, admonishment, reprimand and/or suspension, to determine the continued appropriateness of retention.
- b. Materials deemed inappropriate or no longer relevant may be removed from the personnel file with the employee concerned so notified. Criteria that may be used include age of the material, seriousness of the infraction, and instances of repeated or similar infractions.

12. Record Retention: Employment/volunteer records will be retained in accordance with current record retention laws.

### POLICY 8.3 POSITION DESCRIPTIONS

- A. The Fire Chief will prepare and maintain a plan listing all job positions in the District. Copies of this plan and individual position descriptions will be available at the District Office.
- B. Position descriptions will include titles and written specifications. Job titles will refer to a particular position, not to the individual filling a position and will be used in all personnel, budget and financial records.
- C. Each position will be allocated to an appropriate department on the basis of the duties and responsibilities of the position.
- D. Each position description will include a concise, descriptive title and a description of the duties and responsibilities. Position descriptions take into consideration the requirements of the job and are merely descriptive and explanatory of the work to be performed. They may not include all of the duties and are not intended to replace detailed work assignments.
- E. The Fire Chief will be responsible for keeping the position plan current through periodic studies of positions within the District service. The Fire Chief may, with the approval of the District Board of Directors, create new positions.



## POLICY 8.4 PAYROLL, SCHEDULING AND OVERTIME PRACTICES

### A. WORKWEEK AND WORKING HOURS

1. The normal work period for each type of employee is defined in the definitions in this policy. Employees are expected to accomplish service priorities in a timely fashion within their normal work week, to the greatest extent possible.
2. The hours of employment for each employee will be fixed by the department heads with regard to convenience of the public.
3. Supervisors will establish meal and break periods as required by law. Employees are provided a fifteen (15) minute rest period during each half shift, scheduled at or as nearly as feasible to the middle of each half shift. A one (1) hour unpaid meal period is provided to employees working a shift of six hours or more. Rest and meal breaks are mandatory and may not be combined or used to shorten the workday.
4. Shift employees will be paid for actual hours worked on days when Daylight Savings Time begins or ends during their shift.

### B. WAGE COMPENSATION

1. 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 Fire Chief and the District's financial condition.
2. Salary Review. Compensation will be reviewed by the Fire Chief at the end of an employee's trial service period. An increase may be recommended to the Board of Directors 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. The Fire Chief will make salary recommendations to the Board of Directors based upon merit. For exceptional performance, the Fire Chief may recommend a merit increase to any employee paid below the top of the range. Any merit increase may be reduced to the step appropriate at any time extraordinary performance ceases.

3. Pay Plan
  - a. The District policy is to pay fair, competitive wages which attract and hold qualified employees. Every job has been given a title and pay range. Wages are reviewed regularly to ensure that District pay rates remain competitive.
  - b. The Fire Chief will prepare a salary schedule and pay plan covering all positions with the District, showing the minimum and maximum rates of pay for review and approval by the Board of Directors.

- c. In arriving at such salary ranges, consideration is given to total compensation for comparable work in other Fire District employment in communities of similar size and location, including consideration of conditions of work and basic pay, current costs of living, the local economy and wage adjustments in the community, and the District's financial condition.

4. Analysis of Pay Plan

- a. At least once every five (5) years, the Fire Chief will review the current District salary rates, compensation policies, and personnel regulations of the District.
- b. The Fire Chief will then examine the salary range for each position to ascertain whether current minimum and maximum salaries should be maintained, increased, or decreased during the succeeding fiscal years. The Fire Chief may submit to the Board of Directors recommendations for granting a cost of living wage adjustment, amending the personnel policies, compensation policies, and pay plan each fiscal year.
- c. All salaries and approval of any salary increases are subject to funds being available in the District budget.

5. Initial Compensation And Salary Reviews

- a. Upon initial or promotional appointment to a position, the employee will receive the minimum salary for the position to which the position is allocated.
- b. However, in cases where unusual difficulty in filling the vacancies is experienced or when the appointee is exceptionally qualified, the Fire Chief may cause the appointment to be made at a salary level above the minimum, but not more than the maximum, for the position.
- c. Compensation will be reviewed at the end of an employee's trial service period and on an annual basis concurrently with the employee's performance evaluation.

6. Salary Adjustments

- a. Salary adjustments (increases or decreases) may be warranted and approved while an employee works for the District.
- b. Salary decreases: Employees may receive salary decreases as follows:
  - i. Across the board reduction in wages for all District employees or a group of District employees due to a lack of funds in the District; or
  - ii. As part of a disciplinary action; or
  - iii. For unsatisfactory job performance.

All salary decreases must be recommended by the Fire Chief. Salary decreases approved by the Board will take effect on the date specified on the Personnel Action Form

- c. Salary increases: Full-time employees may receive salary increases as follows:

- i. For successful completion of the employee's trial service period; or
- ii. For satisfactory, above average, or outstanding job performance; or
- iii. For successful completion of job-related training or education.

All salary increases are discretionary and may only occur if funds are available in the District budget. All salary increases must be recommended by the Fire Chief and approved by the Board of Directors. Salary increases approved by the Board of Directors will take effect on the first day of July unless otherwise specified on the Personnel Action Form.

- a. **Successful Completion of Trial Service Period:** The District Board of Directors may grant an employee a one-step merit salary increase upon the employee's successful completion of his/her trial service period if the employee receives a "satisfactory" or better performance evaluation.
- b. **Satisfactory Performance:** The Board of Directors may grant an employee an annual one-step merit salary increase for satisfactory job performance when the employee receives a performance evaluation with a "satisfactory" or better performance rating. It is possible for an employee to receive a "satisfactory evaluation and not receive a merit salary increase.
- c. **Superior Performance:** The Board of Directors may grant an employee an additional one-step merit salary increase for superior job performance when the employee receives one or more performance evaluations with an "outstanding" or "above average" performance rating. The District recognizes that an employee who receives an "outstanding" or "above average" rating exceeded normal expectations for the position and warrants consideration for a merit increase.

#### 7. Acting-In-Capacity Salary Adjustment

- a. An employee may receive an immediate, temporary five percent salary increase when he/she accepts additional job responsibilities due to the absence of twenty-two (22) or more consecutive work days of the employee's direct supervisor. Acting-in-capacity salary adjustments may be approved when:
  - i. The employee's supervisor is absent for twenty-two (22) or more consecutive work days due to education, training, vacation, illness or other leave of absence.
  - ii. The department head recommends and the Fire Chief approves the temporary salary adjustment on a Personnel Action Form.
  - iii. The employee takes on the duties of the supervisor in an acting capacity. (Example: Assistant Fire Chief as Acting Fire Chief in the Fire Chief's absence.)
- b. The salary adjustment will take effect on the date specified on the Personnel Action Form and will end on the date the supervisor returns to work.

8. Bonuses

The Fire Chief may recommend one-time salary bonuses to employees up to an amount of \$100.00 per bonus when an individual performs exemplary service for the District and the citizens of the community and approved by the Board. Bonuses will be added to the regular monthly paycheck.

9. Pay Period

The pay period will begin on the first day of the month and end on the last day of the month.

10. Pay Day

Employees will be paid on the last working day of the month other than Saturday or Sunday. It is the employee's responsibility to accurately record their time spent working and to submit their timesheets on time.

11. Payroll Deductions

- a. Required Deductions: Federal and State laws require the following deductions from every paycheck:
  - i. Federal Withholding Tax
  - ii. State Withholding Tax
  - iii. Social Security Taxes (FICA)
  - iv. Workers' Compensation
  - v. Court ordered child support payments or garnishments
  - vi. Employee's portion of retirement contribution
- b. Optional Deductions: Other deductions may be made from the employee's paycheck with the employee's written request, including, but not limited to:
  - i. Credit Union participation
  - ii. Insurance contributions
  - iii. United Way or other charitable contributions
  - iv. Union dues
  - v. Money due to the District
- c. 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.

12. Time Records

Time cards 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.

Regular employees and employees in the trial service period must record all time worked for the District. 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.

All employees will submit time cards to the Administrative Assistant. All time cards will then be reviewed by the Fire Chief and retained with payroll records.

13. Separation Pay

A regular employee terminating employment with the District will be paid on the date of separation any earned and unpaid wages when due plus any accumulated and unused vacation pay and compensatory time, excluding administrative leave. Work hours, vacation, and compensatory time will be paid at the employee's current hourly rate at the date of separation. If the employee fails to give at least forty-eight (48) hours' advance notice prior to resigning from District employment, separation pay will be paid within forty-eight (48) hours of the effective date of the resignation, excluding weekends and holidays.

14. Overtime and Comp Time:

Employees are generally classified as exempt or non-exempt. Exempt employees are ineligible for overtime compensation (except for the conflagration exception below). An employee's status will be explained to them when they join the Stayton Fire District.

Due to the nature of our business, overtime may be required. When operating requirements or other District needs cannot be met during regular working hours, employees may be scheduled to work overtime hours. Employees are expected to work overtime when requested. Your supervisor must authorize all requests for time off.

Overtime and compensatory time off for all non-exempt employees are covered by the following guidelines. It will be the District's option to provide compensatory time or overtime pay.

- a. For overtime purposes for Full-time employees, the workweek is Sunday at 12:01 AM through midnight Saturday. All overtime must be approved by your supervisor. Full-time employees are eligible to receive overtime pay for each hour worked over 40 hours in a workweek.

Overtime for Shift employees is time worked over their established 24 day/182-hour work period.

Shift employees will not receive or accrue compensatory time but will be paid each month for all overtime worked.

- b. The District will compensate at the rate of one and one-half times the normal hourly rate for both compensatory time and overtime pay.
- c. It will be the District's option to provide compensatory time or overtime pay.

- d. Overtime and compensatory time off will be computed and rounded up to the nearest one-quarter hour.
- e. Compensatory time accumulation will not ordinarily be allowed to accrue beyond forty (40) hours. The District may elect to provide employees with a cash payment for accumulated compensatory time.
- f. A Full-time employee may request compensatory time off by submitting a written request to his/her supervisor. The supervisor may approve the request or may direct that the compensatory time off be taken at an agreed upon time.
- g. Response to emergency calls that begin during regularly scheduled work hours and carry over past the end of the normal workday or work period, for Full-time and Shift employees, will be exempt from prior approval. Response time that carries over the normal workday or work period will be considered overtime and paid as overtime regardless of employee's regular hours worked or earned time off hours used within the work week when this occurs. Full-time employees may choose to be paid this overtime on their next payday or accrue the time as compensatory time.
- h. At the time of an employee's resignation or dismissal, the District will pay the employee for all accumulated unpaid overtime and compensatory time off earned.
- i. In the event that a Full-time employee is required to work during a regular holiday, the District will provide compensatory time off at the rate of one and one half times their regular hourly rate, in addition to holiday pay, for the hours worked.
- j. Full-time employees are to complete a written compensatory time off agreement with Stayton Fire District.
- k. In the event that an employee is called back on their day off or after leaving for the day, employee will be paid for all Call Back time at overtime rate; they will be paid for a minimum of two (2) hours. Call Back pay is paid to employee regardless of regular hours worked or earned time off hours used within the work week when Call Back occurs.
- l. Employees may be called back after hours by the Fire Chief, Assistant Chief, or Duty Officer. Return for after-hours call back is the option of the employee.
- m. The District requests that Full-time employees flex their work schedule to maintain a 40-hour workweek.

- n. Overtime will not be issued for weekend classes that are not required or approved in writing by the Fire Chief. If classes or meetings are required for Full-time employees, flex scheduling should be used whenever possible.

Overtime exception for exempt employees :

Exempt Employee Overtime: Chief Officers of the District who respond off-duty for participation in state conflagrations and state-sponsored emergency response teams shall receive compensation at a rate of one and one-half times their hourly rate for overtime associated with these activities, if such time is reimbursed by the State.

15. Longevity Pay (adopted 11/10/2008)

The District recognizes the cost and challenges associated with recruiting and retaining outstanding employees. Furthermore, it understands and values all aspects of retaining outstanding employees and the impact such employees have on service delivery to the community.

In order to assist in retaining long term outstanding employees the District shall provide Longevity Pay to those employees successfully achieving the criteria set forth in this policy.

- a. Must average score of 48 or 'Outstanding' rating on the District's current Performance Evaluation form during the evaluation period.
- b. Evaluation Period is considered to be the five (5) year service period prior to the longevity step increase.
- c. No disciplinary action during the evaluation period. Disciplinary actions are considered to be: written warnings, suspensions with or without pay, demotion, pay reduction, probation or termination. Consultations or records of consultations would not be considered disciplinary action.
- d. Any voluntary break in employment or service such as a leave of absence or sabbatical longer than six (6) months may constitute loss of tenure in the plan.
- e. Involuntary breaks in service such as mandatory military call to service would not constitute loss of tenure. However, break in service time may not count towards evaluation period.
- f. Family Medical Leave, extended medical leave, and other recognized leaves, six (6) months or less in duration, may not constitute a break in service unless employment is terminated.
- g. The District maintains the right to evaluate each case on an individual basis.

## C. MANAGEMENT LEAVE

Federal Labor Standards Act (FLSA) exempt employees will be allowed time off with pay at a time approved by the Fire Chief. District employees will regulate their own use of management leave and will provide the Fire Chief at least one day of advance notice of any day which they intend to take off. Management leave may be granted if the time off does not exceed the amount of time worked in excess of forty (40) hours per week. Any FLSA-exempt employee who leaves District employment for any reason will not receive any compensation for hours worked in excess of forty (40) hours per week.

## D. JOB SHARING

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 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.

The District pays the cost of health, dental and vision insurance as per the Medical and Related Insurance Policy for **one** full-time equivalent position. Accordingly, if a position is job-shared, the insurance premium due above the District cap will be prorated to each partner based on hours worked, if both partners wish to receive coverage. If one partner chooses to waive all coverage, however, then the other partner may receive the full coverage and pay any premium balance due, above the District cap, for that position.

Job sharing is implemented, continued or terminated at the discretion of the District based on operational efficiency. Specific scheduling arrangements are determined by the Fire Chief and should be a function of the needs of the District, the nature of the job and the desires of the job share partners.

## E. CONFLAGRATIONS AND STATE EMERGENCY RESPONSE

1. Employees responding to conflagrations or state emergency response will be paid their current regular pay rate for all hours up to 40 hours in a work week and paid time and a half for all hours worked over 40 hours in a workweek.

If employee voluntarily exchanges vacation or comp time for time gone on conflagrations or state emergency response, they will receive their regular salary from the District in addition to conflagration or state emergency response pay.



If employee does not have vacation or comp time to use or chooses not to use that time, their regular work hours while on the conflagration or state emergency response are UNPAID LEAVE. They will not receive their regular pay during those work hours but will receive conflagration or state emergency response pay.

If conflagration or state emergency response occurs on or over a weekend (Saturday and Sunday), there will be no exchange of employee vacation or comp time for those days for Full-time employees that do not normally work on Saturday or Sunday.

- 2 . Volunteer Staff responding to conflagrations or state emergency response will be paid per the State Mobilization Plan.

## POLICY 8.5 EMPLOYEE TRAVEL AUTHORIZATION AND REIMBURSEMENT

### A. GENERAL EXPECTATIONS

All employees of the District are expected to use good judgment regarding the expenditure of funds for travel expenses. Only through teamwork can the costs of travel on District business be minimized.

### B. 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:

1. Pre-approval of all travel requests to insure that the travel is appropriate to the needs of the District and that budgeted funds are available for specific travel requests; and
2. A complete accounting of the actual expenses for the travel to insure that the expenses reported for reimbursement are appropriate and provide appropriate documentation.

### C. APPROVAL

The Fire Chief must approve registration, travel and attendance expenditures in advance within the budgeted amounts adopted by the Board. Prior to submittal for the Fire Chief's approval, the request must be approved by the Training Officer or the employee's Supervisor.

### D. TRAVEL REQUEST

At least one month prior to the anticipated travel, the employee should submit a completed Request for Training form to the Training Officer or Supervisor. This will document advance approval of the requested travel and provide a basis for an advance of funds to the employee.

### E. TRAVEL SETTLEMENT

Within one week after the travel has been completed, the employee must turn in receipts for lodging and all other expenses.

### F. GUIDELINES

The following general guidelines apply to the reimbursement of employee travel expenses:

1. Transportation. The actual cost of transportation, taxi fares, parking fees, telephone calls and similar items incidental and necessary to the performance of official business while on travel status will be paid.

2. 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. If an employee chooses to make other arrangements for lodging, a payment of \$75.00 per night may be allowed in lieu of paying the actual accommodation costs.
3. Meals. The current standard federal per diem rate for meals will be used to reimburse the cost of meals not already provided while on official business for the district. No receipts are required for meals covered under the per diem.
4. Telephone and Telegram. Expenses for telephone and/or telegram 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.
5. Registration and Tuition Fees. Expenses for registrations and/or tuition fees are allowable expenses, and a copy of the registration must be attached to the Request for Reimbursement form.
6. Accompanied Travel. Any expenses for family members who accompany the employee on a trip are not reimbursable.
7. Alcoholic Beverages. Any expenditures for alcoholic beverages are not allowed and reimbursement will be required if any are charged to the District.
8. Private Vehicle. Travel on official business outside the District by a single individual should be by District-owned vehicle or private vehicle. If the employee is authorized to use a private vehicle, mileage will be paid at the prevailing rate.
9. District Vehicles. District vehicles will not be used for unauthorized District uses and will not be used for private gain or benefit. District vehicles will not be used by family members of employees, even though family members may ride in vehicles while traveling to conferences.

POLICY 8.6 TIME OFF

A. 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 a Full-time employee's scheduled vacation, the employee will receive holiday pay for the day if eligible for such pay and will not be charged vacation time for the day.

Accrued and unused vacation benefits are paid upon termination of employment. Vacation credits will not accrue during any unpaid leave of absence.

The District provides vacation benefits to its Full-time and Shift employees. Vacation credits will be posted monthly as follows:

1. Upon satisfactory completion of the first six (6) months of the trial service period, annual vacation will be computed from the first day of the first full month of employment (e.g., employees starting on the first day of the month receive credit for that month; employees starting on the second day of the month receive credit for the month following), and will be posted to the vacation balance on the first day of the first full month during which the employee serves as a regular employee.
2. Vacation leave will be earned on a monthly basis.
3. An employee will not be eligible to take vacation hours during the first six (6) months of employment.
4. Full-time and Shift employees will earn the following annual vacation hours, based on the number of continuous years of service the employee has worked for the District:

Full-time Employees:

Upon Completions of:	Vacation Earned Annually
0-1 year	40 hours
2-4 years	80 hours
5-9 years	120 hours
10 years and beyond	160 hours

Shift Employees:

Upon Completions of:	Vacation Earned Annually
0-1 year	48 hours
2-4 years	96 hours
5-9 years	144 hours
10 years and beyond	192 hours

5. Vacation leave requirements are as follows:  
Full-time Employees:

Upon Completion of:	Minimum Required Annual Vacation
1 year	No required leave
2-5 years	40 hours
Over 5 years	80 hours

Shift Employees:

Upon Completion of:	Minimum Required Annual Vacation
1 year	No required leave
2-5 years	48 hours
Over 5 years	96 hours

- a. Full-time employees may only carry over vacation leave up to 160 hours maximum. Shift employees may only carry over vacation leave up to 192 hours maximum. If an employee does not use all accumulated vacation leave by their anniversary date, they will automatically lose any unused leave accumulated over the maximum allowed.
- b. All vacations must be scheduled and approved by the Fire Chief in advance with due consideration being given to the seniority of the employees and to the work requirements facing the District. Vacation schedules may be amended to allow the District to meet emergency situations.
- c. An employee who has completed six (6) months of employment and is terminated prior to using any or all of his/her vacation will be paid for the unused portion of the vacation earned.

**B. HOLIDAYS**

1. All regular full-time and trial service full-time employees of the District will be entitled to the holidays listed below with pay. Full-time employees will receive regular compensation for eight (8) hours per holiday at the regular rate of pay. Full-time employees with irregular work schedules will work out the remainder of their workweek with their supervisors. Shift employees shall maintain their shift schedule even on holidays.

New Year's Day	Labor Day
Presidents' Day	Veterans' Day
Memorial Day	Thanksgiving Day
Fourth of July	Day after Thanksgiving
Christmas Day	Martin Luther King Day

The holiday to honor Martin Luther King will continue by allowing the individual employee to choose the day they will take for the holiday. *Adopted 4/88*

- a. If any such holiday falls on a Sunday, the following Monday will be given as a holiday. If a holiday falls on Saturday, the preceding Friday will be given as a holiday.
- b. Holidays which occur during vacation or sick leave will not be charged against such leave.

- c. Paid holidays will not be paid to employees on leave without pay.
  - d. Paid holiday compensation will be granted for one-half day prior to either Christmas Day or New Year's Day. The choice of day will be with each employee, with prior approval of the supervisor and the Fire Chief.
2. Holiday time for Shift employees will be regarded as earned at the rate of 6.5 hours per month and can be used during the employee's anniversary year. Total annual holiday hours (78) will be issued to shift employees at the beginning of their anniversary year to allow ample opportunity to use them. Adjustments to final check may be made for any used but unearned holiday hours in the case that employee leaves employment before their anniversary date and used all holiday hours. Holiday time off must be scheduled and approved by the Fire Chief or Assistant Chief in advance. Unused holiday time off is forfeited if not used in the year earned.

### C. SICK LEAVE

1. 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.
2. 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 and Shift employees with 12 hours of accumulated sick leave per month. Sick leave will be calculated from the first day of the first full month of employment (e.g., employees hired on the first day of the month begin earning sick leave that month; employees starting on the second day of the month begin earning sick leave the following month).
3. Employees are eligible to use sick leave for the following reasons:
  - a. Personal illness or physical disability
  - b. Quarantine of an employee by a physician for non-occupationally related disability
  - c. Illness of employee's mother, father, spouse or child/step child/ foster child under the age of 19, or 23 if full time student living with parent. The District expects that other care arrangements will be made as soon as possible to minimize the time lost from work. An employee may take sick leave up to a maximum of fifteen (15) working days for Full-time employees and up to 6 shifts for Shift employees, in a calendar year to care for the members of their family identified above. If additional time off is needed, a written request must be submitted to the Fire Chief for consideration; approval or denial of a request for additional time off will be based on:
    - i. The impact the absence will have on District work priorities
    - ii. The ability of the employee to secure outside care

- iii. The ability of the employee to be productive at work if he/she returns to work in lieu of caring for his/her mother, father, spouse or dependent.
  - d. Medical or dental appointments which cannot be scheduled outside regular work day hours
  - e. Disability or illness related to pregnancy will be treated in the same manner as any other temporary physical condition requiring time off work, as specified in the Family Medical Leave section.
- 4. Employees will be charged sick leave on the basis of one (1) sick leave hour for each duty hour absent.
- 5. Misuse of the sick leave privilege will be cause for disciplinary action. An employee who is unable to report to work because of any of the reasons set forth in this section will report the reason for the absence to his/her supervisor prior to the start of the work day or within the first two (2) hours of the work day. Sick leave with pay will not be allowed unless such report has been made. A physician's statement confirming illness may be requested of the employee by the supervisor or Fire Chief.
- 6. Sick leave may accumulate from year to year for each month of service.
- 7. Accumulated unused sick leave may be used to increase retirement benefits allowed through P.E.R.S. *Policy Adopted 11/14/88*
- 8. Employees who have at least one hundred twenty (120) hours of earned sick leave may, with the approval of the District Fire Chief, donate up to 24 hours' sick leave to a fellow employee once during each calendar year. The Fire Chief's determination will be based on his judgment of the need of the individual to receive such sick leave. This decision is not subject to appeal.
- 9. Unused sick leave will not be compensated for in any way at the time of resignation or dismissal of an employee, except as provided for above.

**D. PAID LEAVE OREGON**

Stayton Fire District provides a Paid Leave Oregon insurance plan through Oregon Employment Department. This insurance is required by Oregon state law and provides paid time off to eligible employees. This is a protected leave. All health-related information gathered by the insurer and organization during this process will be maintained as confidential. Employees will not be discriminated against or retaliated against for using or trying to use this insurance benefit. We encourage each employee to use the combination of time off and benefits that meets their personal needs.

**Cost**

Employees will see up to .006% deduction from gross wages for each paycheck. Stayton Fire District has fewer than 25 employees and is not required to make the employer contribution.

**Eligibility**

The determination of eligibility will be made by Oregon Employment Department. If employee disagrees with an eligibility determination, employee may use the appeal process outlined in the determination notice.

### **Length of leave**

The length of leave is part of the determination process. Employee may qualify for up to twelve (12) weeks of leave annually, starting from the first day of leave. An additional two (2) weeks of leave may be available if the employee is pregnant, has given birth, or has health needs because of childbirth. The coverage may be approved in single day or single week segments.

### **Reasons for leave**

Benefits may apply to a variety of situations, including:

**Family leave** - Caring for members of employee's family:

- During the birth of a child
- Bonding with a child in the first year:
  - After birth
  - Through adoption
  - When the child is placed in employee's home through foster care
- To care for a family member with a serious health condition\*.

**Medical leave** - Employee caring for themselves when they have a serious health condition\*.

**Safe leave** - For survivors of:

- Sexual assault
- Domestic violence
- Harassment
- Stalking

\* A serious health condition is an illness, injury, impairment, or physical or mental condition that: requires inpatient care, poses an imminent danger of death or possibility of death in the near future, requires constant or continuing care, involves a period of incapacity, involves multiple treatments, or involves a period of disability due to pregnancy.

### **Insurance benefit while on leave**

The amount of benefit employee will receive will be calculated based upon employee's earnings for the prior year. This will also be part of the determination of coverage process. The minimum and maximum benefit amounts may be adjusted by the Oregon Employment Department annually, and employee will receive notification before a change occurs.

Employee may, but is not required to, make up the difference between the PLO benefit amount and their regular rate of pay. The following leave banks are available for this purpose; Vacation, Sick Leave, Compensatory Leave.

Continuation of health benefits is required while employee is receiving a PLO benefit. This includes the offering of insurance to a newly hired person who becomes eligible while on/receiving a PLO benefit.



If employees pay a portion of their health care premium, Stayton Fire District will set up a payment plan with employee for the payment of their portion while on/receiving a PLO benefit.

### **Notification of the need for leave**

Employee is required to provide the District notice of the intention to take leave. For planned events, employee is required to provide thirty (30) days written notice. For unplanned events, employee is required to notify the District within twenty-four (24) hours of the leave and provide written notice within three (3) days. If employee is incapacitated due to the unplanned event and are unable to meet these obligations, we ask the employee to notify the employer as soon as possible.

Please complete the Personnel Leave Form found on the copier hard drive to notify the District of the intention to take leave or contact Administrative Assistant for a copy.

### **Filing a Claim for coverage**

Employees will need to establish an account at Frances Online and file claims electronically. This is the electronic system of record for the Oregon Employment Department. Employees are responsible for submitting the required paperwork and any updates or changes to their claim. The employer will be unable to complete the application process on the employee's behalf.

### **Job and Benefit Protection while on leave**

If employee has been employed with the District for at least ninety (90) days prior to the leave, employee will be restored to the same position upon their return, if the same position exists. If the same position does not exist, employees will be restored to a different position with similar job duties and the same employment benefits and pay. This position may or may not have the same terms and conditions.

If, at the time of leave, employee is receiving health benefits, these will be maintained. Employees will be required to pay their portion of all elected benefits premiums while on leave.

### **Complaints Procedure**

Our goal is to solve all concerns at the lowest possible level. We encourage all employees to bring complaints to the Fire Chief promptly and in writing.

We understand employees may choose to seek outside assistance to resolve complaints regarding this coverage. Employees may contact the Oregon Bureau of Labor and Industries to file a complaint or may contact an attorney of their choice to determine if a civil action may be appropriate.

## E. FAMILY MEDICAL LEAVE POLICY

### **Policy**

It is the policy of Stayton Fire District to authorize leave of absence to eligible employees for qualifying circumstances as specified in the federal Family and Medical Leave Act (FMLA) and other related statutes and regulations. Administration of such leaves shall be conducted in accordance with the applicable laws and regulations.

The District makes available family and medical leave to eligible employees. Leave may be available in the following circumstances: to care for the employee's newborn, newly adopted or newly placed foster child; to care for a family member with a serious health condition; to recover from or seek treatment for an employee's own serious health condition; or, to care for a child with an illness which requires home care, but is not a serious health condition.

### **Eligibility**

Family and medical leave is available to employees who have completed at least 180 days of employment, averaging at least 25 hours per week.

### **Maximum Duration of Leave**

Generally, eligible employees may take up to twelve (12) workweeks of statutory leave in any twelve-month period, measured forward from the date your first leave begins. Family and medical leave may be taken in increments of a day or more or in one continuous block of time. Hourly paid employees may take leave for the remainder of a shift or workday if they learn of a family member's serious health condition after reporting to work. An advance written request is required for each increment of family medical leave requested.

Intermittent or reduced schedule leave may be available under limited circumstances.

### **Benefits During Leave**

The District will continue to provide group health insurance coverage for an employee on family and medical leave on the same terms as would have been provided if the employee had been working continuously during the entire leave. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave.

Paid time off benefits, such as vacation and sick leave, do not accrue during any period of unpaid leave.

### **Pay During Leave**

Leave is generally without pay. However, during your leave, you must utilize any accrued vacation and comp time. Sick leave may be used for the period in which employee is physically unable to perform their job.

### **Application for Leave**

Generally, a request for leave must be made 30 days in advance. In any event, you must provide reasonable advance notice of the need for statutory leave. Leave may be delayed or reduced if proper notice is not given.

Leave related to planned medical treatment should be scheduled so as to not unduly disrupt District operations.

### **Certification**

Before requests for leave can be approved, you may be required to supply medical certification of the condition necessitating leave. A health care provider must complete a certification form. Forms may be obtained from the Administrative Assistant.

The District also reserves the right to require certification from a second health care provider, at the District's expense.

### **Call-In**

The District requires employees on statutory leave to comply with the District's call-in policy.

### **Reinstatement Upon Return From Leave**

In the event that leave does not exceed the maximum duration and absent of any extraordinary circumstances, you will be returned to your former or equivalent position upon return from leave.

### **Return to Work**

You are expected to return to work on the date specified at the time of your request for leave. If you fail to report to work as scheduled and fail to properly request an extension of leave, you may be considered to have voluntarily quit.

Notification of availability to return to work prior to the planned return date should be made to the Fire Chief within two days prior to the expected time of return.

When returning from leave, you may be required to present certification from a health care provider that you are fit to return to work or of any restrictions on your ability to safely perform the essential functions of your job.

## F. JURY DUTY

If a summons for jury duty is received, please notify your supervisor and/or Fire Chief. Arrangements will be made to reassign work and time off will be granted. Jurors will pay the District any payments received for jury duty, except mileage when using 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.

## G. MILITARY LEAVE

The District will provide unpaid time off for employees with an obligation to actively serve in the military, reserve military service or summer encampment while maintaining the individual's employment status and benefits in full accordance with both federal and state laws. Should you have a need for this leave, please consult the District Fire Chief as soon as possible.

## H. UNPAID PERSONAL LEAVE OF ABSENCE

1. Employees who have been continuously employed with the District for at least one (1) year may request an unpaid personal leave of absence 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 District.

2. Requests must be submitted in writing and must be approved in writing by the Fire Chief before the leave begins. Requests for extensions of leaves must be submitted in writing and approved in writing by the Fire Chief 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.

The District may pay for group health or dental insurance premiums during any portion of an unpaid personal leave of absence consistent with the insurance carrier policy. Accordingly, the premiums for such coverage are the complete responsibility of the employee. In order to keep the insurance in force, premiums for the entire period of the leave must be paid before the employee begins the leave. Vacation time and sick leave will not accrue during an unpaid personal leave of absence.

## I. UNPAID LEAVE TO PERFORM VOLUNTEER FIREFIGHTER DUTIES

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 not be considered hours worked at the employee's regular rate of pay. The employee will receive volunteer points for responding to an alarm during the ordinary hours of work. Time spent responding to alarms will be made up by the employee.

## J. CONFERENCES AND CONVENTIONS

Decisions concerning attendance at conferences, conventions or other meetings at District expense will be with the approval of the Fire Chief. Approval may be granted based on the

cost to the District and the benefits to the District from the employee's participation in the conference or the direct relation of the employee's work to the subject matter of the meeting.

## K. FRINGE BENEFITS

1. Retirement. The District provides a mandatory money purchase pension plan for all Full-time and Shift employees working 600 hours per year. Employees must have completed the six (6) month waiting time to be eligible to participate. The employee is required to contribute six percent (6%) of the employee's gross monthly salary into the plan. (*Adopted 12/94*) The District has elected to "pick up" the employees required contribution to PERS. (*Adopted 12/9/96*) The District also contributes an actuarial determined percentage that is computed annually. For further information on this retirement plan, consult the plan booklet.
  - a. The District encourages employees to plan their retirement and notify the District sixty (60) days before the effective date of retirement to enable the District to appoint a new person to the position in a timely manner. The District's day-to-day pension plan shall be administered by P.E.R.S. The Fire Chief will assure that the necessary adjustments are made to the budget each July.
2. Industrial Accident Insurance.
  - a. The District provides Workers' Compensation through an insurance carrier for industrial accidents and diseases. Benefits include medical treatment, medical care and disability compensation.
  - b. The District will pay the premium for medical, hospital, life and dental insurance for up to six (6) months for employees who sustain an injury or illness compensable by Workers' Compensation and who are unable to perform their regular duties.
  - c. An employee who has sustained a compensable injury will be reinstated to the employee's former position of employment, if available, or to other employment which is available and suitable upon demand for such reinstatement, provided the employee can perform the duties of such position and can provide written medical evidence of the ability to perform all job requirements.
  - d. An employee is not eligible to earn vacation or sick leave time while on Workers' Compensation leave for a period of longer than thirty (30) days.
3. Medical and Related Insurance. The District provides medical, hospitalization, dental and related insurance benefits for all Full-time and Shift employees and their eligible dependents. Part time and temporary employees are not eligible to participate in our health insurance plans. Coverage for eligible employees begins on the first day of the month following 30 days of employment with the district. Benefit plans and costs will be reviewed and approved annually by the Board of

Directors. The District expects employees to cooperate in containing the costs of health care.

The District currently pays a portion of the cost of premiums for eligible employees and dependent family members medical and dental insurance coverage. Eligible employees who wish to participate in the district's medical and dental insurance plans and/or to provide coverage for their dependent family members will be required to authorize payroll deductions for their portion of the premium.

4. HRA VEBA Plan Employer Policy. Stayton Fire District has adopted the health reimbursement arrangement (HRA) plan offered and administered by the Voluntary Employees' Beneficiary Association Trust for Public Employees in the Northwest ("Plan"). The Plan is designed with a variety of coverage options to allow for the maximum benefit permitted by applicable law. Employer agrees to contribute to the Plan on behalf of all non-represented employees ("Group") defined as eligible to participate in the Plan, in accordance with Plan and regulatory limitations. The Plan must receive an enrollment file for each eligible employee to become a participant and become eligible for benefits under the Plan.

**Contributions on behalf of each eligible employee shall be based on the following selected funding sources/formulas:**

- Excess Monthly Benefit Dollars:** Eligibility is limited to employees (Full time and Shift employees) with excess monthly benefit dollars provided by Employer. Employer contributions shall include the entire excess monthly benefit dollars for eligible employees.

The term of this Employer Policy shall be from July 1, 2023 until otherwise updated or amended.

5. Continuation Coverage: There are specific requirements, time frames and conditions which must be followed in order to be eligible for continuation coverage. Please contact the Administrative Assistant as soon as possible if you think you may qualify for continuation coverage. Requirements and procedures are outlined in the Benefit Booklet provide by the District's health insurance carrier.
6. Health Insurance Coverage for Retired Employees and Dependents: A person who retires from District employment (retiree) may continue health coverage under the District's health insurance plan subject to the following conditions:
  - a. The same health insurance coverage offered to regular employees is available to eligible retirees.
  - b. The retiree has the option as to whether or not to take advantage of the coverage.
  - c. The retiree has the option of electing coverage for his/her dependents. Dependent coverage, if elected, for a spouse may continue until the spouse

achieves Medicare eligibility; for a child, until the child reaches age 23, becomes independent, or is married.

d. The retiree will pay the total cost of their health insurance premiums.

7. Modification of Benefits

Benefits for employees may be provided, modified or changed at the discretion of the Board of Directors. Employees will be notified in writing of all benefit changes which occur.

8. Group Life Insurance

a. The District will provide \$20,000 of term life insurance covering each employee against both occupational and non-occupational related death, and \$40,000 for occupational related death.

b. The District will also provide an accidental death or dismemberment plan of \$1,000 for each covered family member.

9. Uniforms

a. The District will provide articles of exterior uniforms for all personnel.

b. Maintenance personnel are provided uniforms, coveralls and laundry service for coveralls.

c. The District may repair or replace personal items damaged, lost or broken during job related functions with approval of the Fire Chief.

L. FUNERAL LEAVE

The purpose of funeral leave is to provide Full-time and Shift employees time to attend the funeral of a member of their immediate family and to handle personal affairs.

When a death occurs in an employee's immediate family, Full-time employees may take one (1) day (8 hours) off with pay to attend the funeral or make funeral arrangements. Shift employees may take one (1) day (24 hours) with pay to attend the funeral or make funeral arrangements. Any additional bereavement leave will be charged to the employee's unused vacation or sick leave.

Immediate family defined: employee's spouse, parents, stepparents, siblings, children, stepchildren, grandparent, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, or grandchild.

Time off without pay may be provided to attend the funeral of individuals other than immediate family members upon the Chief's approval. Employees may take unused vacation or comp time for this.

## POLICY 8.7 SAFETY AND ACCIDENTS

### A. 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 must:

1. Operate only equipment that you are fully qualified and authorized to use.
2. Follow safe operating procedures for all equipment. Use the safeguards provided for your protection. Never operate machinery when safety features have been removed or are not functioning properly.
3. Refrain from fighting, horseplay or distracting fellow workers.
4. Not wear torn or loose clothing or jewelry which could become entangled in operating machinery.
5. Use protective equipment and clothing as specified for the job task.
6. Observe all hazard and warning signs.
7. Report immediately any hazardous conditions and/or unsafe work practices to any supervisor.
8. Keep aisles, walkways and working areas orderly, clean, and clear of tripping and slipping hazards. This includes picking up loose products or materials that can create hazards, or contribute to injuries.
9. Walk not run on District premises.
10. Not riding as a passenger on vehicles which are not provided with passenger seats (i.e., forklifts, etc.).
11. Keep emergency equipment in your work area (such as fire extinguishers, fire alarms, exit doors, and first aid kits), clear of obstacles and readily accessible.
12. Know and observe emergency action procedures during emergencies.
13. Actively participate in the District's safety and health program.

### B. UNSAFE CONDITIONS



1. 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 are expected to 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.

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:

- a. Safely eliminate the hazard, and obtain necessary assistance;
- b. Safely control the hazard by enclosure or guard;
- c. Employ avoidance procedures; and
- d. Use personal protective equipment as appropriate.

2. Management Responsibility: 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.

#### C. EMPLOYEE INJURY REPORT

In case of an accident involving personal injury to an employee, regardless of how serious, a supervisor and the Fire Chief 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 Worker's 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 Administrative Assistant 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 Administrative Assistant will then proceed to process a claim report form.

The appropriate entries shall be made in the OSHA Report log.

#### D. WORKERS' COMPENSATION INSURANCE

If an employee is injured on the job, the injured worker may 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.

Use of Sick Leave for on-the-job injury or illness:

- Employee will not be required to use their personal sick leave for doctor authorized time off work due to an on-the-job injury or illness. Once employee has returned

to regular duty or light duty, they will then use personal sick leave time for doctor appointments, physical therapy appointments, etc. per Sick Leave policy.

#### Time Loss Benefit from Workers' Comp:

- If employee receives compensation (time loss benefit) from the District's workers comp carrier for an on-the-job injury, the employee must photocopy each check before cashing it and furnish a copy of the check to the District. The District shall pay the difference between the time-loss benefits paid and the employee's regular wages less taxes incurred

OR

The employee can endorse the check and turn it into the District to prevent any loss to the employee's regular salary.

#### E. RETURN-TO-WORK POLICY

The following procedures must be followed by employees who wish to return to work following an injury, whether incurred while on-the-job or otherwise, that has resulted in the employee's being off work or being unable in the opinion of the Fire Chief to perform the essential functions of the job without reasonable accommodation.

1. The Fire Chief may prohibit the employee from returning to work until he/she has requested to return to work in accordance with the procedures set forth below.
2. All requests to return to work must be made in writing, dated and signed by the employee.
3. All requests to return to work must be accompanied by a dated, written release signed by the attending physician. This release must clearly specify whether the employee is released for his/her former job or is restricted in any way and will include any request for reasonable accommodation.
4. Requests to return to work must be made no later than the 7th regular work day following the date of the attending physician's signature on the written release. Except where, in our opinion, extenuating circumstances exist, failure to make a timely request terminates the employee's right to reinstatement or reemployment. Failure to seek a written release upon becoming able to return to work may constitute abandonment of the right to reinstatement or reemployment.
5. 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 in No.6 below. Requests brought in personally will be deemed made the date on which the written request is given to the District. Mailed request will be deemed made on the date of receipt. All requests will be date stamped upon receipt.
6. All requests to return to work must be directed to the Fire Chief.
7. If the employee's former job or a suitable alternative is not available at the time of the request to return to work, the Fire Chief must be contacted in person or by telephone once a week to renew the request. If a period of ten (10) working days elapse without such a contact, the employee will be considered to have abandoned his/her right to be returned to work.

8. All job offers will be made by telephone. It is the employee's obligation to keep the District advised of any changes in your telephone number.
9. If the employee is offered a suitable position in response to a request to return to work and it is refused, he/she will be considered to have voluntarily terminated employment and abandoned the right to reinstatement or reemployment
10. Light Duty Work Assignments. Disabled employees who are temporarily assigned light duty work as a reasonable accommodation but are unable to perform the essential duties of their job, may be required to provide a medical evaluation after thirty (30) days from their treating physician so that the Fire Chief may determine whether the employee is capable at that time of performing the essential functions of the job, with or without reasonable accommodation.

The District offers light duty accommodations only for those employees whom the Fire Chief may anticipate will recover the ability to perform all the essential functions of the job within a reasonable time. If recovery becomes doubtful, the Fire Chief may discontinue the light duty assignment. No light duty assignment is intended to become permanent.

## POLICY 8.8 WHAT THE DISTRICT EXPECTS FROM YOU

### A. 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. It is the responsibility of all District personnel to follow the General Conduct Rules outlined in Policy 12.5.C.

### B. PUBLIC RELATIONS

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.

### C. ETHICS POLICY

The purpose of this policy is to establish ethical standards of conduct for all district public officials in accordance with Oregon Governments Ethics law.

Oregon Government Ethics Law:

- Applies to all elected and appointed officials, employees and volunteers
- Prohibits use of public office for financial gain
- Requires public disclosure of financial conflicts of interest
- Limits gifts that an official may receive per calendar year
- Found in Oregon Revised Statutes, Chapter 244

#### 1. Participation in Community Affairs

- a) District employees are encouraged to take an active part in community affairs.
- b) Employees are entitled to enter into political activity provided it is done on his/her own time; that no political pressure is placed upon other employees; and that all political activities are in conformance with Oregon Government Ethics Law.

#### 1. Financial Gain

Each public official is prohibited from using the position as a public official to receive certain financial benefits if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official. In addition, each public official is prohibited from using or attempting to use the official position to obtain financial benefits for a relative or a member of the public official's household, or for a business with which the public official, a relative, or a member of the public official's household is associated.

The following is a list of financial benefits that may be received. These include:

- Official compensation

- Reimbursement of expenses
- Honorarium
- Unsolicited awards for professional achievement
- Some gifts

2. Gifts

No public official shall solicit or receive any gift(s) with a total value of more than \$50 from any single source who could reasonably be known to have a financial interest in the official actions of that public official. A gift is defined as something of value given to a public official, for which the official does not pay an equal value. Gifts of entertainment are included in the \$50 gift limit.

This does not mean that an official cannot receive any gifts. The law only restricts gifts from sources that have an administrative or legislative interest in the public official's actions, and does allow the public official to receive up to \$50 worth of gifts from each source. In addition, unlimited gifts may be accepted from a source that does not have a legislative or administrative interest in the public official, and the public official may accept unlimited gifts from specified relatives.

3. Conflict of Interest

Oregon Government Ethics law identifies and defines two types of conflicts of interest: actual conflict of interest and potential conflict of interests.

The difference between an actual conflict of interest and potential conflict of interest is determined by the words "would" and "could".

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 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.

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:

- 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.

#### D. POLITICAL ACTIVITIES OF DISTRICT EMPLOYEES

1. 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.
2. On-Duty Activity. Oregon law prohibits 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.
3. Off-Duty Activity. During the term of their employment a District employee may not hold any elective office that creates a conflict of interest between the duties of that employee and the prospective duties of the elective office holder. An employee may obtain a prior written approval of their department head and/or the Fire Chief before filing as a candidate for an elective office. Failure to obtain prior written approval may be deemed by the District to constitute a voluntary resignation if the employee is elected to that position and the District determines that the election to the position creates a conflict of interest with the employee's position with the District.

Nothing in this rule is intended to restrict the political actions or activities of employees outside of their regular working hours.

#### E. COST CONSCIOUSNESS

Every employee of the District is a citizen and taxpayer and is expected to practice economy in all duties. Failure to do so is not in the best interests of the District and may lead to discipline, and/or discharge, as appropriate.

#### F. ATTENDANCE AND PUNCTUALITY

Regular attendance is of primary importance for every position at the District. You are expected to arrive for work on time and be ready to start work at the beginning of your scheduled shift. You are also expected to complete your shift as scheduled.

If you are going to be late or absent, you must call in and personally notify your supervisor prior to the beginning of your scheduled shift. If you do not report as scheduled and if you have not spoken to your supervisor or manager in advance to explain your absence, disciplinary action may result.

If you are sick, you must call and personally notify your supervisor each day prior to your scheduled shift, unless you are on an approved medical leave.

Failure to report and call in as required for two consecutive days will be considered a voluntary resignation.

You must receive supervisory approval to leave prior to the end of your scheduled shift.

Attendance requirements specific to your position are outlined in your job description. If you are having difficulties meeting the requirements of your schedule, please contact your supervisor.

Excessive tardiness and/or absenteeism may result in disciplinary action.

**G. PERSONAL APPEARANCE**

Both the employee's personal appearance and dress are essential to creating a favorable public image. All employees will dress in neat, clean, professional-looking attire, appropriate to their daily job duties. Uniformed personnel will be attired in appropriate District-provided uniforms.

Each employee 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.

**H. LEGAL LIABILITY**

1. Employees are expected to abide by all laws and regulations which govern the performance of their duties and will perform their duties in a reasonable and prudent manner.
2. The District will indemnify and defend its employees, in accordance with the Oregon Tort Claims Act, in the event litigation is brought arising out of employee's performance of duty.

**I. APPEARANCE OF WORK AREAS**

The District and its employees are responsible for maintaining positive public perceptions with our work place appearance. 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 insure that all working documents, desks, cabinets and equipment are secure at the close of the work shift.

**J. PERSONAL TELEPHONES AND 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.

All use must be consistent with our standards for courtesy and professionalism in communications and must not adversely affect employee productivity. Any expense arising from personal use must be reimbursed to the District in the subsequent billing period. Use of the phones for personal commercial ventures or gain, or to disseminate confidential information is prohibited.

Cellular Phones: With the rising cost of cellular phones and service plans, it is no longer in the best interest of Stayton Fire District to provide officers (Captains and Lieutenants) and full-time paid staff with District phones. However, the District continues to recognize the necessity to maintain a reasonable avenue of communications with its officers and paid staff. In an effort to maintain a communications link with its officers and paid staff, the District will reimburse each officer and member of paid staff \$20.00 per month for the use of their personal cellular phones for District business. The District reserves the right to modify or terminate monthly reimbursement at any time. (See Cell Phone Waiver in Appendix)

Cellular telephones should only be used when two-way radios or land-lines are not an option. Cellular telephone conversations are to be kept short and to the point.

Employees are required to comply with traffic regulations, laws, and ordinances in the operation of motor vehicles while using cellular telephones while traveling. At no time should cellular telephone use jeopardize the safety of the public or District employees.

Unauthorized use or abuse of our cellular telephone benefit is cause for disciplinary action.

#### K. PERSONAL ELECTRONIC DEVICES

**PURPOSE:** To outline the use of personal electronic devices by personnel while engaged in service delivery, training, or as a representative of the Stayton Fire District.

Personal electronic devices include cellular phones, text messaging devices, still or video cameras, recording devices, radiophones, personal data units, radio/music playing devices or gaming systems.

Time spent on these devices for personal use should be kept to a minimum during district events. Phone contact, text messaging, pager contact or radiophone contact on a personal basis should be controlled and especially reserved for urgent or emergency (personal) situations. Constant interruptions from personal contacts are disruptive to the work environment and are not allowed when personnel are engaged during training and fire ground operations. The following rules will be in addition to these guidelines:

1. Personnel will refrain from using personal electronic devices while responding to an emergency or while on the fire/training ground. The exception to this rule would be the case of a true personal emergency. Firefighters should notify their engine officer of the need to use their personal phone for a potential emergency.
2. Members in uniform involved in public presentations will need to minimize the use of their personal electronic devices and preferably out of public view.
3. Hardware for personal electronic devices shall not utilize any fire apparatus at any time unless authorized by a fire officer.
4. The Stayton Fire District will not be responsible for lost or damaged personal electronic devices.



5. At no time shall personal electronic devices that can record (audio, video or camera) be used on apparatus or training grounds. If it is found one of these devices has been used the device may be collected by the officer in charge for the remaining time of the event. The device will be returned to the individual at the conclusion of the event and once the data has been removed.
6. If any use has been proven to be used for personal gain, or placed on the Web, or any other source, disciplinary action will occur and may result in termination from duties.

#### L. USE OF SOCIAL MEDIA

**PURPOSE:** This policy provides important standards and guidelines when using social media.

**SCOPE:** This policy shall apply to all District Board Members, employees, and volunteers herein referred to as members.

**RESPONSIBILITY:** It is each individual's responsibility to comply with this policy. Failure to do so will result in disciplinary action, up to and including termination.

**DEFINITION:** "Social Media" is an umbrella term for various forms of communication consisting of user created text, audio and video published in a shared environment, online such as over the Internet or through mobile telephone networks (i.e. using personal cell phones, smartphones, etc.) including, but not limited to, social network services (i.e., Facebook, Instagram, Twitter, Snap Chat, Tik Tok etc.), blogs, texts, forums or message boards, audio/video content commodities (i.e., You Tube, Flickr, etc.).

The differing forms of social media generally have common characteristics of allowing for personal participation and feedback in a very fast and informal way. Social media is also typically open to vast multitudes of people to observe, copy, and use, with few, if any, access restrictions.

#### **PROCEDURE:**

1. Using social media for Business Purposes:

Stayton Fire District recognizes the increasing popularity and usefulness of social media as a rapidly evolving means of communication that can be accessed not only from computer systems, but also from smart phones. There are many potentially beneficial District business uses of social media, including industry related research; networking; marketing, quick communication and knowledge building. It is not the intent of this policy to unduly limit employees' access to these conduits, however, guidelines and expectations surrounding their use are necessary as there are liabilities inherent in such use. When any employee is using organization provided computers or cell phones or is representing the organization via social networking activity, that individual is expected to

represent the organization in a positive and professional light. Stayton Fire District wishes to use networking exclusively to its advantage, preventing or minimizing any negative outcomes.

Members who use social media for business purposes are to always conduct themselves in a professional manner according to this policy and other applicable District policies and procedures including, but not limited to, the District's Acceptable Use of Computers, Non-Discrimination/Harassment Policy; and Sexually Explicit Material in the Workplace Policy. Additionally, if you are unsure as to whether or not a particular social media activity is appropriate you **must** consult with your supervisor or Fire Chief before participating in it, Board Members would consult with the Board President.

## 2. Responsibility:

Each member is responsible for any online activity conducted using a District issued e-mail address or other access method that can be traced back to the District's domain, computer equipment or other devices and equipment, all of which can only be used to access social media if related to a valid business purpose directly related to your specific job duties with the District and/or in a manner consistent with the District's Acceptable Use of Computer. Members should have no expectation of privacy while using the District's e-mail addresses, computer systems and other devices to access social media, and the District will monitor and investigate the use of its equipment as necessary.

The following standards are to be followed when using social media for business purposes. The concept is simple; imagine what you post as being on a billboard in the middle of town:

- a. Do not portray yourself as an official spokesperson for the District, or suggest you represent the District's position, unless specifically authorized to do so in writing by the Fire Chief.
- b. Adhere to all applicable District policies concerning confidentiality when using social media. Including, but not limited to, confidential medical information about members or members of the public (HIPPA)
- c. Identify any copyrighted or borrowed material with citations and links. When publishing any authorized materials online through social media that include someone else's direct or paraphrased quotes, thoughts, ideas, photos or videos, always use citations and links to the original material where applicable.
- d. Evaluate the accuracy and truthfulness of anything you write or produce before posting.
- e. Follow the terms and conditions of use established by the venue used for any social media activities (website, blog, discussion forum, etc.) It is

your responsibility to review all such rules and to conform all of your social media activity to the applicable terms and conditions of each site.

- f. Always be respectful when referring to the District's members, business partners, service providers, vendors and members of the public, including their privacy. This applies to both the type of information posted and the manner and context in which it is presented.
- g. Obey the law. Do not post any information or engage in any online conduct that may violate applicable local, state or federal laws or regulations.

### 3. Personal Use of Social Media:

Stayton Fire District respects the rights of members to use social media as a medium of personal self-expression and conversations and does not want to discourage such self-expression and discussion. The District does not disapprove of members who use these mediums for non-work-related personal interests or other lawful purposes.

Social media sites have nearly unlimited communication potential, duration and retention, and generally can be accessed by anyone around the world. While the District does not routinely monitor personal social networking sites, other employers, organizations, and individuals do monitor and share information found on social networking websites. Posted information is public information. Thus, to protect the Fire District's legitimate interests, and consistent with the District's responsibilities...

Members who maintain or contribute to social media sites are prohibited from engaging in certain activities:

- a. You are prohibited from using the District's facilities or equipment, including computers and software, during working time to engage in personal social media activities in a manner that is inconsistent with the District's Acceptable Use of Computers.
- b. You are allowed to share a post of the District's, so long as it is not altered. You are prohibited from posting social media that purports to represent the position, viewpoint, statements, opinions or conclusions of the district. When necessary to be clear, indicate that your posts represent your views and not necessarily the opinions of the District.
- c. You are prohibited from using social media to post intellectual property, trademarks, logos or copyrighted materials owned by the District or any business partners, service providers or vendors.

- d. You are prohibited from posting proprietary or other confidential information learned through contact with the District, including, but not limited to, confidential medical information regarding members or members of the public we serve.
- e. You are prohibited from using photographs, recordings, marketing materials or other materials owned by the District for personal social media activities.
- f. Always speak or write in first person not third person voice when using social media (i.e., “I believe...” rather than “we believe...”). Be clear that any social media comments you make are your own and not on behalf of the Stayton Fire District.
- g. Disclose your true identity and affiliation with the District at all times, when representing the District while using social media for business purposes. It is inappropriate to hide behind false identities, pseudonyms, or partial names when utilizing social media.
- h. Most significantly, do not discuss or otherwise disclose non-public information learned through your work with the District.
- i. Do not post any audio, video or photographic images of an emergency scene or training; no posting of text referencing an emergency call of any kind. Do not post anything that is sensitive in nature, if you are not sure, ask your supervisor.
- j. Always be respectful when referring to District’s members. Do not identify such individuals by name, post their pictures or provide other specific information without securing their approval.

These limitations are not intended to infringe upon any rights Fire District Personnel may have under applicable local, state and federal employment and labor laws.

#### M. TOBACCO USE

For health and safety considerations, the District strongly discourages the use of tobacco products for all personnel affiliated with Stayton Fire District.

It is recognized that the use of tobacco products promotes the causation of cancer. It is also known that second-hand smoke is a cause of cancer and that Hepatitis C is known to be transmitted through saliva and can be found in dry saliva for a period of up to two (2) weeks.

It is Stayton Fire District's obligation to provide a healthy, safe environment for all persons, tobacco users and non-users, who may come in contact with the District. In order to achieve consideration for all, the use of tobacco will be regulated in the following manner:

Smokers shall:

1. Not smoke in District buildings or in District vehicles
2. Smoke only in designated areas
3. Place their cigarette butts in approved containers located in the smoking area
4. Not expose others to secondary smoke
5. Shall not smoke while in direct contact with the public or their fellow firefighters while representing the District

Smokeless tobacco users:

1. Shall not chew tobacco while in direct contact with the public, while representing the Fire District
2. Shall not spit or use spit containers on District property or in District vehicles
3. Shall not spit tobacco in sinks, urinals, trash cans or on any hard surface such as floors, parking lots or sidewalks
4. Shall not expose others to chewing tobacco or by-products of chewing tobacco
5. Shall use discreet professional manners while chewing tobacco on District property or in District vehicles

#### N. OUTSIDE EMPLOYMENT

1. 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.
2. Incompatible Work. Employees should 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.
3. Notification. Employees are to notify the Fire Chief in writing, in advance, of all employment outside the scope of their employment with the District.
4. Conflicts. The Fire Chief 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.

O. DRUGS AND ALCOHOL

1. Purpose and Goal.

- a. The District has a responsibility to its employees, volunteers and the public to insure safe working conditions and a productive District 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.
- b. The misuse of alcohol, prescription drugs and controlled substances can impair employee performance, as well as physical and mental health, and may jeopardize employee safety as well as the safety of the public.
- c. 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.
- d. 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 Board of Directors.

2. Covered Workers.

- a. This policy applies to any individual who represents or works for the District, is applying for the position with the District or is representing or working for the District on the District's property, including but not limited to the Fire Chief, supervisors, Full-time employees, Shift employees, Part-time employees, temporary employees, volunteers and applicants.
- b. This policy applies during all working hours and whenever any individual described above is representing the District while on call, while on paid standby, while on District property or while at District-sponsored events.

3. Prohibited Behavior.

- a. It is a violation of this policy to use, possess, sell, trade, manufacture, distribute, dispense and/or offer for sale alcohol, illegal drugs or intoxicants, any drug not medically authorized or any other substance which may impair job performance or pose a hazard to the safety and welfare of the worker, other workers or the public.
- b. It is a violation of this policy for covered workers to report to work, work or engage in any activity on the District's behalf under the influence of alcohol, controlled substances, any drug not medically authorized or any other substance which may impair job performance or pose a hazard to the safety and welfare of the worker, other workers or the public.
- c. Prescription and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription. Each covered worker must report the use of prescribed or over-the-counter medications which the employee knows or should know can impair job performance to the Fire Chief and provide the Fire Chief proper written

medical authorization from a physician while using such substances. The covered worker is responsible to ascertain whether the medication may impair job performance. A covered worker whose impairment may affect job performance or could compromise the safety of the worker, fellow workers or the public, should take sick leave, request change of duty, notify supervisor or take other steps consistent with advice of a physician. If an employee reports to work under the influence of prescription medication and endangers self, fellow employees or the public, the employee may be disciplined. Any failure to report the use of such medications following an event of concern to the District, or failure to provide evidence of medical authorization, can result in disciplinary action.

- d. It is a violation of this policy to use prescription drugs illegally or without proper medical authorization. It is a violation of the policy to intentionally misuse and/or abuse prescription medications. Any such misuse or abuse can result in disciplinary action. This includes using prescriptions authorized for other individuals which are not prescribed for the employee.
4. Notification of Drug Convictions. Any covered worker who is convicted of a criminal drug violation must notify the Fire Chief of the conviction and the facts and circumstances surrounding it no later than five (5) days after the conviction.
  5. Searches. Covered workers 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 work place, 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 Fire Chief or his/her designee, and, if possible, notice to the worker and an opportunity to be present shall be given.
  6. Testing.
    - a. Testing Guidelines: To ensure the accuracy and fairness of the testing program, the District shall use only reputable and reliable licensed laboratories recommended by the District's physician and shall utilize only highly accurate and reliable laboratory tests.
    - b. Types of Tests. As a condition of employment, covered workers may be required to submit to the following tests:
      - i. Pre-Employment Testing. Covered workers are required to pass a chemical screen test as a condition of employment. The presence of any illegal substance, unauthorized controlled substance (including the use of prescriptions not in accordance with instructions or

prescriptions authorized for others) may be cause for rejection from further consideration for employment or placement, and that appointment to a position is contingent upon a negative drug test result.

Applicants shall be directed to an appropriate collection facility. The drug test must be undertaken as soon after notification as possible, and no later than 48 hours after notice to the applicant. Where appropriate, applicants may be reimbursed for reasonable travel expenses.

Applicants may be advised of the opportunity to submit medical documentation that may support a legitimate use for a specific drug. 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 or placement 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.

- ii. Testing Upon Reasonable Suspicion. Where a supervisory employee has a reasonable suspicion that a covered worker is under the influence of any illegal substance, unauthorized controlled substance (including the use of prescriptions not in accordance with instructions or prescriptions authorized for others) or alcohol, the worker in question will be asked to submit to testing to confirm involvement with alcohol or illegal drugs or that the worker is drug or alcohol free at the time in question.
- iii. Testing on a Random or Periodic Basis. Covered workers who are in positions that the District determines involve dangerous and skilled activities and compelling public safety concerns, including but not limited to firefighters, paramedics and EMTs, may be asked to submit to drug testing on a random or periodic basis at any time during employment, absent individualized or reasonable suspicion.
- iv. Testing Following Accidents. Where a covered worker has been directly involved in an on-the-job accident or other incident related to public safety and a supervisory employee determines that the worker actually could have caused the accident or incident, the worker may be asked to submit to drug testing.



- c. Substances Tested: The substances that will be tested for under this policy are amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PCP) and alcohol. The District reserves the right to test for any or all of the following substances in addition to those mentioned above upon reasonable suspicion or following an accident: barbiturates, club drugs, flunitrazepam (Rohypnol), gamma hydroxybutyrate (GHB), ketamine, MDMA (Ecstasy), methcathinone, methylphenidate, hydrocodone, methaqualone, benzodiazepines, methadone, propoxyphene, lysergic acid diethylamide (LSD), anabolic steroids, hallucinogens, stimulants, inhalants, any drug not medically authorized and any other substance which may impair job performance or pose a hazard to the safety and welfare of the employee, other employees or the public.
- d. Testing Methods. Testing for the presence of alcohol will be conducted by analysis of breath, saliva or blood. Testing for the presence of the metabolites of drugs will be conducted by the analysis of urine, blood or hair.
- c. Testing Procedure.
  - i. Employee Representation. When the worker 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 worker 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.
  - ii. Authorization to Test. Before a supervisor, acting on behalf of the District under this policy, may require a worker to consent and submit to any test, the supervisor must first obtain concurrence from the Fire Chief or the Board of Directors that the information available to the District about the subject worker is sufficient to determine reasonable suspicion that prohibited conduct will be established as a result of the test.
  - iii. Procedure for Consent. The worker shall give consent to a test upon request by signing a consent form. The form shall contain the following information:
    - (1) Worker's consent to release tests results to the District;
    - (2) The procedure for confirming an initial positive test result for controlled substance, including marijuana;
    - (3) The consequences of a confirmed positive test result for a controlled substance, including marijuana;
    - (4) The consequences of a positive test for alcohol, under the circumstances;

- (5) A listing provided by the worker of legally prescribed and over-the-counter medications which may be in the worker's body;
  - (6) The right to explain a confirmed positive test result for a controlled substance, including marijuana, or a positive test for alcohol; and
  - (7) The consequences of refusing to consent to the test.
- iv. Confirmatory Test. In the event that the 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, which also must be positive before concluding the worker has such substances(s) present in the body.
  - v. Requested Test. If a test is positive, the District will instruct the laboratory to retain the 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 worker to conduct an independent test at his or her own expense at a laboratory approved by the District.
  - vi. 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 worker's privacy and the need to maintain the confidentiality of test results to an extent which is not inconsistent with the needs of this policy.
  - vii. Notification. The worker shall be notified of the results of all tests conducted pursuant to this policy. Workers 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.

7. Consequences.

- a. Positive Test. Any covered worker who tests positive will be subject to disciplinary action up to and including termination. If the worker seeks drug treatment following a positive test, the worker may not use sick leave benefits even if treatment is imposed as a condition of continued employment or placement under a Return to Work Agreement.
- b. Refusal to Test. A covered worker will be subject to the same consequences of a positive test if the worker refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that of another person or sends an imposter, will not sign the required forms or

refuses to cooperate in the testing process in such a way that prevents completion of the test. 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.

c. Last Chance Agreements. Following a violation of this policy, a covered worker may be offered an opportunity to sign and abide by the terms set forth in a Last Chance Agreement (see Appendix) as a condition of continued employment or placement. Such Agreement may require the employee to:

- i. Consult the District's physician and other health care providers;
- ii. Submit to evaluation by a substance abuse professional or physician for assessment and recommendations;
- iii. Participate in a drug or alcohol treatment program recommended by the District;
- iv. Successfully complete recommended rehabilitation;
- v. Pass a return to duty test;
- vi. Participate in follow-up treatment or other aftercare program as part of a comprehensive drug and alcohol treatment program;
- vii. Submit to ongoing, unannounced and follow-up testing for a specified period of time not to exceed thirty-six (36) months; and
- viii. Submit to monitoring of the treatment program and employee's participation therein by the Fire Chief and Board of Directors.
- ix. Meet the District's standards of conduct, perform required job duties satisfactorily and follow all work rules and procedures on an ongoing basis.

8. Employee Education. The District will afford covered workers an opportunity to deal with drug and alcohol related problems. The District will also maintain 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.

9. Employee Assistance Program.

- a. Employees may obtain counseling and rehabilitation through the Employee Assistance Program ("EAP").
- b. 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 District will assist employees who wish to identify and select an appropriate treatment program.
- c. When an employee voluntarily enters a treatment program which is not associated with disciplinary action or a Return to Work Agreement, the employee may use any unpaid leave while attending rehabilitation. The

employer may specify the order and type of leave taken. 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.

10. Confidentiality

- a. Medical confidentiality will be preserved, subject to rights granted by the employee to the Fire Chief and Board of Directors to monitor treatment and program compliance through the District or directly with a health care provider in order to ensure compliance with conditions of employment and ability to return to or remain at work.
- b. 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.
- d. 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.

b. Definitions.

- a. "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:
  - i. Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug;
  - ii. A pattern of abnormal conduct or erratic behavior;
  - iii. 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;
  - iv. Information provided either by reliable and credible sources or independently corroborated; and
  - v. 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.

- b. "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.
- c. "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 included in Schedule I or II, 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.
- d. "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.
- e. "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.

## A. EMPLOYEE PERFORMANCE REVIEWS

1. 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. 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. It also serves as a basis of personnel decisions, merit increases, promotion and termination.
2. Review Process. Performance reviews are completed at least annually in the month of their anniversary date and in accordance with the guidelines and instructions set forth below. Employees and supervisors are required to sign the completed performance review forms. All performance reviews will be reviewed by the Fire Chief and placed in the employee's personnel file. Employees will be provided with a copy of performance reviews.
3. Employees Affected. All regular employees of the District will be evaluated under this policy. The Fire Chief shall be evaluated by the Board Members based upon the consensus of the Board, using a written performance evaluation.
4. Regular Review. All employees will be evaluated at least annually in the month of their anniversary date.
5. Probationary Review. Probationary employees will participate in goal-setting interview/reviews as often as appropriate and will be evaluated in at least two performance progress reviews before being transitioned to regular employee status.
6. Pay and Trial Service Period Recommendations. A recommendation for a merit or step increase and/or extension of trial service period, or passing trial service period to regular employee status, or termination shall be set forth in a performance evaluation as appropriate.
7. Supplemental Evaluation. A supplemental performance evaluation may be submitted on any occasion deemed appropriate by a supervisor.

## B. THE EVALUATION PROCESS

Meaningful performance assessments require both the supervisor and the employee's evaluation of the employee's performance.

1. **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. The 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 neatly written in ink.
2. **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.
  - a. Avoid rating most employees at the high end of the scale. Experience shows that "excellent" and "very good" rating are used more frequently than competent or adequate. This is too often a reflection of the 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.
  - b. 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.
  - c. 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.
3. **Evaluation Form.**  
(See Employee Performance Evaluation Form in Appendix)
4. **Performance Review Procedures:**  
A written evaluation of each employee's job performance will be normally completed by the employee's supervisor at the end of the employee's trial service period and then the employee's performance will be reviewed annually from the date of the employee's successful completion of the trial service period.

- a. Forms: The supervisor will use performance evaluation forms approved by the Fire Chief. Each evaluation will be completed, dated, and signed by the supervisor.
- b. Employee Review: The supervisor and employee will review the evaluation in detail. Each employee will sign the performance valuation after the review and may attach a written response to the evaluation within five (5) days of the date of the evaluation.
- c. Personnel Record: The performance evaluation will become a permanent part of the employee's personnel record and will be placed in the employee's confidential personnel file.
- d. Review: After an evaluation is completed, the employee's supervisor will review the performance evaluation with the supervisor's next immediate supervisor. Personnel evaluations shall be considered CONFIDENTIAL.
- e. Job Performance Goals and Objectives: The employee and supervisor may establish in writing specific job performance objectives and completion dates as part of each evaluation.
- e. Rating Scale: An employee's job performance will be rated on a five-point rating scale:
  - i. Outstanding: Excellent performance. All job skills are performed at a superior level. The employee works independently and initiates improvements in the operation of the District. Employee has completed all job objectives for the previous year and has performed numerous other work assignments and/or professional development training, demonstrating a superior skill level on most assignments.
  - ii. Above Average: Good to excellent performance on 80 percent of work assignments. The employee works independently and initiates improvements in the operation of the District. Employee has completed all job objectives for the previous year at a skill level of above average.
  - iii. Satisfactory: Employee performance is satisfactory to good in most areas. No major deficiencies noted, but improvements can be made as noted by the supervisor. Employee has accomplished 80 percent or more of the job objectives for the previous year at an average to good skill level.
  - iv. Needs Improvement: Overall employee performance is satisfactory. Deficiencies are noted in one or more areas and improvements are required to achieve satisfactory performance, and/or the employee has accomplished less than 76 percent of the job objectives for previous year; those completed are satisfactory to good.
  - v. Unsatisfactory: Overall performance is unsatisfactory and work does not meet acceptable standards. Deficiencies are noted in one



or more areas and improvements are necessary to achieve satisfactory performance, and/or the employee has accomplished less than 50 percent of job objectives for the previous year; those completed meet basic standards or need improvement.

- f. Merit Salary Adjustment:
  - i. The Fire Chief may recommend an employee for a merit salary increase for satisfactory or superior job performance in accordance with the policy relating to salary increases.
  - ii. The Fire Chief may recommend a reduction in salary if employee performance needs improvement or is unsatisfactory.

5. Evaluation of the Fire Chief: (See Fire Chief Evaluation in Appendix)

## C. PREPARING FOR AND CONDUCTING THE PERFORMANCE REVIEW

1. 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.
2. Arrange for the Interview.
  - a. 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.
  - b. Notify the employee several days beforehand, so that the employee has enough time to prepare for the performance review. One good method of having the employee prepare is to require that the employee evaluate himself. Ask the employee to fill out an appraisal form for discussion and comparison with yours during the interview.
3. 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.

4. Structure and Format of the Evaluation. The interview should have some structure to it, varying with individual circumstances.
  - a. Create a relaxed climate by indicating overall satisfaction and honest appreciation of job performance.
  - b. 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.
  - c. Follow a comfortable sequence during the discussion, for example:
    - i. Past performance -- on each relevant job performance factor;
    - ii. Major strong points and weak points needing greater effort;
    - iii. Specify developmental steps to be taken to improve performance;
    - iv. Goals and the role of the District.
  - d. Encourage the employee to participate. The more an employee discusses performance, the better the review. Listen and gather information. Active listening is very important.
    - i. Use open-ended questions (who, what, when, why and how) which encourage discussion rather than simple "yes/no" responses;
    - ii. Tell the employee you are receiving information, not judging; and
    - iii. Use restatement or reflection. This is a clarification process and feeds back what you are hearing to the employee.
  - e. Discuss areas of good performance first. This is easier if you have required the employee to appraise performance as preparation for the review.
  - f. 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.
  - g. 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.
  - h. Discuss personal goals and interest.
  - i. 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.

5. Follow-Up. During the review, specific steps to improve performance were identified. If action needs to be taken by the employee, it should be taken.

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.

## POLICY 8.10 FAIR TREATMENT POLICY

### A. 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 will be made to find an acceptable solution by informal means at the lowest possible level of supervision

### B. DEFINITION OF NON-DISCIPLINARY APPEAL

If an employee or group of employees in the District believes an injustice has occurred because of one of the following, a written request may be filed under the non-disciplinary appeal procedures:

1. Lack of a District policy or a department policy;
2. A policy that appears unfair;
3. Misapplication of a policy;
4. Disagreement with another employee or supervisor;
5. A discretionary action of the District or a department in the application of the rules and regulations of the District; or
6. 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, sex, national origin, marital status, age or religion, family relationship, mental or physical disability, or application for Workers' Compensation benefits.

### C. NON-DISCIPLINARY APPEAL PROCEDURE

Non-disciplinary appeals should not be presented to the Fire Chief or supervisor in writing, unless the issue is such that it cannot be understood except in writing.

1. Open Door Policy - An employee wishing to discuss any issue or problem of a non-disciplinary nature may meet with the Fire Chief at any reasonable time. This is the established non-disciplinary policy. Access to supervisors may be delayed by District operational requirements.
2. Chain Of Command Policy - Employees wishing to discuss a specific non-disciplinary matter should start with the immediate supervisor and follow the chain of supervisory command. In the event the employee cannot start with the immediate supervisor, he/she is entitled to commence the process at whatever level of supervisory command is available.

### D. HEARING OF APPEAL

When an appeal of a non-disciplinary policy cannot be resolved with the department procedure, the appeal will be directed to the Board of Directors resulting in an investigation and recommendation of the matter on the appeal.

## POLICY 8.11 DISCIPLINE

### A. DISCIPLINE GENERALLY

The orderly and efficient operation of the District requires that discipline be maintained and that proper standards of conduct are observed at all times. We have established rules which all employees must observe. (This section concerning discipline does not apply to the District's Fire Chief, who serves at the pleasure of the Board of Directors.)

As a disciplinary action, the District may issue written warnings, suspensions with or without pay, demotions, pay reduction, probation, discharge, or any other action it determines to be appropriate for departures from proper conduct or violation of District rules.

Following are examples of conduct which violate our standards of conduct for employees. This list is not complete. If you engage in the conduct listed or in conduct the District feels is similar to the kinds of conduct listed, you will be subject to disciplinary action:

- a. Insubordination;
- b. Dishonesty;
- c. Unauthorized use, removal or destruction of District property or the property of other employees;
- d. Excessive tardiness or absences;
- e. Leaving work without prior authorization;
- f. Violation of safety rules or failure to follow safety procedures;
- g. Possession, sale or use of intoxicants or illegal drugs on District premises, in District vehicles or while on District business;
- h. Reporting for work or working while intoxicated, under the influence of illegal drugs or intoxicants, or otherwise unfit for duty;
- i. Abusive language or actions;
- j. Sexual harassment or harassment based upon an employee's membership in any protected class;
- k. Falsification of District records;
- l. Off duty conduct which in the District's view interferes with performance or negatively reflects on the reputation of the District;
- m. Inability or unwillingness to get along with other employees;
- n. Fighting or horseplay;
- o. Violation of any District rule, policy or practice whether written or unwritten.
- p. Possession of firearms on premises.

An employee's overall record may be considered in determining what is appropriate disciplinary action. The District will determine the facts, whether discipline is warranted and what level of discipline, including discharge is warranted.

We believe our rules and expectations are clear. If, however, you have any questions concerning the application or intent of these rules, please consult your supervisor. Your

cooperation in observing our work rules and standards for conduct will make disciplinary action unnecessary.

## B. APPEAL OF DISCIPLINARY ACTION

1. Right to Appeal from Discipline. Any regular employee who is subordinate to the District's Fire Chief, who has been suspended, reduced in pay, demoted or dismissed, may have the right of appeal to the Board of Directors. Notice of the appeal must be filed not later than ten (10) days after the effective date of the action. Such notice shall be in writing and explain the reasons why the disciplinary action is thought to be improper.
2. Who May Appeal. Only regular employees have a right to appeal disciplinary actions. The Board of Directors, in any manner as it may deem proper, may give consideration to all suggestions and complaints that concern proper administration of the personnel policies.
3. Investigations. In connection with an appeal, complaint, protest, or any other purpose authorized by the personnel policies, the Board of Directors may conduct such investigation as the Board deems necessary.
4. Hearings.
  - a. Conduct of Hearings. A hearing upon timely request 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. In lieu of conducting a hearing, the Board may hire a hearings officer to conduct proceedings and submit recommended findings to the Board of Directors.
  - b. 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 representation. The employee or his/her spokesperson may examine and cross-examine witnesses, make statements, summarize testimony, and otherwise conduct the hearing.
5. Board of Directors Findings. If, after receiving evidence presented in hearings on disciplinary actions, the Board of Directors finds that the complained-of action taken by the Fire Chief was reasonable and consistent with policy, the Board of Directors may affirm the action; if the Board of Directors finds that the complained-of action taken by the Fire Chief was not so made, the employee may be reinstated to the position and will not suffer any loss in pay or status and the personnel file will be purged of such record. The Board of Directors, in lieu of affirming the disciplinary action may modify the discipline as circumstances may warrant. The decision of the Board of Directors shall include a finding of fact and shall be final and binding.

## POLICY 8.12 EMPLOYEE ASSISTANCE PROGRAM

### A. PURPOSE

The objective of the Employee/Volunteer Assistance Program ("EAP") is to assist and retain valued Employee/Volunteers and reduce the potential for difficulties in the work force stemming from Employee/Volunteers' needs and difficulties which otherwise may not be addressed. Problems of a personal nature can have an adverse effect on an Employee/Volunteer'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/Volunteer Assistance Program is to provide confidential 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.

### B. POLICY

1. The policy applies to all employees of the District, who receive full benefits, regardless of job title or responsibilities and to all Volunteers including Volunteer Firefighters, Board Members and Volunteer Support members.
2. The program is available to Employee/Volunteers and their families on a self-referral basis. Employee/Volunteers or family members who have personal problems and may benefit from assistance are encouraged to use the program.
3. Participation in the program will not jeopardize an Employee/Volunteer's job security, promotional opportunities or reputation.
4. All records and discussions of personal problems will be handled in a confidential manner as are other medical records. These records will be kept by the designated counseling resource and will not become a part of the Employee/Volunteer's personnel file. The District will not be informed of matters discussed unless the Employee/Volunteer requests.
5. When work related performance problems are not corrected in response to supervisory attention, the supervisor should consider whether the Employee/Volunteer should be encouraged to seek assistance to determine if personal problems are causing unsatisfactory performance. Performance problems which persist will be dealt with corrective action or discipline as appropriate.
6. 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/Volunteer has sought help through the program upon recommendation of counselor.



7. It is the responsibility of all managers to utilize the program as appropriate to assist in resolving job performance problems which result from identifiable personal problems.
8. Sick leave (leave of absence for Volunteers) 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.
9. This policy does not alter or replace other policies or terms of labor agreements.
10. The District encourages employees and volunteers to seek initial assistance through the District Chaplains. If further assistance is needed, the District will provide for short-term counseling and referral services up to three sessions per request.

## POLICY 8.13 SUGGESTIONS, INCENTIVES AND EDUCATION PLANS

### A. SUGGESTION POLICY

The District supports the use of an employee suggestion program to bring dollar saving ideas to the attention of the Fire Chief and encourages employees to take an increased interest in the operation of the District.

### B. RECOGNITION

The District values its employees and desires to recognize employee's length of service, outstanding accomplishments and work performance with certificate and award programs.

### C. IN-SERVICE TRAINING

Employees and supervisors are encouraged to take advantage of training opportunities in order that services rendered to the District will be more effective.

Training sessions may be conducted during regular working hours at the discretion of the Fire Chief. Training sessions conducted outside the employee's regularly scheduled work hours must have prior approval from the Fire Chief.

### D. EDUCATIONAL OPPORTUNITIES

1. The District will reimburse an employee for the cost of tuition for courses and degree programs directly related to the employee's work. The courses must be offered at any accredited institution for higher education (e.g., Chemeketa Community College, Linn-Benton Community College, Western Oregon State College, Portland State University, etc.) and be conducted outside the employee's regularly scheduled work hours, provided that:
  - a. Attending or taking such courses is voluntary and the employee is advised that non-attendance will not prejudice his or her working conditions or employment standing;
  - b. The employee is instructed not to perform services on behalf of the District while attending any such session;
  - c. Funds for such expenditures are available in the current budget;
  - d. The employee has made application through the Training Officer to the Fire Chief prior to registration, and has received written approval for participation in the educational program;
  - e. The employee submits evidence of a passing grade of "C" or higher or "Pass", and satisfactory completion of the course;

- f. The employee is not receiving reimbursement for no more than six (6) credit hours per semester;
  - g. The employee is eligible for reimbursement for no more than six (6) credit hours per semester;
  - h. Prior to approval of an eligible educational class or program, the Fire Chief may require the employee to sign an agreement or professional growth plan related to the education costs and the employee's future employment with the District. The Board of Directors must approve all educational agreements or professional growth plans.
2. Courses which are only offered during regular working hours may be approved by the Fire Chief, provided time off may be arranged conveniently and reasonable arrangements can be made for the employee to make up time off.
  3. The District will reimburse an employee for the expense of attending classes, lectures, conferences, or conventions when the employee has been directed to attend on an assignment basis. The assignment will have prior approval of the Fire Chief.
  4. Normally the cost of textbooks and technical publications required for such courses will be the responsibility of the employee. If the District purchases any of the textbooks and publications for such courses, said textbooks and publications will become the property of the District.
  5. Employees are advised that educational and in-kind benefits from the District to an employee may be counted as part of the employee's compensation by the Federal Internal Revenue Service (IRS) and will be reported on W-2 forms at the end of the year as income.

## POLICY 8.14 COPYRIGHTS AND PATENTS

- A. All publications, articles, equipment, audio and/or visual materials and other items produced for District use with District time and funds by an employee(s) shall remain the property of the District. All rights to such property, copyrights and/or patents shall be retained by the District. This policy also applies to providing contracted service or producing works for hire.
- B. In the event the articles are produced partly on District time, the District reserves the right to claim full ownership. The employee(s) may petition the District for assignment of copyright or patent rights.
- C. In the petition, the employee(s) shall provide the Board with full, complete and timely information and disclosure with respect to any such item. The Board may then waive or relinquish any copyright or patent interest in the item within 90 days of such full disclosure by an employee(s).

## POLICY 8.15 SELECTION AND DUTIES OF THE LEGAL COUNSEL

- A. At the first regular meeting of the Board in July of each year, the Board shall select legal counsel for the District.
- B. Legal counsel shall advise the Board of Directors on specific legal problems submitted and recommend a course of action.
- C. The Fire Chief has general authority to seek legal counsel. Individual Board Members and/or staff are not so authorized.

POLICY 8.16            CIVIC INVOLVEMENT

- A.     Employees are encouraged to participate in civic activities and non-profit organizations with the Stayton community, in addition to service related organizations.

The Fire Chief may authorize payment of membership dues for no more than one (1) employee per organization.

- B.     The District will reimburse an employee for the amount of membership dues incurred by an employee, provided that:

1.     The employee has made application through the Fire Chief and has received written approval for District payment of the employee's membership dues
2.     The employee's attendance or participation is voluntary and he or she is advised that non-attendance or non-participation will not prejudice his or her working conditions or employment standing
3.     The employee is instructed not to perform services on behalf of the District while attending any meetings or activity sponsored by the organization
4.     Funds for such expenditures are available in the current budget
5.     The employee is not receiving reimbursement for membership dues from any other source

- C.     Meetings or activities of the civic group or non-profit organization which are only offered during regular working hours may be approved by the Fire Chief, provided time off may be arranged conveniently and reasonable arrangements can be made to make up time off.

- D.     District employees may provide services to civic and non-profit organizations on an assignment basis as part of an employee's regular duties for the District.

- E.     Authorized expenses incurred by an employee will be reimbursed in accordance with the Travel and Expense Reimbursement Policy.

## CERTIFICATE OF RECEIPT OF POLICY

I certify that I have received a copy of the Personnel Policies and Procedures of the District. I understand that it is my responsibility to read and ask questions if necessary regarding personnel policies.

I accept responsibility for understanding and complying with the District's policies. I understand that my employment can be terminated with or without cause, at any time, at the option of either the District or myself, subject however only to such restrictions as may appear in the District Policies and Procedures Manual, as each may be amended periodically. I understand that no one except the Fire Chief and Board of Directors, has the authority to enter into any agreement in writing, contrary to the personnel policies and procedures of the District.

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Signature

---

Date

## APPENDIX

- Compensatory Time Off Agreement
- Employee Performance Evaluation
- Last Chance Agreement & Release
  - Cellular Phone Waiver





# STAYTON FIRE DISTRICT

POST OFFICE BOX 8 ■ 1988 W. IDA STREET  
STAYTON, OREGON 97383

PHONE: 503-769-2601  
FAX: 503-769-1487  
e-mail: sfd@wvi.com

## STAYTON FIRE DISTRICT COMPENSATORY TIME OFF AGREEMENT

This Agreement sets forth the Stayton Fire District's policy for Compensatory Time Off in lieu of overtime pay.

Compensatory Time Off is available for eligible employees as follows:

1. If budgeted funds are not available for the payment of overtime and it is consistent with the needs of the District, such overtime may be allowed in compensatory time off at the rate of one and one-half times the overtime hours worked.
2. Overtime and compensatory time off will be computed and rounded up to the nearest one-quarter hour.
3. Compensatory time accumulation will not ordinarily exceed forty (40) hours. All compensatory time accumulated over forty (40) hours will be converted to overtime pay the following payday unless a written exception to accumulate more than forty hours is granted by the Fire Chief.
4. An employee may request compensatory time off by filing a written request to his or her supervisor. The supervisor may grant the request or may direct that the compensatory time off be taken at an agreed upon time.
5. At any time, the District may elect to provide an employee with a cash payment for any or all accumulated compensatory time off.
6. At the time of an employee's resignation or dismissal, the District will pay the employee for all accumulated overtime and compensatory time off.

When I am eligible, I agree to receive Compensatory Time Off in lieu of overtime pay, as described above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

PROUDLY SERVING THE COMMUNITIES OF STAYTON ■ MEHAMA ■ MARION ■ MT. PLEASANT ■ ELKHORN

*"Volunteer Service With Pride"*

**Stayton Fire District**  
1988 W. Ida St.  
Stayton OR 97383

An Equal Opportunity Employer

**APPLICATION FOR EMPLOYMENT**

**POSITION:** \_\_\_\_\_

**Instructions:** Each question should be fully and accurately answered. No action can be taken on this application until all questions have been answered. Use blank paper if you do not have enough room on this application blank. **PLEASE PRINT**, except where signature is required. All information you give on this application will be held in strict confidence.

**PERSONAL DATA**

\_\_\_\_\_  
Last Name                      First Name                      Middle Name

\_\_\_\_\_  
Current Street Address      City                                      State                      Zip

Telephone Number \_\_\_\_\_

Social Security Number \_\_\_\_\_

When are you available for employment? \_\_\_\_\_

Are you at least 21 years old?      Yes \_\_\_\_\_      No \_\_\_\_\_

Will you take a physical examination if it is required for the job for which you are applying?  
Yes \_\_\_\_\_      No \_\_\_\_\_

**GENERAL INFORMATION**

Do you have a valid drivers' license?                      Yes \_\_\_\_\_ No \_\_\_\_\_

Driver's License Number \_\_\_\_\_ State \_\_\_\_\_

Emergency Medical Technician Rating \_\_\_\_\_ Certification # \_\_\_\_\_

DPSST Certification Levels \_\_\_\_\_

\_\_\_\_\_ AP # \_\_\_\_\_

Have you ever been convicted of any law violation (*except a minor traffic violation*)?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, give a brief explanation.

Are you now or have you been a member of a recognized fire organization?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, explain. \_\_\_\_\_

\_\_\_\_\_

<b>EDUCATION</b>		
Name, address and location of school.	Highest Grade Completed	Did You Graduate?
High School: _____ _____		
College or University: _____ _____		
Major: _____ Degree: _____		
College or University: _____ _____		
Major: _____ Degree: _____		
Additional Education/Vocational/Technical Training	Courses	Completed
School: _____		
School: _____		
School: _____		

## WORK HISTORY

List names of employers in consecutive order, with current or last employer listed first. Account for all periods of time, including military service and any periods of unemployment. If self-employed, give firm name and supply business references. If you worked in any position under another name, please give names(s). Include month and year.

Name of Employer, Address, City, State, Zip	Name of Last Supervisor	Employed From      To
Title:	Telephone:	Salary Start      Final
Reason For Leaving:		
Duties:		
Name of Employer, Address, City, State, Zip	Name of Last Supervisor	Employed From      To
Title:	Telephone:	Salary Start      Final
Reason For Leaving:		
Duties:		
Name of Employer, Address, City, State, Zip	Name of Last Supervisor	Employed From      To
Title:	Telephone:	Salary Start      Final
Reason For Leaving:		
Duties:		

SKILLS: (Please indicate briefly any job-related skills or additional information you feel may be helpful to us in considering your application.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**REFERENCES**

Give three references, not relatives or former employers.

	Name	Address	Phone	Occupation
1.	_____			
2.	_____			
3.	_____			

By my signature below, I certify that all answers and statements on this application are true and complete to the best of my knowledge. I understand that should an investigation disclose untruthful or misleading answers, my application may be rejected or my employment with the agency terminated. In addition, I authorize previous employers and references to release information as necessary to verify my qualifications for employment and further give my permission for the agency or their agent(s) to conduct the required background checks including a police records check.

\_\_\_\_\_Initials

Further, the employing agency will require a pre-employment physical with a physician retained by the agency. Such physical will include a drug-screening test. My signature below serves as authorization to the physician to release all information relative to the pre-employment physical and drug testing results. If such results indicate an inability to perform the job applied for or drug use, I understand my application may be rejected or my employment with the agency terminated.

\_\_\_\_\_Initials

I understand that if my employment is terminated by the District for dishonesty, breach of trust, or any criminal acts the authorities may be notified and I may be criminally prosecuted.

\_\_\_\_\_Initials

I understand that this application does not, by itself, create a contract of employment.

\_\_\_\_\_Initials

I understand and agree that, if hired, MY EMPLOYMENT IS TEMPORAY, FOR NO DEFINITE PERIOD OF TIME, and may, regardless of the date of payment of my wages or salary, BE TERMINATED AT ANY TIME, subject to District policies and rights provided by written contract.

\_\_\_\_\_Initials

I understand that NO PERSON IS AUTHORIZED TO CHANGE ANY OF THE TERMS MENTIONED IN THIS EMPLOYMENT APPLICATION FORM.

\_\_\_\_\_Initials

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

Return application and résumé to:  
Stayton Fire District  
1988 W. Ida St.  
Stayton OR 97383

Applications must be returned in person or by mail; NO FAXES ACCEPTED

# STAYTON FIRE DISTRICT EMPLOYEE PERFORMANCE EVALUATION

Date: \_\_\_\_\_

Name: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

Job Title: \_\_\_\_\_

Date of Last Evaluation: \_\_\_\_\_

Please complete this form carefully and thoroughly. Remember that its purpose is to:

Provide objective criteria for personnel performance evaluations on a standard basis within the organization.

Compel you to examine *all* of the individual traits affecting employee performance.

Help you to support your conclusion and recommendation for job classification and compensation improvements.

Produce fairer evaluations of employees.

## PROCEDURE:

Pages 2 and 3 describe fifteen personal traits identified with job success or failure. Decide for each the level at which the employee performed for this rating period. Write the corresponding value number in the rating column. Add the numbers to obtain a total score.

Transfer this total to the rating scale on page 4. This will indicate and support your overall opinion of the employee's performance.

Refer back to pages 2 and 3 to comment on the employee's principal strengths. Your comments should be consistent with your rating of individual traits.

Finally, you and the employee should design any development/improvement objectives needed to further develop the employee's strengths. Action steps should accompany each objective in order that both know what is expected.

<b>PERSONAL TRAITS</b>		<b>UNSATISFACTORY</b> In this evaluation measure, your performance is not acceptable; improvement objectives should be designed for <u>immediate</u> action.	<b>NEEDS IMPROVEMENT</b> This is an area of performance where the need for improvement is indicated; your supervisor will assist you in developing improvement objectives.
		<b>0</b>	<b>1</b>
<b>KNOWLEDGE</b>	The blending of job-related education, skills and experience.	Severely lacking in knowledge.	Noticeable deficiencies in job knowledge.
<b>QUANTITY</b>	Level of satisfactory output generated per unit of time.	Usually below acceptable standard.	Barely acceptable level of output. A slow worker.
<b>ACCURACY</b>	Absence of errors.	Constantly commits errors.	Error level to high. Needs improvement.
<b>COMMUNICATIONS</b>	Exercises sound communications skills.	Lacks necessary skills for position.	Listens but provides little feedback.
<b>INNOVATION</b>	Imagination and creativity used to lower costs and improve profits.	Never offers a new procedure or new idea.	Rarely suggests new ideas
<b>APPEARANCE &amp; HABITS</b>	Personal habits, clothing and grooming (Evaluation should consider the nature of job.)	Frequently offensive.	Occasionally sloppy. appearance or display of offensive habits.
<b>ORDERLINESS</b>	Organization of the individual's work and work area	Usually disorderly and chaotic.	Frequently unorganized or work area in disarray.
<b>COURTESY</b>	Respect for feelings of others. Politeness on the job.	Frequently rude. Causes noticeable discomfort to others.	Occasionally impolite to co-workers or others.
<b>COOPERATION</b>	Willingness to help others accomplish their objectives.	Usually uncooperative. A "roadblock" to co-workers, customers or suppliers.	Too often uncooperative when faced with reasonable requests for assistance.
<b>INITIATIVE</b>	Voluntary starting projects. Attempting non-routine jobs and tasks.	Shows little initiative. never volunteers. Sticks closely to job routine.	Shows some initiative. Should do more without having to be told.
<b>RELIABILITY</b>	Dependability and trustworthiness.	Not reliable. Often fails to deliver a complete job.	Occasionally leaves routine tasks incomplete.
<b>PERSEVERANCE</b>	Steadfast pursuit of job objectives when faced with unexpected obstacles.	Frequently quits when faced with unexpected obstacles.	Is sometimes deterred by obstacles which should be overcome.
<b>STABILITY</b>	Even temperament. Acceptance of unavoidable tension and pressure.	Volatile, inconsistent personality. Disrupts work environment.	Occasional display of temper or emotion sufficient to disrupt others and hinder own performance.
<b>ATTENDANCE</b>		Frequent unexcused lateness or absence from work. Very poor attendance record.	Absences or lateness below standards.
<b>ALERTNESS</b>	Ability to quickly understand new information and situations.	Very slow to grasp ideas and events.	Usually needs extra instruction.



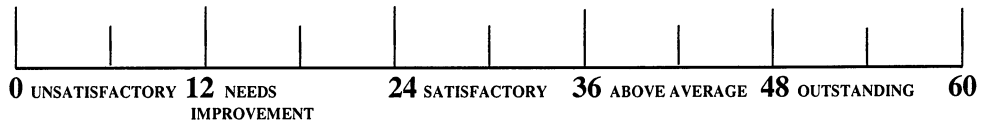
<b>SATISFACTORY</b> Your performance in this area is satisfactory; while acceptable, you are encouraged to work with your supervisor to improve your performance.	<b>ABOVE AVERAGE</b> Good performance in this evaluation measure; thank you for your extra effort.	<b>CLEARLY OUTSTANDING</b> Outstanding performance deserving of commendation; your supervisor appreciates your exceptional effort. WELL DONE!	<b>INSERT NUMERICAL RATING</b> (0 THROUGH 4)
2	3	4	
Understands job routine. Some knowledge still to be acquired.	Completely understands all aspects of the job.	Understands why all job functions are performed and interrelationship with other jobs. An expert.	
Satisfactory. Meets Expectations of average output.	Usually exceeds the norm. A fast worker.	Exceptional producer. Generates maximal output.	
Makes average number of mistakes	Very accurate. Commits few errors.	Extremely accurate. Rarely commits an error.	
Communicates effectively with supervisor/subordinates.	Above average skills for position.	Deals with public in a very professional manner	
Average number of suggestions for improving methods and procedures.	Often suggestions beneficial changes and profit/cost improvements	Very innovative. Constantly offers imaginative suggestions for improving operations.	
Usually properly dressed and groomed. Few poor personal habits.	Rarely exhibits poor appearance or offensive habit.	Always properly dressed for the job. Personal habits are never offensive or in poor taste.	
Work sufficiently organized to efficiently perform the job.	Highly organized and efficient worker. Few instances of poor performance from lack of order.	Exceptionally precise in organization work. Has immediate access to anything needed. Extremely efficient.	
Observes common courtesies. Does not offend.	Very conscientious of other's feelings and rights. Always polite.	Extremely courteous, well mannered and polite. Always considers the comfort and ease of others.	
Generally a cooperative person on the job.	Very cooperative. Often offers assistance. Can usually be counted on to help.	Extremely cooperative. Constantly offers aid and always available to help others.	
Does not shirk. Voluntarily attempts to solve non-routine job problems as they occur.	Above average. A self-starter. Will generally volunteer.	Places highest priority on getting things done. Constantly accepts difficult or unpleasant jobs to achieve goals.	
Can be relied on to complete all aspects of job.	Completes work with little supervision. Will complete occasional special projects.	Extremely dependable and trustworthy. Accepts all assignments. Always performs as expected.	
Is not stopped by most obstacles. Works through them.	Displays sufficient drive to overcome unusually difficult obstacles	Always displays extreme determination. Will rarely quit until objective is reached.	
Even tempered. Absorbs routine pressures of job.	Can tolerate unusual pressure and tension without hindering performance.	Performs consistently and effectively under extreme pressure. Never visibly falters.	
Satisfactory attendance record.	Rarely late or absent.	Almost never late or absent. Always accepts overtime work if offered.	
Understands most new ideas and developments without excessive explanation	Fast learner. Grasps new information quickly.	Extremely bright. Analyzes and understands with minimum of instruction.	

SUPERVISOR

Summary Score

TOTAL

(MARK TOTAL NUMERICAL RATING ON SCALE BELOW)



PERFORMANCE STRENGTHS: \_\_\_\_\_

\_\_\_\_\_

DEVELOPMENT/IMPROVEMENT OBJECTIVE: \_\_\_\_\_

ACTION STEPS: \_\_\_\_\_

\_\_\_\_\_

DEVELOPMENT/IMPROVEMENT OBJECTIVE: \_\_\_\_\_

ACTION STEPS: \_\_\_\_\_

\_\_\_\_\_

DEVELOPMENT/IMPROVEMENT OBJECTIVE: \_\_\_\_\_

ACTION STEPS: \_\_\_\_\_

\_\_\_\_\_

(Additional objectives may be listed on a separate sheet)

DEVELOPED BY EMPLOYEE

Has this evaluation been discussed with the employee?

Comments: Yes

No

\_\_\_\_\_

\_\_\_\_\_

RATED BY (Name and Title)

\_\_\_\_\_

\_\_\_\_\_

APPROVED BY:

\_\_\_\_\_

Completion of this section by the employee is optional and subject to the policy of your organization.

I have reviewed this evaluation and I completely understand its contents.

Date \_\_\_\_\_

Employee's Signature

**STAYTON FIRE DISTRICT  
FIRE CHIEF EVALUATION**

**I. OBJECTIVES:**

- A. Qualitatively measure the Fire Chief's performance.
- B. Assist the Fire Chief by providing direction and by identifying the Board's expectations.
- C. Identify and re-establish the Board/Fire Chief roles.
- D. Identify and reinforce positive aspects of the Fire Chief's performance.

**II. EVALUATION PROCESS:**

- A. Blank evaluation sheets will be provided to Board members and Fire Chief.
  - a. The Board Chairman will appoint two members of the Board of Directors to solicit information from the community, volunteers and staff.
  - b. Appointed Board members will gather information.
  - c. The Board will meet again in Executive Session to receive reports from Board members regarding information received.
- B. Board members and the Fire Chief will complete evaluation sheets, including comments, if desired.
- C. Board members will meet and Board evaluations will be totaled and divided by five (5) to achieve a composite evaluation. Comments relating to specific evaluation factors and overall evaluation will be identified.
- D. Within two (2) weeks, the Fire Chief will meet with the Board to discuss the evaluation and compare the composite evaluation with the Fire Chief's self-evaluation. The composite evaluation may be modified, based upon input from the Fire Chief. The evaluation will be finalized in triplicate: 1 copy for the personnel file, one copy for the Fire Chief and one copy for the Board Secretary. The Board secretary will retain the worksheets prepared by the Fire Chief and individual Board members.
- E. A follow-up meeting will be scheduled within ninety (90) days to review progress on areas identified as needing improvement.

**III. EVALUATION RATING:**

The numerical rating (0-4) is an effort to quantify opinions and judgment about a specific management responsibility or skill and/or a personal/interpersonal skill. While admittedly subjective, it suggests a useful emphasis or relative degree of acceptability.

A (4) rating represents "outstanding" performance or behavior

A (3) rating indicates performance or behavior that is "above average"

A (2) rating is "satisfactory"

A (1) rating is indicative of performance or behavior that is "in need of improvement"

A (0) rating is "unsatisfactory"



F. The Fire Chief is able to accept and support Board reversals. *Score: - - - - -*  
*0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

G. The Fire Chief works effectively with the Board to accomplish the goals of the District. *Score: - - - - -*  
*0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

**2. RELATIONSHIP WITH COMMUNITY:**

A. The Fire Chief is involved in community activities other than Fire Service related. *Score: - - - - -*  
*0 1 2 3 4*

Comment: \_\_\_\_\_  
\_\_\_\_\_

B. The Fire Chief makes himself available to the Board and Community. *Score: - - - - -*  
*0 1 2 3 4*

Comment: \_\_\_\_\_  
\_\_\_\_\_

C. The Fire Chief resolves citizen complaints consistent with District policy and in a timely manner. *Score: - - - - -*  
*0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

D. The Fire Chief informs the community of the Fire District's status and service goals. *Score: - - - - -*  
*0 1 2 3 4*

Comment: \_\_\_\_\_  
\_\_\_\_\_

**3. ADMINISTRATIVE FUNCTION:**

A. The Fire Chief ensures that provisions of all leases, contracts, permits and privileges granted by the District are enforced. *Score: - - - - -*  
*0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

B. The Fire Chief makes sure all sums of money due the District, whether by way of fees, or any other source, are collected and accounted for and periodically reported to the Board. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

C. The Fire Chief, through the Volunteers and Staff, provides effective and efficient delivery of fire protection services as authorized and budgeted by the Board. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

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D. The Fire Chief produces evidence of systematic progress toward completion of all special projects. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

E. The Fire Chief is effective in dealing with other governmental units at the local, regional, state and federal level. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

F. The Fire Chief ensures the District fiscal policies are efficiently executed. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

G. The Fire Chief provides effective management of the approved budget and planned expenditures. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

H. The Fire Chief follows State laws and local requirements of purchasing. *Score:* - - - - -  
*0 1 2 3 4*

Comments: \_\_\_\_\_

---

I. The Fire Chief ensures that the Fire District benefits from grant opportunities and other potential outside funding sources. **Score:** - - - - -  
**0 1 2 3 4**

Comment: \_\_\_\_\_  
\_\_\_\_\_

J. The Fire Chief develops and presents the Fire District's budget in a clear and concise manner. **Score:** - - - - -  
**0 1 2 3 4**

Comment: \_\_\_\_\_  
\_\_\_\_\_

K. The Fire Chief shows consistent progress in creating and implementing the District's strategic plan and project goals. **Score:** - - - - -  
**0 1 2 3 4**

Comment: \_\_\_\_\_  
\_\_\_\_\_

L. The Fire Chief develops a balanced, understandable, and well documented budget. **Score:** - - - - -  
**0 1 2 3 4**

Comment: \_\_\_\_\_  
\_\_\_\_\_

M. The Fire Chief understands and effectively applies public financing and budgeting laws. **Score:** - - - - -  
**0 1 2 3 4**

Comment: \_\_\_\_\_  
\_\_\_\_\_

**4. RELATIONSHIPS WITH EMPLOYEES:**

A. The Fire Chief supervises effectively all personnel who report to him. **Score:** - - - - -  
**0 1 2 3 4**

Comments: \_\_\_\_\_  
\_\_\_\_\_

B. The Fire Chief promotes and encourages a favorable environment that induces Volunteer participation within the District operations. **Score:** - - - - -  
**0 1 2 3 4**

Comments: \_\_\_\_\_  
\_\_\_\_\_

**5. PERSONAL SKILLS:**

A. The Fire Chief generally keeps himself informed and abreast of the latest information and technology available in the fire service. *Score: - - - - -  
0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

B. The Fire Chief seeks to improve his management skills. *Score: - - - - -  
0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

C. The Fire Chief is creative and aggressive in seeking new solutions to improve the District. *Score: - - - - -  
0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

D. The Fire Chief inspires and motivates others to fulfill the mission of the organization. *Score: - - - - -  
0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

E. The Fire Chief presents a professional appearance, courtesy, and orderliness necessary for the position. *Score: - - - - -  
0 1 2 3 4*

Comments: \_\_\_\_\_  
\_\_\_\_\_

F. The Fire Chief maintains the physical condition necessary to perform job requirements. *Score: - - - - -  
0 1 2 3 4*

Comment: \_\_\_\_\_  
\_\_\_\_\_

G. The Fire Chief articulates clearly and effectively verbal and written communications. *Score: - - - - -  
0 1 2 3 4*

Comment: \_\_\_\_\_  
\_\_\_\_\_



H. The Fire Chief portrays a positive attitude in all aspects of the District's business. Score: - - - - -  
0 1 2 3 4

Comment: \_\_\_\_\_  
\_\_\_\_\_

I. The Fire Chief interacts positively with members of the community and the District. Score: - - - - -  
0 1 2 3 4

Comment: \_\_\_\_\_  
\_\_\_\_\_

J. The Fire Chief encourages and supports the volunteers in their service and functions. Score: - - - - -  
0 1 2 3 4

Comment: \_\_\_\_\_  
\_\_\_\_\_

OVERALL OBJECTIVE EVALUATION

Summary Score (Mark total numerical rating on scale below)

0 UNSATISFACTORY 30 NEEDS IMPROVEMENT 60 SATISFACTORY 90 ABOVE AVERAGE 120 OUTSTANDING 144

COMPOSIT TOTAL  
\_\_\_\_\_

0 - 30 = Unsatisfactory      61 - 90 = Satisfactory      121-144 = Outstanding  
31 - 60 = Needs Improvement      91 - 120 = Above Average

**DIRECTORS' OVERALL COMMENTS:**

A. Specific accomplishments well done during the past year:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Suggestions for improvement:

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**FIRE CHIEF'S COMMENTS:**

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\_\_\_\_\_  
Fire Chief's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Board President's Signature

\_\_\_\_\_  
Date

**Stayton Fire District  
LAST CHANCE AGREEMENT AND RELEASE**

I. The reinstatement and continuing employment of \_\_\_\_\_  
("EMPLOYEE") by \_\_\_\_\_ ("EMPLOYER") is contingent upon the  
following:

- A. EMPLOYEE'S full participation in an evaluation as directed by EMPLOYER;
- B. EMPLOYEE'S full participation in and successful completion of any recommended treatment program approved by EMPLOYER.
- C. EMPLOYEE'S satisfactorily meeting the conditions of any recommended follow-up treatment or other aftercare program approved by EMPLOYER;
- D. EMPLOYEE'S submission to any drug or alcohol test requested by EMPLOYER during the twelve-month period following the date of this Agreement; and,
- E. EMPLOYEE'S meeting EMPLOYER'S standards of conduct, performing required job duties satisfactorily, and following all work rules and procedures on an ongoing basis.

II. It is understood and agreed that EMPLOYEE will be subject to immediate discharge from employment for any positive drug or alcohol test or failure to fully meet the foregoing requirements during the term of this Agreement.

III. EMPLOYEE hereby consents to submit to a drug or alcohol test at EMPLOYER'S request during the twelve-month period following the date of this Agreement.

IV. EMPLOYEE hereby authorizes any laboratory or other testing facility to release the results of any drug or alcohol test to EMPLOYER during the twelve months following the date of their Agreement. EMPLOYEE will be responsible for any treatment or follow-up program costs not covered by EMPLOYEE'S health insurance.

V. EMPLOYEE hereby releases any physician, addictionologist, counselor or other rehabilitation professional to confirm EMPLOYEE'S compliance with this Agreement with EMPLOYER during the twelve months following the date of this Agreement.

EMPLOYEE \_\_\_\_\_ DATE \_\_\_\_\_

EMPLOYER \_\_\_\_\_ DATE \_\_\_\_\_

TITLE \_\_\_\_\_

STAYTON FIRE DISTRICT  
CELLULAR PHONE WAIVER  
Policy 8.8.J

Although Stayton Fire District has determined it is in the best interest of the District to reimburse its Officers, Fire Ground Leaders and Staff for use of their personal cellular phones, the District does not take any liability or responsibility for damage to, or loss of, individual cellular phones.

In as much as the District has determined it is in the best interest of the District to provide for partial reimbursement of personal cellular phones, and the individual member is electing to receive reimbursement, specific information could be considered public record and that information could be obtained for any reason pertaining to public records and is under the jurisdiction of public record laws. However, only information pertaining to the particular incident can be obtained from the individual's phone.

I understand the personal cellular phone liability limits of the District and the legal encumbrance of the public records laws in regards to information specific to District incidents stated above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

STAYTON FIRE DISTRICT  
CIVIL SERVICE RULES

---

AS ADOPTED BY THE CIVIL SERVICE COMMISSION

ON November 30, 2005

AND BY THE BOARD OF DIRECTORS

ON December 12, 2005

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## RULE I

### GENERAL STATEMENT OF POLICY

#### SECTION 1 PURPOSE OF RULES

The purpose of these rules is to implement provisions of Civil Service for the employees of Stayton Fire District. These rules represent the sole Civil Service policies for Stayton Fire District as provided by ORS 242.704 and achieve for the District the following objectives:

- A. To establish a system of personnel administration based on merit governing the appointment, tenure, promotion, layoff, removal and discipline of its officers and employees, and other incidents of employment.
- B. To establish and maintain a uniform plan of classification based upon the relative duties and responsibilities of positions in the service of Stayton Fire District.
- C. To provide an equal opportunity to all qualified persons to gain employment on a basis of demonstrated merit and fitness to be ascertained by open recruitment and competitive examinations.
- D. To comply with ORS 242.702 through 242.824 as stipulated in ORS 242.704 (2).



## RULE II

### DEFINITIONS

#### SECTION 1 DEFINITION OF TERMS

As used in these rules, unless the context clearly requires otherwise:

- A. "Appointing Power" means the Fire Chief or the Board of Directors of the District vested with authority to appoint or to remove from any Civil Service position.
- B. "Appointment" means all means of selecting or employing any person to hold any position subject to Civil Service.
- C. "Civil Service" means the Civil Service system established under ORS 242.702 through 242.824.
- D. "Chief Examiner" means the person appointed by the Commission to administer the examinations and any other aspect of the Civil Service program assigned by the Commission.
- E. "Class" or "Classification" means a group of positions in the classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to all positions in the group.
- F. "Class Specification" means the written description of a class containing a title, statement of duties, authority and responsibilities and the desired minimum qualifications for the class.
- G. "Classified Service" means all positions under the jurisdiction of the Civil Service Commission.
- H. "Commission" means the Civil Service Commission created under ORS 242.702 through 242.824.
- I. "Commissioner" means a Civil Service Commission member.
- J. "Demotion" means a transfer of an employee from a position in one class to a position in another class having a lower maximum salary rate.
- K. "Dismissal" means removal by the appointing power from a position or service within the Fire District either by permission or for cause.
- L. "District" means the Stayton Fire District.
- M. "Employee" means a person who holds a position in the classified service.
- N. "Entrance Register" means a list of persons who have been found qualified by an entrance test for appointment to a position in a particular class.

- O. "Entrance Examination" means a test for positions in a particular class.
- P. "Governing Body" means the Board of Directors of Stayton Fire District.
- Q. "Layoff" means a separation from the service because of a shortage of funds or materials, abolishment of a position or for other reasons not reflecting discredit on an employee and for reasons outside the employee's control.
- R. "Personnel Action" means any action taken with reference to appointment, compensation, promotion, transfer, layoff, dismissal or any other action affecting the status of employment.
- S. "Personnel Rules" means the personnel rules adopted by order of the Board of Directors.
- T. "Position" includes any office, place or appointment.
- U. "Probationary Period" means a working test period during which an employee is required to demonstrate the employee's ability and capacity to perform the duties of the position to which he/she has been appointed.
- V. "Promotion" means a transfer of an employee from a position in one class to a position in another class having a higher maximum salary rate.
- W. "Promotion Register" means a list of names of persons presently in the employ of the District who have been found qualified by promotional examination for appointment to a position in a particular class.
- X. "Promotional Examination" means an examination, which is limited to employees in the classified service.
- Y. "Provisional Appointment" means an appointment to a position, limited to three months, in the absence of names of qualified candidates on the register or registers for the class, of a person meeting the minimum qualifications specified for the class.
- Z. "Reclassification" means a change in allocation of an individual position on the basis of significant changes in the kind, difficulty or responsibility of the work performed in such position.
- AA. "Regular Employee" means either an employee who has been appointed to a position in accordance with the rules of the Civil Service Commission and who has successfully completed a probationary period, or an employee who acquired status through appointment to a position in the classified service on or before date of initial adoption of these rules.
- AB. "Rules" means the Civil Service rules adopted by the Civil Service Commission.

- AC. "Suspension" means a temporary removal from duty, with or without pay, of an employee for disciplinary purposes or for the purpose of investigation of accusations brought against an employee.
- AD. "Temporary Appointment" means an appointment for a temporary period not to exceed the period of need.
- AE. "Termination" means the involuntary cessation of employment with the Stayton Fire District for cause.
- AF. "Transfer" means any change of an employee from one position to another in the same class.

## RULE III

### **ADOPTION AND AMENDMENT OF RULES**

#### **SECTION 1 ADOPTION OF CIVIL SERVICE RULES**

The Commission shall adopt rules relating to the administration of the Civil Service Act only after public hearing open to any citizen, officer or employee of the District. Five or more days public notice of such hearing shall be given, setting forth the place and the time of the hearing and the purpose for which it is called. Rules adopted by the Commission shall become effective on a date specified by the Commission and shall be posted on all official bulletin boards of the District.

#### **SECTION 2 EFFECT OF ADOPTION UPON INCUMBENT EMPLOYEES**

Within one day after the adoption of the Civil Service, all persons employed in a position subject to Civil Service and who have been employed by the District for at least twelve months and who have otherwise passed all probationary requirements of the District shall be immediately placed in their existing positions as classified by Civil Service as if they had been regularly appointed. The appointing authority shall file a list of names of such persons with the Civil Service commission, including their names, residence, occupation, length of continuous service and compensation.

#### **SECTION 3 AMENDMENT OF RULES**

A request for a change in the Civil Service Rules may be submitted at any time by the Board of Directors, Fire Chief, a department head, employee, or other interested party in a written communication to the Commission indicating the proposed change and the reasons therefore. After necessary study the Commission may amend the Civil Service Rules, as it believes proper. The procedure for adoption of rules in Section 1 shall also apply to amendments to the rules.

#### **SECTION 4 APPLICATION OF RULES**

Any personnel action taken prior to the official adoption of new or amended rules shall be governed by the rules in effect at the time of the action and shall not be affected by the proposed new or amended rules unless such rule provided for a retroactive effect.

#### **SECTION 5 PERSONNEL RULES OF THE BOARD OF DIRECTORS**

Personnel rules relating to salaries, wages, leave, attendance, hours of work, holidays, retirement or any other factor of employment having direct budgetary implications in the classified and exempt service shall be established and administered by the governing body in conformance with laws pertaining to such matters. Rules governing the general conduct of employees, work regulations and assignment schedules shall be adopted and administered by the governing body. Such rules shall be readily available for review by employees. This section is mentioned so there is no confusion as to the limits of power of

the Civil Service Commission. The areas referenced in this section are not areas to be covered by the activities of the Civil Service Commission.

## **SECTION 6 SEVERABILITY**

If any of these Civil Service rules or portions thereof are hereafter declared by a court of competent jurisdiction or judicial proceedings or rulings of a proper court to be illegal or unconstitutional, the part declared unconstitutional and/or illegal shall be deemed severable and such shall not affect the remaining rules or remaining portions of the rules.

RULE IV

**CLASSIFIED OR EXEMPT SERVICE**

**SECTION 1 CLASSIFIED SERVICE**

The classified service shall include all positions now classified or hereafter created in the Civil Service system of the District as provided by ORS 242.702 through 242.824.

**SECTION 2 EXEMPT SERVICE**

The exempt service shall include the following positions:

- A. Positions on the Board of Directors
- B. Positions on the Civil Service Commission
- C. Persons employed as professional consultants on a fee basis to provide special or technical assistance
- D. Members of special boards, commissions, or committees appointed by the Board of Directors, who serve without compensation
- E. Volunteer participants with the District
- F. Temporary employees/volunteer trainees

## RULE V

### **THE CIVIL SERVICE COMMISSION**

#### **SECTION 1 CIVIL SERVICE COMMISSION**

The Civil Service Commission consists of three members appointed or confirmed by the governing body of the District. No member of the commission shall be a member of the governing body or an employee of the political subdivisions subject to ORS 242.702 through 242.824, except that any commissioner may serve as a member of any other civil service commission.

#### **SECTION 2 COMMISSION CHAIRPERSON**

Immediately after the appointment of all of its members, the Commission shall elect a chairperson. Subsequent elections of chairperson shall be held the first meeting of the Commission each calendar year.

#### **SECTION 3 MEETINGS OF THE COMMISSION**

The Commission shall hold such meetings as may be required for the proper discharge of its duties with a meeting every 90 days and such additional meetings as are requested by any Commission member. Any person subject to Civil Service may request a special meeting of the Commission, which request shall be granted when good cause is shown. Two members of the Commission shall constitute a quorum, and the votes of any two Commissioners concurring shall be sufficient for the decision of all matters and transactions under ORS 242.702 through 242.824.

#### **SECTION 4 TERM OF COMMISSIONERS**

The term of office of a member of the Civil Service Commission is four years, and each shall serve without compensation.

#### **SECTION 5 REMOVAL OF COMMISSIONERS**

The governing body of the District which appoints Commissioners may remove any Commissioner for incompetency, dereliction of duty or other good cause, after giving due notice in writing of the charges against the Commissioner and an opportunity to be heard publicly on such charges before the Governing Body. A copy of the charges and a transcript of the record of the hearing shall be filed with the Governing Body of the District.

#### **SECTION 6 BUDGET PREPARATION & RECORD KEEPING**

The Commission shall prepare and submit a budget to the governing body prior to each fiscal year for which an appropriation is needed to carry out the provisions of ORS 242.702 through 242.824.

The Commission shall keep on file all examination papers and their markings, records in commission hearings and all other papers, documents and communications received by it.

Except for examination papers, all such reports and files of the Commission shall be public records and accessible at reasonable and convenient times.



RULE VI

**DUTIES OF THE SECRETARY/CHIEF EXAMINER  
AND THE APPOINTING POWER**

**SECTION 1 DUTIES OF THE SECRETARY/ CHIEF EXAMINER**

The Commission shall appoint a Chief Examiner who may act as the Commission's secretary. The Chief Examiner shall keep records of the Commission's proceedings, preserve all reports, keep record of all examinations and investigations and perform such other duties as prescribed. The Commission shall make regulations to carry out the provisions of ORS 242.702 through 242.824 providing in detail the manner in which examinations shall be held. The Chief Examiner shall, consistent with these rules, conduct and supervise such examinations as necessary.

**SECTION 2 DUTIES OF THE APPOINTING POWER/FIRE CHIEF**

The Chief of the District, under the direction of the Commission, shall administer the provisions of ORS 242.702 through 242.824 and these rules.

## RULE VII

### CLASSIFICATION PLAN

#### SECTION 1 MAINTENANCE OF PLAN

The Commission shall adopt and maintain a classification plan, which shall group all positions in the classified service into classes based upon their duties, authorities, responsibilities, and compensation. The Commission may assign the review of the classification plan to the Chief Examiner who will be responsible for keeping the classification plan current by conducting periodic studies of positions and making appropriate recommendations to the Commission.

#### SECTION 2 AMENDMENT OF PLAN

- A. Request for Change. Any officer or employee in the District service may initiate a request to the Commission to amend the classification plan. If the Chief Examiner determines the request to be in good cause, he/she shall then conduct the necessary investigation of any such request. The Chief Examiner shall also make classification studies or surveys at other times on own initiative and as directed by the Commission. If the Chief Examiner finds that substantial change in organization, creation or change of positions or other pertinent conditions makes necessary the modification of an existing class or the establishment of a new class, the Examiner shall make recommendation for such an amendment to the Commission.
- B. Hearings on Changes. The Commission shall hold public hearings on changes in the classification plan and shall give at least five days public notice prior to such hearings. After hearing suggestions and recommendations, the Commission shall review this information and act on classification revisions with such modifications as it believes proper.
- C. Changes in ORS. If changes in Oregon Revised Statutes pertaining to Civil Service require the Commission to make corresponding changes in these Civil Service Rules, they may be made without holding a public hearing on changes.

#### SECTION 3 ALLOCATION OF POSITIONS

- A. New Positions: When the Appointing Power desires to establish the classification of a new position, notice of such proposed action together with a description of the duties shall be submitted to the Chief Examiner who shall promptly assign the appropriate class therein on the basis of its duties, authority, responsibilities, and compensation and shall notify the Appointing Power of the official classification.
- B. Reclassification of Positions: Whenever the Appointing Power desires to make a permanent and substantial change in the duties, authority or responsibilities of a position, written notification of the proposed change shall be submitted to the Chief Examiner for the determination of the effect, if any, on the classification of the

position. At the direction of the Commission, the Chief Examiner will initiate classification studies to determine if the current classification is proper. The Chief Examiner shall report to the Commission the nature of such changes. The commission may revise the classification of such position, as it deems proper.

C. Effect of Reclassification on Employee Status:

The classifications, from time to time, may be amended, added to, consolidated or abolished by the commission, but no person holding any position under any established classification shall be affected by such change so as to deprive the person of any of the benefits attached to the classification applicable to the position then held by the person. No person shall be promoted or advanced to a higher classification by such change without being eligible for appointment to such higher classification by reason of the position of the person on the promotion register.

## **SECTION 4 CLASS SPECIFICATIONS**

- A. Content of Specifications: The Commission shall adopt, for each class of employment, a descriptive class specification. Each class specification shall include the class title, a description of the duties and responsibilities of the work and a statement of the minimum qualifications a person should possess to perform the work with reasonable prospects of success.
- B. Interpretation of Specifications: The definitions in class specifications are descriptive and not restrictive. They are intended to indicate the kinds of positions that are allocated to the several classes, as determined by duties and responsibilities, and are not to be construed as declaring what the duties or responsibilities of any position may be, or as limiting or modifying the power of any Appointing Power to assign, direct and control the work of employees under his supervision. The use of a particular expression or illustration as to other duties shall not be held to exclude others not mentioned that are of similar kind or quality, nor shall any specific omission necessarily mean that such factor is not included.
- C. Use in Allocation: In determining the class to which any position shall be allocated, the specification describing each class shall be considered as a whole. Consideration shall be given to the general duties, specific tasks, responsibilities, qualifications and requirements and their relationship to other classes, as a composite description of the kind of employment which the class is intended to embrace.

## **SECTION 5 MINIMUM QUALIFICATIONS STATEMENT**

Person qualifications commonly required of an employee in any class, such as good citizenship, honesty, loyalty, sobriety, industry, amenability to supervision and suggestions of superiors for improvement of service, and willingness to cooperate with associates, shall be implied as qualifications required for entrance to every class, even though such traits may not be specifically mentioned in the specifications.

## **SECTION 6 USE OF CLASS TITLE**

The class title shall be the official title of every position allocated to the class for the purpose of personnel actions and shall be used on all payrolls, budget estimates and official

records and reports relating to the position. Any other working title desired and authorized to be used by the Appointing Power may be used as a designation of any position for the purpose of internal administration or in contacts with the public.

## RULE VIII

### APPLICATIONS AND EXAMINATIONS

#### SECTION 1 EXAMINATION ANNOUNCEMENTS

- A. Distribution of Announcements: Public announcements of examinations shall be given at least two weeks in advance of the last date for filing applications. Such announcements shall be posted on the official bulletin boards of the District and at least two other public places, and once a week for two weeks in a newspaper of general circulation in the District. The Chief Examiner may provide for such other publicity as deemed advisable to attract sufficient numbers of qualified candidates. In the case of promotional examinations, announcements shall be posted on bulletin boards provided for such purpose. The Appointing Power shall take necessary steps to bring announcements to the attention of all eligible employees.
- B. Content of Announcements: Official notices of examinations shall state the duties and pay of positions in the classes for which the examinations are to be held, the qualifications required, the time and place and the manner of making application for admission to such examinations, the different parts of tests, closing date for filing applications and any other information which may be considered pertinent.

#### SECTION 2 ELIGIBILITY TO COMPETE IN EXAMINATIONS

- A. Who May Compete: Examinations designed to establish entrance lists shall be open to all persons who appear to meet minimum qualifications and other requirements for the class as stated in the class specification and as set forth in the announcement.
- B. Entrance Requirements: The Governing Body shall establish and may revise requirements regarding experience, training, physical condition, residency, and other factors that relate to the ability of candidates to perform effectively the duties of a class.
- C. Competition in Promotional Examinations: Promotional examinations shall be open to employees who have acquired regular or probationary status, meet the minimum qualifications as stated in the class specification and as set forth in the announcement, and who have held a position in the classified service in another class or classes for a period of not less than six months immediately preceding the filing date specified on the announcement. The Governing Body of the District reserves the right to declare whether any open or new position shall be filled by a promotional or entrance examination. If an entrance examination were selected, it would be open to both qualified employees and non-employees.

#### SECTION 3 APPLICATIONS

- A. Filing of Applications: All applications must be made upon official District application blanks filled out as therein directed, and filed in the office of the

Commission or postmarked on or before the closing date specified in the examination announcement. The applicant must sign each application, and such signature constitutes a certification that all information contained therein is true to the best of the knowledge of the applicant. The Commission, or its Designee, may conduct pre-employment investigations to verify the past employment record and to obtain other information relating to the qualifications of the applicant.

- B. Freedom from Bias. The application form shall contain no question so formed as to elicit any information concerning political, racial, or religious affiliations of the applicant. However, this provision shall not prevent inquiry as to whether the applicant supports the Constitution of the United States of America.

#### **SECTION 4           ADMISSION TO EXAMINATIONS**

Each candidate whose application has been accepted for an examination shall be notified at least 48 hours in advance of the examination by mail or personal service of the time and place of the examination and such notice shall be considered authorization for admission. No person shall be permitted to take an examination without such authorization or other satisfactory evidence of the acceptance of application. Any applicant whose application has been accepted but who, because of illness or other good cause, is unable to appear, may at the discretion of the Chief Examiner, be given the examination at a later date.

#### **SECTION 5           DISQUALIFICATION OF APPLICANTS**

The Chief Examiner may reject the application of any person for admission to an examination or decline to examine any applicant who:

- A. Is found to lack the qualifications prescribed for admission to the examination as announced in the public notice.
- B. Is found to be unfit because of previous employment or driving record or for other reasons reflecting discredit on the applicant.
- C. Is physically unfit to perform effectively the duties of the class.
- D. Has been convicted of a crime involving moral turpitude or who has been dismissed from the public service for delinquency or misconduct, or has been dishonorably discharged from the armed forces of the United States.
- E. Has used, or attempted to use, political pressure or bribery to secure an advantage in testing or appointment.
- F. Has made false statements of any material fact or practiced, or attempted to practice, deception or fraud in application or examination.
- G. Does not support the Constitution of the United States of America.
- H. Has taken the same examination within the six-month period preceding the examination date,

- I. Has otherwise violated the provisions of these rules.

Any person whose application has been rejected by the Chief Examiner may appeal such action to the Civil Service Commission within ten (10) days of postmarked date of rejection.

## **SECTION 6 EXAMINATION ADMINISTRATION**

- A. Conduct of Examinations: Written or performance examinations shall be conducted in such places as are necessary for the reasonable convenience of applicants within the practical limits for proper administration and control. The Chief Examiner shall designate the number of examiners necessary to conduct examinations, and provide them with instructions. The Chief Examiner may also arrange for the use of public buildings in which to conduct these examinations.
- B. Frequency of Examinations:
1. Entrance examinations shall be given at least every thirty months.
  2. All other examinations may be given as necessary.
- C. Anonymity of Applicants: The identity of persons taking written examinations shall not be disclosed to examiners except where conditions of anonymity are impractical.

## **SECTION 7 POSTPONEMENT or CANCELLATION of EXAMINATIONS**

In the event a sufficient number of qualified applicants have not made application for any test, the Chief Examiner may postpone the last filing date, or cancel the test. In such case, written notice shall be given to the applicants and appointing authorities concerned.

## **SECTION 8 CHARACTER OF EXAMINATIONS**

Tests shall be practical and competitive, and must be designed to determine the qualifications, fitness and ability of candidates to perform the duties of the class for which a register is to be established. They may be written, oral, physical, in the form of a demonstration of skill, an evaluation of training and experience, or any combination of such types. They may take into consideration education, experience, aptitude, capacity, knowledge, character, physical fitness, length and quality of service, and other qualifications to determine the relative fitness of the candidates, and shall not be related to political or religious preference. Applicants selected for appointment shall be required to pass a pre-employment physical examination administered by a licensed physician.

- A. Open-Continuous Examinations. When necessary to meet continuing requirements for filling positions, and when there is no immediately available large pool of applicants for a class, the closing date for any test may be indefinite, and the applicants may be tested continuously in such manner and at such times and places as the Chief Examiner may provide. A closing date for an open-continuous test

may be set at any time by giving public notice, at least two weeks prior to the effective date.

## **SECTION 9 RATING OF EXAMINATIONS**

- A. Method of Rating: In all tests a minimum rating shall be established which is required to achieve eligibility. Such minimum ratings may also apply to the rating on any parts of the test, and candidates may be required to obtain minimum ratings on separate parts in order to receive passing grades, or to be rated on the remaining parts of the tests. The final earned rating of each competitor shall be determined by adding the earned rating on each part of the test in accordance with weights established prior to the date of the test. Ratings shall be based on a scale of 100 points.
- B. Rating of Experience and Training: When a rating of experience and training forms is a part of a test, the Chief Examiner shall develop procedures for the evaluation of those factors that will serve to assist in the selection of the best qualified candidates. Procedures that are adopted shall give due regard to quality, recency, and amount of experience, and to the pertinency and amount of training. In establishing the value that a rating of experience and training shall bear to the total test, and in determining the length of time for which experience credit shall be awarded, consideration shall be given to the amount of learning time required to perform efficiently the duties of the position.

## **SECTION 10 NOTIFICATION OF EXAMINATION RESULTS**

The rating of each test shall be completed and the resulting list established as soon as practical after the date on which the test was held. Each person competing in a test shall be given notice of their final rating. Each person competing in a test may, during the immediate thirty-day period following notification of examination results, review their examination papers and have the rating reviewed and corrected if an error is found. No correction shall invalidate any appointment previously made from the list. The right to review the test is limited to the applicant, Commissioners, their staff and members of the Governing Body. Tests may be reviewed only during regular business hours at the office of the Commission.

## **SECTION 11 PREFERENCE FOR VETERANS**

In all competitive entrance examinations, preference status shall be given to every veteran and disabled veteran who has successfully completed all phases of a Civil Service test. Preference means that the total combined score of a veteran or disabled veteran who has passed the test shall be increased in accordance with Oregon Revised Statutes.

## **SECTION 12 VOLUNTEER PREFERENCE**

In all competitive entrance examinations, preference status shall be given to active District Volunteer Firefighters who have served a minimum of two years as a volunteer firefighter with the Stayton Fire District. Members meeting this requirement shall qualify for five (5) additional points providing the member meets all other position requirements and a passing grade has been received at the first stage of the selection process.



## RULE IX

### REGISTERS

#### SECTION 1 ESTABLISHMENT OF REGISTERS

The Commission shall establish and maintain registers (lists) of eligibles necessary to provide an adequate supply of qualified candidates for positions in the classified service. Lists shall be established by class of employment and shall be District-wide in application.

#### SECTION 2 KINDS OF REGISTERS

- A. Entrance Register: An entrance register shall be established for such class of positions to be filled on an entrance basis and shall consist of the names of all persons who have passed the entrance test for that class.
- B. Promotion Registers: A promotion list shall be established for each class of positions to be filled on a promotional basis and shall consist of the names of all employees who have passed a promotion test for the class.

#### SECTION 3 ORDER OF NAMES ON ENTRANCE REGISTERS

- A. Entrance Registers:
  - 1. Laid off Employees: Each entrance register shall be headed by the names of persons who have been regular employees and who were laid off from a position in that class through no fault of their own.
  - 2. Eligibles: Names of eligibles shall be placed on lists in the order of their final earned ratings plus any veterans or volunteer preference credits to which they may be entitled. Where ties exist, names shall be arranged in order of the candidate whose application was received first.
- B. Promotion Registers
  - 1. Demoted Employees. Each promotion register shall be headed by the names of persons who have been regular employees and who were demoted or reclassified to a lower class from a position in that class through no fault of their own.
  - 2. Eligible Employees. Names of eligibles shall be placed on lists in the order of their final earned ratings. Where ties exist, names shall be arranged in order of the candidate whose application was received first.
- C. The order of names of persons laid off or demoted in "A" or "B" of this section shall be in inverse order of the date of their layoff or demotion.

#### SECTION 4 DURATION OF REGISTERS

- A. Entrance Registers: The duration of an entrance register is limited to twelve (12) months from the date the list was established. An entrance list may be extended,

but not to exceed an additional twelve (12) months if, in the opinion of the Commission, the best interests of the District would be served thereby. An entrance list may be canceled when, in the opinion of the Appointing Power or Commission, it does not contain a sufficient number of eligibles. An Entrance List shall be deemed exhausted when less than three (3) candidates are available for the position under consideration by the Appointing Power.

- B. Promotion Registers: The duration of eligibility on a promotional register resulting from demotion or downward reclassification is limited to not more than thirty (30) months from the date of such demotion or reclassification. A promotion register may not be canceled unless exhausted or has been in effect for thirty months.

## **SECTION 5            REMOVAL OF NAMES FROM LISTS**

The Chief Examiner may remove a name from a list permanently or temporarily for any of the following reasons:

- A. Certification and appointment of an applicant from the list to fill a permanent position.
- B. Certification and appointment to fill a permanent position with the same or higher salary range from a different list. However, any applicant whose name is so removed may have it restored by making written application to the Chief Examiner.
- C. Failure to respond within five (5) days to a written inquiry of the Chief Examiner or an Appointing Power relative to availability for appointment.
- D. Refusal of an offer of an appointment without adequate explanation.
- E. Failure to report for duty within the time specified by the Appointing Power.
- F. Expiration of the term of eligibility on the register.
- G. Failure to maintain a record of current address with the Commission as evidenced by the return of properly addressed unclaimed letter, or other evidence.
- H. Certification three times to the same appointing authority without receiving appointments.
- I. Willful violation of any rules of the provisions of the Civil Service Rules for Fire Fighters or these rules.
- J. In case of promotion lists, separation from the District service.
- K. Upon a finding by the Chief Examiner or Commission that the person is not qualified to perform the duties of the class.
- L. Upon a finding of the Appointing Power and concurrence by the Commission that the applicant is not qualified to perform the duties of the class.

M. Upon request of the eligible to have his/her name removed.

Any person whose name is removed from the register shall be promptly notified by the Chief Examiner of the reason for such removal.

## **SECTION 6 RESTORATION OF NAMES TO ELIGIBLE LISTS**

An eligible whose name is removed from a list may make a written request to the Chief Examiner for restoration of his/her name to the list. The request must specify the reasons for the requested restoration. The Chief Examiner, subject to appeal to the Commission, shall determine whether evidence submitted justifies approval of the request.

## **SECTION 7 AVAILABILITY OF ELIGIBLES**

It shall be the responsibility of eligibles to notify the Commission in writing of changes in address, or other changes that may affect availability for employment. However, the Chief Examiner may, from time to time, circulate registers or use other methods to determine current availability of eligibles.

## RULE X

### CERTIFICATION AND APPOINTMENT

#### SECTION 1 FILLING VACANT POSITIONS

All vacancies in classified positions shall be filled as provided in these rules. Whenever an Appointing Power wishes to fill a vacancy in the classified service, a request for names of qualified eligibles shall be submitted to the Commission.

#### SECTION 2 CERTIFICATION OF ELIGIBLES

- A. Order of Use of Eligible Lists: Upon receipt of a request for certification of eligibles, the Chief Examiner shall certify the proper number of available eligibles from an appropriate list. If no appropriate list exists, he shall authorize appointment by other prescribed means. Certification shall be made from lists in the order determined by the appointing authority.
- B. Order and Number of Names Certified: Names shall be certified in order of standing on the list. The number of names certified from the entrance list shall be three. When more than one vacancy exists, the number of names shall equal the number of vacancies plus two in addition. From the promotional list, the number of names certified shall be two plus one for each additional vacancy.
- C. Order in Which Certification Will Be Issued: Eligibles shall be certified for vacancies occurring in a class in order of standing on the list.
- D. Additional Certification to a Vacancy: The Chief Examiner may certify additional names to a vacancy upon receipt of a written report from the Appointing Power that in the Commission's judgment, justifies a finding that one or more of the eligibles certified would not be suitable for the position that is to be filled. Religious, racial, or political reasons shall not be considered as valid reasons for rejection of a candidate. If the rejection of the Appointing Power is not approved by the Commission, the Commission shall notify the Appointing Power of each disapproval and upon receipt of such notice the Appointing Power shall immediately appoint the certified candidate in question.
- E. Notice of Eligibles Not Appointed: Those persons certified to the District but not appointed shall be so notified by the Appointing Power within five (5) days after an appointment is made. This rule will not apply in the case of persons who waive, decline, or fail to appear for an interview.
- F. Restoration of Names to the Register: The names of those persons certified to the District but not appointed shall be restored to the register unless subject to Rule IX. Section 5

### **SECTION 3            KIND OF APPOINTMENTS**

- A. Regular Appointment: The Appointing Power shall make regular appointments from the list of candidates certified.
  
- B. Provisional Appointments: If there are no names of qualified candidates on either the promotional or entrance list for a class in which a vacancy exists, the Chief Examiner may authorize the provisional appointment of a person meeting the minimum prerequisites for the class to which the position is allocated. No position shall be filled by provisional appointment more than once in any calendar year. A provisional appointment is terminated after three months or when the Chief Examiner establishes an appropriate list, certifies available eligibles, and an appointment is made for the position. Notice of all such appointments made shall be reported to the Commission at its next regular meeting.
  
- C. Temporary Appointments: The appointing authority is authorized to make temporary appointments to assure continuation of required work. A temporary appointment is typically limited to twelve calendar weeks. Such temporary appointment may be extended for a period of time, up to one year. Temporary appointment shall require official personnel action and the Commission shall be so notified. The appointing authority will consider existing lists when making temporary appointments. All persons receiving temporary appointments will be required to sign documents acknowledging the status of their appointment.
  
- D. Relief Appointments: Where a position exists, the appointing authority may make transfers or relief appointments to fill absences. Such relief appointments shall be made from the appropriate eligibility lists where administratively feasible, or the appointing authority may appoint individuals who meet the minimum prerequisites of the class who are known to have the ability necessary to perform in said position. Should such appointment to that position exceed 12 weeks, the Chief Examiner shall be so notified. Relief appointment shall not be considered a promotion, if to a position which may have a higher pay scale, and return to the employee's regular position shall not be considered a demotion.

### **SECTION 4            TRANSFERS**

- A. Assignment of Duties: An appointing power may, within division or organization unit, assign an employee from one position to another position in the same class without prior approval of the Commission.
  
- B. Method of Transfer: An Appointing Power may authorize the transfer of an employee to a similar position in the same classification of equal pay. An employee may be transferred from a position in one division or organization unit to a position in the same class or a class of equal pay in another division. A transfer of an employee from a position in one class to a position in another class having a higher salary range constitutes a promotion and is subject to rules governing appointments and promotions. A transfer to a position in a class having a lower salary range constitutes a demotion and shall be subject to rules governing demotions. Transfers must be completed with no more than a ten-day break in service.

- C. Voluntary Demotions. An employee may make a request in writing to the Appointing Power for demotion from a position in one class to a position in a class of lower rank. If an employee is qualified, the Chief Examiner may approve the request, provided it would not result in the layoff of another employee.

## RULE XI

### **PROBATIONARY PERIOD**

#### **SECTION 1 PURPOSE**

The probationary period is an integral part of the test and provides the Appointing Power with the opportunity to observe the new employee's work, to train and aid the new employee in adjustment to the position, and to reject any employee whose work performance fails to meet required work standards.

#### **SECTION 2 DURATION OF PROBATIONARY PERIOD**

Every person certified and appointed to a position in the classified service shall serve a probationary period of twelve (12) months of active, on-duty District service. Active, on-duty service means the employee is present and performing the duties of the position for which they were hired. Any form of paid or unpaid absence greater than 180 hours of accumulated time will cause an automatic extension of the probationary period. The extension of the probationary period will be based on the hours of absence in excess of 180 hours. An individual's probationary period may be extended for up to an additional six (6) months by the Fire Chief.

#### **SECTION 3 TRANSFER DURING PROBATIONARY PERIOD**

An employee, who is transferred to another position in the same class prior to the completion of the probationary period, shall complete the probationary period in the latter position.

#### **SECTION 4 DEMOTION DURING PROBATIONARY PERIOD**

A probationary employee serving as a result of appointment from a promotion list who fails to qualify in the new position for reason other than misconduct or delinquency, and who was a regular employee immediately prior to this promotional appointment, shall be reinstated to former position. If the Commission finds that the reasons for such demotions are insufficient, the demoted employee shall be restored to the promoted position under such terms as the Commission may impose.

#### **SECTION 5 COMPLETION OF PROBATIONARY PERIOD**

Prior to completion of an employee's probationary period, the Appointing Power will indicate satisfactory or unsatisfactory service during the probationary period. If satisfactory, the employee shall be deemed to have satisfactorily completed the probationary period and thereby be accorded regular status in the classified service. A notification of unsatisfactory service ordinarily shall be accompanied with a notice of dismissal or a written extension of the probationary period for a specific amount of time not to exceed six (6) months of active, on-duty District service.

## RULE XII

### SEPARATION IN GOOD STANDING

#### SECTION 1 REDUCTION IN FORCE

- A. Reason for Layoff: The governing body may order the layoff of an employee because of abolition of a position, shortage of funds or work, a material change in duties, changes in an organizational unit, or for other reasons which do not reflect discredit on the service of the employee. Duties performed by laid off employees may be reassigned to other employees already working, who hold positions in appropriate classes. No temporary or permanent separation of an employee from the service as a penalty or disciplinary action shall be considered a layoff.
- B. Demotion in Lieu of Layoff: Any regular employee who is about to be laid off may file a written request with the Appointing Power for demotion in lieu of layoff. The appointing authority normally shall grant this request in any class for which the employee has established a right to Civil Service status, and where it appears that he/she may expect to perform satisfactorily. If, in the opinion of the Appointing Power the good of the service does not indicate the desirability of such action, the employee shall be immediately notified, in writing, giving the reasons for denying the request. The employee may request a review by the Commission of the reasons for denial. In all cases where employees are demoted in lieu of layoff, their names shall be placed on layoff lists for the classes from which they were demoted.
- C. Notice of Layoff: The Appointing Power shall give written notice of a pending layoff to any regular, probationary or provisional employee and to the Chief Examiner at least fifteen (15) days before the effective date, stating the reasons for the layoff.

#### SECTION 2 RETURN OF NAMES OF LAID OFF EMPLOYEES TO THE ELIGIBLE LISTS

The names of regular employees laid off or demoted in lieu of layoff shall be placed on the appropriate register as provided in Rule IX, Section 3.

#### SECTION 3 RESIGNATIONS

In order to resign in good standing, an employee will give the Appointing Power at least fourteen (14) calendar days written notice. However, the Appointing Power, because of extenuating circumstances, may agree to a shorter period of notice. The Commission may make such investigation as it deems to be warranted for the purpose of verifying reasons for resignation.

Regular employees of the District that voluntarily resign in good standing may request in writing within one year of their voluntary resignation to the Chief Examiner that they wish to be placed on the entrance register. Placement on the entrance register will be subject to the provisions in Rule IX.



## RULE XIII

### DISCIPLINARY ACTIONS

#### SECTION 1 CAUSES FOR DISCIPLINARY ACTIONS

The tenure of persons subject to Civil Service shall continue during good behavior and such persons may be dismissed, demoted, suspended without pay or deprived of special privileges only for the following causes:

- A. Incompetency, inefficiency or inattention to or dereliction of duty.
- B. Dishonesty, intemperance, addiction to drugs or controlled substances, immoral conduct, insubordination or discourteous treatment of the public or of fellow employees.
- C. Any other willful failure of good conduct tending to injure the public service.
- D. Any willful violation of the rules or regulations adopted under ORS 242.702 to 242.824.
- E. Conviction of a felony or a misdemeanor involving moral turpitude.
- F. The willful giving of false information or withholding information, with intent to deceive, when making application for entrance.
- G. Violation of District policies regarding conduct or operations.

A written statement of the accusation in general terms shall be served upon the accused, and a duplicate shall be filed with the commission.

No person shall be dismissed, demoted, suspended without pay or deprived of special privileges for political, racial or religious reasons.

Nothing herein prohibits the Appointing Authority from using lesser forms of punishment including oral and written reprimands and suspension with pay to which this section does not apply.

## RULE XIV

# APPEALS, HEARINGS AND INVESTIGATIONS

### SECTION 1 APPEALS

Any permanent employee who has been dismissed, demoted, suspended without pay, or deprived of special privileges may, within 10 days, file with the Commission a signed written demand for an investigation setting forth reasons why the disciplinary action is thought to be improper. If the demand alleges, or if it otherwise appears to the Commission, that the action in question was not made in good faith for cause, the Commission shall conduct an investigation and hold a public hearing, such hearing to be within 30 days from the time appeal is filed. An employee may be represented by counsel or other representative of his/her own choosing. The investigation shall be confined to the determination of whether the action in question was made in good faith for cause. The Commission shall furnish the Appointing Power with a copy of the notice of appeal in advance of the hearing.

### SECTION 2 INVESTIGATIONS AND HEARINGS

The Commission may conduct civil suit or action that may be necessary for the proper enforcement of ORS 242.702 through ORS 242.824 or these rules. The Commission shall be represented in such proceedings by the chief legal officer of the District.

- A. Subpoenas and Records: The Commission has power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by law.
- B. Witness Fees. Every person served with a subpoena requiring attendance before the Commission shall be entitled to the same fees and mileage as are allowed by law to witnesses in civil suits and actions, except that no person shall be entitled to any fees or mileage who is employed in the public service of a political subdivision in which he/she is called as a witness. The fees and mileage allowed by this section need not be prepaid, but the Governing Body of the political subdivision shall provide for payment thereof when certified by the Commission.
- C. Conduct of Hearings: A hearing before the Commission is intended solely for the purpose of receiving evidence either to refute or to substantiate specific charges that the Commission has been requested to examine. It shall not be made an occasion for uttering irresponsible accusations, attacks upon the character or conduct of an employer or employee, or other derogatory matters having no bearing on the charges under investigation. The Commission, in conducting such hearings, is not bound by the rules of evidence.

### SECTION 3 COMMISSION FINDINGS

After an investigation and public hearing, the Commission may affirm or modify the action taken by the Appointing Power, or if it finds that the action in question was not made in good faith for cause, the Commission shall order the immediate reinstatement of the

employee in the position from which the employee was dismissed or otherwise affected. Reinstatement shall be retroactive and entitle the affected employee to pay or compensation or special privileges from the time of dismissal. The findings of the Commission shall be certified in writing to the Appointing Power and immediately enforced by it.

**SECTION 4            APPEAL TO CIRCUIT COURT**

Any decision of the Commission affecting any regular employee or employees may be appealed to the Circuit Court of Marion County in accordance with ORS 242.804.

RULE XV

**RECORDS AND REPORTS**

**SECTION 1 ROSTER**

The Commission shall establish and maintain a roster of all employees in the classified service showing for each employee the class title, assignment, salary rate, date of employment, and such other employment data as is deemed pertinent.

**SECTION 2 REPORTS TO THE COMMISSION**

Every appointment, transfer, promotion, demotion, dismissal, change of salary rate, leave of absence without pay, or other temporary or permanent change in the status of classified employees shall be reported to the Commission in writing.

**SECTION 3 DESTRUCTION OF RECORDS**

Original examination papers shall be retained for at least four years and thereafter may be destroyed if microfilmed copies are retained. Original or microfilmed copies of all other papers, documents and communications shall be retained for at least four years and thereafter may be destroyed.

**SECTION 4 PUBLIC RECORDS**

Except for examination material, service ratings, personal history, and other confidential papers as may be specified in these rules or by action of the Commission, records of the Commission shall be public records. Such records shall be open to inspection by the public during regular office hours in accordance with such procedures as the Commission may provide.

## RULE XVI

### PROHIBITIONS AND PENALTIES

#### SECTION 1 PROHIBITED CONDUCT GENERALLY

No person shall:

- A. Alone or in cooperation with one or more persons, defeat, deceive or obstruct any person in respect to the right of that person of examination or registration according to the regulations prescribed by the Commission under ORS 242.702 through 242.824.
- B. Falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to ORS 242.702 through 242.824, or aid in so doing, or make any false representation concerning the same or concerning the person examined.
- C. Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified or to be examined, registered or certified.
- D. Impersonate any other person to permit or aid in any manner any other person to impersonate the individual in connection with any examination or registration or application or request to be examined or registered.

#### SECTION 2 POLITICAL CONTRIBUTIONS AND ACTIVITIES

No person holding any position subject to Civil Service is under any obligation to contribute to any political or religious fund or to render any political service to any person or party. No person shall be removed, reduced in grade or salary or otherwise prejudiced for refusing to do so. No person shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person subject to Civil Service or promise or threaten to do so for giving, withholding or neglecting to make any contribution of money or services or any other valuable thing for any political, racial or religious purpose.

The Commission shall prohibit persons subject to Civil Service from furthering the cause of any candidate for nomination or election to the governing body of the political subdivision by which they are employed.

### **SECTION 3            PENALTIES**

Violation of any of the provisions of the Custodians' Civil Service Law is a misdemeanor. Willful violation of any of the provisions of ORS 242.720, 242.738, 242.768, 242.772, 242.792, 242.822 and 242.824 is a misdemeanor.

RULE XVII

**PAYROLL CERTIFICATION**

**SECTION 1 CERTIFICATION OF PAYROLL ACCURACY**

Annually, the Commission shall certify in writing to the payroll officer of the Stayton Fire District:

- A. The name of each person appointed or employed in the Civil Service, stating in each case the title or character of the position held by such person, the salary or compensation assigned, and the date of the beginning of the person's service.
- B. Every change occurring in any position held by any person in the Civil Service.

The Commission shall notify any officer or employee of the political subdivision authorizing, drawing, signing, countersigning, issuing or honoring any warrant or order for the payment of salary or compensation to an employee subject to civil service of the names of any persons employed in violation of ORS 242.702 through 242.824 or the regulations established under ORS 242.702 through 242.824.

No officer or employee of the political subdivision shall authorize, draw, sign, countersign, issue an honorary warrant or order for the payment of, or pay any salary or compensation to any person in a position subject to civil service who is not certified by the commission as provided in ORS 242.736. Any person entitled to be certified may maintain a proceeding by mandamus to compel the issuance of such certificate.

## ORS 242.702 to 242.824

### CIVIL SERVICE FOR FIREFIGHTERS

(Generally)

**242.702 Definitions for ORS 242.702 to 242.824.** As used in ORS 242.702 to 242.824, unless the context requires otherwise:

(1) “**Appointing power**” includes every person or group of persons who, acting singly or as a board, council or commission, are vested with authority to select, appoint or employ any person to hold any position subject to civil service under ORS 242.702 to 242.824.

(2) “**Appointment**” includes all means of selecting or employing any person to hold any position subject to civil service under ORS 242.702 to 242.824.

(3) “**Civil service**” means the civil service system established under ORS 242.702 to 242.824.

(4) “**Commission**” means a civil service commission created under ORS 242.702 to 242.824.

(5) “**Commissioner**” means a member of the civil service commission created under ORS 242.702 to 242.824.

(6) “**Employees**” mean persons whose principal duties consist of preventing or combating fire or preventing the loss of life or property from fire.

(7) “**Fire department**” means any organization maintained by any political subdivision for the purpose of preventing or combating fire.

(8) “**Governing body**” means the council or city commissioners of a city, the county court or board of county commissioners of a county, the board of directors of a rural fire protection district, the board of commissioners of a domestic water supply corporation and the county court or board of county commissioners acting under ORS 476.310 to 476.340 for the purposes of preventing and controlling fire on zone 2 rural lands.

(9) “**Political subdivision**” means any city, county, municipal corporation, rural fire protection district, domestic water supply corporation or organization authorized under ORS 476.310 to 476.340 to combat fire on zone 2 rural lands which employs four or more full-time firefighters, not including the chief of the fire department.

(10) “**Position**” includes any office, place or employment. [1959 c.252 §1]

**242.704 Political subdivisions and positions to which ORS 242.702 to 242.824 apply.** (1) ORS 242.702 to 242.824 do not apply to any political subdivision which under its charter, ordinances or regulations has a civil service system covering the employees of its fire department which substantially accomplishes the general purposes of ORS 242.702 to 242.824. However, such political subdivision shall retain such exemption only so long as the civil service system upon which the exemption is based remains in effect.

(2) The civil service shall include all employees of the fire department of a political subdivision which employs four or more firefighters on a full-time basis, not including the chief. The governing body of the political subdivision shall decide whether the chief may be a member of the civil service. [1959 c.252 §§2.19; 1981 c.494 §1]



(Civil Service Commission)

**242.706 Civil service commission; members; term of office; compensation.** (1)

There hereby is created in each political subdivision subject to ORS 242.702 to 242.824 a civil service commission composed of three members appointed or confirmed by the governing body of the political subdivision according to its charter, ordinances or regulations. If the political subdivision has an elected fire commission, the members of the civil service commission shall be appointed by the fire commission subject to confirmation by the governing body of the political subdivision.

(2) The term of office of a member of the civil service commission is four years, and each shall serve without compensation. [1959 c.252 §3]

**242.708 Qualifications of commissioners.** No member of the commission shall be a member of the governing body or an employee of the political subdivision subject to ORS 242.702 to 242.824, except that any commissioner may serve as a member of any other civil service commission. The persons appointed shall be known to believe in the principles of civil service. [1959 c.252 §5]

**242.710 Removal of commissioners.** The governing body or fire commission which appoints commissioners may remove any commissioner for incompetency, dereliction of duty or other good cause, after giving due notice in writing of the charges against the commissioner and an opportunity to be heard publicly on such charges before the body which appointed the commissioner. A copy of the charges and a transcript of the record of the hearing shall be filed with the governing body of the political subdivision. [1959 c.252 §6]

**242.712 Chairperson of commission; meetings; quorum.** (1) Immediately after the appointment of all of its members the commission shall elect a chairperson. The commission shall hold such meetings as may be required for the proper discharge of its duties with a meeting at least once every 90 days and such additional meetings as are requested by any commission member. Any person subject to civil service may request a special meeting of the commission, which request shall be granted when good cause is shown therefore.

(2) Two members of the commission shall constitute a quorum, and the votes of any two commissioners concurring shall be sufficient for decision in all matters and transactions under ORS 242.702 to 242.824. [1959 c.252 §§7, 8]

**242.714 Preparation of budget; appropriations.** (1) The commission shall prepare and submit a budget to the governing body of the political subdivision prior to each fiscal year for which an appropriation is needed to carry out the provisions of ORS 242.702 to 242.824.

(2) The governing body of each political subdivision shall appropriate sufficient funds to carry out the provisions of ORS 242.702 to 242.824. [1959 c.252 §43]

**242.716 Chief Examiner and secretary of commission.** (1) In accordance with the requirements of subsection (2) of this section, the commission shall appoint a **Chief Examiner** who may act as the commission's secretary. The **Chief Examiner**, or any

other person appointed as secretary, shall keep records of the commission's proceedings, preserve all reports made to it, keep a record of all examinations and investigations held or made under the direction of the commission, and perform such other duties as it may prescribe.

(2) Except as provided in subsection (3) of this section, the **Chief Examiner** shall be subject to the civil service system established under ORS 242.702 to 242.824 and shall be appointed as a result of a competitive examination open to all properly qualified citizens of the political subdivision.

(3) Any existing civil service secretary or examiner of any political subdivision within this state may be designated as examiner and retained by the commission, if the person holds the position by reason of a competitive civil service examination.

(4) The commission may enter into contracts with any civil service commission or board in this state for the purpose of having such board or commission conduct the examinations required or authorized by ORS 242.702 to 242.824. [1959 c.252 §9]

**242.718 Offices and clerical help for commission.** The governing body of every political subdivision subject to ORS 242.702 to 242.824 shall:

(1) Supply the commission with all office supplies, equipment and space necessary to carry on the business of the commission.

(2) Provide the commission with such clerical assistance as the commission may consider necessary. [1959 c.252 §10]

**242.720 Officers of political subdivision to assist commission.** All officers of the political subdivision shall:

(1) Aid in all proper ways in carrying out the provisions of ORS 242.702 to 242.824 and such rules and regulations as may, from time to time, be prescribed by the commission.

(2) Afford the commission, its members and employees, all reasonable facilities and assistance in inspecting books, papers, documents and accounts relating to positions subject to civil service.

(3) Produce such books, papers, documents and accounts and testify, whenever required to do so by the commission or any commissioner. [1959 c.252 §11]

**242.722 Preservation of records and examinations; public records.** (1) The commission shall keep on file all examination papers and their markings, records in commission hearings and all other papers, documents and communications received by it. Except for examination papers all such reports and files of the commission shall be public records and accessible at reasonable and convenient times. Examination papers shall be accessible only to the commissioners and members of the governing body; provided that a person who takes an examination under the provisions of ORS 242.702 to 242.824 shall have access to the examination papers of the person.

(2) The commission shall retain and may destroy the public records described in subsection (1) of this section as follows:

(a) Original examination papers and their markings and original records in commission hearings shall be retained for at least four years and thereafter may be destroyed if microfilmed copies are retained.

(b) Original or microfilmed copies of all other papers, documents and

communications shall be retained for at least four years and thereafter may be destroyed. [1959 c.252 §13]

**242.724 Rules of commission; examinations.** (1) The commission shall make suitable regulations not inconsistent with ORS 242.702 to 242.824 to carry out the provisions thereof. The regulations shall provide in detail the manner in which examinations shall be held, and appointments, promotions, demotions, transfers, reinstatements, suspensions and discharges shall be made. The rules and regulations together with all amendments thereto shall be posted in the fire department and shall be available for inspection in the secretary's office for public inspection. The rules and regulations shall not limit the personal citizenship rights of any members of the fire department.

(2) The **Chief Examiner** or the agency designated by the commission shall conduct such examinations as necessary. The commission shall assess such weights on examinations as they deem necessary. [1959 c.252 §14; 1997 c.359 §2]

(Investigations; Hearings; Actions)

**242.726 Investigation by commission of abuses; report of investigation.** (1) When any resident of the political subdivision or any person subject to civil service alleges in a verified petition that an abuse or abuses of the provisions of ORS 242.702 to 242.824 exist, the commission shall:

(a) Investigate the enforcement and effect of the provisions of and the regulations prescribed under ORS 242.702 to 242.824.

(b) Inspect all positions affected by ORS 242.702 to 242.824, cited by the petition.

(c) Ascertain whether ORS 242.702 to 242.824 and the regulations are being obeyed.

(d) Make a public report upon all matters investigated under ORS 242.702 to 242.824.

(2) The commission may, upon its own initiative, make any investigation which it deems advisable. [1959 c.252 §15; 1989 c.171 §33]

**242.728 Administering oaths; compelling attendance of witnesses and production of documents; depositions of witnesses.** (1) In the course of an investigation, the commission may administer oaths, subpoena witnesses and compel the production of books, papers, documents and accounts pertinent to the investigation. Attendance of witnesses, either with or without books, papers, documents or accounts, may not be compelled unless such witnesses are personally served with subpoena.

(2) The commission may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil suits and actions.

(3) If a person refuses to attend to give testimony or produce books, papers, documents or accounts, pursuant to a subpoena issued under this section, the circuit court of the county in which the political subdivision is located, upon petition of the commission, shall compel obedience to the subpoena and shall punish refusal to obey or to testify in the same manner as a refusal to obey a subpoena or to testify pursuant to a subpoena issued from the circuit court. [1959 c.252 §16]

**242.730 Witness fees.** Every person served with a subpoena requiring attendance before the commission shall be entitled to the fees and mileage as are allowed by law to witnesses in ORS 44.415 (2), except that no person shall be entitled to any fees or mileage who is employed in the public service of the political subdivision in which the person is called as a witness. The fees and mileage allowed by this section need not be prepaid, but the governing body of the political subdivision shall provide for payment thereof when certified by the commission. [1959 c.252 §17; 1989 c.980 §10d]

**242.732 Procedure in hearings before commission; rules of evidence.** (1) All hearings and investigations before the commission are governed by ORS 242.702 to 242.824 and by the rules and practice of procedure adopted by the commission; and in the conduct thereof, the commission is not bound by the rules of evidence.

(2) No informality in any hearing or investigation, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the commission. [1959 c.252 §18]

**242.734 Action to secure compliance with ORS 242.702 to 242.824.** The commission may conduct any civil suit or action which may be necessary for the proper enforcement of ORS 242.702 to 242.824 and the rules of the commission. The commission shall be represented in such proceedings by the chief legal officer of the political subdivision. If the chief legal officer is absent or unable to act, or a vacancy exists in the office, or no such office exists in the political subdivision, the commission may in any case be represented by special counsel appointed and retained by it. [1959 c.252 §12]

(Payroll)

**242.736 Commission certification of payroll required.** (1) The commission shall certify in writing to the payroll officer of the political subdivision:

(a) The name of each person appointed or employed in the civil service, stating in each case the title or character of the position held by such person, the salary or compensation assigned, and the date of the beginning of the person's service.

(b) Every change occurring in any position held by any person in the civil service.

(2) The certifications shall be made by the civil service commission annually.

(3) The commission shall notify any officer or employee of the political subdivision authorizing, drawing, signing, countersigning, issuing or honoring any warrant or order for the payment of salary or compensation to an employee subject to civil service of the names of any persons employed in violation of ORS 242.702 to 242.824 or the regulations established under ORS 242.702 to 242.824. [1959 c.252 §22]

**242.738 Payments to persons not certified by commission prohibited.** (1) No officer or employee of the political subdivision shall authorize, draw, sign, countersign, issue or honor any warrant or order for the payment of, or pay, any salary or compensation to any person in a position subject to civil service who is not certified by the commission as provided in ORS 242.736. Any person entitled to be certified may maintain a proceeding by mandamus to compel the issuance of such certificate.

(2) Any sums willfully paid contrary to the provisions of this section may be

recovered in an action in the name of the political subdivision from any officer authorizing, drawing, signing, countersigning, issuing or honoring any warrant or order for the payment thereof, and from the sureties on the official bond of the officer. The expenses of the action may be paid from the amounts recovered therein. [1959 c.252 §23]

(Civil Service Positions)

**242.752 Basis of appointment and promotion; creation of positions; fixing compensation.** (1) Except as otherwise expressly provided in ORS 242.702 to 242.824, the appointment and promotion of all persons to all civil service positions shall be made solely upon merit, efficiency, and fitness, which shall be ascertained by open competitive examination and investigation among qualified personnel.

(2) All civil service positions in the political subdivision shall be created by the governing body of the political subdivision, and the governing body shall fix the compensation of all employees employed in civil service positions. In the creation of each civil service position, and in determining the amount of compensation thereof, the governing body shall give due consideration to the recommendation of the civil service commission and the **appointing power**. [1959 c.252 §25]

**242.754 Classification of positions.** (1) The commission shall classify, with reference to the examinations provided for in ORS 242.702 to 242.824, all positions in the civil service. The classifications shall be based upon the functions of the positions and the compensation attached thereto.

(2) The classifications and grades may, from time to time, be amended, added to, consolidated or abolished by the commission, but no person holding any position under any established classification or grade shall be affected by such change so as to deprive the person of any of the benefits attached to the classification or grade applicable to the position then held by the person. No person shall be promoted or advanced to a higher classification by such change without being eligible for appointment to such higher classification by reason of the position of the person on the promotion register. [1959 c.252 §26]

**242.756 Effect on incumbent when position first becomes subject to civil service.**

(1) All persons employed in positions subject to civil service at the time such position first becomes subject to civil service, and who have been employed by the political subdivision continuously for a period of at least six months preceding the date when that position became subject to civil service, and who are citizens of the United States hereby are inducted permanently into civil service in the positions then held as if such persons had been permanently appointed under civil service after examination and investigation.

(2) All persons who hold positions subject to civil service in any political subdivision at the time such position first becomes subject to civil service but who are not eligible for induction into civil service as provided for in subsection (1) of this section shall continue to hold their positions until replaced by persons appointed under civil service.

(3) Within 10 days after a position first becomes subject to civil service, the **appointing power** for that position shall file with the treasurer, auditor, comptroller or similar officer of the political subdivision a statement giving the names, residence, occupation, length of continuous service and compensation of each person holding that

position, declaring whether each person is or is not eligible for induction into civil service as provided in subsections (1) and (2) of this section, and certifying as to the citizenship status of each such person.

(4) Within 60 days after any position first becomes subject to civil service, the commission shall classify such position. Within 90 days after a position first becomes subject to civil service, the commission shall hold an examination to fill any positions not filled by persons inducted into civil service as provided in subsection (1) of this section. [1959 c.252 §24]

(Examinations)

**242.758 Examinations.** (1) The commission shall hold public competitive examinations to ascertain the fitness of applicants for all positions in the civil service. Entrance examinations shall be given at least every 30 months. Promotional examinations shall be given as provided in ORS 242.762 (2). Notice of time, place and general scope of every examination shall be given by the commission once a week for two consecutive weeks by publication in a newspaper of general circulation in the political subdivision. Notices shall be posted in at least three public places in the political subdivision, one of which shall be the office of the commission, for not less than two weeks before the examination.

(2) Except where other arrangements are made under ORS 242.716 (4), the **Chief Examiner** shall supervise all examinations and shall designate the persons who shall act as examiners at any examination. No person subject to the civil service system established under ORS 242.702 to 242.824, other than the **Chief Examiner**, shall be designated as an examiner in the political subdivision by which the person is employed. When a person in the public service of the political subdivision is designated as examiner, the person shall act as such without extra compensation.

(3) All examinations shall be practical in character and shall relate only to those matters which fairly test the relative fitness of persons examined to discharge the duties of the positions for which they are applicants. Tests of physical fitness and manual skill shall be included in the entrance examination.

(4) No question in any examination shall relate to political or religious preference, affiliation, opinion or services. [1959 c.252 §27]

**242.760 Qualifications for admission to examination.** Examinations shall be given only to persons who possess such qualifications as to residence, age, health, education, citizenship, habits and moral character as are prescribed by the rules of the commission. [1959 c.252 §28]

**242.762 Promotional examinations.** (1) Promotional examinations shall be given to those who desire to offer themselves for such examination and are in the qualified classifications or grades as determined by the commission. The regulations adopted for examination of applicants for promotion shall, as nearly as may be, follow the regulations governing the examination of applicants for original appointment.

(2) When there are four or more positions in a promotive grade or classification, promotional examinations for each such grade or classification in the civil service shall be given at least every 30 months and at such other times when there are no candidates

eligible for promotion on the eligible register.

(3) When there are less than four positions in a promotive grade or classification, promotional examinations for each such grade or classification in the civil service shall be given at such times as it is necessary to establish an eligible register to carry out the provisions of ORS 242.702 to 242.824 as it applies to such grade or classification. [1959 c.252 §29]

(Appointment of Candidates)

**242.764 Entrance and promotion register.** (1) The commission shall prepare and keep a register for each grade and classification in the civil service of all persons whose general average standing upon examination for such grade or classification is not less than the minimum fixed by the rules of the commission, and who are otherwise eligible. Such persons shall take rank upon the register, as candidates, in the order of their relative standing as determined by examination and investigation. Candidates of equal standing shall take rank upon the register according to the order in which their applications were filed. No entrance or promotion register shall be kept in effect for longer than 30 months from the effective date thereof.

(2) The current entrance register shall be headed by the names of persons who have been regular employees and who were laid off from their positions for reasons other than fault or delinquency on their part. The current promotion register shall be headed by the names of persons who have been regular promoted employees and who were demoted from their positions for reasons other than fault or delinquency on their part. The order of the names of such persons shall be such that the name of the person who was last laid off or demoted is first on the register.

(3) Only one entrance register and one promotion register shall exist at any time for each grade and classification in the civil service. No promotion register shall be canceled unless it has been exhausted or has been in existence for at least 30 months. The entrance register shall not be canceled unless it has been exhausted or has been in existence for at least 12 months. [1959 c.252 §30]

**242.766 Appointment or rejection of certified candidates by appointing power; probation; discharge; demotion.** (1) The **appointing power** shall appoint one of the certified candidates to the vacant position, on probation for a period of 12 months. If the **appointing power** considers the certified candidates unqualified for the vacant position it may reject the names of the certified candidates for appointment by submitting a written statement of the reasons for the rejection to the commission. The commission shall investigate and decide on the validity of the reasons submitted. Religious, racial and political reasons shall not be considered as valid reasons for rejection.

(2) If the rejection of the **appointing power** is approved by the commission, the commission shall immediately certify to the **appointing power** the name and address of the next eligible candidate standing highest upon the register for the classification and grade to which the position belongs, and return the name of the rejected candidate to the same position on the eligible register from which the candidate was certified. The **appointing power** and the commission shall proceed in this manner for all rejected candidates until a qualified candidate is found for the vacant position.

(3) If the rejection of the **appointing power** is not approved by the commission, the

commission shall immediately notify the **appointing power**, in writing, that the reasons for rejection of the certified candidate or candidates are not sufficient for rejection, and upon receipt of this notice from the commission, the **appointing power** shall immediately appoint the certified candidate in question to the position for which the candidate was originally certified.

(4) If the person on probation is a new appointee, the **appointing power** may discharge that person without regard to ORS 242.798 to 242.804 and in a like manner appoint another certified candidate and so continue until a qualified candidate has been found.

(5) If the person on probation has been promoted, the **appointing power** may demote such person only for cause specified in ORS 242.796, and in the manner provided in ORS 242.798 to 242.804. If the reasons for such demotion are deemed insufficient by the commission, the demoted candidate shall, notwithstanding such demotion, be restored to the promoted position upon such conditions or terms as may be imposed by the commission.

(6) If a person who has taken a promotional examination and been appointed to a position in a higher classification or grade on probation, fails to qualify for the position in the higher classification or grade within the probationary period, the person shall not lose seniority in the lower classification or grade from which such promotion was made, but shall return to employment and be reinstated in the position held in such lower classification or grade. [1959 c.252 §32]

**242.768 Permanent and temporary appointments.** (1) The **appointing power** shall make permanent appointments from the list of candidates certified. If any probationer is not discharged during the period of probation, the appointment is permanent.

(2) When there is no candidate upon the entrance register from which a position may be filled, the **appointing power** may, with the consent of the commission, fill such position by temporary appointment. A temporary appointment shall not continue for more than three months. No classified position shall be filled by a temporary appointment for more than three months in any calendar year.

(3) The commission shall establish rules and regulations under which temporary appointments may be made. Temporary appointments shall be valid only until there are available candidates on the register. No temporary appointment shall be made to fill any position for which a promotional examination is given and an eligible register maintained. [1959 c.252 §33]

**242.770 Vacancies.** Whenever there is a vacancy in any position in the civil service, the **appointing power** shall immediately notify the commission of the vacancy. The commission shall thereupon certify to the **appointing power**:

(1) If the vacancy be in an entrance position, the names and addresses of the three candidates standing highest upon the entrance register. When more than one vacancy is to be filled, the number of names submitted shall equal the number of vacancies plus two.

(2) If the vacancy be in a promotive position, the names and addresses of the two candidates standing highest upon the register for the classification or grade to which the position belongs. When more than one vacancy is to be filled the number of names submitted shall equal the number of vacancies plus one. [1959 c.252 §31]



**242.772 Report of appointing power to commission.** Each **appointing power** shall:

(1) Report to the commission forthwith upon each appointment the name of the appointee, the title or character of the position to which the appointment is made, the date of beginning of service and the salary or compensation therefore.

(2) Report to the commission, on the date of official action or knowledge of each case, every change in the position of any person covered by ORS 242.702 to 242.824.

(3) Furnish such other information to the commission as may be required in order to keep the roster mentioned in ORS 242.774. [1959 c.252 §20]

(Miscellaneous)

**242.774 Civil service roster.** The commission shall keep in its office an official roster of all persons holding civil service positions and shall enter therein all appointments, promotions, demotions, transfers, reinstatements, resignations, suspensions, leaves of absence, removals and discharges, setting forth in each instance the date of beginning, change or termination of service and the nature of the duties performed, together with sufficient information to show why and how such appointments or other changes were made. The roster shall be kept so as to disclose readily to anyone desiring to inspect it all such matters as to each position subject to civil service and each person employed therein. [1959 c.252 §21]

**242.792 Leave of absence.** Leave of absence for not more than 90 days without pay, and without consent of the commission, may be granted by the **appointing power** to any person subject to civil service. Such leave shall not in any way prejudice the rights or privileges of a person subject to civil service. Leave of absence for longer periods may be granted by the governing body of the political subdivision as governed by its rules and regulations. The **appointing power** or governing body shall give immediate notice of such leave to the commission. [1959 c.252 §34]

**242.794 Transfer or reinstatement.** (1) The **appointing power** may authorize the transfer or reinstatement of any person holding one position to a similar position in the same classification or grade.

(2) No transfer or reinstatement shall be made from a position in one classification or grade to a position in another classification or grade. [1959 c.252 §35]

(Discipline)

**242.796 Grounds for dismissal, demotion, suspension or deprivation of special privileges.** (1) The tenure of persons subject to civil service shall continue during good behavior and such persons may be dismissed, demoted, suspended without pay or deprived of special privileges only for the following causes:

(a) Incompetency, inefficiency or inattention to or dereliction of duty.

(b) Dishonesty, intemperance, addiction to drugs or controlled substances, immoral conduct, insubordination or discourteous treatment of the public or of fellow employees.

(c) Any other willful failure of good conduct tending to injure the public service.

(d) Any willful violation of the provisions of ORS 242.702 to 242.824 or the rules or regulations adopted under ORS 242.702 to 242.824.

(e) Conviction of a felony or a misdemeanor involving moral turpitude.

(f) The willful giving of false information or withholding information, with intent to deceive, when making application for entrance.

(2) No person shall be dismissed, demoted, suspended without pay or deprived of special privileges for political, racial or religious reasons. [1959 c.252 §36; 1979 c.744 §12; 1997 c.359 §3]

**242.798 Dismissal, demotion, suspension or deprivation of special privileges only for cause; written accusation.** No person subject to civil service who has been permanently appointed under ORS 242.702 to 242.824 shall be dismissed, demoted, suspended without pay or deprived of special privileges except for cause, and then only upon the signed written accusation of the **appointing power**. A written statement of the accusation in general terms shall be served upon the accused, and a duplicate shall be filed with the commission. [1959 c.252 §37]

**242.800 Investigation and hearing upon demand of accused; right to counsel.** Any permanent employee who has been dismissed, demoted, suspended without pay or deprived of special privileges may, within 10 days, file with the commission a signed written demand for an investigation. If the demand alleges, or if it otherwise appears to the commission, that the dismissal was not made in good faith for cause, the commission shall conduct an investigation and hold a public hearing, such hearing to be within 30 days from the time appeal is filed. Appellant may be represented by counsel or any representative of appellant's own choosing. The investigation shall be confined to the determination of the question of whether the dismissal was made in good faith for cause. [1959 c.252 §38]

**242.802 Findings of commission.** After an investigation and public hearing, the commission may affirm or modify the action taken by the **appointing power**, or if it finds that the dismissal was not made in good faith for cause, the commission shall order the immediate reinstatement of the employee in the position from which the employee was dismissed. Reinstatement shall be retroactive and entitle the dismissed employee to pay or compensation or special privileges from the time of dismissal. The findings of the commission shall be certified in writing to the **appointing power** and immediately enforced by it. [1959 c.252 §39; 1977 c.400 §4; 1993 c.778 §27]

**242.804 Appeal from finding of commission; issue on appeal limited.** (1) Any decision of the commission affecting any permanent employee or employees subject to ORS 242.702 to 242.824 may be appealed to the circuit court of the county in which the office of the **appointing power** or the commission is located, and the court shall hear the appeal.

(2) The appeal, if taken by either an employee or by the **appointing power**, shall be taken by serving upon the commission, within 30 days after the date of the entry of such judgment or order, a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order be filed by the commission with the court. The commission shall, within 10 days after the filing of such notice, make, certify and file such transcript with the court.

(3) The circuit court shall hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether the order of removal, discharge, demotion or suspension made by the commission was made in good faith for cause. No appeal to such court shall be heard except upon such grounds.

(4) If an appeal is taken the prevailing party shall be allowed costs and disbursements on appeal. [1959 c.252 §40; 1965 c.296 §1]

(Prohibited Conduct)

**242.822 Prohibited conduct generally.** No person shall:

(1) Alone or in cooperation with one or more persons defeat, deceive or obstruct any person in respect to the right of that person of examination or registration according to the regulations prescribed by the commission under ORS 242.702 to 242.824.

(2) Falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to ORS 242.702 to 242.824, or aid in so doing, or make any false representation concerning the same or concerning the person examined.

(3) Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified or to be examined, registered or certified.

(4) Impersonate any other person or permit or aid in any manner any other person to impersonate the individual in connection with any examination or registration or application or request to be examined or registered. [1959 c.252 §41]

(Contributions or Services for Political or Religious Purposes)

**242.824 Contribution to political or religious funds or performance of political service.** No person holding any position subject to civil service is under any obligation to contribute to any political or religious fund or to render any political service to any person or party. No person shall be removed, reduced in grade or salary or otherwise prejudiced for refusing to do so. No person shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person subject to civil service or promise or threaten to do so for giving, withholding or neglecting to make any contribution of money or services or any other valuable thing for any political, racial or religious purpose. [1959 c.252 §42; 1997 c.359 §1]

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## **POLICY 9.1: SAFETY AND LOSS PREVENTION POLICY**

### **A. PROMOTION OF SAFETY**

It is the policy of the District to promote safety in all phases of District operations. To that end, the District shall strive to provide safe equipment, necessary personal protection, and adequate training. It is the responsibility of every employee and officer to cooperate in promoting safety and integrating safety procedures into all operations.

### **B. ADMINISTRATION OF SAFETY PROGRAM**

The Fire Chief shall be responsible for the day-to-day administration of the District's safety and loss prevention program, including:

1. Implementation of necessary loss prevention and risk control policies and programs, including the following:
  - a. Participation by and accountability for all officers and employees in loss prevention activities.
  - b. Hazard assessments and control.
  - c. Accident investigations.
  - d. Personal protective and safety equipment programs.
  - e. Training programs.
  - f. Operations evaluations.
  - g. Claims management and early return to work efforts.
2. Legal compliance with all federal, state and local safety and health regulations.
3. Providing personnel with needed resources to insure compliance with the District's loss prevention and control policies.
4. Review of District loss data and accident investigation findings; evaluation of loss prevention activities, comparing them with current needs; assignment of responsibility for corrective action measures; and maintenance of necessary records of District activities.

5. Consulting with the District's insurance agents and carriers in developing loss control policies and procedures.
6. Creating and managing an early return-to-work program for injured employees.
7. Insuring personnel policies, manuals, job descriptions, and job placement practices are in place, and that all District volunteers, employees and officers are in compliance.

## **POLICY 9.2: SAFETY AND HEALTH PROGRAM**

### **A. Policy:**

It is the policy of Stayton Fire District that a safety and health program is adopted by the Board of Directors for all employees, workers, and visitors of the District. The goal of this program is to minimize the risk of employees, workers, and visitors to injuries, illnesses, and fatalities related to occupational exposures. Specific objectives shall be adopted separately for the prevention and elimination of accidents throughout the District and shall apply to all employees, both volunteer and career, workers, and visitors.

### **B. Responsibility:**

The Board of Directors is responsible for the adoption of this policy, including the research, planning, fiscal allocations, development, and on-going evaluation of the District's program.

The Fire Chief is responsible for ensuring compliance with this policy through supervision of all District employees, workers, and visitors including oversight of employee training, establishment of performance standards and review for conformity with current laws, rules, and standards related to providing a safe work environment and firefighter health and safety.

All officers and supervisors shall assist in training employees and share responsibility for taking reasonable steps to ensure a safe and healthful work place.

All employees shall be responsible to adequately learn safety procedures and carry out this policy at the operational level.

### **C. Procedure:**

1. The District expects all employees, workers, and visitors to take an active role in and focus on the following:

- Striving to achieve zero accidents and injuries
- Taking reasonable steps to improve safety and health rules
- Assisting loss control efforts aimed at identifying and mitigating hygiene and/or safety hazards
- Identifying reasonable and appropriate mechanical and physical safeguards
- Conducting reasonable safety and health inspections
- Train employees, workers, and visitors as needed in safe practices and procedures
- Providing employees with personal protective equipment appropriate to specific job task, and train employees in its appropriate care and use
- Using appropriate personal protective equipment

- Reporting hazards, unsafe workplace practices, and accidents
  - Assisting in the identification of the cause of on the job injuries, and in the identification of reasonable methods to prevent similar occurrences
  - Participating in and supporting safety committee activities
2. Failure to pay reasonable attention to any of the above could result in discipline up to and including termination.
  3. All employees and volunteers shall be trained to the level at which they are expected to perform. The District training program shall be developed to provide competence and performance evaluations to all firefighters on an annual basis.
  4. The Fire Chief shall prepare a written organizational statement which includes the basic organization of the District, designates lines of authority and accountability, and specifies employee responsibilities by position within the organization. This statement shall include the appointment and oversight of the Safety Committee.
  5. National Fire Protection Association Standard 1500, "Fire Department Occupational Safety and Health Program, Current Edition, shall be adopted by reference as a guide for the District safety program. This standard shall be for advisory use only and is not mandated by the policy without the review and approval of the Board of Directors.
  6. The District will make reasonable efforts to encourage all members to engage in regular exercise activities and provide regular training and education in health and fitness awareness.
  7. The District will provide exercise equipment and printed instruction on proper use of equipment provided.



## **POLICY 9.3: SAFETY COMMITTEE**

- A. Safety Committee Members shall elect the Safety Committee Chairperson from the following five members:
1. District Apparatus Maintenance Officer
  2. Staff Member (Administration)
  3. Company Officer (Lieutenant or Station Captain)
  4. District Certified Engineer
  5. District Rated Firefighter
- B. Responsibilities of the Safety Committee include, but are not limited to:
1. The Safety Committee shall serve in an advisory capacity to the Fire Chief.
  2. The Safety Committee shall hold regularly scheduled meetings and special meetings when necessary. Regular meetings shall be held at least once each month.
  3. Volunteer representatives shall be given Bonus Bucks for attending meetings. Career employees shall be paid for the time spent at the meeting.
  4. The Safety Committee shall conduct regular safety surveys of facilities, equipment and apparatus. At a minimum, surveys shall be conducted at quarterly intervals. All hazards will be noted and corrected through normal District channels. Imminent safety hazards shall be corrected immediately, or an out-of-service condition shall be declared until the situation can be remedied.
  5. Minutes of Safety Committee meetings will be recorded and posted in each station.
  6. The Safety Committee shall review all job related accidents, near misses and occupational diseases and fatalities suffered by Fire District personnel and submit corrective recommendations to the Fire Chief.
  7. The Safety Committee shall review the procedures employed during any unusually hazardous operation.
  8. When the Safety Committee determines that incorrect or questionable procedures were employed, it shall submit corrective recommendations to the Fire Chief.
  9. Safety Committee members may be assigned tasks by the Fire Chief pertaining to safety issues not outlined above, i.e. budget items, personal safety equipment, evaluations, ORS, and OAR issues.

C. Training and Instruction:

Safety Committee members shall receive training and instruction to include but not be limited to:

1. Safety Committee purpose and operation.
2. Principles regarding effective accident and incident investigation.
3. Oregon Administrative Rules 437-40-030 through 437-40-055 and their application.
4. Workplace inspections to identify workplace hazards.

D. Safety Committee Effective Date:

The effective date per OAR Chapter 437 is March 1, 1991.

## **POLICY 9.4: USE OF TURNOUTS & SCBA (Self Contained Breathing Apparatus)**

- A. Every firefighter shall have full turnout or protective clothing completely donned before boarding any fire apparatus responding to any emergency call or drill; unless otherwise directed by the Officer.

*Exception: The driver (engineer) may have turnout coat and helmet available on the apparatus while responding to an emergency call or in route to drill. The protective clothing will be worn at the scene of an emergency.*

- B. All firefighters will have full turnouts on at all times while operating on the fire ground.

*Exception: EMS personnel may remove any or all parts of the turnouts to perform EMS duties.*

- C. Any member of the District who responds to the station for an EMS call not wearing shoes, shirt, and long pants will be required to don turnout pants and boots before boarding apparatus.

- D. Turnouts will be taken with each firefighter on any apparatus taken out of the fire station for driver training. It is recommended that turnout pants and boots be worn while driving to get the feel of driving with protective clothing on.

- E. SCBA USE:

1. All firefighters using SCBAs shall do so under the guidance of Stayton Fire District's Respiratory Protection Program Policy 12.19 including SOP and Instructional Guidelines there within.

- F. SCBA Air Compressor and Cascade Refilling System:

1. Only qualified person will be permitted to operate the breathing air compressor or the cascade refilling system.

## **POLICY 9.5: FIRE APPARATUS STAFFING**

- A. All District fire apparatus staffing will be in compliance with Stayton Fire District Staffing Levels for Response SOP 603.
- B. Normally the driver is the engineer and the officer responding will ride in the officer's seat of the cab, especially on the first engine out of the fire station. The officer may elect to drive if no qualified driver/engineer has arrived by the time the crew has boarded the apparatus and is ready to respond.
- C. Normally, the person riding in the officer's seat will operate the audio warning devices and radio communications. However, if the officer elects to be the driver/engineer they may also elect to operate the warning devices and the radio if it is more convenient or necessary.

## **POLICY 9.6: HAZARDOUS MATERIALS INCIDENTS**

### **A. Introduction:**

Hazardous material incidents may be transported or fixed facilities and involve any substance that poses a reasonable risk to life, the environment, or property when not properly contained

The occurrence of a hazardous materials emergency will require prompt and effective response and coordination of operations between local government, state government, private industry and other support organizations knowledgeable in such operations. Hazardous material incidents may be of such magnitude and severity that County, State and Federal assistance may be required in order to mitigate an incident.

In responding to a hazardous materials incident, the Fire District and other emergency response agencies have a responsibility to the general public not to place themselves in a position as to be unable to respond to other incidents. Therefore, the Fire District and other emergency response agencies will participate in a hazardous material response operation only to the extent to which they determine is within their training and capabilities. This involvement may be limited to determining the public's exposure and implementing initial actions required to protect life, the environment and property. Emergency responders will not implement nor assume responsibility for other response actions; such as control, stabilization, containment, recovery and cleanup, if it is determined that those actions are beyond the Fire District's ability due to lack of knowledge, training, expertise or the availability of personnel or equipment.

### **B. Responsibility:**

The Fire Chief shall insure that all personnel authorized to respond to emergency incidents are familiar with the contents of this policy and have received training as detailed in this policy.

The Training Officer shall insure that all personnel are provided with the training required by this policy.

All personnel who act as incident commanders will insure that the philosophy and strategies detailed in this policy are followed during hazardous materials incidents.

Prior to responding to any emergency incident, regardless of type, District personnel shall receive hazardous materials training, demonstrate competency, and be certified by DPSST to the Hazardous Materials Operations Level Responder. District personnel will limit their activities during hazardous materials incidents to Operations Level Responder. District officers and incident commanders will ensure that District personnel limit their activities at hazardous materials incidents as authorized by this policy.

The District will also provide annual refresher training of sufficient content and duration to maintain District personnel's competency, or shall have District personnel demonstrate competency in those areas at least annually.

C. Operations Level Responder:

All District personnel who respond to emergency incidents, regardless of the type, will be certified at Operations Level Responder. They will be trained to initiate the emergency response sequence by notifying the proper authorities of a hazardous materials release to comply with this policy and may respond to and operate at incidents involving the release or potential release of a hazardous substance for the purpose of protecting nearby persons, property or the environment from the effect of the release. They will operate in a defensive fashion. Their function is to contain the release from a safe distance, safely stop the released materials from spreading and to safely protect exposures.

D. Activities Beyond Operations Level Responder:

If it is determined that activities beyond those authorized at the Operations Level Responder are required, the incident commander will request assistance through dispatch for agencies and personnel authorized to function at that level and insure that District personnel are used only to stabilize the scene, acting only within their abilities, until qualified personnel become available. District personnel are not to become directly involved in activities beyond the Operations Level Responder unless specific training and certification has been obtained which allows them to do so.

District personnel who have received training in the hazards, physical properties and control techniques for fuels, oils and hydrocarbons with similar properties may work to control/contain spills/leaks at emergency incidents.

E. Training and Certification Requirements:

All District response personnel, through training or experience, shall be certified by DPSST to NFPA 472 Standards in the following areas:

1. Operations Level Responder

F. Incident Commander Training:

District Officers who assume control of a hazardous material incident shall receive training to the Hazardous Materials Incident Commander standard as well as training in NIMS.

G. Responding:

All Hazardous material releases, natural gas leaks/breaks, or possible hazardous material incidents at a commercial facility, hospital, school, or care facility will be dispatched as outlined in Santiam Canyon Communications Center Policy 40.1, Personnel responding on district apparatus will be in structural gear and utilize SCBA when needed.

H. On Scene:

All personnel shall utilize the DOT Guidebook for initial actions and the following Safety Precautions outlined in the Guidebook

- 1. Approach Cautiously from Upwind**
- 2. Secure The Scene**
- 3. Identify The Hazards**
- 4. Assess The Situation**
- 5. Obtain Help**
- 6. Decide On Site Entry**
- 7. Respond**

#### Decontamination

Before returning to the station, all personnel shall be decontaminated. The level of decontamination will be determined by the exposure to personnel and material involved. Professional advice on what to do may be necessary in some cases.

#### Medical Consultation:

District personnel who have been exposed, by direct contact or inhaled, to a hazardous substance(s) during the course of an emergency incident either immediately or subsequently shall be provided with the required medical consultation, followed by medical surveillance as directed by the supervising physician. Medical records of the consultation and the surveillance shall become a permanent part of the member's personnel file.

## **POLICY 9.7: CONFINED SPACE ENTRY POLICY**

### **A. Purpose**

It is the policy of Stayton Fire District that its employees and volunteers will not enter a confined space and that all entries will be made only by certified personnel contracted by the district.

“Confined Space” shall mean a space which by design has limited openings for entry and exit; unfavorable natural ventilation which could contain or produce dangerous air contaminants, and which is not intended for continuous worker occupancy. Confined spaces include but are not limited to, storage tanks, wetwells, pump station dry side, utility vaults, manholes, new construction manholes, etc.



## **POLICY 9.8: COMMUNICABLE DISEASES**

This policy addresses employment and public relations issues arising from communicable diseases in the District workplace. It does not address communicable disease reporting or treatment.

For some diseases, workplace transmission is a real danger. For other diseases, such as Acquired Immune Deficiency Syndrome (AIDS), according to the best medical evidence available, casual workplace contacts among employees and citizens who are infected will not transmit the disease. The nature of each disease will determine the District's response to infected employees and clients.

### **A. Policy for a Safe Working Environment:**

The District recognizes that its employees and clients are entitled to a safe working environment. Employees and job applicants who are communicable disease carriers or who are afflicted with disease systems are entitled to compassion and legal protection against unlawful discrimination. Work restrictions will be imposed only when a disease may be spread in the District workplace. Based on these principles, the District has formulated this policy to:

1. Prevent unlawful discrimination in hiring
2. Educate employees about the ways communicable disease is and is not transmitted
3. Designate a contact person to whom concerned employees can go for information
4. Ensure the confidentiality of information about any employee who contracts a communicable disease
5. Address employment concerns of infected employees
6. Require medical assessment of employees with potentially dangerous diseases
7. Assure that the public is accommodated and that risks to health are minimized
8. Provide for technical assistance on infection control issues
9. Protect the health of employees through a program on universal precautions for blood-borne diseases
10. Avoid disruption or interference with the District's business that could result from unfounded health concerns
11. Specify the oversight of communicable disease issues regarding employees

### **B. Non-discrimination in Hiring:**

The District will not unlawfully discriminate against persons with disease on the basis of their handicap. The following practices are to be followed:

1. Job applicants are not to be asked whether they have any disease or are infected with a disease agent. They are to be asked if they have any physical or mental impairment (including communicable diseases) which would prevent them from doing the job for which they are applying. If they are impaired, they may be asked what sort of accommodation would enable them to perform the job. If accommodation is required, its reasonableness will be assessed by management as provided for elsewhere in these policies.

2. Job applicants who disclose that they have a disease or are infected will be asked if they can do the job applied for and whether any sort of accommodation is required. The reasonableness of any requested accommodation will be determined by management as provided for elsewhere in these policies.

3. Any applicant known by the District to be handicapped but capable of performing the duties of the job sought, with or without reasonable accommodation, will be given the same consideration as other equally qualified applicants.

#### C. Confidentiality

The District recognizes that an employee's health concerns are confidential. Employees who have been infected with or who have been exposed to a communicable disease may notify the designated contact person confidentially. Medical information will be kept confidential, consistent with legal, medical and management practices.

Employees infected with a communicable disease or afflicted with disease symptoms are expected to refrain from publicizing their condition in a manner likely to subject the District to adverse publicity or internal controversy. Failure to do so is grounds for discipline, wholly independent of the employee's underlying handicap.

Employees who obtain knowledge that an employee is a communicable disease carrier or are afflicted with disease symptoms will maintain the confidentiality of such information. Failure to do so may result in discipline.

#### D. Employment of Infected Employees

Employees who are infected with a communicable disease or afflicted with disease symptoms may contact the designated contact person for confidential information about the potential impact of their condition on their employment. Upon request, the designated contact person will assist concerned employees in obtaining information about community resources and psychological counseling available to persons with a communicable disease and their families.

Any employee with a known infectious disease for which there is a known risk of transmission to co-workers or clients will be:

- a. Given reasonable accommodation within the work organization which does not pose a risk of disease transmission, or
- b. If no reasonable accommodation is possible, then he/she will be placed on medical leave, subject to the District's policies on such leave.

Any employee with a known infectious disease for which there is no known risk of transmission in the workplace may continue in his or her position as long as the employee is able to perform his or her job duties safely. If complications of the employee's illness could be caused by ordinary workplace conditions, reasonable accommodations will be made in job assignment to avoid those complications.

The reasonableness of any proposed accommodation will be determined by management and will take into consideration the health and safety of all employees and clients. Supervisors are to consult the designated contact person to obtain District authorization before making any employment decision on the basis of an employee's actual or perceived infection. Discrimination against such employees on the basis of their

handicap will not be tolerated, but no employee will be permitted to work in a position which would create a risk of disease transmission to co-workers or the public.

E. Medical Assessment.

If the department head has reasonable basis to believe that an employee has an infectious disease which may pose a hazard to co-workers or clients, the department head will refer to the blood borne pathogen policy.

F. Business Disruptions Due to Unfounded Health Concerns.

If an employee refuses to work with an infected co-worker or serve an infected citizen, and if a supervisor should decide that the co-worker or citizen poses or posed no threat to the health of others, continued refusal or a failure to work with or other disruption of District services may result in discipline, including discharge. Harassment of known or suspected carriers is expressly prohibited and may result in discipline, including discharge.

## **POLICY 9.9: BLOODBORNE PATHOGENS STANDARD**

The Stayton Fire District is committed to the prevention of incidents or accidents that can result in employee injury or illness. As with all District activities, employees will have the most important role in the blood borne pathogens compliance program. The ultimate execution of much of the Exposure Control Plan will rest in their hands. This exposure control plan is an element of our safety and health program and complies with OR-OSHA's Blood borne Pathogens, 1910.1030, requirements. The Stayton Fire District Assistant Chief has the authority and responsibility to ensure that all elements of the exposure plan are in place. Employees can read the plan at the Blood borne Pathogen Compliance Center at each station.

### **Purpose**

The purpose of this exposure plan is to eliminate or minimize employee occupational exposure to blood or other potentially infectious materials, identify employees occupationally exposed to blood or other potentially infectious material in the performance of their regular job duties, provide information and training to employees exposed to blood and other potentially infectious materials, and comply with OR-OSHA Blood borne Pathogen standard, 1910.1030.

### **Exposure Determination**

Stayton Fire District employees subject to the OR-OSHA blood borne pathogens standard are those who are reasonably expected to have skin, eye, mucous membrane, or parenteral contact with blood and/or any body fluids that are contaminated with blood resulting from the performance of their assigned job duties. Although Good Samaritan acts are not covered under the blood borne pathogen standard, it is our policy to provide evaluation and treatment of employees who sustain exposure to blood or other potentially infectious materials who assist an injured employee but are not required to.

**Table 1** lists job classifications and associated tasks identifying employees at risk of exposure to blood or other potentially infectious materials (OPIM). Exposure determinations are made without regard to use of PPE.

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**Table 1: Employees at risk**

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Fire Chief, Assistant Chief, Firefighter, First Responders, EMT's	MVA Structure Fires Medical Incidents Rescue Incidents Walk-in Medicals Walk-in Aid Requests Training Incidents
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**Table 2** lists job classifications and task in which some employees may have occupational exposure to blood or OPIM.

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**Table 2: Employees who may be at risk**

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Administrative Staff	Walk-in Medicals Walk-in Aid Requests
Support Team	Incident Rehab Training Rehab

# **POLICY 9.9 APPENDIX**

## Blood borne Pathogens Exposure Control Plan

### **Compliance methods**

#### **Universal precautions**

Universal precautions are an approach to infection control in which all human blood and other potentially infectious materials are handled as if they were known to be infectious for blood borne pathogens. Consider difficult or impossible-to-identify body fluids as potentially infectious.

#### **Engineering and work practices controls**

Stayton Fire District shall use the following controls to eliminate or minimize occupational exposure:

##### *Sharp containers*

All contaminated needles and other sharp objects shall be placed in a sharps container as soon as feasible after use. Containers shall be replaced routinely and not allowed to overfill. When moving containers of contaminated sharps from the area of use to a disposal area, all containers shall be closed to prevent spillage or protrusion of contents. No attempt shall be made to remove anything from a sharps container nor should fingers be inserted into sharps containers. Sharps container shall not be emptied or reused.

##### *Safe medical devices*

The Stayton Fire District will purchase and use safe medical devices whenever possible. Evaluation of all medical devices shall be completed annually by the EMS committee to determine appropriateness of the device and to investigate new and safer options.

##### *Work practices*

Employees shall clean up blood spills or body fluids as soon as possible. Use disposable absorptive materials, such as paper towels or gauze pads, to soak up the fluids. Clean the area with chemical germicides or a 1:10 solution of liquid bleach. If 1:10 bleach is used it must be mixed the same day. Place absorptive towels pads and other material used to mop up spills in red plastic bags or designated, labeled containers and treat as biohazardous waste. Employees shall wash their hands upon removal of gloves and other protective gear. If soap and water are not immediately available, use disposable antiseptic towelettes or germicidal gels or foams to clean hands after removing gloves. Employees must wash their hands with soap and water as soon as possible. Employees may not eat, drink, smoke, apply cosmetics or lip balm, or handle contact lenses where occupational exposure can occur. Do not store food or beverages in refrigerators and freezers and other sites used to store blood or other biohazardous materials. Place biohazard labels on refrigerators or freezers used to store biohazardous material.

#### **Personal protective equipment (PPE)**

PPE is provided at no cost to employees. Employees receive training in its use, maintenance, and disposal annually.

### ***Storage area***

Each apparatus is stocked with protective clothing for incident response. Station 80 EMS supply room is the storage area for blood borne protective gear. Supplies, stored at each station, include disposable gloves, mouth and eye protection, impervious disposable coveralls and booties, resuscitation devices, large heavy-duty plastic bags and ties, sharps containers, biohazard signs or labels, absorbent pressure dressings for wounds, housekeeping items such as disposable absorptive material for cleaning up spilled blood, rubber gloves, and bleach solutions or germicides.

### ***PPE use and disposal***

Any employees engaging in activities that may involve direct contact with blood, or other potentially infectious materials, contaminated objects, mucous membranes, or open wounds must wear medical grade or better disposable gloves. Employees shall use appropriate PPE to clean up spill areas, perform medical equipment cleaning, when performing routine housekeeping tasks in areas that are likely to be contaminated with blood or other potentially infectious materials, and when handling any potential contaminated waste or laundry. Face shields or goggles with disposable surgical masks shall be worn whenever splashes spray or spatters of blood droplets or other potentially infectious materials may be generated and eye, nose, or mouth contamination can be reasonably anticipated. Wear impermeable disposable coveralls and booties whenever contamination of skin not protected by gloves or face shields is anticipated, such as a traumatic injury with significant blood loss. Use resuscitation devices, which minimize contact with mucous membranes, to perform cardiopulmonary resuscitation. All personnel shall remove used personal protective equipment at the exposure location or as soon as feasible to avoid contamination of other work areas. Place in a biohazard container or in a plastic bag with a biohazard label. Potentially contaminated PPE shall not be taken from the Fire District stations.

### **Housekeeping**

All employees who have received blood borne pathogen training and who have been included under the exposure plan can clean up spills and work surfaces. Clean and decontaminate all equipment and working surfaces after completion of procedures in which blood or body fluids contaminated with blood are handled and immediately, or as soon as feasible, when surfaces are overtly contaminate with blood. Use chemical germicides or solutions of 5.25 percent sodium hypochlorite (liquid bleach) diluted 1:10 with water for cleaning. If 1:10 bleach is used it must be mixed fresh daily. Commercially available chemical germicides approved for use as hospital disinfectants and effective against HIV/TB may also be used. Broken glassware or glass items must not be picked up directly with the hands. Use a mechanical means, such as a brush and dust pan, tongs, or forceps. Handle as a biohazardous waste. Decontaminate equipment used to pick up glassware with a 1:10 bleach solution or an approved germicide.

### **Contaminated laundry**

Handle any non-disposable linen or any other clothing using disposable gloves. Minimize the time spent handling laundry; bag laundry as close as possible to the location where it was used. Place laundry in a bag that prevents soak-through and/or leakage of fluids to the exterior. Place a biohazard label on the bag. Employees shall not wash contaminated items at home. Some contaminated items may require being sent to an approved facility for decontamination. For those items that can be decontaminated in house, the Stayton station commercial washing machine may be used. The procedure for this is as follows: wash contaminated linen in warm water with liquid bleach or a commercially available equivalent. After wash is complete, run an empty cycle with warm water and bleach through commercial washer, followed by a hot water only rinse. Cleaned linens then may be dried in the residential type dryer upstairs at the Stayton station. Make an effort to ensure potentially contaminated patient linens and clothing articles remain with the patient and any reusable linens used on that incident may be sent with ambulance personnel for laundering. These items shall be appropriately bagged prior to transport and

ambulance personnel notified of items. Employee clothing and apparel that have been contaminated shall be washed at the Stayton station prior to returning the item to personal residences. If you are unsure about decontamination of an item, please contact your immediate supervisor for assistance.

### **Regulated waste**

Stayton Fire District employees shall place regulated waste in containers that are provided at each of the Stayton Fire District stations. The containers shall be constructed to contain all contents and prevent leakage, appropriately labeled or color-coded, and closed prior to removal to prevent spillage or protrusion of contents during handling. Employees shall not overfill the waste containers and shall never compact materials in any waste receptacle in the Stayton Fire District due to the potential of sharps waste. Marion County Environmental Waste provides regulated waste containers and pick up for the Fire District disposal of biohazard waste. The small containers at the Marion, Mehama and Elkhorn stations shall be transported by Fire District facilities staff to the large container at the Stayton station. The administrative office shall be notified when the container is full and to be picked up by Marion County Environmental Waste personnel.

### **Labels and signs**

It is the Stayton Fire District's policy to affix warning labels to laundry bags, containers of regulated waste, refrigerator units and containers used to store or transport, or other potentially infectious materials. Red bags or red containers can be used instead of labels.

### **Hepatitis B vaccine**

The hepatitis B vaccine series and titer shall be offered, at no cost, to whoever may have potential exposure to blood borne pathogens within 10 working days of their initial assignment. Any employee that may have potential exposure to blood borne pathogens but declines the vaccination series shall sign a declination of vaccination statement. If an employee initially declines, they may receive the vaccination at a later date. Previously vaccinated new hires must provide a vaccination record that includes the vaccination dates. Employees must sign a declination statement if the vaccination record is not available and revaccination is declined or not appropriate. The Information Manager at the Administrative Office shall schedule vaccinations at the Santiam Hospital or with the Stayton Fire District Physician and will keep employee's vaccination records in their medical files.

### **Exposure incident and post-exposure evaluation and follow-up**

An exposure incident to blood borne pathogens is defined as an eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of employees' duties. It is Stayton Fire District's policy to include Good Samaritan acts performed by an employee at the work site.

Whenever an exposure occurs, wash the contaminated skin immediately with soap and water. Immediately flush contaminated eyes or mucous membranes with copious amounts of water. The employee who was exposed shall notify his/her immediate supervisor of the exposure, the employee's supervisor shall be responsible for notification of the Stayton Fire District duty officer. If the exposure is determined to be significant, the employee shall be transported to the Emergency Room at Santiam Memorial Hospital for medical evaluation as soon as possible after the exposure incident in order that post-exposure prophylaxis, if recommended, can be initiated promptly.

The medical evaluation shall include the route(s) of exposure and the exposure incident circumstances, identification and documentation of the source individual, where feasible, exposed employee blood collection and testing of blood for HBV and HIV serological status, post-exposure prophylaxis, where

indicated, counseling, and evaluation of reported illnesses. Source test results and identity will be disclosed to the exposed employee according to applicable laws and regulations concerning disclosure and confidentiality.

Santiam Memorial Hospital emergency room provides post exposure medical evaluations and post-exposure follow-up after an exposure incident. A copy of the Blood borne Pathogen standard, 1910.1030, and an exposure packet shall be provided to the hospital when the employee who was exposed is sent to the emergency room for medical evaluation.

### **Information provided to the health care professional**

The Assistant Chief is responsible for ensuring that the health care professional who evaluated the employee after an exposure incident receives the following information:

- A description of the employee's duties as they relate to the exposure incident
- Documentation of the route(s) and circumstances of the exposure
- The results of the source individual's blood testing, if available
- All medical records relevant to the appropriate treatment of the employee, including vaccination status

### **Health care professional's written opinion**

The Assistant Chief will provide the employee with a copy of the health care professional's written opinion within 15 days after completion of the evaluation. The health care professional's written opinion shall be limited to the hepatitis B vaccination, to whether the vaccination is indicated and whether the employee has received the vaccination, and the post-exposure evaluation to the following information:

- Whether the employee was informed of the evaluation results
- Whether the employee was told about any medical conditions resulting from exposure to blood or other potentially infectious materials that may require further evaluation or treatment.
- All other medical information and communication between the health care professional and the employee is confidential and shall be treated as such.

### **Training and training records**

All Stayton Fire District employees who have occupational exposure to blood borne pathogens or other potentially infectious materials shall receive training on the epidemiology, symptoms, and mode of transmission of blood borne pathogen diseases. In addition, the training program shall include the following topics:

- An explanation of activities and tasks that may involve exposure to blood and other potentially infectious materials.
- How appropriate engineering controls, work practices, and PPE will prevent or reduce exposure
- The basis for the selection of PPE - the types, use, location, removal, handling, decontamination, and disposal procedures
- Hepatitis B vaccine information including that the vaccine is provided at no cost, the benefits of being vaccinated and methods of administration
- Employer responsibilities for post-exposure evaluation and medical follow-up - how and who to contact should an exposure incident occur
- An explanation of the signs and hazard labels
- How to review or obtain a copy of the exposure control plan and the standard



The Training Officer shall ensure all employees receive BBP training prior to their assignment to tasks in which occupational exposure may occur. Training shall be repeated every 12 months or sooner if there are new tasks or changes to the existing procedures/tasks. Training records shall be maintained at the Stayton Fire District Administrative Office for three years and include the date(s) and content of the training program, name and qualifications of the trainer(s), and names and job titles of the attendees.

**Record keeping**

Stayton Fire District shall maintain medical records for employees with occupational exposure to blood borne pathogens. This record shall contain the employee’s name, social security number, and hepatitis B vaccination status, including dates of hepatitis B vaccination and any medical records relative to the employee’s ability to receive the vaccination. Medical records are kept for the duration of employment plus 30 years in accordance with OR-OSHA’s Access to Employee Exposure and Medical Records standard, 1910-1020. Medical records are confidential. Employees must sign a written consent for disclosure.

In the event of an exposure incident, the following records shall be kept in the employee’s medical file:

- The results of any examination, medical testing, and follow-up procedures.
- A copy of the treating physician’s written opinion to the employer.
- A copy of all information provided by the employer to the health care professional regarding the exposure incident.

Stayton Fire District employees shall record every needle stick on the OSHA 300 Log and all other exposure incidents that result in medical treatment, (e.g. amma globulin, hepatitis B immune globulin, hepatitis B vaccine, etc.) on the OSHA 300 Log. These records shall be retained for five years.

**Plan evaluation and review**

The Stayton Fire District shall review the exposure control plan and update it as least annually. The Assistant Chief is responsible to ensure the annual review is completed. Sign and date this exposure plan when the review has taken place.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **POLICY 9.10: LOCK OUT/TAG OUT PROCEDURE**

### General

The following simple lock out/tag out procedure will be provided to assist the District in meeting OAR 437, Division 2, General Occupation and Health Rules, Subdivision J.

### Lock Out Procedure

This lock out procedure has been developed for the Stayton Fire District.

### Purpose

This procedure establishes the minimum requirements for the lock out of energy isolating devices whenever maintenance or servicing is done on machines or equipment. It shall be used to ensure that the machine or equipment is stopped, isolated from all potentially hazardous energy sources and locked out before employees perform any servicing or maintenance where the unexpected energization or start-up of the machine or equipment or release of stored energy could cause injury. When the energy isolating devices are unable to be locked out, tag out will be used.

### Compliance With This Program

All employees will be required to comply with the restrictions and limitations imposed upon them during use of lock out. The authorized employees will be required to perform the lock out in accordance with this procedure. All employees, upon observing a machine or piece of equipment which is locked out to perform servicing or maintenance, shall not attempt to start, energize, or use that machine or equipment.

*Note: Failure to comply with this procedure could result in disciplinary action by the Chief of the District.*

### Sequence of Lock Out

1. Notify all affected employees that servicing or maintenance is required on a machine or equipment and that the machine or equipment must be shut down and locked out to perform the servicing or maintenance. District personnel will be notified of servicing or maintenance of machines or equipment by the use of signs warning against the starting or use of the machine or equipment.
2. The authorized employee shall refer to the company procedure to identify the type and magnitude of the energy that the machine or equipment utilizes, shall understand the hazards of the energy, and shall know the methods to control the energy.
3. If the machine or equipment is operating, shut it down by the normal stopping procedure (depress stop button, open switch, close valve, etc.).
4. Deactivate the energy isolating device(s) so that the machine or equipment is isolated from the energy source(s).
5. Lock out the energy isolating device(s) with assigned individual lock(s).

6. Stored or residual energy (such as that in capacitors, springs, elevated machine members, rotating flywheels, hydraulic systems, and air, gas, steam or water pressure, etc.) must be dissipated or restrained by methods such as grounding, repositioning, blocking, bleeding down, etc. by trained personnel.
7. Ensure that the equipment is disconnected from the energy source(s) by first checking that no personnel are exposed, then verify the isolation of the equipment by operating the push button or other normal operating control(s) or by testing to make certain the equipment will not operate.
8. The machine or equipment is now locked and/or tagged out.

### Restoring Equipment to Service

When the servicing or maintenance is completed and the machine or equipment is ready to return to normal operating condition, the following steps shall be taken:

1. Check the machine or equipment and the immediate area around the machine or equipment to ensure that nonessential items have been removed and that the machine or equipment components are operationally intact.
  2. Check the work area to ensure that all employees have been safely positioned or removed from the area.
  3. Verify that the controls are in neutral.
  4. Only the person who locked out or tagged out the machine or equipment may remove or give permission to remove lockout/tagout device(s).
  5. Remove the lock out device(s) and reenergize the machine or equipment.
- Note: The removal of some forms of blocking may require reenergization of the machine before safe removal.*
6. Notify affected employees that the servicing or maintenance is completed and the machine or equipment is ready for use.

### Alternative Methods

1. When lock out or tag out is not used for tasks that are routine, repetitive, and integral to the production process, or prohibits the completion of those tasks, then an alternative method must be used to control hazardous energy.
2. Selection of an alternative control method must be based on a risk assessment of the machine, equipment, or process. The risk assessment must consider existing safeguards provided with the machine, equipment or process that may need to be removed or modified to perform a given task.

3. For example, when control circuits are used as part of the safeguarding system, the system must be designed to ensure protection as effective as a mechanical disconnect switch or master shut-off valve. A control-reliable dual channel hardwired circuit of industrially rated components that satisfies the design features as specified in ANSI B11.19, with a safety relay or safety PLC to ensure integrity and performance of the safeguarding system, must be used.
4. Under all circumstances, the individual must have exclusive personal control over the means to maintain the state of the control circuit in a protective mode.

### Exposure Survey

1. Stayton Fire District will conduct a hazardous-energy survey to determine affected machines and equipment, types and magnitude of energy, and necessary service and maintenance tasks. Each task will be evaluated to determine if it must be accomplished with lock out or tag out procedures.

### Training

1. Employees who may be exposed to hazardous energy will receive training before assignment to ensure that they understand Stayton Fire District's energy-control policy and have skills to apply, use, and remove energy controls. The training will include the requirements of 1910.147 and the following:
  - a. Affected employees will be trained in the purpose and use of energy-control procedures. *An affected employee uses equipment that is being serviced under lockout or tagout procedures or works in an area where equipment is being serviced.*
  - b. Authorized employees will be trained to recognize hazardous energy sources, the type and magnitude of energy in the workplace, the methods and means necessary for isolating and controlling energy, and the means to verify that the energy is controlled. *An authorized employee locks out or tags out equipment to do service work. An affected employee becomes an authorized employee when that employee's duties include service or maintenance work on equipment.*
  - c. Employees whose jobs are in areas where energy-control procedures are used will be trained about the procedures and the prohibition against starting machines that are locked or tagged out.
  - d. Employees will be retrained annually to ensure they understand energy-control policy and procedures.
  - e. Authorized and affected employees will be retrained whenever their job assignments change, energy-control procedures change, equipment or work processes present new hazards, or when they don't follow energy-control procedures.
2. Current training records will be maintained for each authorized and affected employee including the employee's name and the training date.

## Inspections of written energy-control procedures

1. Stayton Fire District will perform and document annual inspections of energy-control procedures to ensure that employees understand and use them effectively. This will be documented and will include the following:
  - a. The equipment on which the procedure is used
  - b. The date of the inspection
  - c. The employees included in the inspection
  - d. The inspector
  
2. If an inspector finds that employees are not following an energy-control procedure or that the procedure is not protecting them, employees must be retrained and the procedure's deficiencies corrected.
  
3. The inspector must understand the procedure and must be someone other than those following the procedure at the time of the inspection. Each procedure's accuracy, completeness, and effectiveness must be verified.
  
4. If the inspection covers a procedure for equipment with an energy-isolating device that can be locked out, the inspector must review the procedure with the employees who use it to service the equipment. The inspector can review the procedure with the employees individually or in a group.
  
5. If the inspection covers a procedure for equipment with an energy-isolating device that can only be tagged out, the inspector must review the procedure with the authorized employees who service the equipment and with affected employees who may work in the area when the equipment is serviced. The inspector can review the procedure with the employees individually or in a group.

*Updated Lockout/Tagout 1/9/12, 10/13/2014*

## **POLICY 9.11: CRITICAL INCIDENT STRESS MANAGEMENT (CISM)**

### Overview

The District considers its employees and volunteers to be the most valuable asset and is concerned about their safety, health and well-being. Because the response to incidents where deaths caused by self-infliction, accidents or natural causes, incidents with traumatic injuries, and to other incidents where potential short term or long term harmful effects on District personnel may occur, the District has established a Critical Incident Stress Management (CISM) policy. The policy was also established because there are normal reactions to abnormal situations which could affect the performance and general physical and mental health of the employee or volunteer, which may jeopardize the safety of co-workers and the general public.

The District's goal is to maintain a work environment that is free from stress caused by response to incidents where potential harmful effects on District personnel could occur.

### Scope

This policy shall apply to all District personnel.

### Responsibility

It shall be the responsibility of the District Support Division Chief to maintain an ongoing Critical Incident Stress Management program.

### Procedure

CISM activation shall be as outlined in SOP

*Updated Critical Incident Stress Management 9/8/2014*

## **POLICY 9.12: HEARING CONSERVATION PROGRAM**

### Purpose

To establish and maintain a program to monitor and protect District employees against the effects of work-related noise exposure.

Employee noise exposure shall be computed in accordance with OSHA regulations with regard to attenuation (hearing protection).

Protection against the effects of noise exposure will be mandatory whenever the sound levels exceed 86 decibels. Whenever possible, administrative or engineering controls will be utilized to reduce employee exposure and/or noise levels.

### Training

Employees will be trained annually in the effects of noise on hearing, proper hearing protection and its purpose.

A summary of the OSHA standard will be available for any employee.

### Monitoring Noise Levels

The District Safety Officer will be responsible for monitoring noise levels on new pieces of equipment or when requested by any employee. The results of noise level monitoring tests will be available upon request.

### Hearing Protectors

All employees exposed to noise levels greater than 85 decibels must wear approved hearing protection during time of exposure. The District will provide hearing protection equipment.

**POLICY 9.13: EMERGENCY INCIDENT ACCOUNTABILITY (PASSPORT SYSTEM)**

It shall be the policy of the Stayton Fire District to account for the location and safety of all personnel within an EMERGENCY INCIDENT PERIMETER at an emergency incident. Participation by members of the Stayton Fire District in an emergency incident mitigation without entering the PASSPORT SYSTEM is unauthorized.

The Stayton Fire District shall train, practice, and implement on all scenes the MARION COUNTY FIRE DEFENSE BOARD'S adopted PERSONNEL ACCOUNTABILITY (PASSPORT SYSTEM) and PERSONNEL ACCOUNTABILITY REPORT (PAR).

The Stayton Fire District shall maintain compliance with all NFPA standards for ACCOUNTABILITY SYSTEMS.

Reference Marion/Polk County Fire Rescue Protocols

Adopted 12/9/2019



## **POLICY 9.14: PERSONAL PROTECTIVE EQUIPMENT POLICY**

### Introduction

It is the policy of the Stayton Rural Fire Protection District that all personnel are properly protected in the performance of their duties by appropriate PPE.

### Intent

It is the intent of this policy to define the different classifications of PPE commonly used by the District in a consolidated manner. Other operational guidelines/policies may refer to classifications within this policy to indicate the type of PPE that an operation may require. It is not the intent of this policy to be inclusive of all situations and all types of PPE that may be required or offered by the District. Any exceptions or additions to PPE requirements will be noted in each individual operating guideline/policy.

### PPE Classifications

#### Structural Firefighting PPE:

Protective apparel and equipment for structural firefighters shall be designed to provide thermal protection for the firefighters against external heat sources with flame resistant clothing and equipment. Firefighters performing suppression on a structure fire shall wear a protective clothing ensemble provided by the Stayton Rural Fire Protection District.

The combined protective clothing ensemble shall include:

- (a) Helmet with eye protection and neck shield
- (b) Turnout coat
- (c) Turnout pants
- (d) Structural firefighting gloves
- (e) Nomex hood
- (f) Structural firefighting boots with steel toe and insole

NFPA Standard Protective Clothing and Equipment for Structural Firefighting 1971 shall serve as a guideline for determining performance characteristics of this clothing.

#### Wildland Firefighting PPE:

Protective apparel and equipment for wildland firefighters shall be designed to provide thermal protection for the firefighters against external heat sources with flame resistant clothing and equipment without creating high heat stress loads due to the prolonged operational periods they experience. Members performing suppression on a wildland fire shall wear a protective clothing ensemble provided by the Stayton Rural Fire Protection District.

The combined protective clothing ensemble includes:

- (a) Hardhat/helmet
- (b) Upper and lower torso clothing (may include belt)
- (c) Leather gloves
- (d) Goggles/safety glasses
- (e) Wildland firefighting boots (leather lace up extending a minimum of 8 inches above the top of the sole, which shall be slip resistant)
- (f) Fire shelter

NFPA Standard Protective Clothing and Equipment for Wildland Fire Fighting 1977 shall serve as a guideline for determining performance characteristics of this clothing.

Personnel operating Type 1 or Type 2 engines assigned to structural protection will carry structural protective clothing on their assigned apparatus.

Wildland personal protective clothing shall not be used for interior structural firefighting.

#### Medical Response PPE:

Protective apparel and equipment for medical response shall be designed to provide protection against the transmission of infectious diseases through direct contact with bodily fluids or exposure to airborne particulates. Members having direct contact with patients and/or the patient's environment shall wear protective equipment provided by the Stayton Rural Fire Protection District. The minimum equipment to be worn includes:

- (a) Nitrile gloves
- (b) Eye protection (face shield or glasses)

NFPA Standard Protective Clothing and Equipment for Emergency Medical Operations 1999 shall serve as a guideline for determining performance characteristics of this equipment.

Additional equipment is also provided by the District and can be used depending on the severity of the situation including face shields, gowns, M95 masks, and full Tyvek suits.

#### PPE USE

##### Responding:

Before responding from quarters, all members shall dress in required protective clothing.

##### On Emergency Scene:

Full protective clothing will be worn by all personnel while operating within the incident hot zone.

NOTE: It is recognized that the use of protective clothing may compromise patient care when operating in close quarters. However, COMMAND shall exercise care when allowing the removal of protective clothing during operations where personnel are operating in or near traffic or where a fire or life safety hazard exists.

The Nomex hood shall be worn during firefighting operations and any other situations where injury to the head or face is likely to occur.

The face shield and/or goggles will be used whenever the need for eye protection is apparent such as during overhaul, operating hand or power tools, or when fighting fires where the SCBA face piece is not worn.

Appropriate gloves shall be worn when engaged in firefighting, overhaul, training with hose and ladders, using hand or power tools, handling hose, or any other situation where injury to the hand is likely to occur.

Structural gloves will be worn while working with fire hose on scene.

##### Training:

District provided protective clothing shall be worn during all training sessions, drills or exercises and the cleaning/restoration of equipment which expose firefighters to conditions or situations that present a potential for injury.

##### Hose Cleaning/Restoring:

Gloves provided by the District and stored by the hose cleaning supplies shall be worn during cleaning and restoring of fire hose.

#### Extrication Gloves:

Extrication gloves (instead of structural gloves) may be worn during extrication operations as well as other power tool operations such as saws, if not required by suppression operations.

#### EXCEPTIONS

COMMAND: Command Personnel need not don full personal protective equipment unless entering the incident hot zone. It is recommended that Command Personnel wear appropriate protective clothing for their situation/environment.

Command may use discretion to regulate the use of protective clothing in those situations where exceptions to the above policy appear necessary.

#### USE OF NON-DISTRICT PURCHASED/PROVIDED PPE

It will be the policy of the District to not allow use of non-District issued PPE for emergency response and training without explicit permission from the Fire Chief or his/her designee. This request and approval shall be in writing.

Any equipment allowed by the Fire Chief or his/her designee shall meet current NIOSH, ANSI, OSHA and/ or NFPA standards.

Any markings, stickers, writing or insignia on a helmet other than as issued by the District, must be approved by the Fire Chief or his/her designee. This request and approval shall be in writing.

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## POLICY 10.1: HAZARD COMMUNICATION PROGRAM

### A. APPLICATION

In order to comply with Oregon's Occupational Health and Safety Code, OAR Chapter 437, Division 155, Hazard Communication, the District has established the following Hazard Communication Program. Each department and organizational unit of the District is included in the program.

### B. CONTAINER LABELING

The District's purchasing agent and department heads shall be responsible to verify that all containers received for use by the District:

1. Are clearly labeled as to the contents;
2. Display the appropriate hazard warning; and
3. List the name and address of the manufacturer.

It is the policy of the District that no container of any substance or product will be released for use by District personnel until the above data is verified. The District Maintenance Officer will insure that all secondary containers are labeled with either an extra copy of the original manufacturer's label or with a generic label containing the information required under this paragraph.

### C. SAFETY DATA SHEETS (SDS)

Copies of SDSs for all hazardous chemicals to which employees of the District may be exposed shall be kept at each station, as well as in the District's office. SDSs will be available to all employees of the District in the District's office for review during regular business hours. If an SDS is not available, or new chemicals in use do not have an SDS, it shall be the responsibility of any employee noting the absence of an SDS to report it to the Maintenance Officer.

### D. EMPLOYEE INFORMATION AND TRAINING

Prior to commencing work for the District, each new employee shall attend a health and safety orientation, and shall receive information and training regarding the following:

1. An overview of the requirements contained in the State's Hazard Communication Rules, OAR Chapter 437, Division 155.

2. Chemicals present in the employee's workplace operation.
3. Location and availability of the District's written Hazard Communications program, including the required list of hazardous chemicals, and Safety Data Sheets required by OAR 437 Division 155.
4. Methods and observation techniques used to determine the presence or release of hazardous chemicals in the work area.
5. Physical and health effects of the hazardous chemicals encountered in the employee's workplace.
6. Steps which can be taken by the employee to prevent exposure, including actions taken by the District to reduce or prevent exposure to hazardous chemicals through work practices and personal protective equipment.
7. Emergency procedures to be followed if the employee is exposed to hazardous chemicals in the workplace.
8. Familiarization with labels and SDSs to obtain appropriate hazard information.

After the employee or volunteer has attended the health and safety orientation, the employee or volunteer shall be given a copy of the District's Hazard Communication Program, and shall sign a form verifying both the attendance at the health and safety orientation and the receipt of the written materials.

Prior to the introduction of any new hazardous chemical into any District workplace, each employee of the District shall be furnished the information outlined above with respect to the new hazardous chemical. The District's Maintenance Officer is responsible for assuring that SDSs are available for each new chemical introduced.

It shall be the responsibility of department heads to provide contractors working on the District's premises with information regarding the hazardous chemicals to which they may be exposed while on the job site, and precautions the contractor or its employees can take to lessen the possibility of exposure to such hazardous chemicals through the use of appropriate protective measures.

E. HAZARDOUS CHEMICALS LIST

Further information on each chemical used by District employees can be obtained by reviewing the Safety Data Sheets located at the Main Station in the apparatus bay.

F. HAZARDOUS NON-ROUTINE TASKS

Periodically, employees of the District may be called upon to perform hazardous non-routine tasks. Before starting work on any such task, each affected employee will be given information by his or her supervisor regarding the hazardous chemicals to which they may be exposed during the activity. This information will include at a minimum the following:

1. Specific chemical hazards;
2. Protective or safety measures employees shall take to avoid hazardous exposure; and
3. Measures the District has taken to reduce the hazards, including ventilation, the provision of specialized equipment, or the presence of another employee to monitor the hazardous task, etc.

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## **POLICY 11.1: VEHICLE USE**

### **A. INTRODUCTION**

This policy applies to and regulates the use of all vehicles owned by the District, and prescribes their proper use under routine and emergency conditions.

### **B. POLICY**

The use of vehicles creates special responsibilities for officers and employees of the District. Vehicle operators have the responsibility to operate vehicles in a safe, lawful and skillful manner, and shall at all times give the highest priority to the safety and welfare of the general public. Operators shall obey all laws and District policies pertaining to the operation of District vehicles.

Legal constraints for the operation of emergency vehicles are provided in the Oregon Revised Statutes. All officers and employees of the District will operate emergency vehicles in accordance with these statutes. Operators shall familiarize themselves with ORS 820.300 - 820.320, with particular attention to ORS 820.300 (2) (a) and (b).

### **C. QUALIFICATION AND LICENSURE**

No person shall operate a District vehicle unless he or she is qualified and authorized to do so. In order to operate a district vehicle they shall possess a valid Oregon Drivers License, meet the district Motor Vehicle Record (MVR) policy as outlined, and complete the requirements as described in the Support Driver, Driver, and Engineer Handbook. The following criterion is the district's MVR standard.

#### **Motor Vehicle Record (MVR)**

The district, using the Automated Reporting System through DMV, shall monitor a MVR of all personnel.

No conviction for a Class B or higher traffic misdemeanor is allowed within the last three (3) years. Personnel are allowed up to two (2) convictions for Class C traffic misdemeanors or two (2) "moving" traffic infractions or one (1) chargeable\* accident or the combination of one (1) citation and one (1) chargeable accident within the last three (3) years. Instances in excess of this allowable standard will be cause for a review by Staff Officers and possible suspension of driving privileges. Reinstatement will be considered upon receipt of proof of a driving record that qualifies under current standards for the immediate past three (3) years.

\*Note: The term "chargeable" refers to any accident appearing on an MVR that does not fall into one of these categories: a) driver is the victim of a hit-and-run; b) driver is rear ended while stopped; c) driver is reimbursed on behalf of or by the other party; d) the other driver is cited as the cause of the accident.

D. RESPONSIBILITIES

Officers and employees [and volunteers] assigned to operate District vehicles are responsible for the operation, care and condition of such motor vehicles, and for their cleanliness.

E. SEAT BELTS

Every operator and passenger riding in a District vehicle shall utilize his or her respective seat belt[s] while the vehicle is in motion. It is the responsibility of the operator to assure that all passengers utilize seat belts.

F. IDENTIFICATION

All vehicles owned by the District shall bear external identification indicating that they are property of the District.

G. OPERATION BY CIVILIANS

Only District officers, employees [and volunteers] shall be permitted to drive District-owned vehicles, except for purposes of mechanical maintenance or technical evaluation.

H. TRANSPORTATION OF CIVILIANS PROHIBITED; EXCEPTIONS

Operators of District vehicles shall not transport civilians or other unauthorized persons in or on District vehicles except as authorized by a superior officer, in an official capacity, or as provided in this Policy.

1. Staff Vehicles. Civilians are not permitted to travel in District staff vehicles, except when such civilians are:
  - a. Accompanying a District employee to an official District function located outside District's boundaries, or
  - b. Directly involved in the transaction of District business, or
  - c. Transported in the course of District response to a public assistance call.
2. Emergency Vehicles. Only District employees or volunteers shall be allowed in or on the District's emergency vehicles. Civilians are not permitted to be in or on District emergency vehicles, except when such civilians are:
  - a. Directly involved with an alarm or emergency.
  - b. Participating in an authorized ride-along program with proper forms recorded.
  - c. Acting as mutual-aid personnel.
  - d. Participating in a scheduled and approved public relations program.

I. PERSONAL USE PROHIBITED

District vehicles shall be used only in the course of official District business, and not for personal business or private gain. However, an "On Duty" officer will be allowed limited personal use.

J. USE OF STAFF VEHICLES

Staff vehicles are to be used only for District business.

K. VEHICLE USE OUTSIDE DISTRICT BOUNDARIES

District-owned vehicles are not to leave the District other than on official District business, for maintenance purposes or as approved in advance by the Chief Executive Officer.

L. ASSIGNMENT

Assignment of vehicles shall be done by the Chief Executive Officer. Employees must be cognizant of their high visibility, and the potential damage to the public trust if misuse occurs. Violation of this policy or any misuse of District vehicles shall result in disciplinary action being taken.

M. RADIO USE

Unless authorized by a supervisor, operators assigned to a District vehicle equipped with a radio shall maintain the radio on the appropriate frequency, and shall not turn the radio off while operating the vehicle except when responding to situations involving explosive devices believed to be electrically or electronically activated.

N. SIGNS AND DECALS

Employees are prohibited from applying or placing any signs, decals, posters, insignia, bumper stickers, window stickers or any other items on District vehicles, unless authorized to do so by the Chief Executive Officer.

O. APPROPRIATE VEHICULAR SPEED

When practical, all travel in District vehicles shall be at the designated road speed or less. When traffic conditions make such speeds impractical, the vehicle shall be operated in accordance with the general flow of traffic.

P. VEHICLE OPERATION CODES

District vehicles shall be operated in strict conformance with all the provisions of the categorical designations set forth below:

1. Non-Emergency. Assignments which are not urgent. Units on such calls shall comply with all traffic laws.
2. Emergency. Emergency assignments where there is a danger or threat of danger to life or property. These calls require all practical haste. Response to these calls shall be made with the emergency light and siren in operation at all times. Traffic control devices should be observed to the extent the operator is unsure that all traffic has

yielded the right-of-way. Lights and siren must be employed when the operator chooses to take advantage of the exemptions granted to an emergency vehicle, such as proceeding past a red signal or exceeding the speed limit. No vehicle shall be operated in excess of the safe speed for the conditions present or shall endanger persons or property. Operators must remember that the use of any emergency equipment does not relieve them of the responsibility for the consequences of such operation.

3. Exemptions. Exemption from certain provisions of the Traffic Code does not relieve the operator of an emergency vehicle from the duty to drive with due care for the safety of all persons using the roads, nor do the exemptions protect them from the consequences of exercising such privileges. See ORS 820.300(2)(a-b).

Q. DISTRICT VEHICLE AND PROPERTY ACCIDENT REPORTING

Minor Damage, Non-Injury Vehicular Accidents: When any District vehicle is involved in a minor accident that does not affect the operations of the vehicle or incur damage to any other vehicle, person or property, (work damage or vandalism are included in this category) the following procedures shall be observed:

- a. Operator shall report incident to their Duty Officer who will inform the Fire Chief
- b. Every vehicle accident, regardless how minor, shall be documented on the Accident Reporting form.
- c. The Fire Chief will determine the need for further investigation.

Major Vehicular Accidents: When any District vehicle is involved in an accident resulting in major property damage that interferes with the operation of vehicle, or damage to public property or injury to any person, the following procedures shall be observed:

- a. Operator shall immediately report such fact to the Dispatcher and to the operator's supervisor; remain at the scene until a police report is made in the case of a fatality, injury, extensive damage, or damage that renders a vehicle inoperative
- b. Any accident resulting in personal injuries or death must be reported immediately to the Fire Chief.
- c. Whenever an accident occurs, every employees' initial responsibility is to evaluate and provide for scene safety and medical care.
- d. Personnel involved in the accident shall exchange information as outlined in the Accident Reporting form located in each vehicle and station.
- e. An Oregon DMV accident form must be completed within 72 hours if accident meets their criteria
- f. Duty Officers and Supervisors will ensure that copies of all completed vehicle accident forms are submitted to the Fire Chief as soon as possible.

Equipment or Property Accidents: Whenever an accident occurs that causes damage to any District equipment or property, the following procedures shall be observed:

- a. Every employees' initial responsibility is to evaluate and provide for scene safety and medical care.
- b. Personnel involved in the accident must follow the steps outlined on the Safety Incident Procedures form

- c. Duty Officers and Supervisors will ensure that copies of all completed accident forms are submitted to the Fire Chief as soon as possible. The Fire Chief will determine the need for further investigation.

R. MAINTENANCE OF VEHICLES

Operators shall be responsible for the proper maintenance of any vehicle assigned to them. This service shall include fuel, oil, water, tire check, wash windshield, and clean the interior of the vehicle of debris and clutter. All vehicles shall have routine maintenance as required, including lubrication, oil and filter changes, tire changes, and other preventive maintenance measures. The operator shall complete the necessary maintenance forms and documents in a timely manner.

S. REPAIR OF VEHICLES

When a vehicle is found to be inoperative or unsafe to use due to damage, mechanical failure, or normal wear, the operator to which the vehicle is assigned shall submit (on the proper District forms) a report on the condition of the vehicle to the operator's supervisor as soon as time permits. No officer, employee or volunteer shall attempt to repair any District vehicle unless authorized by a supervisor.

T. USE OF PERSONAL VEHICLES

All officers, employees and volunteers seeking reimbursement for vehicle expense shall have the specific advance approval of the Chief Executive Officer before using their own or other privately owned vehicle for District business. The District provides liability insurance for officers, employees, and volunteers for the acts in which they become involved. However, officers, employees and volunteers must be advised that they must provide coverage for privately owned vehicles. Personal vehicles used for District business must be in good repair. Campers and motorcycles shall not be used when conducting investigations or representing the District. When responding to an emergency in a private vehicle, all traffic laws shall be complied with.

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## ***POLICY 12.1 ADMINISTRATION OF S.O.P.S***

The Fire Chief will have the power and duty to administer and enforce the policies and procedures contained in the personnel manual.

The Fire Chief may specifically delegate in writing the authority for the enforcement of rules and policies.

Each department head may establish additional District rules and 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 Fire Chief before becoming effective and must be consistent with the general policies, procedures, rules, or regulations established by the District. District rules and regulations may be more restrictive than general District policy. Copies of the applicable department rules and operating procedures will be made available to all employees in the department and will be filed at the District office.

The Fire Chief will provide a current copy of the personnel manual to each employee and will provide each employee with a copy of any revisions to this manual adopted by the District. As a condition of employment with the District, a new employee must receive and acknowledge in writing that he/she has received and reviewed the personnel manual. A copy of the executed acknowledgment will be placed in the employee's central personnel file.

## ***POLICY 12.2 DISTRICT MISSION, GOALS, PROGRAM REVIEW***

It is the policy of the Stayton Fire District to prevent, protect, and preserve life and property from hostile fire and to provide emergency medical services -- both services to be of the highest possible quality within the District's funding limitations.

Fire District goals will be:

1. To prevent hostile fire from starting
2. To reduce the number of fire and medical emergencies, per capita
3. To prevent injury, loss of life or property when hostile fire starts or other emergencies occur
4. To confine hostile fire to its starting place
5. To extinguish hostile fires
6. To provide emergency medical care
7. To increase delivery system capabilities and efficiency
8. To provide the most cost effective and highest level of service possible with available resources
9. To meet community fire protection and emergency service needs

The Board of Directors will establish annual planning priorities. Areas to be considered for priority status will be based on perceived community needs and recommendations of the Fire Chief.

Annual priorities will be incorporated within the long-range plan. Planning priorities will be part of the long-range plan until established goals have been met.

The number of concurrent planning priorities undertaken will be determined by the Fire Chief and will be based on the availability of resources, be consistent with regulations developed, and follow a logical cycle.

### **A. STANDARD OPERATIONAL GUIDELINE ORGANIZATIONAL STATEMENT**

1. Mission Statement  
*To Provide Outstanding Service With Commitment To Saving Lives and Property*
2. Training Statement

The Stayton Fire District will assure that all personnel have the opportunity to receive quality training in a safe environment. Our goal is to maintain and enhance the knowledge, skills and attitudes of the Fire District's personnel and to support the mission statement of the Stayton Fire District.

The Fire District will provide training as required each year in the following areas:

- Fire suppression
- Emergency medical training
- Workplace safety including bloodborne pathogens training

- Fire District orientation/policy training
- Hazardous materials awareness training
- Incident command and accountability training

*The method of training will be administered through Service Delivery, Task Performances, or Education and/or Training.*

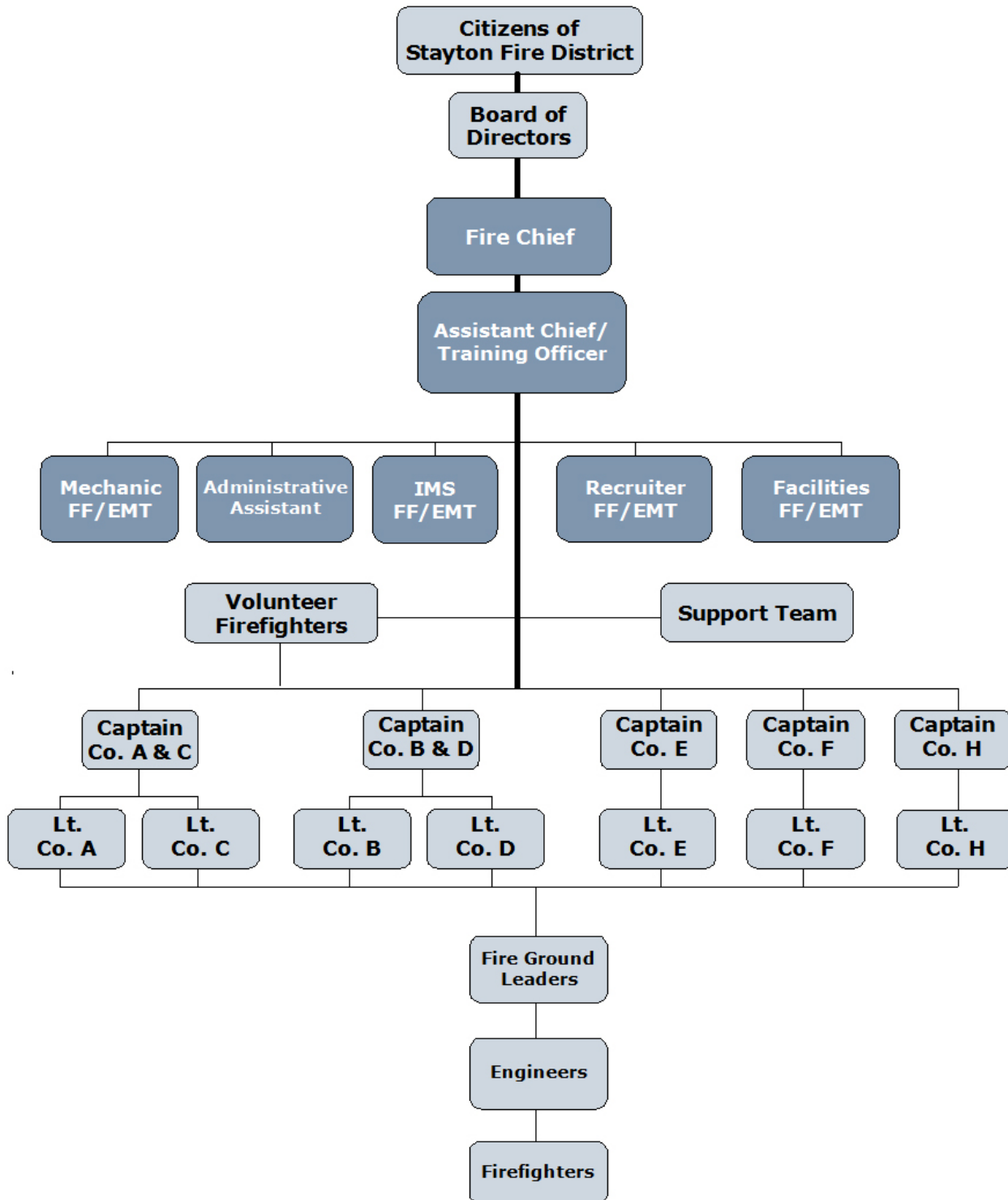
The training described above is for continuing education training and is not considered limiting. All entry level training will be completed before a member is allowed to respond to alarms as a participant.

### 3. Functions of the Organization

- The District will respond to hostile fires with the primary goal of preventing fire spread to nearby structures, and containing the fire to the area of origin.
- The District will respond to hazardous materials incidents to protect life, property, and the environment within its capabilities and training.
- The District will enter Immediately Dangerous to Life or Health (IDLH) environments to perform rescue, or to fight fires within its capabilities and training.
- The District will provide adequate apparatus and equipment to meet its functions.
- The District will provide training and protective equipment to its personnel to meet all of its functions.
- The District will respond to emergency medical incidents and provide basic life support.
- The District will investigate all hostile fires for a cause determination.
- The District will provide rescue within its capabilities and training. The District will rely on the mutual and automatic aid agreements to provide technical rescue capabilities.

B. ORGANIZATIONAL CHART

**Stayton Fire District**  
*Organizational Chart*



## ***POLICY 12.3 USE OF DISTRICT PROPERTY***

### **A. COMMUNITY USE OF DISTRICT BUILDINGS**

1. The specific use of the buildings will be that of Fire Stations housing fire trucks and equipment and serving as a meeting, training and gathering place for Volunteers of the District.
2. District buildings may be used for meetings or gatherings of community groups and non-profit organizations. Scheduled use by these groups may be granted following completion of a written request form and approved by the Fire Chief.
3. The District enacted a non-refundable room use fee, effective August 1, 1998 for every non-District sponsored function scheduled in any District facility.  
*Adopted: 7/13/1998*
4. Use of firefighting equipment or other fire related items by community or non-profit groups will not be permitted.
5. The Fire Chief may grant the use of a District building to a Volunteer Firefighter for a private function.

### **B. COMMUNITY USE OF DISTRICT EQUIPMENT WILL BE AS FOLLOWS:**

1. District equipment will not be loaned to private citizens or community groups.
2. District non-emergency equipment may be loaned to Volunteer Firefighters.
3. The Fire Chief will be the designated official to authorize the loan of any District Equipment.

## ***POLICY 12.4 MUTUAL AID AGREEMENTS & RESPONSE OUT-OF-DISTRICT***

### **A MUTUAL AID**

1. Upon request of any person or agency to provide fire protection of any sort, excepting natural cover type, which is extended to Clackamas-Marion Forest Protection District on a mutual aid basis, the Fire Chief shall provide same using whatever means he thinks is necessary.

The property owner shall be billed for the cost of manpower, supplies and equipment in accordance with OAR 837, Div. 130, State Fire Marshal Standardized Cost Schedules. *Adopted 2/11/75 Revised 9/13/93*

2. The District will participate in the Marion County and Linn County Fire Defense Board Mutual Aid Agreements. *Adopted: Marion 5/12/80 Linn 8/11/86*
  - a. The Fire Chief or his designee(s) will periodically review the Agreements to insure that the dates are current and that the procedures are being followed.
  - b. Major changes or updates to the Agreements will be approved by the Board of Directors.
  - c. Board approval will be required to terminate the Agreement.
3. The District may enter into Automatic Aid Response Agreements with neighboring cities and fire districts.
  - a. Automatic agreements shall be approved by the Board.
  - b. The Fire Chief or his designee(s) shall periodically review the agreements to determine if procedures used conform to the agreements.
  - c. Major changes to automatic aid response agreements shall be approved by the Board.
4. The District will provide for responsibility (command) for emergency incidents.

The Fire Chief or his designee(s) will establish guidelines to:

  - a. Insure that a command structure is established
  - b. Establish a framework outlining the authority and responsibility of command.
  - c. Fix the responsibility for command to a specified individual
  - d. Provide a system for an orderly transfer of command

### **B. RESPONSE OUT-OF-DISTRICT**

1. Stayton Fire District will respond to calls in designated unprotected areas (85E) for medical, rescue, and fire service to assist outside agencies until the agency/authority having jurisdiction arrives and assumes command or the situation is under control.

2. The designated unprotected areas will include Three Pools Day Use Area. Any other response to unprotected areas (82U and 85U) shall be by request only of the agency/authority having jurisdiction.
3. All responses outside Stayton Fire District boundaries shall be at the discretion of the Fire Chief or his/her designee based on available resources, expertise required and/or the duration of the incident.
4. Stayton Fire District will bill for services rendered in unprotected areas unless extenuating circumstances dictate otherwise. The Fire Chief will review all responses outside the Fire District for billing criteria.
5. Stayton Fire District shall use the Oregon State Fire Marshal's Conflagration rates to establishing billing fees for responses outside the District.
6. Stayton Fire District will use Appendix A of this policy (Guide for Response to Unprotected Areas) as the guide for response outside District boundaries and in unprotected lands.

**POLICY 12.5 VOLUNTEER MEMBERSHIP**

**A. VOLUNTEER FIREFIGHTER APPLICATION AND ACCEPTANCE PROCESS**

To initially qualify for application as a recruit Volunteer Firefighter, an individual shall meet the following criteria:

1. There must be a position available on the district roster at the time of acceptance.

The District Board of Directors sets the total number of volunteer firefighters for the district and only the Board may alter this amount. The maximum number of volunteer firefighters for the Stayton Fire District is set at 89. The suggested allocation for each station is:

Stayton	Station 800	40 positions
Mehama	Station 820	20 positions
Marion	Station 830	15 positions
Elkhorn	Station 850	14 positions

2. An individual shall be at least 18 years of age and no more than 60 years of age. If, in the opinion of the Fire Chief, an individual over the age limit is capable of continued active service, the upper age limit may be waived.
3. An individual shall be in possession of a valid Oregon driver's license.
4. An individual shall have no record of criminal convictions, however, the District reserves the right to consider individual cases when requested, in writing, by the applicant.
  - a. No individual shall be considered for membership if he/she has a felony or Class A misdemeanor conviction.
  - b. Individuals with Class B or C misdemeanor convictions may be considered under the following circumstances:
    - i. If the individual has maintained an incident free history for a minimum of two years from date of conviction.
    - ii. The individual shall not have more than two Class B, Class C, or any combination of misdemeanor convictions in their history.
    - iii. The individual shall not be on probation resulting from a criminal conviction.
  - c. All cases will be judged on an individual basis with the final determination made by the Fire Chief.
  - d. Cause for termination: Any individual granted membership under the conditions listed above may be subject to disciplinary action up to and including termination if arrested and convicted during his/her tenure with the District.
5. An individual shall live within three (3) miles of his/her response station. An exception to this policy may be allowed if, in the opinion of the Fire Chief, an individual is within a *reasonable* distance for response.



6. All applicants shall complete the applicant routing checklist prior to being accepted as a recruit Firefighter. Until completion of this checklist, an individual may attend all meetings and drills, *but will not be allowed to perform any emergency service.*

An offer of membership shall be contingent upon an applicant's successful completion of a medical examination and the physician's certification that the applicant is capable of performing all essential functions of a firefighter without reasonable accommodation and without direct threat to the health or safety of the applicant or other persons. This examination will be provided by the District's physician at District expense. Any information gathered as part of the exam will be treated as a confidential medical record.

In order to insure continued qualification for membership, the District will request its members to submit to an unannounced, random test or post-accident test. *(Revised 6/8/09)*

7. Any member resigning from the District shall notify to that effect the Fire Chief or other Fire Officers. Every member resigning from the District shall surrender all District property in his/her possession to the Fire Chief or Fire Officer.

## B. VOLUNTEER SUPPORT MEMBERSHIP APPLICATION AND ACCEPTANCE PROCESS

Support Volunteer is any volunteer other than a Volunteer Firefighter that wants to assist the Stayton Fire District. A Support Volunteer can assist with such things as, but not limited to: Fire Prevention Programs and Activities, District Events, Office Assistance, Photography, Child Care or various Fire Scene Activities. Support Volunteers will be eligible for all benefits of being a volunteer with the exception of points and LOS awards and subject to all rules and regulations of the District. An individual shall meet the following criteria:

1. Support Volunteers must be at least 16 years of age.
2. An individual shall be in possession of a valid Oregon driver's license.
3. An individual shall have no record of criminal convictions, however, the District reserves the right to consider individual cases when requested, in writing, by the applicant.
  - a. No individual shall be considered for membership if he/she has a felony or Class A misdemeanor conviction.
  - b. Individuals with Class B or C misdemeanor convictions may be considered under the following circumstances:
    - i. If the individual has maintained an incident free history for a minimum of two years from date of conviction.
    - ii. The individual shall not have more than two Class B, Class C, or any combination of misdemeanor convictions in their history.

- iii. The individual shall not be on probation resulting from a criminal conviction.
- c. All cases will be judged on an individual basis with the final determination made by the Fire Chief.
- d. Cause for termination: Any individual granted membership under the conditions listed above may be subject to disciplinary action up to and including termination if arrested and convicted during his/her tenure with the District.
- 4. All Support Volunteer Applicants shall complete the application procedures for support personnel prior to acceptance as a support volunteer.
- 5. Attend at least one district function per quarter to remain on the support roster. (i.e. drill, meetings, community events, work parties, etc.)

C. UNIFORM POLICY

It is the policy of the Stayton Fire District to provide a standard uniform inventory to be maintained by all District personnel and worn when appropriate. It shall be the responsibility of the Fire Chief to ensure that all District personnel maintain the appropriate uniform inventory. District Chiefs shall ensure that District personnel display the appropriate uniform at all assigned times.

District personnel shall be issued the uniform items indicated by an asterisk (\*) for each classification. Other items are included as part of the uniform but will be provided by each member, as desired. Personnel shall be responsible for regular cleaning of issued uniform. The District shall assume responsibility for replacement or repair of District-issued uniform items when unserviceable. All personnel shall notify the Captain of the station to which they are assigned when replacements or repairs are required.

- 1. Jacket – navy blue service w/badge, patch placement same as shirt, service cross on left sleeve  
Firefighters (FF)
- \*2. Tie – black Fire Dept. style Firefighters
- \*3. Uniform Shirt - see Uniform Classes below  
Med. blue, short sleeved, with epaulets FF, Engineers & Lt's  
White with epaulets Capt's. & above  
Support shirt Support Volunteers
- 4. Trousers - Black uncuffed All Personnel
- \*5. Tie Clasp - Fire Service style Firefighters
- \*6. Badges:  
Firefighters: Silver w/standard emblem  
Chief: 5 Trumpets on gold  
Asst. Chief: 4 Trumpets on gold  
Div. Chief: 3 Trumpets on gold  
Captain 2 Trumpets on gold  
Lieutenant: 1 Trumpet on silver

- |     |   |  |
|-----|---|--|
| *7. | Collar Insignias:<br>Silver S.F.D.<br>According to Rank   | Firefighters<br>All Officers                               |
| *8. | Hat - Regulation Fireman's Cap:<br>Navy Blue w/black rim, black visor, black chin strap, badge<br>Navy Blue w/black rim, black visor, silver chin strap<br>White w/black rim, black visor, gold chin strap<br>White w/white rim, white visor, gold chin strap | Firefighter<br>Lt's & Captains<br>Div. Chief<br>Fire Chief |
| 9.  | Belt, plain black   | All Personnel  |
| 10. | Ball Cap - District approved  | All Personnel  |
| 11. | Shoes - Black plain toe (slip on boots acceptable)  | All Personnel  |
- a. The dress uniform for firefighters shall be:
- i. A shirt as set forth above with badge attached and as approved
  - ii. District approved shoulder patch displayed on the left sleeve of the shirt, centered one inch below the shoulder seam, with appropriate medical patch centered under the District patch
  - iii. A U.S. flag patch displayed on the right sleeve of the shirt, centered one inch below the shoulder seam (any other patch approved may be centered below the flag). Only pins awarded by the District or meritorious ribbons may be worn on pocket flaps of uniform shirt
  - iv. Trousers as set forth above
  - v. Belt as set forth above
  - vi. Name badge above right breast pocket
  - vii. Shoes as set forth above

All personnel may wear an approved station cap, jacket, vest or shirt at times when a dress uniform is not required or when engaged in an activity that the Chief Officer deems appropriate for the wearing of such apparel.

A Drawing of uniform patch/badge placement will be posted in each station for reference.

**UNIFORM CLASSES: (Added 9/11/06)**

**Drill Uniform:**

1. Blue or red District Tee Shirt with logo on the front left crest and the back

**Class D:**

Commonly known as the "Duty Uniform" will consist of the following:

1. Blue or red District tee shirt with logo on the front left crest and the back
2. Black pants preferred, blue pants are acceptable, pants should be in good repair
3. Black shoes are preferred
4. Black or navy dress shorts may be worn for designated events (Fire Chief)

5. Blue District sweatshirt, screen printed or embroidered (optional)
6. Black or navy baseball caps (optional)

Class C:

1. Blue or white button-up dress uniform shirt (long or short sleeve)
2. Black pants are strongly suggested, blue pants may be worn, must be in good repair
3. Black belt
4. Black shoes preferred
5. Black or navy dress shorts may be worn for designated events (Fire Chief)
6. Black or navy baseball caps (optional)
7. Blue District sweatshirts, screen printed or embroidered (optional)

Class B:

1. Blue or white button-up dress uniform shirt (long or short sleeve)
2. Black tie (tie clasp optional)
3. Black dress pants
4. Black belt
5. Black dress shoes

Class A:

1. Blue or white button-up dress uniform shirt (long or short sleeve)
2. Black Class A dress uniform jacket
3. Black tie (tie clasp optional)
4. Black Class A uniform pants or skirt
5. Black belt
6. Black dress shoes
7. Class A uniform hat (optional)
8. Black full length rain coat (optional)

D. RULES OF CONDUCT AND DISCIPLINE

The Rules of Conduct and Discipline adopted by the Stayton Fire District are written with the intent to maintain morale and a harmonious interpersonal relationship with all members of the District. Any member of the District who violates a policy procedure or rule of conduct shall be subject to disciplinary action in keeping with the guidelines set forth.

Conduct:

1. In matters of general conduct, all members shall be governed by the ordinary and reasonable rules of behavior, and shall not commit any act while acting as an agent of the District that would discredit the District or its members.
2. No member shall willfully disobey any order issued by a superior officer that is reasonable and in the officer's power to issue.
3. No member shall willfully violate any policy or procedures of the District.

4. No member shall accept a reward, fee or gift from any person for services provided as a member of the District. Token gifts of appreciation with little value such as cookies, cakes or the like may be accepted. All such gifts should be reported to the Fire Chief as soon as reasonably practical, but in no event should reporting be delayed beyond five days.  
  
Money which is in the form of a donation to the District or Volunteer Association may be accepted. Such a donation must be immediately reported to the Fire Chief, or his/her designee, who will be responsible for issuing a receipt (if needed) and forwarding the donation to the proper party.
5. No member, on or off duty, or Volunteer, shall use the member's employment, membership or position with the District to gain entry to an event, or to purchase, charge or to initiate a discount for any item or services for personal gain, unless the Board of Directors is notified of such a program or discount, and all District personnel are eligible.
6. No solicitation, speeches or distribution of campaign literature for or against any candidate for elective office shall be permitted on District property, while a member is on duty or in uniform.
7. No member shall be a party to any malicious gossip or activity that would tend to disrupt District morale or bring discredit to the District or any of its members.
8. No member shall falsify any records, make any misleading entries or statements with intent to deceive, or willfully mutilate any District records, books, papers or documents.
9. All members shall promptly notify the District office of any changes in residence, telephone number, personal status or similar condition.
10. Members assigned a rank or position shall assume and discharge all reasonable authority, duty and responsibility of such rank. They shall be allowed all privileges of the rank or position and shall be obeyed and respected accordingly during the time they are acting in that capacity.
11. No member shall use District purchasing cards unless authorized to do so by the District Board of Directors or the Fire Chief.
12. All monies, jewelry or similar valuables discovered by any member at emergency scenes shall be protected and immediately reported to the officer in command of the scene (preferably face to face). The command officer will make a determination regarding the handling of such articles.
13. Any member receiving a complaint of theft or loss of valuables from an incident scene shall immediately notify the command officer, who, together with the Fire Chief or his/her designee, will conduct or order an appropriate investigation into such claims.
14. It is the responsibility of all members to protect all persons from any hazardous condition or situation that comes to their attention. The command officer and on-scene safety officer shall be notified immediately of all hazards involving emergency operations.

15. No member shall willfully and without proper authority remove or conceal any equipment or property of the District.
16. Any equipment, materials or property donated to the District shall become property of the District. The removal or sale of any such equipment, material shall be done in accordance with the applicable District policy.
17. All District equipment, materials and property are to be used to benefit the citizens of the District, or to enhance an individual's ability to carry out such duties.
18. At no time is any volunteer, employee, District Director or the general public allowed to possess, carry or store any type of firearm or other weapon, in any District facility or apparatus. *Exception: Section 18 of this policy does not apply to law enforcement personnel, when not acting as an agent of the District.*
19. All District personnel are charged with promoting a safe and positive influence on the community. Any person having a direct affiliation with the District (volunteer, employee, board member, etc.) and on or off duty, engages in illegal activity or behavior which is in direct conflict with the mission or policies of the Fire District, will face disciplinary action.

## E. RULES OF DISCIPLINE

### 1. Volunteers

#### a. Discipline Generally

Conduct of District Volunteers affects the ability of the District to serve its citizens and affects the taxpayer's impression of District government. Volunteer safety, productivity and morale are dependent upon the conduct of Volunteers.

Occasionally it is necessary for supervisors to resort to corrective action when other actions are inappropriate, or where a particular Volunteer fails to respond to informal guidance.

In order to provide a fair method of correction, and when necessary, of disciplining Volunteers, the District will use progressive discipline procedures when it deems such progressive procedures appropriate. Nothing in this policy shall be deemed to change the "at will" status of any Volunteer.

### 2. General Guidelines:

- a. Initiation of Discipline: Discipline may be initiated for many proper reasons, including, but not limited to, violation of laws or District policies, procedures, or work rules, insubordination or poor performance. The severity of the action generally depends on the nature of the offense and a Volunteer's work record, and may range from verbal counseling to discharge.

- b. Progressive Discipline: Progressive discipline for infractions may include:
  - i. Verbal counseling
  - ii. Written counseling or warning, with or without a work plan or last change agreement
  - iii. Suspension
  - iv. Demotion
  - v. 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, in its discretion, deems it appropriate in the circumstances of the particular case.

c. Application of Progressive Discipline

For performance deficiencies, Volunteers will normally be verbally counseled once before receiving a written warning. A supervisor may or may not choose to make the imposition of a verbal warning part of the Volunteer's personnel file.

There is no appeal from a verbal counseling or a written reprimand or warning. The Volunteer may place an explanatory statement in their personnel file.

Supervisors may issue verbal counseling and written reprimands or warnings. All other discipline shall be referred to the Fire Chief.

F. DISCIPLINARY MATRIX

- 1. The following listed disciplinary actions and matrix is to be utilized when determining what action can be taken by the Officer.

	REPRIMANDS			
	VERBAL	WRITTEN	SUSPENSION	DISMISSAL
LIEUTENANT	X	*OA	**REC	**REC
CAPTAIN	X	X	**REC	**REC
DIVISION CHIEF	X	X	*OA	**REC
ASSISTANT CHIEF	X	X	X	*OA
CHIEF	X	X	X	X
	*OA - On Approval		**REC - Recommend	

- 2. Officers shall not:
  - a. Discuss or comment on any pending disciplinary action, except to those individuals directly involved with the investigation and/or disciplinary action

- b. Cause any investigation or disciplinary action to proceed in a less than timely manner
- c. Be influenced by a personal relationship in regard to determining action to be taken. If necessary, duty shall be relinquished to an Officer of equal rank or higher.

#### G. DISCHARGE PROCEDURES

If the Fire Chief deems it appropriate, for disciplinary reasons, to demote or discharge a Volunteer, the Fire Chief shall notify the Volunteer of the nature of the proposed discipline and of the specific reasons that the proposed discipline is being considered. The Volunteer shall be provided with the facts upon which the proposed actions are based. The Fire Chief shall afford the Volunteer a formal opportunity to refute the charges orally or in writing. If a pre-disciplinary conference is to be held, it will be scheduled and held within three (3) workdays after notice of the action has been given. The Volunteer will be given adequate time to develop a response and to see necessary outside assistance if needed. The time limits may be varied by the District to meet individual needs.

The Fire Chief will conduct the conference and decide whether to impose discharge or a lesser degree of discipline. The Fire Chief shall advise the Volunteer in writing of the decision, mailed to the Volunteer at the last official address the Volunteer provided to the District in writing.

A Volunteer will not participate in District operations after receiving a notice of dismissal until the Fire Chief reaches a final decision. During this period, the Volunteer shall be considered on a leave of absence for record keeping purposes.

Any volunteer who fails to attend 50% of the District's regularly scheduled drills may be dismissed at the Fire Chief's discretion, if the Chief determines that this lack of attendance detrimentally affects District operations. The volunteer will have four weeks, commencing from the date of notification, to demonstrate an improved attendance record to the Fire Chief. A record of this notice will be kept in the Volunteer's personnel file.

#### H. GRIEVANCE PROCEDURE:

1. The grievance procedure will be as follows:
  - a. The aggrieved member will have five (5) working days from notification of impending disciplinary action to do the following:
    - i. Complete the District grievance form (See Appendix)
    - ii. Appoint one (1) member of the District to serve on the Review Board (the Fire Chief or Assistant Fire Chief may not be appointed to fill this position)
    - iii. Submit grievance form and name of Review Board selection to the Assistant Fire Chief



- b. The Assistant Chief will have five (5) working days from receipt of grievance to do the following:
  - i. Notify all directly concerned members, either verbally or in writing
  - ii. Appoint one (1) member of the District to serve on the Review Board (the Fire Chief or Assistant Fire Chief may not be appointed to fill this position)
  - iii. Verbally notify aggrieved member of the selection to the Review Board
- c. The two (2) selected members will then have five (5) working days to select a third party to the Review Board. The third party selected will serve as the Board Chairperson.
- d. The Review Board will convene within fifteen (15) days of selection of the Board Chairperson.
- e. The Review Board will:
  - i. Review all facts
  - ii. Interview all members summoned
  - iii. Consider all testimony, pertinent facts and mitigating circumstances
  - iv. Submit in writing the Review Board's findings and decision to the Fire Chief within five (5) working days of the close of the Review Board meeting
- f. The Fire Chief:
  - i. Will study the Review Board's findings
  - ii. May modify disciplinary action to be implemented based on the finding of the Review Board
  - iii. May not overturn the Review Board's findings of guilt or innocence
  - iv. Will make notification to all concerned parties of the findings of the Review Board and modifications to be implemented within five (5) working days of receipt of the Review Board's findings.

## I. VOLUNTEER PERSONAL LEAVE OF ABSENCE

- 1. Volunteers who have been with the District for at least one (1) year, who are off probation, and are a member in good standing\* may request a personal leave of absence for a reasonable period up to ninety (90) days. Requests for leave of absence will be considered on an individual basis and on the volunteer's length of service, performance, the reason for the request, and prior requests.

\*Member in good standing: A member of Stayton Fire District who is not in violation of district policies or SOP/SOGs.

2. Requests must be submitted in writing and must be approved in writing by the Fire Chief before the leave begins. Requests for extensions of leave must be submitted in writing and approved in writing by the Fire Chief before the extended period of leave begins. It is the volunteer's responsibility to report to the District at the end of the approved leave. A volunteer who fails to report to the District after the leave expires will be considered to have voluntarily resigned.

## ***POLICY 12.6 APPARATUS OPERATOR STANDARDS***

### **A. ENGINEER CERTIFICATION POLICY**

The following steps are required to become an Engineer with the Stayton Fire District:

An Engineer candidate must:

1. Be a member of the District for 18 months. Outside certification will be reviewed by the District Apparatus Operator Examiner and the Training Officer. The Station Commander may waive this requirement upon written request.
2. Hold the rank of BPSST Basic Firefighter for at least six (6) months. The District Apparatus Operator Examiner and the Training Officer will review outside Certification.
3. Meet the requirements of the District insurance carrier and the Engineer Motor Vehicle Record (MVR) standard, as adopted by the District.
4. Complete a DPSST Driver and Pumper Operator course. Outside certification will be reviewed by the District Apparatus Operator Examiner and the Training Officer.
5. Must be able to demonstrate to the Apparatus Operator Examiner knowledge of equipment location and identify all equipment carried on apparatus for which certification is requested.
6. Document a minimum of ten (10) hours driving and pumping time while accompanied by a District certified Engineer or Apparatus Operation Instruction. Documentation is the responsibility of the candidate.
7. Successfully pass the District Driving and Pumping Test, based on BPSST Task Performance TP 3008 and TP 7.

Apparatus Operator classes and Engineer promotional examinations will be given on an as-needed basis, as determined by the Apparatus Operator Examiner and the Training Officer.

### **B. ENGINEER RECERTIFICATION PROCESS**

The District Apparatus Operator Examiner and the Training Officer shall be responsible to oversee the recertification process. For annual recertification as a District Engineer, the Engineer shall:

1. Successfully complete the four-part recertification criteria, which includes:
  - a. Attend the classroom presentation of driving laws, policies and procedures.

- b. Engineers will be given a performance-based evaluation annually. One task will be selected and the Company Officers will evaluate the rated engineers of their station.
  - c. Participate and pass the annual apparatus rodeo as given by the District Apparatus Examiner within two (2) attempts.
  - d. Upon completion of the testing procedure an MVR will be obtained to compare against the Engineer standards policy.
2. Upon successfully completing the four part criteria for recertification the Engineer will be considered re-certified and a certificate will be entered into the training record.
  3. If the Engineer fails any part of the four-part process it will result in the loss of certification for one (1) year. Following the one-year suspension, the fire fighter may re-enter the recertification process. Failure of the MVR report results in Engineer status removed.

### C. GENERAL EMERGENCY VEHICLE OPERATOR REQUIREMENTS

#### *Requirements for Vehicle Operators Under Age 21:*

1. Due to the lack of general driving experience and considering the limited amount of training and related activities available to a young member of an emergency service organization, all members under the age of eighteen (18) shall not be allowed to drive emergency vehicles ***under any circumstances.*** There will be no exceptions!
2. All new candidates to become driver trainees shall be subject to periodic medical evaluation as determined by the governing body of the Stayton Fire District. The purpose of the physical examination is to determine if the candidate has the physical ability to adequately perform his or her duty as an operator of emergency vehicles.
3. Any candidate between the ages of eighteen (18) and twenty-one (21) who has demonstrated exceptional abilities with their personal driving may become an emergency vehicle operator trainee. The individual shall remain on the trainee list until the age of twenty-one (21). During this time, candidates will meet the requirements of a training program established by the Training Officer.

The training program should include, but not be limited to preventative maintenance, record keeping, legal requirements, defensive driving and unusual circumstances, training for specific vehicle functions such as vehicle systems, pumps, tanks, aerial devices, hydraulics, etc. as determined by the Fire District.

Candidates will also demonstrate their driving ability to the Apparatus Operator Examiner with the following conditions:

- a. The trainee's driving of emergency vehicles shall be limited to training and non-emergency activities. If an emergency situation occurs and

there is no certified operator present at that time, if the trainee meets the requirements of the training program of the District and approved by the Officer in charge for the trainee to act in this capacity, the trainee may respond in the vehicle to the emergency “Code 1”.

- b. Detailed training records shall be kept on all trainees during their training period. The training records should include hands-on experience and classroom time on theory.
- c. A Department of Motor Vehicles check should be done on every trainee upon initial entry into the training phase and annually thereafter until the trainee turns twenty-one (21). This report is to be secured from local sources by the District. This report should reflect no conviction for a Class B or higher traffic misdemeanor within the last three (3) years upon application and never during the Engineer’s tenure as an Apparatus Operator.

*Requirements for Vehicle Operators Aged 21 to 65 Years*

- 1. All new candidates for or existing operators of emergency vehicles shall be subject to periodic medical evaluation as determined by the governing body of the Stayton Fire District. The purpose of the physical examination is to determine if the candidate or Engineer has the physical ability to adequately perform their duty as an operator of emergency vehicles.
- 2. A Pumper Operator class is required training for all new engineer training candidates. Periodic classroom training for experienced operators should be performed at the discretion of the Training Officer.
- 3. New candidates should have sufficient hands-on training to effectively demonstrate their capability of handling the emergency vehicles necessary to perform their duties. Annual hands-on training will be a minimum of ten (10) hours.
- 4. All candidates for operators of emergency vehicles shall meet the requirement of a training program established by the Stayton Fire District. The training program shall include preventative maintenance, record keeping, legal requirements, defensive driving and unusual circumstance driving, specific training of vehicle functions such as vehicle systems, pumps, tanks, aerial devices, hydraulics, etc. as determined by the Training Officer.
- 5. A Department of Motor Vehicles check should be done on each individual every year. No conviction for a Class B or higher traffic misdemeanor is allowed for any Engineer within the last three (3) years upon application and never during the Engineer’s tenure as an Apparatus Operator. Engineers are allowed up to two (2) convictions for Class C traffic misdemeanors or two (2) “moving” traffic infractions or one (1) chargeable\* accident or the combination of one (1) citation and one (1) chargeable accident within any three (3) year period. Instances in excess of this allowable standard will be cause for a review by Staff Officers and possible disqualification as an

Engineer for a period of three (3) years. Reinstatement will be considered upon receipt of proof of a driving record that qualifies under current standards for the immediate past three (3) years and agreement to undergo the recertification process for an Engineer.

*\*The term "chargeable" refers to any accident appearing on an MVR that does not fall into one of these categories - 1) driver is the victim of a hit-and-run; 2) driver is rear-ended while stopped; 3) driver is reimbursed on behalf of or by the other party; 4) the other driver is cited as the cause of the accident. Adopted 9/11/95*

6. The Stayton Fire District driver training program and procedure will be based upon current recognized safety standards and policies, as well as manufacturers' suggested procedures.

#### *Requirements for Vehicle Operators Age 65 Years and Older*

Drivers over age sixty-five (65) shall not be permitted to drive emergency vehicles in emergency situations. If it is necessary for an individual over sixty-five (65) to operate emergency vehicles, the following must be adhered to:

1. Meet all requirements for operators in the twenty-one (21) to sixty-five (65) year class (see evaluation requirements).
2. An annual physical shall be completed by a licensed physician stating the operator is physically capable of driving an emergency vehicle in an emergency situation. A signed copy of the completed physical examination must be kept in the member's file. The physical shall include, but not be limited to, the following:
  - a. No impairment of the use of foot, leg, hand, arm or fingertips, or any other structural defect or limitation likely to interfere with safe driving
  - b. Does not have diabetes mellitus to a degree presently requiring the use of insulin for control
  - c. No heart condition likely to cause loss of consciousness or sudden death
  - d. No respiratory ailment likely to interfere with safe driving
  - e. No arthritic, rheumatic, muscular or vascular condition which interferes with ability to drive safely
  - f. No epilepsy or any other condition likely to cause sudden loss of consciousness or loss of ability to control a vehicle
  - g. No mental, nervous, organic or functional disease or any psychiatric condition likely to interfere with safe driving
  - h. Meet the following minimum vision requirements - At least 20/40 (Snellen) in each eye and in both eyes together, with or without glasses; at least seventy (70) degrees side vision in each eye; the ability to distinguish red, green and yellow (amber).

- i. Meet hearing requirements by perceiving a forced whisper at five (5) feet with the better ear, or meet specified requirements as measured by a testing device, with or without a hearing aid.
  - j. Evaluate any medication taken to determine if any chemical impairment would result and interfere with the ability to operate an emergency vehicle.
  - k. Must not be diagnosed as an alcoholic.
4. A copy of the physician's certificate must be forwarded to the insurance company providing coverage on all District vehicles and apparatus.

**POLICY 12.7**

**FISCAL POLICIES**

**A. BUDGET ADMINISTRATION**

1. The adopted budget is the financial plan developed to carry out the programs supporting the District's goals and objectives.
2. The District's Budget Document is the District's purchasing plan for the fiscal year. All purchases must be in accordance with the District budget appropriations and expenditure account definitions.
3. The Fire Chief is responsible for the procurement of all goods and services and for establishing procedures to sell goods and services.
4. The Fire Chief shall develop and publish procedures for the purchase and requisition of materials and services.
5. The Fire Chief is authorized to approve expenditures for any supply and equipment items valued under \$10,000, provided that they are within approved budget item totals.
6. The District recognizes that effective purchasing practices can cause significant savings. It supports the integration of effective private sector purchasing with the statutory requirements of public sector purchasing. The Public Contracting Law will prevail when a conflict develops between the two.
7. Only persons designated by the Fire Chief are authorized to commit the District for materials, equipment, supplies and services.
8. The Board of Directors recognizes that volume purchasing results in cost savings and supports consolidated purchasing, warehousing and distribution. Since volume purchasing benefits the District, service charges will not be added to goods sold to participating agencies.
9. Standardization of supplies, materials and equipment is to be achieved whenever possible.
10. District intent is to achieve standardization through attrition. Consideration must be given to cost of installation and operation commitments when replacing non-standard items.
11. The Board will be provided financial reports on a monthly scheduled basis in which actual revenues and expenditures will be compared with the budget.

**B. DEPOSITORIES**

1. The depositories for the District income shall be designated by the Board at the first business meeting of each fiscal year. Bank signature authorizations and other required forms will be signed by the new Board Officers at the first Board meeting of the fiscal year.



2. All receipts will be deposited to the proper account as soon as possible after they are received.

C. PURCHASE AND SALE OF REAL PROPERTY

1. The purchase of all real property must have the prior approval of the Board of Directors.
2. The Fire Chief shall project site needs in advance and the Board, with advice and counsel of the Fire Chief, shall select sites prior to immediate need. Such sites shall be chosen with a view to the best service of the residents and properties of the whole District and will be based on demographic data, growth projections, emergency response items, availability and cost of land.
3. Selection of a specific site will depend upon county planning requirements concerning accessibility and relationship to the street system, availability of utilities, topography of the land and ease of exit and entry of emergency equipment.
4. Sites that become surplus to the District's needs shall be declared as such by the Board and shall be considered for trade or sale.

D. INVESTMENT OF FUNDS

1. The Stayton Fire District maintains a policy of investing a maximum of surplus available funds as is reasonably prudent, while having available cash on hand to meet daily operating needs.
2. The Fire Chief is the portfolio manager and shall receive direction from the Board of Directors.
3. The portfolio manager shall adhere to the rules set forth in Oregon Revised Statutes 294.035 and 294.040 and the guidelines that follow.
  - a. Long-term investment objectives are set by the Board of Directors.
  - b. The following diversification guidelines will be adhered to:  
Money Market Accounts - Local Bank - 100% Maximum  
Local Government Investment Pool - 100% Maximum

E. BORROWING

1. The Board shall determine the limit for the total amount of short-term loans at the first business meeting of each fiscal year.
2. The District is authorized to contract for short-term loans for the purpose of meeting current expenses. Two members of the Board of Directors shall sign these notes.

F. PAYING FOR GOODS AND SERVICES

1. All payments for goods and services must be in accordance with ORS 279.
2. All payments for goods and services must be authorized by budget commitment or by prior Board action.
3. All payments for goods and services must be in accordance with procedures for payment that will be approved by the Board.

- a. An original invoice for each purchase must be provided with the payment request. The invoice must have the vendor's complete name and mailing address. It must clearly show that the goods or services were provided to the Fire District, clearly describe the goods or services provided by the vendor and contain the accurate and total price to be paid.

Should the original invoice be lost or destroyed, the vendor shall be contacted by the responsible individual and asked to provide a duplicate invoice that clearly states it is a replacement.

In the event that the vendor provides only monthly statements in lieu of an invoice, the statement may be used as the paying document only if it describes the goods and services provided.

The following items do not require an invoice:

- i. Rent or lease of property and equipment made under contract
  - ii. State, County and City licenses, permits and fees; however, documentation must be provided to the District office as soon as possible
  - iii. Registration to seminars and conferences will be processed if a properly completed form and a flier describing activities and costs are provided.
4. A payment document is an essential part of the clear and complete accounts payable files required to meet GAAP standards. Therefore, the following procedure must be adhered to without fail:
    - a. Before an invoice is authorized for payment, it must be directed to the Administrative Assistant for coding.
    - b. The Administrative Assistant will forward the invoice to the Fire Chief for approval.
    - c. Before an invoice is to be returned to the Administrative Assistant for payment, it must be approved by the Fire Chief.
    - d. The invoice shall not be paid until the Board of Directors has approved a list of all invoices referred to as "Monthly Accounts Payable".
    - e. Since many vendors allow a trade discount when bills are paid within a specific time frame, it is District policy to take the discount whenever possible.

- f. It most cases, checks are to be disbursed as soon as possible after they are approved and signed by the Board; however, large disbursements are not to be made until the due date. If the disbursement is to be mailed, it shall be mailed sufficiently ahead of the due date so that it reaches its destination by the due date.

## G. SYSTEM OF ACCOUNTS

1. The District shall adopt and maintain a standardized accounting policy that will correlate with GAAP, GAAFR and NCGA practices where practical.

GAAP - Generally Accepted Accounting Principles

GAAFR-Governmental Accounting Auditing and Finance Reporting

NCGA - National Council of Governmental Accounting

2. The District uses the following funds to account for its revenue and expenditures:

General Fund: This interest-bearing fund resides in the Local Government Investment Pool (LGIP) and is the primary account into which tax revenue is deposited directly by Marion and Linn Counties. Transfers to the District checking account and other funds as directed by the budget are made from this fund.

Debt Service Fund: This fund resides inside the General Fund and is set aside under its own account number to accumulate funds required for principal and interest payments on the District's bonded debt.

Equipment Reserve Fund: This interest-bearing fund resides in the Local Government Investment Pool and was established to accumulate budgeted transfers for the purchase of fire equipment to maintain the approved Apparatus Replacement Plan.

Building Fund: This interest-bearing fund resides in the Local Government Investment Pool and was established to accumulate budgeted transfers for the acquisition of land for future expansion of fire service facilities and approved building projects.

Length of Service Fund: This interest bearing money market account resides in U.S. Bank and was established to accumulate budgeted transfers to present monetary awards based on rank and training to long-term Volunteers, upon their retirement.

Training Fund: This fund resides in a local bank as a non-interest bearing, business checking account and was established to process revenue and training expenses for scheduled classes, seminars and live fire exercises.

## H. AUDIT

1. The Administrative Assistant will work with the Board designated auditor each year to accomplish the objective of the annual audit.

## I. SELECTION AND DUTIES OF THE AUDITOR

1. At a regular Board meeting in the first quarter of every third year the Board shall select an auditor.
2. The auditor shall:
  - a. Examine the accounts of the District at the close of every fiscal year in accordance with ORS
  - b. Include such tests of the accounting records and such other auditing procedures as are necessary in the circumstances
  - c. Render an opinion on the financial statements prepared at the close of the fiscal year
  - d. Prepare financial statements for publication required by law
  - e. Make recommendations to the Board concerning its accounting records, procedures and related activities
  - f. Perform such other related services as requested by the Board

## J. PROPERTY INVENTORY

1. The District shall maintain a formalized program of accountability and controls over all inventories of furniture, fixtures and equipment. The purpose of the inventory will be to satisfy reporting requirements for insurance coverage, to aid the administration in the management of equipment and to assist in budgeting for replacement and to affix the control responsibility for the custody of equipment.
2. The inventory shall be reviewed annually by the Fire Chief.
3. The criteria to be used to conduct the inventory shall be included in the administrative regulations.

## K. SELECTION OF ARCHITECTS

1. Prior to any construction project requiring an architect, the Board shall approve the employment of architects from recommendations prepared by the Fire Chief.
2. The Fire Chief or his designee shall have the specific responsibility for screening applicants and developing recommendations for Board approval.

Selection criteria shall be developed and placed in the administrative regulations.

L. RISK MANAGEMENT AND INSURANCE PROGRAM

1. The Board shall provide for a program of risk management consistent with legal requirements pertaining thereto and with the ability of the District to finance it.
2. The Board shall purchase the necessary insurance or set aside adequate reserves to self-insure. Coverage shall be adequate to protect:
  - a. Itself as a corporate body
  - b. Its Board of Directors
  - c. Its individual members
  - d. Its appointed officers
  - e. Its employees

These groups are to be insured against financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act resulting in accidental injury to any person or damage to property within or without the District while the above named insured are acting in the discharge of their duties within the scope of their obligations as Board members or as employees carrying out their duties. Under no circumstances will Board members be held personally liable for consequences of their actions and decisions in fulfilling Board responsibilities.

3. The Board shall purchase insurance to cover or self-insure:
  - a. All real and personal property of the District
  - b. Losses due to employee dishonesty, injury or death
  - c. A program of benefits for employees to the limits established from time to time by the Board.
4. The Fire Chief shall develop and maintain procedures and regulations to carry out this policy and may designate District employees to administer and supervise the program.
5. The person(s) so designated shall be guided by the Prudent Man Rule and shall:
  - a. Identify and measure those risks
  - b. Evaluate physical properties owned or leased by the District
  - c. Establish accounting records to reflect values of such property
  - d. Establish procedures to maintain property and designate security personnel to protect property

- e. Establish procedures for good housekeeping and safe environmental conditions for employees and members of the public
- f. Establish procedures for handling of funds and record keeping
- g. Utilizing the services of the District's Insurance Consultant and/or Broker to determine which risks can normally be assumed as a property business risk and which risks shall be ceded to professional risk bearers considering:
  - i. Frequency and magnitude of loss, and
  - ii. The ability of the District to replace damaged property

M. AGENT OF RECORD

1. The District will retain an agent of record for casualty and property insurance and bonds as well as an agent of record for employee benefits.
2. The Board will designate the agent for a period of three years with an annual review in January of the type and quality of service.
3. The agent is responsible for assisting the District with the development of a sound risk management program and for writing and servicing all necessary policies and statutory bonds.
4. The means of selection, the minimum qualifications and responsibilities of an agent of record are developed and placed in the contract and the administrative procedures.

N. PROPERTY APPRAISAL

1. The District shall maintain an up-to-date appraisal of all buildings, including improvements, fixtures and fixed contents.
2. An appraiser who is certified or has a history of successful experience in the field shall conduct the appraisal. The District's insurance agent of record may perform this appraisal.
3. Effective in 1988, a physical re-appraisal of replacement values on property and improvements shall be conducted no less than each ten (10) years. All values of all buildings shall be updated at least annually or more often if necessary.

O. DISPOSAL OF SURPLUS OR OUTDATED EQUIPMENT AND PROPERTY

1. The District shall dispose of surplus or non-usable property using the monetary policies required by Oregon State Statute or Board Policy, with sales being conducted in a manner that will not invite criticism.
2. Items declared surplus or non-usable may, upon approval of the Fire Chief, be sold or disposed of as authorized by the Board to fire departments or other governmental agencies.

3. Where possible, sale of surplus firefighting equipment shall be made available to fire departments with which the District may expect to have mutual aid agreements and/or support.

P. PETTY CASH FUNDS

This fund was established using consistent practices outlined in ORS 465. Amounts requested to reimburse petty cash for expenditures shall not be made more often than once each month and no less often than once each quarter. Amounts of more than fifteen dollars (\$15.00) shall not normally be paid from petty cash funds. *Adopted April 1, 1990*

1. Full legal responsibility for the petty cash fund will rest with the Fire Chief of the District, but full financial responsibility for the fund will rest with the Administrative Assistant.
2. When reimbursement is required, the Administrative Assistant shall complete a reconciliation form. The receipts and other substantiating documents shall be attached to this reconciliation. Requests should be submitted at a time when the fund balance will allow reimbursement within the established accounts payable vendor cycle.

Expenditures made from the account are subject to the same budget and fiscal control requirements as are regular expenditures of the District and must be appropriately substantiated by the following types of documents:

- a. An original invoice or receipt which clearly shows the vendor's name, type of goods or services provided and the amount. The document should clearly be marked "paid". A cash register receipt will be considered an original receipt if this information is machine printed.
- b. A properly completed non-receipted disbursement form. This form should be used only for those transactions for which receipts are normally not provided, for example:
  - i. Cab, city bus or subway fare
  - ii. One-time personal services for which receipts are not normally available
  - iii. Disbursements made at coin-operated machines, such as laundromats, telephones and parking meters
  - iv. Unidentified cash discrepancies (over and short) in the petty cash fund
- c. The reimbursement check shall be made payable to Stayton Fire District Petty Cash
- d. The following items are expressly not authorized as expenditures from the petty cash fund:
  - i. Transactions where the individual did not obtain a receipt

when a receipt was available

- ii. Cashing of personal checks
- iii. Expenditures and travel expenses substantiated by cash register and credit card receipts that exceed fifteen dollars (\$15.00)
- e. The Administrative Assistant or the Fire Chief shall be the only personnel authorized to make expenditures from the petty cash fund.
- f. Procedures shall be established to insure the safety and security of the account. The petty cash fund, when unsecured, should never be left unattended and should be locked in a secure location when it is not practical for an attendant to be present.



## ***POLICY 12.8 EMERGENCY MEDICAL SERVICE & RESCUE***

Stayton Fire District will provide Basic Life Support (BLS) medical response for Emergency Medical incidents within the fire district boundaries and those areas adjacent that have been identified by district policy.

### **Response**

Response shall include trained medical personnel with minimum license of Emergency Medical Responders (EMR). The district will support personnel through Emergency Medical Technician and recognize personnel up to Paramedic.

Support means providing training and equipment to perform at the EMT scope

Recognize means utilizing their skills when Advanced Life Support services are on scene. The district will provide necessary equipment needed for the EMR and EMT Scope of Practices as approved by the Supervising Physician.

### **License**

The district requires ALL response personnel to be trained to minimum EMR and ALL Rehab members to be trained to minimum First Aid/CPR/AED at no cost to the individual for training, initial license and bi-annual license renewal.

The district will support response personnel to be trained to EMT at some cost to the individual for training, and at no cost for initial license and bi-annual license renewal. (See cost tables below). The district will not reimburse personnel for license renewal levels above EMT and/or specific classes to those levels.

### **License Renewal**

The district will only recognize and support Oregon licenses and renewals. Individuals are responsible for training and cost associated with maintaining National Registry EMT (NREMT) certification. Individuals who do not recertify on time are responsible for late fees and associated cost.

### **Training**

The district will provide regular training on drill nights and other days throughout the year, which will offer hours required for bi-annual license renewal. Additional opportunities to attend classes, conferences and seminars are also available to all members throughout the year.

The district will reimburse personnel for successful completion of EMT courses, initial license fees and bi-annual renewal. Reimbursement shall occur as follows: 100% of the course upon a copy of certification presented to the district; 100% of renewal upon copy of renewal to the district. Member must be in good standing with the district. If a member leaves the district prior to one year of service to the district after reimbursement for the course, a graduated scale based on the year will be applied for the individual to reimburse the district.

<b><i>DISTRICT PAYS WITH PRIOR APPROVAL BEFORE TAKING COURSE</i></b>	<b><i>DISTRICT DOES NOT PAY FOR</i></b>
EMT Test fees	Books
Tuition	Uniforms
Refresher training	Reimbursement for other expenses such
Written test	as travel, lodging, meals associated
Some immunizations	

## ***POLICY 12.9 EMERGENCY CONFLAGRATION ACT***

If it appears imminent that the District will be required to participate under requirements of the Emergency Conflagration Act, the Fire Chief is enabled to assess the budget, equipment and personnel of the District and to review the minimum level of fire protection required to protect the District under conditions created by the emergency. *ORS 476.510 - 476.610 and ORS 192.640*

A. The Fire Chief shall:

1. Develop and implement a plan to bring the District into conformity with the Emergency Conflagration Act
  - a. Maintain a current inventory of personnel and equipment committed as firefighting resources
  - b. Establish a command post and provide for ready communication with the Fire Defense Board Chief and the State Fire Chief
  - c. Develop communications that are compatible with the statewide radio fire communications network
2. Designate an alternate(s) to be in command in the event he is absent, disabled or otherwise unable to perform.
3. Keep accurate records of units dispatched, personnel and time employed, distances traveled, motor fuel consumed, supplies and repairs required, losses suffered and other expenses incurred due to the emergency operation.
4. Submit a bill to the appropriate State agency for reimbursement within thirty (30) days after the end of the emergency.
5. The cost schedule for reimbursement of expenses shall be the State Fire Service Mobilization Plan hourly rate (OAR 83, Div 130 7/95)

## ***POLICY 12.10 FEES AND COST RECOVERY***

Note: All references to Fee Schedule are directed to the current District Fee Schedule in this policy.

### **A. SUPPRESSION OF UNLAWFUL FIRES**

1. The costs associated with providing firefighting apparatus and/or personnel required to respond and be used actively or on a stand by basis in connection with the extinguishment or control of a fire that has been started or allowed to spread in a willful violation of ORS 478.960 (1) to (5) shall be recovered from the responsible party:
  - a. Costs shall be paid in any case where fire is started or allowed to spread and firefighting equipment and/or manpower of the District are required to respond to extinguish, control or patrol the fire.
  - b. Actions shall be pursued against and costs recovered from the person responsible for starting or allowing a fire to spread. The action shall be prosecuted in the name of the District and the District shall request the Court to determine and assess a reasonable amount as attorney fees for the District in prosecuting the action on behalf of the District.
2. This cost recovery policy will be governed by the following guidelines:
  - a. No one within the boundaries of Stayton Fire District shall cause or permit to be initiated or maintained on his own property, or cause to be initiated or maintained on the property of another, any open burning of commercial waste, demolition material, domestic waste, industrial waste, land clearing debris or field burning without first securing permission from the Fire Chief of the District and complying with their direction.
  - b. The Fire Chief shall prescribe conditions upon which permission is granted and which are necessary to be observed in setting the fire and preventing it from spreading and endangering life or property or endangering the air resources of this state. The Department of Environmental Quality (DEQ) notifies the district of the type and time for burning to be allowed on each day under schedules adopted pursuant to ORS statutes. The Fire Chief or their designee shall grant permission only in accordance with the schedule of DEQ, but may reduce hours to be allowed for burning if necessary to prevent danger to life or property from fire. The State Fire Marshal may refute, revoke or postpone permission when necessary in their judgment to prevent danger to life or property from fire, notwithstanding any determination by the Fire Chief.
  - c. Nothing in this section relieves a person starting a fire from responsibility for providing adequate protection to prevent injury or damage to the person or property of another. If such burning results in the escape of fire and injury or damage to the person or property of another such escape and damage or injury constitutes prima facie evidence that the burning was not safe.

- d. Within the Stayton Fire District, no person shall, during the closed season, operate any power equipment in forest harvesting operations unless each piece of equipment is provided with a fire extinguisher of sufficient size and capacity and with such other tools and firefighting equipment as may be reasonably required by the Fire Chief of the District.
- e. No person shall dispose of any building or building wreckage within a district by fire without having first secured permission therefore from the Fire Chief or their designee. No person shall refuse to comply with any reasonable requirements of the Fire Chief to safeguard the spread of such a fire.
- f. Whether the established criteria of this policy are met shall be determined by the District's responding Duty Officer and may be made by on-site investigation or reliance upon reports of other persons.
- g. Upon determination by the Duty Officer that the established criteria of this policy have been met, the Duty Officer shall cause to be dispatched such available personnel and apparatus as may be available to Stayton Fire District.
- h. Charges for services provided by the District may include services provided by a contractor upon determination by the Duty Officer that such services are required and exceed the services provided by the District.
- i. Stayton Fire District shall use the Oregon State Fire Marshal's Mobilization Plan rates to establish billing fees for suppression of unlawful fires.
- j. Any District charges shall be exclusive of and in addition to those charges that may be imposed by a private contractor or other entity.
- k. No charge shall be made for mutual aid assistance provided to another district or city or to the Oregon Department of Forestry pursuant to a Mutual Aid Agreement where the District has agreed to make no such charge for service or where the District has agreed to another or different charge rate for such services.
- l. The Fire Chief of the District is responsible to determine the application of the cost recovery policy.
- m. A billing statement will be issued for services, regardless of whether or not the property owner placed the call for assistance.

The Fire Chief is authorized to settle, reduce, cancel or dismiss any claim for service if warranted by the circumstances.

Statements shall be issued in the following manner:

- i. First bill for cost recovery must be issued within thirty (30) days of the incident
- ii. Second bill for cost recovery must be issued within sixty (60) days of the date of the first bill

- iii. Registered letter will be sent seventy-five (75) days after the first bill if no negotiation is underway
  - iv. Settlement must be obtained or negotiated within ninety days of first billing
  - v. Referral to a collection agency may be initiated immediately following the ninety-day period
- Resolution 97-03*

The Board of Directors will review only those cases that the Fire Chief deems necessary.

**B. COSTS INCURRED ON TRANSPORTATION ROUTES:**

1. In accordance with ORS 478.310, when the district responds to a call for assistance arising from an incident involving an airplane crash or an occurrence on a transportation route within district, the district may recover from the person or property receiving the direct fire or safety services as a result of the incident, any cost incurred for the following:
  - a. Apparatus, equipment and personnel used; and
  - b. Other expenses or costs reasonably incurred in furnishing the assistance, as adopted by the District.
2. Actions shall be pursued against, and the costs recovered from the person or property receiving the direct fire or safety services. In any event that it shall be necessary to apportion the costs of direct fire or safety services provided between two or more properties, the District shall prorate the costs incurred in proportion of the number of the properties involved. The action shall be prosecuted in the name of the District.
3. Stayton Fire District shall use the Oregon State Fire Marshal's Mobilization Plan rates to establish billing fees for fire or safety costs incurred on transportation routes.
4. Definitions: As used in this section, "transportation route" means a roadway, waterway or railroad right of way against which no taxes or assessments for fire protection are levied by the district or city.
5. Billing statements will be issued as outlined in the previous section.

**C. BILLING FOR MUTUAL AID AND UNPROTECTED AREA OUT OF DISTRICT RESPONSE**

Stayton Fire District will bill for services rendered in unprotected areas unless extenuating circumstances dictate otherwise. The Fire Chief will review all responses outside the Fire District for billing criteria.

Stayton Fire District shall use the Oregon State Fire Marshal's Mobilization Plan rates to establish billing fees for responses to unprotected areas outside the District.

**D. FEES FOR PUBLIC RECORDS**

In order to recover costs for responding to public records requests, the following applies:

1. No charge will be imposed on resident or property owner when requesting a basic incident report involving their residence or property.
2. All requests for copies of general documents, sound recordings, maps or other nonstandard documents, etc. will be charged according to the rules in this policy and fees in the Fee Schedule
3. Research Fees: If a request for records requires District personnel to spend more than 30 minutes searching or reviewing records prior to their review or release for copying, the person requesting the records will be charged the minimum fee per hour with a minimum charge for one hour. 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.
4. 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.
5. Reduced Fee or Free Copies: Whenever the Fire Chief determines that furnishing copies of public records in the District's possession at a reduced fee or without costs would be in the public interest, the Fire Chief may so authorize. ORS 192.324(5).
6. Stayton Fire District personnel will refer to the current District public records process and request form.

**E. PHOTOCOPY AND FAX FEES**

Fees will be charged according to Fee Schedule for photocopies and faxes other than those required by the District or Volunteers.

**F. FACILITY USE FEES**

Facility and AV equipment use fees are per current Fee Schedule

G. FEE SCHEDULE

Suppression of Unlawful Fires.....State Fire Marshal Mobilization Plan  
with additional \$25 Administrative fees

Incidents on Transportations Routes.....State Fire Marshal Mobilization Plan  
with additional \$25 Administrative fees

MutualAid&Response to Unprotected Areas Out of Dist. ....State Fire Marshal Mobilization Plan

Public Records:

Public Records: (includes electronic and paper standard one-sided letter size, emailed,  
faxed or mailed in response to request)

..... \$1 per page/ minimum charge \$5  
 Fire/Incident Reports for resident or owner ..... No charge  
 Sound Recordings of meetings ..... \$15/copy  
 Maps and Other Non-Standard Formats ..... Actual cost including Research Fees  
 Research Fees: minimum fee .....\$25/hour

Photocopies ..... \$.10/copy  
 Fire Service organizations with District membership..... \$.03/copy

Fax ..... \$.10/page

Facility Rental.....Fee Schedule

Fees are for each four (4) hour time block - Payment required in advance Groups or agencies using the facility for any period up to 4 hours will be charged the minimum rate for 4 hours.

Prorated fees will be charged for every hour the meeting/event extends beyond 4 hour periods.

\*Cleaning deposit is refundable when room is restored as originally found. Any costs for damage/ repairs or special cleaning for extensive soiling will first be deducted from the Cleaning Deposit and the balance will be invoiced to the organization or individual responsible for payment of the user fee.

<u><i>User Category</i></u>	<u><i>All Stations Training Room</i></u>	<u><i>Stayton Station Conference Room</i></u>
Cleaning Deposit*	\$ 40.00	\$ 40.00
Civic & Private	\$ 20.00	\$ 10.00
Commercial	\$ 40.00	\$ 20.00
A/V assistance	\$ 25.00	

*Updated Aug 2018, Aug 2019*



***POLICY 12.11***      ***VOLUNTEER POINT PROGRAM***

This program was established by the Board of Directors and is funded as a line-item expenditure in the General Operations Budget of the District. The amount of the expenditure is determined by the budget process each year. All monies allocated by the budget process will be disbursed each fiscal year on an annual basis, on approximately December 1 of each year, to each Volunteer who has accumulated points in accordance with the point formula. A point value will be assigned each year by dividing the amount of money allocated to the Volunteer Point Fund by the total number of points earned by all Volunteers.

Points are considered a stipend. The District will withhold state and federal liabilities and issue a W-2 to each Volunteer.

**One Point** is issued for all **Operational** functions which include, but are not limited to: calls, drills, training, and meetings. **Non-operational** functions include the Halloween Safety Fair, Toys for Joys, Golf Tournament and any related meetings (for example, are functions with committees and/or chairpersons that oversee the activity).

**No Points** are issued under the following situations: when the function is intended to raise funds for the Volunteer Association, when the activity is part of a function that has already been awarded a point, or when staff or volunteers are being compensated by the District.

**POLICY 12.12 VOLUNTEER INCENTIVES & AWARDS**

**A. YEARS OF SERVICE AWARDS**

An award program was established for years of service in order that District personnel might be recognized for their time in service to the District and the Community. Each member shall be recognized for his or her time in service after completing the time blocks.

A District Achievement Award certificate will accompany all years of service awards:

Time in Service

- 5 Years
- 7 Years
- 10 Years
- 15 Years
- 20 Years
- 25 Years
- 30 Years

**B. INCENTIVE AWARDS**

Other incentive programs may be designed from time to time to enhance participation in District activities.

**POLICY 12.13      LENGTH OF SERVICE**

The Stayton Fire District established a length of service award program in 1991 to be administered by the Fire Chief of the District to promote increased length of service among Volunteers.

**A.      Eligibility**

1.      A Firefighter will become eligible for the length of service award after ten (10) years of Volunteer service in good standing.
2.      Volunteer firefighters must adhere to the 50% training attendance requirement and be an active member of the district.
3.      Leave of absence time will not be counted unless it exceeds more than 90 days during the volunteer's length of service. Leave of absence time beyond 90 days will be adjusted in the volunteer's years of service.
4.      District permanent full-time career staff will not be eligible for this program.

**B.      AWARD**

1.      Application for the award must be made within ninety (90) days after retirement. Award will be available following the next regular scheduled District Board of Directors meeting.
2.      The following will be used to calculate the amount of the award:
  - a.      \$100.00 per year of service up to twenty (20) years of service
  - b.      \$200.00 per year of service from twenty-one (21) and thereafter
3.      Eligible award benefits shall be distributed upon the death of an eligible volunteer to his/her beneficiary.
4.      All awards will be subject to IRS reporting.
5.      The Fire Chief shall administer the program.

**C.      HONORARY MEMBERSHIP**

To provide the District a consistent means of recognizing individuals, groups, or organizations that have rendered outstanding service to the District or Volunteer Association.

Honorary Membership may be conferred on any person, group, or organization that has rendered outstanding service to the District or Volunteer Association provided that such membership has been recommended by the Volunteer Association or the District and approved by the Fire Chief.

## Stayton Fire District

Honorary Members shall be entitled to participate in District and Association events as invited.

Honorary Members, when present, shall be recognized and introduced at District Board meetings, Volunteer Association meetings, and other appropriate District and Association events.

Honorary Members shall be awarded "I support Stayton Fire District" sport apparel (tee-shirt and/or sweatshirt) and an Honorary Membership Certificate at the time of induction as an Honorary Member. Every effort shall be made to perform induction at an appropriate District or Volunteer event such as a Board meeting, Volunteer Association meeting or awards banquet.

### D. LIFE MEMBERSHIP

To provide the District a consistent means to recognize individuals who have rendered outstanding service to the District or Volunteer Association.

Life Membership may be conferred on any member, who has rendered outstanding service to the District or Volunteer Association for a period of ten (10) years, provided such member has been recommended by the Fire Chief and approved by the Board of Directors of the District.

Life Members shall be entitled to participate fully in District and Association events. They can attend Association meetings but may not be an officer of the Association or vote on Association matters.

Life Members, when present, shall be introduced and recognized at District Board meetings, Volunteer Association meetings, and other appropriate District and Association events.

Life Members shall be awarded a shadow box with their Stayton Fire District badge, name plate, name tag, collar insignia, rank insignia, helmet shield and other individual items as available, displayed inside. Life members shall also receive a framed Life Member Certificate at the time of induction as a Life Member. Every effort shall be made to perform induction at the District's next annual awards banquet following the member's retirement from service to the District. Immediate family members of inductee may be invited to presentation at the District's discretion.

**POLICY 12.14**

**COMMUNICATIONS – PUBLIC & MEDIA**

**A. THE BOARD DIRECTS THE FIRE CHIEF OR HIS DESIGNEE TO:**

1. Keep the public informed of the policies and directions of the District by furnishing full and accurate information together with interpretation and explanation of District plans and programs to the public.
2. Provide citizens, news media, civic organizations, business and industry opportunities to raise questions, express views and discuss District issues with the Board and staff.

**B. NEWS MEDIA RELATIONS**

**1. Public Meetings**

- a. The Board encourages representatives of the media to attend and report on all its regular and special meetings. Staff is to notify media of meeting schedules and agenda items and to provide appropriate background to assist in factually reporting proceedings of the Board.
- b. Under provisions of ORS 192.660, media representatives may attend Board executive sessions except when collective bargaining issues are under discussion and upon agreeing not to publish any information concerning the actions, recommendations, deliberations or discussions taken or given consideration at the session, unless specifically and expressly agreed otherwise at or after the executive session, or to communicate such information to a third party.
- c. For the purpose of ORS 192.660(5):
  1. “Employees of a news media organization” means a person who is paid wages or a salary by a news media organization
  2. “Contractor of a news media organization” means a person who contracts to perform work for a news media organization.
  3. “Agent of a news media organization” means a person who is authorized to act for or in place of a news media organization
- d. Proof of Status:
  1. Representative of the news media must have preapproved media credentials
- e. Attendance:
  1. Representatives must give advanced notice that a representative of the news media is attending; representative may be excluded for not giving advance notice.

2. Notification Involving Emergencies
  - a. The District will issue notification of significant emergencies as they are occurring.
  - b. News releases will be issued in a timely manner to all media requesting same concerning emergencies to which the District responds.
3. Notifications Involving Non-Emergencies
  - a. News releases will be issued as necessary, time dated as appropriate, to all media concerning District programs, policy and activities.

C. COMMUNICATIONS FROM PUBLIC AND STAFF

1. District patrons and staff wanting to be on a Board agenda must confer with the Fire Chief prior to the meeting so the Chief may collect and prepare appropriate and necessary information for the Board's consideration.
2. The Board can give status or special recognition to any individual or group of individuals in the performance of their District duties and to members of the community who distinguish themselves by performing an act of assistance or heroism for another.

D. INFORMATION CONCERNING ELECTIONS

1. Prior to District elections, the Board will provide the public background information on measures that concern or involve the District. Where appropriate, the Board will state its position on said measure(s).

E. GIFTS AND DONATIONS

1. The District may accept gifts, grants, donations and title to property and, upon receipt, shall have sole and complete control of it. The Board shall recognize the receipt of gifts and donations.
2. The Board shall recognize presentations of memorials or other awards without such recognition being considered as a testimonial or endorsement by the District.

F. INTERGOVERNMENTAL COOPERATION

1. Whenever feasible, the District will attempt to develop cooperative agreements with local governmental agencies to promote the efficient use of resources by sharing facilities and avoiding duplication of services.
2. To implement said policy, written agreements will be developed which include provisions related to responsibilities, payments, descriptions of the

Stayton Fire District

property or services, insurance, liability and necessary coordination of activities involving the cooperative agreement.

3. Intergovernmental agreements will be submitted to the Board for approval.

***POLICY 12.15                      MAINTENANCE DIVISION***

**A.        GENERAL**

The Board supports strong, cost-effective maintenance programs designed to protect the taxpayers' investment in plant and equipment.

**B.        RESPONSIBILITY AND AUTHORITY**

The Chief is delegated the responsibility and authority to develop the maintenance programs and levels necessary to protect the District's investment in plant and equipment.

**C.        PREVENTATIVE MAINTENANCE**

The primary emphasis of the District's internal maintenance effort will be preventative and predictive maintenance programs and activities.

**D.        STANDARDS**

Equipment and facilities will be maintained and upgraded as necessary to insure that they comply with current federal, state, and local building codes, safety standards, or the appropriate standards, such as NFPA.

**E.        CONTRACTS WITH OUTSIDE AGENCIES**

The District may contract to provide maintenance service to other governmental agencies provided it has the capability and provided it is cost-effective.



***POLICY 12.16 TRAINING DIVISION***

**A. TRAINING DIVISION FUNCTIONS AND ACTIVITIES**

1. The Board directs the Fire Chief or his designee to develop and administer training programs that will insure personnel are properly trained. To accomplish this, the following programs and activities are authorized:
  - a. Volunteer Program
  - b. Accreditation Programs
  - c. Testing and Evaluation Programs
  - d. Continuing Education Programs
  - e. Career Development/Promotional Program
  - f. Educational Program
2. Training Division Activities
  - a. Planning - Goals and Objectives
  - b. Budgeting
  - c. Administration of Programs
  - d. Records
  - e. Educational Involvement in Community Colleges and State Colleges
  - f. Association Participation

**B. VOLUNTEER PROGRAM**

1. Realizing the value of volunteer service, the Board directs the Fire Chief or his designee to utilize volunteer assistance as best serves the interest of the Fire District.

**C. ACCREDITATION PROGRAMS**

1. The Board directs the Fire Chief or his designee to create and administer an accredited training program that meets all minimum standards established by the Oregon Board of Public Safety Standards and Training.

Training Officer - Accredited training programs are required to be under the direction of a qualified training officer.

Instructors - Instructor resources must be adequate to present the proposed training. Instructors are to complete at least 20 hours of instructor training as outlined in Instructor I accreditation requirements, Subject #35-01, Instructor Training.

Subject Outline - Appropriate subject or course outlines and a suitable method for scheduling training are required.

Basic Text - Where applicable, the basic text for the prescribed training will be, but not limited to, the appropriate IFSTA manual.

Evaluations - Appropriate written and/or task performance evaluations will be periodically conducted to determine each individual's success in the program. Supervision of the examination process will be conducted by the Training Officer to insure credibility.

Records - Maintenance of a personal record for each individual's training and education is required for at least five (5) years.

Task Performance Evaluations - As time permits, task performance evaluations shall be conducted for Firefighters in accordance with testing criteria developed by the Board on Public Safety Standards and Training. The following evaluators are acceptable: **Assistant Chief, Division Chief, Captains, Lieutenants, and Fire Chief Designee.**

Personnel Accreditation - Applications for accreditation of fire personnel will be submitted on the appropriate form. Credit will be given where documented past experience and training clearly indicates that the specific requirements have been met. Individuals with three (3) or more years' experience may take a written examination administered by the Board on Public Safety Standards and Training to gain credit in specific subjects where documented training cannot be shown.

Notice of Personnel Action - Notification to the Board of Public Safety Standards and Training will be submitted within thirty (30) days after the termination of any accredited personnel.

Program Changes - Notification to the Board on Public Safety Standards and training can be submitted within thirty (30) days of any changes in the program and subject outlines.

Board Access and Monitoring - Allow access by Board on Public Safety Standards and Training examiners to the unit's personnel training records to verify training received by personnel seeking accreditation and to monitor testing processes.

"Live Fire" - All conditions of the Board of Public Safety Standards and Training "live-fire" training standards will be implemented. The Board on Public Safety Standards and Training will be notified prior to each scheduled "live -fire" training event through submission of Form PTE-10 (Notice of Proposed Training or Evaluation)

#### D. TESTING AND EVALUATING PROGRAMS

1. The Board directs the Fire Chief or his designee to create and administer, on a continuing basis, testing and evaluation programs designed to measure the readiness and preparedness of District functions and services. Functions and services with low proficiency are to be corrected.

E. CONTINUING EDUCATION PROGRAMS

1. The Board directs the Fire Chief or his designee to develop and implement continuing educational programs. These could include:
  - a. Ongoing in-service training and maintenance (i.e. tactical pre-plan, Firefighter I, EMT I certification, etc.)
  - b. Classes and/or practical programs to keep personnel aware of new technologies (i.e. incident command classes, modern day supervision and leadership classes, etc.)

F. CAREER DEVELOPMENT/PROMOTIONAL PROGRAM

1. The Board directs the Fire Chief or his designee to create and maintain a Career Development Program. The goal of the program is to foster the growth and development of the District and its employees.

G. EDUCATIONAL PROGRAM

1. The Board supports and encourages the concept of professional development throughout an employee's career with the Fire District through a program of continuing education. Therefore, the Board directs the Fire Chief or his designee to create and administer an educational reimbursement program that addresses District approved continuing education programs and employee accountability.

***POLICY 12.17 FIRE PREVENTION DIVISION***

**A. FIRE PREVENTION DIVISION FUNCTIONS AND ACTIVITIES**

1. The mission of the Fire Prevention Division is to develop and implement the optimum level of loss control services, and to prevent the cause and spread of hostile fires, recognizing and utilizing all available resources.
2. The Fire Prevention Division has four major performance areas:
  - a. Public Education
  - b. Fire Investigation
  - c. Code Enforcement
  - d. Community Development
3. Support activities include:
  - a. Training
  - b. Research
  - c. Administration
  - d. Records and Statistics
  - e. Appeals
  - f. Associations

**B. PUBLIC EDUCATION**

1. The Fire Prevention Division is charged with responsibility to meet the public's demand for information regarding what can be done in their homes and work places to minimize the incidence of fire.
2. It is also responsible for training high risk groups in fire survival techniques.

**C. C. FIRE INVESTIGATION**

1. The Division will thoroughly investigate each fire to determine if the fire occurred by accident, design or code violation; following regulations required by state statutes.
2. The primary objective of fire investigation is to prevent fires through more effective fire prevention education activities, better codes and built-in fire protection.

**D. CODE ENFORCEMENT**

1. The fire protection elements of the codes at existing non-residential premises will be enforced.

2. The Division will:
  - a. Identify fire hazards and bring all hazardous conditions to the attention of individuals responsible.
  - b. Assure that proper exits, interior finishes, fixed fire protection equipment and other related fire safety features remain place and/or operable.
  - c. Compliance with occupant load requirements at public assembly occupancies will be investigated and verified.
  - d. The Division will enforce the application of appropriate fire safety practices by property owners/managers and occupants. *Legal Reference ORS 478.910 et. seq.*

E. COMMUNITY DEVELOPMENT

1. The Division will make certain that fire prevention and life safety features required by applicable codes are provided for and properly installed in new construction projects.
2. The Division will facilitate, as early as possible, the identification of actual and/or potential fire hazards thus making it simpler and more cost-effective for the developer to amend the property/structural plans to comply with the codes. *Legal Reference ORS 478.927 et. seq.*

F. FULFILLMENT OF OBJECTIVES

1. Division staff shall be specialists who have sufficient training, experience and knowledge to render equitable and rational judgments as they enforce the fire prevention code, state statutes and fire and life safety protection requirements of the Building Code.
2. The Division will develop annual budget-related goals and objectives to aid in monitoring its effectiveness.

**POLICY 12.18 FIRE FIGHTER DEATH**

The investigation of a line-of-duty death may serve several different purposes. The most important objective, in every case, is to prevent the same situation from occurring in the future. We should never be satisfied until we can be sure that we are doing everything in our power to prevent accidents, injuries, occupational illnesses and line-of-duty deaths.

**A. PRIMARY OBJECTIVES**

1. To determine the direct and indirect casual factors, which resulted in a line-of-duty death, particularly those factors that could be used to prevent future occurrences of a similar nature, including:
  - a. Identifying inadequacies involving apparatus, equipment, protective clothing, standard operating procedures, supervision, training, or performance
  - b. Identifying situations that involve an unacceptable risk
  - c. Identifying previously unknown or unanticipated hazards
2. To ensure that the lessons learned from the investigation are effectively communicated to prevent future occurrences of a similar nature. (When appropriate, this should include dissemination of the information through fire service organizations and professional publications.)

**B. ADDITIONAL OBJECTIVES**

1. To satisfy the requirements of the Public Safety Officer Benefits (PSOB) program and other entitlements
2. To identify potential areas of negligence and casual factors that could result in criminal prosecution or civil litigation.
3. To ensure that the incident and all related events are fully documented and evidence is preserved to provide for additional investigation or legal actions at a later date.
4. To provide factual information to assist those involved who are trying to understand the events they experienced.
5. To provide the information to other individuals and organizations that are involved in the cause of fire service occupational safety and health.

### C. COMPLICATION FACTORS

1. Factors and situations that could cause the investigation team to lose sight of the true objectives and damage the credibility of the completed report often complicate investigations. The investigators must have a firm understanding of their mission and must have the support and independence necessary to perform a thorough and unbiased investigation.
2. The investigation team may be placed in the uncomfortable position of investigating the actions of friends, co-workers and superior officers. There may be pressure to find a particular individual or one isolated act or omission responsible for the fatal incident. There may also be a desire to absolve an individual of responsibility or to protect the reputation of the fire department. Emotional reactions are natural when a fatality occurs and they can be magnified when accusations are made or when an individual feels personal responsibility. The investigation should attempt to separate the emotions from the facts and present an unbiased analysis of the incident.
3. The mission of the investigation team must be directed and limited to finding facts and developing recommendations that are based only on the facts. Any instruction that attempts to alter the mission is inappropriate and any suggestion that a bias or cover-up is involved is a serious accusation.
4. A report that is based on factual information should speak for itself. The facts should be documented and available for review and the conclusions and recommendations should be clearly supported. In most cases a series of contributing factors will be found, leading to a number of recommendations.
5. Accusations of negligent acts and determinations of personal responsibility or liability are beyond the scope of a fact-finding report. If the report presents facts that lead to a conclusion of this nature, it is up to administrative, regulatory, or legal bodies to initiate appropriate actions.
6. There are times when significant facts cannot be determined with certainty. The actions of the victim may have been based upon circumstances that only the victim could describe. Other factors may be subject to conflicting theories or contradictory evidence. In these situations it is up to the investigation team to investigate as thoroughly as possible and to differentiate, in the report, between established facts and speculation or expert opinion. A report should never be based on unsupported assumptions.
7. A further complication may arise if there are any suggestions of criminal responsibility for an incident. In these situations it is essential to work closely with the appropriate law enforcement agencies to coordinate activities and share information during the investigation. This will depend on the nature of the

suspicion and the relationship between the investigation agencies. In most cases, it is possible to develop a positive working relationship that allows the investigation of both aspects of the situation to proceed.

#### D. INVESTIGATION TEAM

An investigation of a line-of-duty death is not a job for one individual. A thorough investigation will usually require at least 3 to 5 individuals and may involve a larger team. The fire department should have a plan that identifies an investigation team that will be immediately activated when an incident occurs. Designated team members should respond to the scene of the incident to begin the investigative procedures as soon as possible.

The plan should identify more than one potential team leader and several potential team members. The assignment process should be planned and documented based on the availability of designated individuals and the particular circumstances of the incident. The team member should be immediately reassigned from their regular duties to devote their full efforts to the investigation. In larger departments there may be a duty roster system or a primary designated individual and a number of potential alternates. Smaller departments may plan to work together, assembling a team from a mutual aid group or from more than one agency.

The ideal team leader should be thoroughly familiar with fire department operations, with health and safety issues, and with investigative techniques. Because few individuals possess true expertise in all three of these essential areas, the team should be assembled to combine the abilities of different individuals who can contribute to the project. The Fire Department Safety Officer should be a member of the team and may be the best choice to be the team leader. The team leader should be the individual who is most capable of managing and leading a group effort with these and other needed abilities.

#### E. INVESTIGATIVE AUTHORITY

One of the important considerations in appointing the team leader is to delegate the necessary authority to conduct a complete and thorough investigation. While the Fire Chief has the ability to assign and delegate the authority to any member of the department, a Team Leader who holds command or management level rank can usually function more efficiently in gaining cooperation and coordinating team efforts. The individual should also be respected for expertise, impartiality and conscientious work. No other officer should have the authority to interfere with the investigation.

#### F. TEAM MEMBERS

A list of potential team members should be maintained, based on individual abilities and qualifications. At least one member of the team should be trained and qualified in investigative procedures, preferably with specialized training in accident and injury investigation. A trained and qualified fire investigator or accident investigator can provide



the other team members with guidance on the proper collection and preservation of evidence, managing interviews and preparing investigative reports.

The team should include members who are very familiar with the type of activities and hazards that were involved in the incident, with the safety procedures that should apply to the situation, and with the organization and operations of the department. Additional capabilities that may be needed include photographers, video specialists, and experts in other areas that may apply to the particular situation. Some of these individuals may not need to be assigned to the team on a full time basis if their skills are available when needed.

It may not be possible to find all of these qualifications within the fire department. For example, a traffic accident involving fire apparatus will require an individual who is qualified to investigate accidents involving heavy trucks. This individual may have to be necessary to contract with a private investigator.

One of the first concerns of the Team Leader will be to identify the individuals or the particular capabilities that will be needed to investigate the incident. The plan should identify individuals who would be called upon, depending on the specific situation. If the plan does not identify anyone with expertise in the particular area of concern, one of the highest priorities will be to locate and engage the services of a qualified individual. The plan should provide a mechanism to quickly arrange for the services of any outside assistance that could be needed. The local law enforcement agency may be able to provide valuable assistance, particularly in managing and documenting evidence.

The plan should provide for the immediate response of a designated or provisional team leader and at least one or two additional team members when a fatal incident occurs. The remaining team members should be reassigned from their regular duties to the investigation team within 12 to 24 hours.

#### G. IMMEDIATE ACTIONS

There are several actions that should be implemented immediately when a line-of-duty death or a serious accident or injury occurs.

THE INCIDENT COMMANDER SHOULD DIRECT THE FOLLOWING ACTIONS:

##### 1. ISOLATE THE SCENE

The scene of the incident should be secured and guarded; only those individuals who have a specific reason to enter should be allowed inside the perimeter. An officer and as many members as are necessary should be assigned to secure the scene. Police assistance may be necessary to establish and maintain scene security. Senior officers should respect the need to preserve the scene for the investigation team and not use their privilege of rank to violate the perimeter.

The sooner that isolation is implemented, the easier it will be to investigate the scene and to account for any disruptions of the physical evidence. The only reason to violate this rule would be to provide medical treatment in an attempt to save the victim or to control a fire that could destroy the evidence. If an obviously dead body is present, the scene should be left undisturbed for the investigators. The scene should be maintained until all physical evidence has been documented, photographed and measured.

## 2. IMPOUND EVIDENCE

All items that could have a bearing on the investigation should be impounded and protected until they can be turned over to the investigation team. In the case of a fire fatality, items such as protective clothing and breathing apparatus will be extremely important in the investigation. Physical evidence should be handled in the same manner as evidence from an arson investigation or criminal investigation. A qualified fire investigator would usually be the most appropriate team member to manage the physical evidence.

Every reasonable effort should always be made to rescue, treat, and transport a victim to a hospital, if there is any possibility of preserving life. In this process protective clothing, breathing apparatus and other items may be removed from the victim and could be easily misplaced. The Incident Commander should immediately assign someone to take custody of any items that are removed from the secured area and to turn them over to the investigation team. Any necessary movement of evidence should be noted and recorded.

## 3. DOCUMENT THE CONDITION OF SAFETY EQUIPMENT

Information relating to the performance of protective clothing, breathing apparatus and other safety equipment is extremely significant in fatalities that occur during fire suppression operation and hazardous materials incidents. Written notes, supported by photographs, should document this information. If the victim must be moved, or if it is necessary to remove protective clothing and equipment before the investigation team arrives, it is important to note the condition of pertinent items.

### QUESTIONS ON THE CONDITION OF SAFETY EQUIPMENT:

#### **BREATHING APPARATUS**

Was the victim wearing SCBA?

Was the mask in place?

Was there pressure remaining in the air cylinder?

Were the valves in their normal positions?

Were straps and other components in their normal use configuration?

Was there any visible damage to the SCBA?

Were any components missing?

Where were they found?

How old was the SCBA?

When was the last test?  
If needed, were the repairs made?

**PERSONAL ALERT SAFETY SYSTEM (PASS) AND RADIO**

Was the victim carrying a PASS device?  
Was it turned on, and how do you know?  
Was it functioning when the victim was found?  
Did the victim have a portable radio or any other equipment?  
Where was it found?  
Was it in operable condition?

**PROTECTIVE CLOTHING**

Was the victim wearing full protective clothing?  
Was any protective clothing damaged?  
Had the victim removed any item of protective clothing?  
Where was it found?  
Did the victim have/wear all the required personal protective equipment?

\*Note: This list would apply to a firefighter who died in a fire suppression incident. A similar set of concerns would apply to any other type of situation.

**THE INVESTIGATION TEAM SHOULD IMPLEMENT THE FOLLOWING STEPS:**

**1. PHOTOGRAPH THE SCENE**

The scene should be diagrammed and photographed in the same manner that a crime scene would be documented. Large color prints are the preferred method of documentation. If the fire department does not have a qualified photographer, a police photographer should be requested to provide this service, under the direction of the Team Leader. All photographs should be delivered to the Team Leader. All photographs should be delivered to the Team Leader.

**2. ARRANGE FOR AN AUTOPSY**

An autopsy should be conducted for every line-of-duty death. If the death is fire-related, the medical examiner should be requested to look particularly at blood gases, including carboxyhemoglobin levels and other products of combustion. An alcohol level test is also necessary to meet the requirements of the Public Safety Officer Benefits Program (see Cooperation with other agencies).

**3. IDENTIFY WITNESSES**

It is often impossible for the investigation team to interview all of the witnesses at the scene or immediately after the incident. The immediate priorities should be to obtain

essential information from individuals who were directly involved and to identify witnesses for later follow-up.

## H. SECOND STATE ACTIONS

The immediate actions will generally require several hours and should be conducted according to a documented and established plan. The second stage will usually begin on the following day, when the full investigation team meets to plan the remainder of the investigation and to make assignments for different functions. It is up to the team leader to identify the resources that will be needed and to establish a plan to manage the investigation. There will be information to gather and analyze, witnesses to be interviewed, references to be checked and a report to be prepared.

### 1. CONDUCT INTERVIEWS

Full interviews should be conducted with every fire department member involved in the event. At a major incident this may have to be confined to those who were in any way involved with the victim before or during the event. All interviews should be recorded, with the consent of the witness (record that, too), and notes should be documented. The list of witnesses to interview will often grow as different leads are followed. Anyone who has information that could be significant should be encouraged to inform the investigation team and every contact should be interviewed, including members of the general public.

One objective should be to locate and interview anyone who makes a statement reported in the news media. These statements often confuse the issues in the early stages of an investigation; finding the person who made a statement is usually the best way to determine its accuracy. The team should obtain and review copies of all news broadcasts and published accounts of the incident. The reporters themselves should be interviewed, if their reports suggest some factor not consistent with the information found by the team. These individuals should be approached as any other witness-by requesting their assistance in determining exactly what happened.

### 2. OBTAIN RECORDS OF THE INCIDENT

The compilation of records, radio tapes and other data should allow the Team to establish a basic time line for the incident. The time line establishes the sequence of events chronologically, sometimes to the second. Additional information should be added to the time line as it is obtained, until the time line can be used to fully describe:

*.....who did what, and who saw what,  
.....at what location, and at what time?*

This is one of the basic building blocks of an investigation process.

In establishing a time line it is important to synchronize the time base for different records. Misleading information may result if times are compared from different sources, assuming

that the clocks were synchronized at the time of the incident. The investigation team should verify the times that are recorded for a verifiable simultaneous event and apply the appropriate correction factor to all other time measurements.

### 3. EXAMINE PHYSICAL EVIDENCE

All physical evidence, including protective clothing and equipment that was impounded at the scene, should be thoroughly examined by qualified personnel. All findings should be thoroughly documented and photographed. It may be necessary to have certain items inspected or tested by qualified experts or by testing laboratories. It is important to maintain the chain of custody for all physical evidence as different individuals examine it and to ensure that reports are obtained and the items are returned to a secure area.

### 4. RESEARCH DOCUMENTS

All existing departmental standard operating procedures, training materials, and similar sources of guidance that would apply to the situation should be reviewed to determine:

- a. How the situation “should” have been handled.
- b. Whether or not it was handled in the expected manner.
- c. Whether or not this would have had an impact on the outcome.

Records should be examined or determine if the individuals involved had received the proper training in the relevant topics.

All applicable NFPA standards, ANSI standards OSHA regulations and similar information that could relate to the events should also be studied. NFPA annual reports on fire fighter deaths and injuries should be consulted to determine if similar situations have occurred in other departments and the conclusions from those reports from those incidents should be obtained.

Where equipment or apparatus is involved, specifications and maintenance records should be obtained. Operators should be asked if any problems were previously noted and a determination should be made if required inspections and repairs had been completed on schedule. Talk to the maintenance crew.

### 5. EXPERT ASSISTANCE

There are several situations that will require the assistance of qualified experts. Mechanical engineers and metallurgists who are qualified to determine the specific cause of the failure should examine apparatus failures, particularly those that involve aerial devices. Breathing apparatus should be examined and tested, if it was involved in any manner.

Expert assistance is available in many different areas. If the needed expertise is not available within the fire department, it is an excellent investment to find the best individual

to assist the team in specific areas or to be part of the entire investigation. Where an incident has become extremely controversial, it may be advisable to have a recognized independent investigator participate in the investigation or review the evidence to develop an independent report.

## 6. OBTAIN LEGAL ADVICE

Legal issues will involve nearly every aspect of a line-of-duty death investigation. Where potential criminal action is a possibility, the safety investigation should be independent, but must be coordinated with the appropriate law enforcement agencies. Issues of potential liability, including product liability and possible violations of occupational health and safety laws, will be a consideration in almost every case. These factors should not be allowed to restrict the investigation, but it is advisable to consult an attorney and to have the report reviewed by the fire department's attorney before it is released.

### I. ANALYSIS & REPORT DEVELOPMENT

There is no magic formula for how to compile and analyze all of the data necessary to conduct a thorough investigation and prepare a report. It requires time and effort to fully understand, prepare, and develop a comprehensive report on a complicated situation. The team members should work toward a full understanding of the events that occurred, the responsibilities and actions of key individuals, the factors that made the department vulnerable to a fatal incident, and the actions that should have been taken or should be implemented now to prevent a similar occurrence in the future.

Every component of the "puzzle" should be followed back to its root cause. For instance, the evidence may suggest that an individual was not properly trained to handle a particular situation. This should be followed back to determine if the training was available, if the individual was trained, was trained in an improper procedure, or had taken action that was inconsistent with training that had been provided. This could lead to a recommendation for refresher training, for training in a new area, for a change in the procedure that training is based upon, or for a system to ensure that members attend all training classes.

Every contributing or suspected contributing factor should be followed back to a conclusion and tied in with all of the other factors to develop a complete report. The investigation team should continue its efforts until the team members are satisfied that they fully understand what happened, why it happened, and what steps need to be taken to prevent a similar occurrence in the future.

The information should be compiled into a written document, supported by photographs, diagrams, and supporting data to fully present the facts of the incident. Additional supporting information should be maintained in the investigation files.

The report should be presented to the Fire Chief as a completed document. In most cases, the presentation of the document should occur at a meeting with all of the team members present. The Team Leader should present an overview of the report, including all conclusions and

recommendations, using audio-visual aids to illustrate the presentation. The Fire Chief and other staff members should be prepared to ask questions of the team members.

The report should also be presented to the fire department Health and Safety Committee. In most cases the majority of the investigation team members will be members of the Health and Safety Committee or directly involved with the committee's functions. The Health and Safety Committee should be involved in the development of the investigation procedure and plan.

The Health and Safety Committee should review the full report, paying particular attention to the recommendations to prevent future occurrences of a similar nature. As a representative body, the Health and Safety Committee adds credibility to the investigative process and to the final report. The committee should be asked to endorse the recommendations of the investigation team. The Health and Safety Committee should have the option to request the Fire Chief to refer the report back to the investigation team, if the report is considered inaccurate or inadequate or if the recommendations are not feasible. The ultimate responsibility is the Fire Chief's.

A special presentation of the report for the members who were involved in the incident should be considered. This should be discussed with the critical incident stress team to determine if there are individuals who would have a difficult time attending such a presentation. In most cases, the presentation and discussion of the report with the members involved will help to bring closure to the situation. The final report should then be released to the department. This may involve printing and distributing a document or a presentation by the team at a training session. Every member of the department should see the final report or a presentation of its major points.

Under most state laws, the release of the completed report makes it a public document, accessible to the news media and any interested party. Supporting documents and evidence that remains in the investigative file may or may not be accessible. If there is a known media interest in the report, copies should be made available to reporters who have requested it. Copies should also be sent to organizations that are involved in fire fighter health and safety, including the United States Fire Administration, National Fire Protection Association, and International Association of Fire Chiefs. Copies should also be sent to other Fire departments that have requested information on the incident and to all individuals and organizations that provided assistance in the investigation.

#### J. RESTRICTING RELEASE

While one of the basic principles contained in this procedure is the value of conducting an open investigation and sharing the results for educational purposes, there will be cases where the possibility of litigation being brought against the department is a major concern. In these cases the attorneys representing the fire department will probably be strongly opposed to releasing any potentially damaging information. Anything that the investigation team finds in its investigation could potentially be used against the department and under litigation discovery procedure, the department can be forced to release all observations and reports, including all evidence compiled in the investigation. The department may be forced to release information even if it has proven to be inaccurate through the internal investigation. There may be certain privileges or other restrictions regarding release information even if it has proven to be inaccurate through the

internal investigation. There may be certain privileges or other restrictions regarding release of the report. These privileges may arise from privacy laws and be applicable to the description of the decedent and bar release to any but the decedent's representatives, or bars release if the report bears upon a criminal investigation, or under certain limited circumstances if the report is produced as a result of a critical self-analysis designed to identify methods of improving operations. Any restrictions on the release of the report should be coordinated with the department's attorney.

The concern over discovery should never restrain a fire department from taking corrective action to avoid another incident. The courts have generally found that taking action based upon knowledge gained from an adverse incident to prevent a recurrence of an event is not an admission of responsibility for the original event. Conversely, corrective action that was recommended, but not implemented, prior to the incident may be construed to be evidence of negligence and possibly even gross negligence. The decision of when to release a final report will have to be determined through discussions between the Fire Chief and the attorneys.

#### K. NEWS MEDIA

The news media often generate an atmosphere of tension around an investigation, fueled by the speculation and accusations that may surround an incident. The possibility that an individual may have been negligent or that some inappropriate act may have caused a death makes an excellent news story, particularly when fire department members are willing to be quoted. These same feelings may come to the surface when an investigation report is released. Accusations that an investigation is a "cover up" or a "witch hunt" do not help any situation.

Media inquiries should be directed to the team leader or the department's public information officer. While the investigation is in progress, it is appropriate to provide information on how the investigation is being conducted. No findings should be released until the full report is completed and reviewed. Certain information, such as the Medical Examiner's report will be released as public records at the same time they are available to the investigation team.

When the time comes to release the final report, copies should be made available to the news media through the Public Information Officer. The PIO may recommend a press conference or for the Team Leader to be available for interviews, if there is a high level of news interest in the report.

In some cases it will be necessary to interview reporters who covered the incident as witnesses. News photographs and videotape have been valuable in several investigations and most news organization will provide copies if the department will make an official request with assurance that they will be used only to support the investigation and subsequent training objectives.

#### L. COOPERATION WITH OTHER AGENCIES

A line-of-duty death will require a high level of cooperation among the fire department investigation team and other agencies and organizations that will be involved in investigation or seeking information on the incident. This may include organizations that have a statutory



authority or responsibility to investigate the incident and others that have legitimate reasons to be involved or to be interested in the results. There may also be organizations that are requested to assist the fire department investigation team. The best policy is to be extremely cooperative with other agencies that have a recognized reason to be involved in the investigation.

The investigation team assigned by the Fire Chief should be the authority having jurisdiction over the internal investigative process. If the incident is a fire, the investigation team should be on the scene before fire department operations are completed and should retain control of the scene as long as is necessary to conduct the investigation. If it is not a fire incident, control of the scene may fall within the jurisdiction of another agency and the investigation team will have to seek their cooperation to complete its on scene research.

If the incident is a vehicle accident or a situation where some other agency has primary jurisdiction for the investigation, the team leader will have to establish a close liaison with that agency. Most public agencies will recognize the need for the fire department to conduct an investigation and will work cooperatively with the investigation team.

#### M. FIRE CAUSE INVESTIGATOR

A fire cause investigation may be carried out concurrently with the safety investigation. If there is evidence of arson or other criminal acts, the situation will become much more complicated. The investigation of the safety factors involved in the incident must continue, while a high level of coordination is provided with fire investigation and law enforcement investigators. The fire department should retain custody of the scene until both sets of investigators have completed their examination and gathering of evidence.

The best approach to a situation that involves parallel fire cause and safety investigations is to meet with the law enforcement agencies and establish a cooperative relationship. There is no reason to compromise a fire cause investigation, particularly where there is a possibility that criminal activity is responsible for the death of a firefighter; nor should a criminal investigation stand in the way of the safety analysis. The two activities can sometimes be completed independently, where the area of origin and the area where the death occurred are physically separate. In other cases the investigations can be mutually supportive.

Where a possible arson investigation is involved, the investigation team may have to carefully control evidence and limit the release of information until the law enforcement authority having jurisdiction is comfortable having it released. In most cases the criminal issues, particularly the specific cause of a fire, will not be critical issues in the safety investigation and the release of a safety report should not compromise a criminal prosecution.

#### N. MEDICAL EXAMINER

In most areas the medical examiner or coroner has the responsibility to make the official determination of cause of death and may send an investigator to the scene. The on-scene investigative responsibility is sometimes delegated to the police agency. These investigators are

generally not experts at investigating fires or fire deaths and will usually be pleased to work with the fire department team to gather their information.

The remains of the deceased should be turned over to the medical examiner for an autopsy. The Public Safety Officer Benefits program requires certain tests to be reported by the medical examiner and the list should be provided before the autopsy should be incorporated into the investigation report.

The US Fire Administration is developing a standard protocol for a fire fighter autopsy, which should be available sometime in 1993. The objective of this procedure will be to focus on the specific causal factors that are of concern in a line-of-duty death, particularly relating to toxicity and thermal injuries. It is a good idea to establish a relationship with the medical examiner when developing the investigation procedure, since the pace of events when an incident occurs makes this a poor time to explain the need for a special autopsy.

#### O. OSHA

The employer is usually required to notify the state agency that is responsible for occupational safety and health, or the Occupational Safety and Health Administration of the federal government, of any line-of-duty death. (This will depend on the relationship between the state agency and the federal Occupational Safety and Health Administration.) In most cases this agency will send an investigator to prepare a report on the incident. The orientation and approach of the investigating agency varies considerably from one state to another.

The role of OSHA is primarily to investigate the employer on behalf of the employee. The investigation is intended to determine if the employer was in violation of occupational safety and health laws in a manner that could have caused or contributed to the death or injury of the employee. The employer is usually considered to be responsible for any violation, even if the victim's own negligence caused the accident, because it is presumed to be the employer's responsibility to ensure that employees comply with all health and safety regulations. The employer may be fined or subject to other penalties if violations are found.

The OSHA investigation may take one of several courses. The OSHA Investigator will usually invite the union to participate in any discussion relating to the investigation as the representative of the employee. The situation in industry is often an adversarial relationship, with a union encouraging the investigator to find fault with the employer. In many fire departments, the union and the department have a joint commitment to an effective health and safety program and share and equal interest in determining causal factors and corrective actions. Where there has been labor management conflict, particularly over health and safety issues, an OSHA investigation may become a tense situation for management.

The OSHA investigator may not be extremely familiar with fire department standard operating procedures and may have to rely on fire department members to explain the standard operating procedures and to help interpret the regulations that apply. The best policy is usually to be open and cooperative, to demonstrate to the investigator that the department is not trying to conceal anything and is dedicated to a full and open investigation. In many cases, an open invitation to

participate and to share in the conclusions of an investigation has created a positive relationship with OSHA investigators.

An OSHA investigator may insist on conducting a completely independent investigation or may refuse to work with management investigators. In some cases the investigator may appear to be committed to finding fault with the department for violations ranging from minor to major. This can create a very difficult situation for the investigation team and requires sound legal advice. This should not deter the fire department from conducting its own thorough and honest investigation and from being willing to share the results with other investigating agencies, although the city attorney may insist on reviewing any report before it is released.

Unfortunately, in some cases, the OSHA report has cited the fire department for violations that were insignificant or imagined because of investigators who were unfamiliar with fire department operations and applicable standards. In other cases major violations have been overlooked. These situations are often difficult to avoid and even more difficult to correct, particularly when the reports are released to the public.

#### P. INSURANCE CARRIER

Many cities and fire departments are insured by private insurance carriers, while others are self-insured and have their own loss management offices. The insurer's organization may be able to assist the team in obtaining expert assistance in particular areas or in conducting some forms of research to support the investigation. The insurers may also have training materials, guides, forms, and other materials that can assist the team in conducting or preparing to conduct an investigation.

In the case of a line-of-duty death the insurance carrier and/or the city's loss management department will almost definitely want to be kept informed on the progress of the investigation. The insurer may send its own investigator to meet with the fire department's investigation team, particularly where there will be a claim to be paid. The investigator who represents the department's insurance carrier should be supportive of a good internal investigation and should be looked upon as an asset to the investigation team. The extent of the insurer's direct involvement will depend on their relationship with the fire department and their experience in the type of situation under which the incident occurs.

#### Q. USFA

The United States Fire Administration and the National Fire Academy are both very concerned with fire service health and safety issues. The Fire Administration has requested to be notified immediately of any line-of-duty death and to be sent a copy of all investigation reports. The Fire Administration also serves as a point of contact for the Public Safety Officer Benefits program.

The Fire Administration contracts with a private sector investigative organization to prepare reports on incidents of national interest and significance; this includes most incidents of multiple fire fighter deaths and could include single fatalities in unusual circumstances. The Fire Administration does not have any investigative authority and the primary objective is to report

and disseminate information that would be of interest to the fire service and other agencies, as well as supporting the Fire Administration's health and safety projects. The report is for informational purposes only and is always submitted to the local jurisdiction for review and approval before it is released. In some cases the Fire Administration will request copies of the fire department's investigative reports or send a contractor to gather information from the local jurisdiction's investigation team.

If requested by the fire department, the Fire Administration has the ability to dispatch a contracted investigator to assist or advise the local jurisdiction in conducting the investigation, in some cases within hours of the occurrence. Most of the USFA contracted investigators are well qualified to assist the investigation team and are probably involved in more line-of-duty death investigations than any other investigators. The request should be made directly to the USFA by calling 301-447-1000.

#### R. NFPA

The National Fire protection Association is a continuing interest in firefighting health and safety, particularly as it relates to the development of NFPA standards. For many years NFPA has sent investigators to prepare reports on major incidents and often to assist local investigators. The NFPA investigation reports are primarily informational and often describe the relationship between NFPA standards and the incident. They are carefully limited to a factual discussion of the incident and are often published in NFPA periodicals and presented at NFPA meetings.

NFPA has no investigative or enforcement powers and participates in investigations only at the invitation or with the approval of the authority having jurisdiction. If requested by the local jurisdiction, NFPA is usually willing to send an investigator to assist the fire department investigation team. NFPA also has a staff of specialists in several different areas of fire protection that are available for consultation on unusual cases.

#### S. OTHER INVESTIGATORS

It is not unusual for a line-of-duty death to become the focus of multiple official and unofficial investigations in addition to those mentioned above. One of the characteristics of our current society is intense interest in establishing fault or blame for an incident. This may extend as far as accusations of criminally negligent acts and demands for criminal prosecution of individuals who are considered to be responsible for a line-of-duty death. While such charges are very rarely filed against fire department or against individual officers or members, the accusations have caused many difficult situations.

In some cases law enforcement agencies and prosecutors have launched their own investigations into incidents, adding unwanted pressure and complexity to an already tense situation. When these situations occur, the best policy for the fire department is to continue conducting its own investigation and to offer to share its findings with other investigators. Whether or not to invite the other agencies to participate along with the fire department's internal investigation team will depend on several factors, including jurisdiction and the relationship between the organizations. The accusers may attempt to discredit the internal investigations and use their legal authority to

conduct their own investigation. At these times it is important to have good legal advice and a well-established plan for conducting a thorough and honest internal investigation.

There may also be attempts by attorneys representing surviving family members, owners of the property where the fire occurred, or other interests to intervene in the investigative process. Participants who do not have official status should politely refer these requests to the fire departments attorney, who should understand the need for the department to conduct an internal investigation without intervention.

T. PSOB

The Public Safety Officer's Benefits Act (Public law 94-430) is intended to pay a sum in excess of \$120,000 to the survivors of any fire fighter who dies or is permanently disabled in the line of duty. A claim must be made to the Department of Justice, either by the survivors or by the involved fire department on their behalf. The responsibility rests with the claimants to submit the necessary documentation to support a claim, so that a determination of eligibility can be made. The PSOB staff should be contacted at 202-307-0635 as soon as possible after a death occurs to ensure that the proper documentation is assembled and submitted.

**POLICY 12.19                    RESPIRATORY PROTECTION PROGRAM**

Stayton Fire District has developed the following respiratory protection program to provide for respiratory safety of personnel within the district, meet state standards, and provide a means of record keeping and re-evaluation of the program on a regular basis.

**A.        PROCEDURES FOR SELECTING RESPIRATORS**

1.        By assessing the hazards that personnel are exposed to, it is revealed that respiratory hazards are encountered during frequent alarms and occasionally during various training activities. Because of these hazards, SCBA shall be worn anytime a hazardous exposure may occur.
2.        The accepted industry standard is open circuit SCBA. The Fire District agrees that self-contained breathing apparatus offers the highest level of respiratory protection and still allows personnel to work safely and efficiently.
3.        At the present time the District provides MSA high pressure, mask mounted regulator (MMR), self-contained breathing apparatus (SCBA) to all personnel who may be exposed to respiratory hazards while performing their duties.
4.        Company Officers, Duty Officers, and Safety Officers will continually monitor all respiratory hazards to be sure that personnel are using the appropriate respiratory protection. Changes will be made as soon as possible if current protection is deemed inadequate.

**B.        MEDICAL EVALUATION**

1.        Personnel of the District will undergo a medical evaluation before they may wear SCBA. This evaluation will be done prior to fit testing or any SCBA use.
2.        The District's Physician or Other Licensed Health Care Professional (PLHCP) will review all medical evaluations. The evaluation will contain the same information as in Sec. 1&2, part A of Appendix C of 29 CFR 1910.134(e) under 2(ii)
3.        The medical questionnaires will be administered by District Administration during regular working or meeting hours.
4.        The PLHCP will make recommendations to the District regarding the ability of each person to wear and use SCBA.
5.        Personnel will have the opportunity to discuss the questionnaire and the examination results with the PLHCP.
6.        Based on the PLHCP evaluation of the medical questionnaire, further testing may be required. Additional testing will be discussed with personnel on an individual basis by the PLHCP.    **INFORMATION IS KEPT CONFIDENTIAL.**
7.        An additional medical evaluation may be required if:
  - PLHCP recommends it
  - Personnel report medical signs and symptoms related to the ability to wear SCBA

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- Observations during fit testing indicate the need for further evaluation
- Workplace conditions change
- The respirator style is changed
- Positive answers are given to questions on the medical evaluation

### C. FIT TESTING REQUIREMENTS

1. Personnel who may, in the course of their duties, be required to use SCBA will undergo and pass a quantitative fit test before they are required or allowed to use the respiratory protection supplied by the District. The Fire District will provide each individual a SCBA mask after successfully passing the fit test administered by the District. District Personnel who require corrective glasses will be provided the frames and lenses to be used inside the SCBA mask by the District.
2. The quantitative fit test will be performed with the proper size mask and will be based on comfort and seal.
3. Personnel will be tested annually or whenever required by 29CFR1910.134(f).
4. Stayton Fire District will perform a Quantitative Fit Test (QNFT) as outlined in Item J of this respiratory standard.
5. Additional fit testing may be required if:
  - Personnel report that the respirator is unacceptable
  - Personnel have undergone physical changes
  - The PLHCP recommends it
  - The program administrator recommends it

Note \* - *Re-tests will be done at the earliest opportunity to assure compliance*

6. If personnel are unable to maintain an adequate fit with the masks currently in use, alternatives will be made available by the District.
7. Fit test results will be recorded on the District Respirator Fit Test Record.

### D. USE OF SCBA FACE PIECES (MASKS)

1. The District shall not permit face pieces with tight fitting masks to be worn by personnel who have facial hair that comes between the seal of the mask and the face or that interferes with the face to mask seal or valve function.
2. Corrective glasses, goggles, or other personal protective equipment shall not interfere with the seal of the mask to the face of the user.
3. Seal checks will be performed each time SCBA is used. Masks will be donned by proper methods that are implemented in training and suggested by the manufacturer. When the mask has been donned and properly tightened, a seal check will be performed by placing an ungloved hand over the intake opening where the MMR attaches. The user will then attempt to inhale. No leakage around the mask seal should be detected. If there is leakage, re-adjust and re-tighten the mask and perform the seal check again. Once the seal had been verified, the MMR can be attached.

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4. The District will continually observe personnel while working on incidents and in training to determine if SCBA is providing adequate respiratory protection and/or whether workers are experiencing discomfort from contaminants.
5. Personnel will immediately leave the work area if there is any malfunction or if leakage is detected. Personnel will proceed to a safe area (rehab, decon, etc.) before removing SCBA. The SCBA will be replaced if condition continues.
6. Atmospheres that are encountered in firefighting are considered to be Immediately Dangerous to Life and Health (IDLH). Therefore on any incident involving fire, toxic atmospheres, or oxygen deficient atmospheres where personnel are involved in hot zone activities, SCBA will be worn. Some examples include:
  - Visible smoke or particulate matter is present
  - Any interior structural firefighting
  - Oxygen levels are less than 19.5% or greater than 23.5%
  - Any hazardous materials release while operating in the hot zone
  - Carbon monoxide levels are 25 ppm or greater
  - Any time the Incident Commander determines that SCBA needs to be worn
7. The 2 in 2 out rule will be observed. When personnel are working in a hazardous area, they will work in teams of two (2 in), always remaining in visual or voice contact with one another and other personnel outside the hazard area. At least two additional personnel will remain outside the hazard area (2 out) in a rescue mode, with full personal protective equipment (PPE). At least one of the two personnel just outside the hazard area will remain in radio contact with the team inside the hazard area. This standard is not meant to prevent firefighters from rescuing victims from a life-endangering situation immediately. Rescuers must always work in teams of at least two. In most situations, four personnel qualified to perform firefighting duties are to be on scene before any interior structural attack, confined space, or hazardous materials mitigation takes place.

E. MAINTENANCE, CARE, CLEANING, INSPECTING AND REPAIR

1. SCBA shall be cleaned and disinfected after each use. This includes alarms, training, and fit testing.
2. After masks have dried, they are placed in designated bags and stored with each Firefighter's turnout gear.
3. The District shall ensure that SCBA packs are inspected monthly, per the manufacturer's instructions. SCBA shall be checked for function before and after each use.
4. Individuals that are issued masks are responsible for inspecting and maintaining their own equipment before and after each use. Inspections will be conducted annually with the proper paperwork being turned into the respiratory program coordinator.



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5. Monthly SCBA inspections shall include checking for face piece function, tightness of connections, conditions of various parts including but not limited to the valves, connecting hose, and proper function of regulator and warning devices.
6. Air cylinders shall be maintained in a fully charged state and shall be recharged when the pressure falls below 90% of the manufacturer's recommended pressure level.
7. Inspections shall be recorded and initialed by personnel performing inspection. The District shall maintain SCBA Log Records.
8. If repairs are needed, the SCBA will be taken out of service and tagged with an out of service tag. It will be placed on the repair bench. Repairs will be made as soon as possible and the breathing apparatus will be placed back in service. Repairs and adjustments are to be made by appropriately trained personnel with NIOSH approved parts. Repairs will be made according to manufacturer specifications. (Outlined in the Field Maintenance Manual)
9. There are certain repairs that can only be done by an MSA representative. If this is the case, an authorized MSA repair facility will be contacted and arrangements made for repair.
10. SCBA shall be flow tested by manufacturer certified personnel annually.
11. Batteries located throughout the SCBA and mask will be changed annually.

F. BREATHING AIR QUALITY

1. The District will provide air of high purity for use in self-contained breathing apparatus.
2. Compressed breathing air will be at least grade "D" as described in ANSI/Compressed Gas Association Commodity Specification for air. 29 CFR 1910.134(I)(1)(ii)(A through E)
3. Only compressed air will be used for breathing apparatus. Breathing air couplings are not compatible with oxygen equipment. Oxygen content will not exceed 23.5% in SCBA bottles.
4. Only approved SCBA bottles will be used with breathing apparatus. Breathing air containers are marked with NIOSH certification labels.
5. Cylinders will be tested and maintained as prescribed in the Shipping Container Specification Regulation of the Department of Transportation (CFR 49 part 173 and part 178).
6. Air quality will be monitored semi-annually (every six months). Air quality results will be kept on file
7. Moisture content in cylinders shall not exceed dew point of -50 degrees F at 1 atmosphere.
8. The compressor shall be situated to prevent contaminated air from getting into the system. The compressor will be set up to minimize moisture content of breathing air.

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9. The breathing air compressor shall be equipped with appropriate in line air purifying sorbent beds and/or filters that are maintained or replaced following manufacturer's instructions.
10. The breathing air compressor will be tagged with information on most recent filter change date and signature of person authorized by the District to perform the change.
11. The District shall use a high-temperature or carbon monoxide alarm, or both, to monitor carbon monoxide levels in oil-lubricated compressors. If only high-temperature alarms are used, the air supply shall be monitored at intervals sufficient to prevent carbon monoxide in the breathing air from exceeding 10 ppm.

G. SCBA TRAINING AND INFORMATION

1. Prior to SCBA use and annually thereafter, the District shall ensure that each member can demonstrate knowledge of the following:
  - Why the face piece is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the face piece
  - What the limitations and capabilities of the SCBA are
  - How to use the SCBA properly in emergency situations in which the SCBA malfunctions
  - How to inspect, don, doff, use, and check the seal of the face piece
  - What procedures are used for maintenance and storage of the face piece
  - How to recognize medical signs and symptoms that may limit or prevent the effective use of the SCBA
2. Training shall be conducted in a manner that is understandable to all personnel
3. The District shall provide training prior to requiring that personnel use a face piece in the workplace.
4. Retraining shall be administered annually and when the following situations occur:
  - Changes in the workplace or the type of SCBA render previous training obsolete
  - Inadequacies in individual knowledge or use of the SCBA indicate that an individual has not retained the requisite understanding or skills
  - Any other situation arises in which retraining appears necessary to ensure safe use.

H. PROGRAM EVALUATION

1. The District will conduct annual evaluations of the work site or scene to ensure that the written respiratory program is being properly implemented.
2. Personnel will be consulted to ensure that they are using SCBA properly and to get their views and opinions on the SCBA and the program. This information will be recorded on the Respiratory Program Evaluation Form.
3. Any problems identified are to be assessed and corrected. Factors to be assessed include but are not limited to:

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- Face piece fit
- Appropriateness of SCBA used
- Proper use of SCBA under work or training conditions
- Proper SCBA maintenance.

I. RECORD KEEPING

The District will retain all written information regarding equipment, personnel records, training records, medical evaluations, fit testing, the respiratory program, SCBA checks, flow testing, and compressor maintenance information.

Equipment:

- Inventory of all SCBA packs (frame and regulator)
- Inventory of all cylinders (hydro test dates)
- Fill log for fill station
- Fill log for all cascade systems
- Monthly and annual equipment checks
- Inventory of individual masks
- Compressor service record (posted)
- Air quality test results
- Pak flow test (annually)

Personnel – “CONFIDENTIAL” – Kept for 30 Years:

- Medical evaluations
- Medical examinations
- Exposure records (as needed)

Training:

- Annual fit test (separate from medical file)
- Annual SCBA and fill procedure training
- Use of air monitoring equipment
- Annual personnel program evaluation

J. SCBA FACE PIECE FIT TESTING PROCEDURES

The use of Self-Contained Breathing Apparatus is a vital part of a Firefighter’s job. It is important that the Firefighter’s mask fits properly so that the Firefighter’s respiratory system is not subjected to contaminate from doing his/her job in a hazardous atmosphere (IDLH).

The Stayton Fire District will conduct annual fit testing of all its personnel who may be subject to use of SCBA. Personnel will be fit tested with the same make, model, style and size of face piece/mask that will be used in IDLH atmospheres.

The Fire District will use an appropriate quantitative fit test (QNFT) to test for proper fit. The fit test will be administered using an OSHA-accepted QNFT protocol. The OSHA-accepted QNFT protocol and procedures are contained in the “**Fit Testing Procedures**”.

The Fire District will conduct an additional fit test whenever personnel report, or the employer, PLHCP, supervisor, or program administrator makes visual observations of changes in a Firefighter’s physical condition that could affect face piece fit. Such

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conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight.

The Firefighter must first go through the standard operating guideline for medical evaluation for face piece use before being fit tested. The Firefighter will then be fit tested using the Quantitative Fit Test.

Fit test records will be recorded and forwarded to Administration to be kept on record in the member's personnel file.

### General Requirements

#### 1. Fit Testing Procedures

The Stayton Fire District will conduct fit testing using the following procedures. They apply to all OSHA-accepted fit test methods.

- a. The test subject shall be allowed to pick the most acceptable face piece from a sufficient number of face piece sizes so that it is acceptable to, and correctly fits, the user.
- b. Prior to the selection process, the test subject shall be shown how to put on a face piece, how it should be positioned on the face, how to set strap tension and how to determine an acceptable fit. A mirror may be available to assist the subject in evaluating the fit and positioning of the face piece. This instruction may not constitute the subject's formal training on face piece use, because it is only a review.
- c. The test subject shall be informed that he/she is being asked to select the face piece that provides the most comfortable fit. Each one will provide adequate protection with various degrees of comfort.
- d. Assistance in assessing comfort can be given by discussing the points in the following item e. If the test subject is not familiar with using a particular face piece, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.
- e. Assessment of comfort shall include a review of the following points with the test subject and allowing the test subject adequate time to determine the comfort of the face piece:
  - i. Position of the mask on the nose
  - ii. Room for eye protection
  - iii. Room to talk
  - iv. Position of mask on face and cheeks
- f. The following criteria shall be used to help determine the adequacy of the face piece fit:
  - i. Chin properly placed
  - ii. Adequate strap tension, not overly tightened

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- iii. Fit across bridge of nose
  - iv. Face piece of proper size to span distance from nose to chin
  - v. Tendency of face piece to slip
  - vi. Self-observation in mirror to evaluate fit and face piece position.
- g. The test subject shall conduct a user seal check, either the negative and positive pressure seal checks described in “User Seal Check Procedures” of this section or those recommended by the face piece manufacturer, which will provide equivalent protection. Before conducting the negative and positive pressure checks, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another mask shall be selected and retested if the test subject fails the user seal check tests.
- h. The test shall not be conducted if there is any hair growth between the skin and the mask-sealing surface, such as stubble beard growth, beard, mustache or sideburns, which cross the mask-sealing surface. Any type of apparel, except the Fire District’s approved glasses, which interferes with a satisfactory fit shall be altered or removed.
- i. If a test subject exhibits difficulty in breathing during the tests, he/she shall be referred to a PLHCP, as appropriate, to determine whether the test subject can wear a face piece while performing his/her duties.
- j. If the test subject finds the fit of the face piece unacceptable, he/she shall be given the opportunity to select a different face piece and to be retested.
- k. The fit test shall be performed while the test subject is wearing any applicable safety equipment that may be worn during actual SCBA use, which could interfere with mask fit.
- l. The District shall ensure that persons administering the QNFT are able to calibrate equipment and perform test properly, recognize invalid tests, calculate fit factors properly, and ensure that test equipment is in proper working order.
- m. The District shall ensure that the QNFT equipment is kept clean, and is maintained and calibrated according to the manufacturer’s instructions so as to operate at the parameters for which it was designed.
- n. Test Exercises:  
The following test exercises are to be performed for all fit testing methods. A separate fit testing exercise regimen is contained in the CNP protocol. The test subject shall perform exercises, in the test environment, in the following manner:
- i. Normal breathing: In a normal standing position, without talking, the subject shall breathe normally. After the exercise, the subject needs to hold head straight ahead and hold his/her breath for 10 seconds during the test measurement.

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- ii. Deep breathing: In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as not to hyperventilate. After the exercise, the subject needs to hold head straight ahead and hold his/her breath for 10 seconds during the test measurement.
  - iii. Turning head side to side: Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side. After the exercise, the subject needs to hold his/her to left and hold breath for 10 seconds during test measurement. Repeat again with head to the right.
  - iv. Moving head up and down: Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling). After the exercise, the subject needs to hold head up and hold his/her breath for 10 seconds during test measurement. Repeat again with head down.
  - v. Talking: The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song. After the exercise, the subject needs to hold his/her head straight ahead and hold breath for 10 seconds during test measurement.
  - vi. Grimace: The test subject shall grimace by smiling or frowning for 15 seconds.
  - vii. Bend and touch toes: The test subject shall bend at the waist and touch toes. After the exercise, the subject needs to hold his/her head straight ahead and hold breath for 10 seconds during test measurement.
  - viii. Normal Breathing: Same exercise as 1.o.1)(a).
  - ix. Each test exercise shall be performed for one minute. The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become unacceptable, another model of respirator shall be tried. The respirator shall not be adjusted once the fit test exercises begin. Any adjustment voids the test, and the fit test must be repeated.
2. Ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol. (Portacount)
    - a. Portacount Fit Test Requirements
      - i. Check the face piece to make sure the sampling probe and line are properly attached to the face piece and that the mask is fitted with a particulate filter capable of preventing significant

Stayton Fire District

penetration by the ambient particles used for the fit test per manufacturer's instruction.

- ii. Instruct the person to be tested to don the face piece for approximately five minutes before the fit test starts. This purges the ambient particles trapped inside the face piece and permits the wearer to make certain the face piece is comfortable.
  - iii. Complete a final inspection for proper fit and perform a seal check, using methods described throughout this policy.
  - iv. Follow the manufacturer's instructions for operating the Portacount and proceed with the test.
  - v. After the test exercises, the test subject shall be questioned by the test conductor regarding the comfort of the face piece upon completion of the protocol. If it has become unacceptable, another size of mask shall be tried.
- b. Portacount Test Instrument
- i. The Portacount will automatically stop and calculate the overall fit factor for the entire set of exercises. This is what counts. The Pass or Fail message will indicate whether or not the test was successful. If the test was a Pass, the fit test is over.
  - ii. Since the Pass or Fail criterion of the Portacount is user programmable, the test operator shall ensure that the Pass or Fail criterion meet the requirements for minimum face piece performance.
  - iii. A record of the test needs to be kept on file with the District, assuming the fit test was successful. The record must contain the test subject's name, overall fit factor, make, model, style, and size of face piece used; and date tested.
  - iv. User Seal Check Procedures

The individual who uses a tight-fitting face piece is to perform a user seal check to ensure that an adequate seal is achieved each time the face piece is put on. Either the positive and negative pressure checks listed in these procedures or the respirator manufacturer's recommended user seal check method shall be used. User seal checks are not substitutes for qualitative or quantitative fit tests.

    - a. Mask Positive and/or Negative Pressure Checks
      - 1) Positive pressure check. Close off the exhalation valve and exhale gently into the mask. The face fit is considered satisfactory if a slight positive pressure can be built up inside the mask without any evidence of

Stayton Fire District

outward leakage of air at the seal. For most respirators, this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

- 2) Negative pressure check. Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s). Inhale gently so that the mask collapses slightly and hold that breath for ten seconds. The design of the inlet opening of some cartridges cannot be effectively covered with the palm of the hand. If so, the test can be performed by covering the inlet opening of the cartridge with a thin latex or nitrile glove. If the mask remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.
- b. **Manufacturer's Recommended User Seal Check Procedures**
  - 1) The face piece manufacturer's recommended procedures for performing a user seal check may be used instead of the positive and/or negative pressure check procedures, provided that the employer demonstrates that the manufacturer's procedures are equally effective.



**POLICY 12.20 ACCOMMODATING PERSONS WITH LIMITED ENGLISH**

**A. PURPOSE**

1. Stayton Fire District is committed to compliance with federal and state laws prohibiting discrimination based on a disability. The Fire District recognizes its legal obligation to ensure effective communication with persons with Limited English Proficiency (LEP) and makes every effort to pro-actively assess communication needs as well as providing the best service.

**B. RESPONSIBILITY**

1. The Fire Chief is the coordinator for the Fire District's procedures for implementing of this Policy. It is the responsibility of each member to know the Policy and to follow it.

**C. DEFINITIONS**

1. Effective Communication. Communication sufficient to provide the individual who may have limited English proficiency with substantially the same level of services received by individuals who are not limited in English proficiency.
2. Interpretation. The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning
3. LEP is the acronym for both "limited English proficiency" and "limited English proficient." The U.S. Census Bureau's operational definition for LEP is a person's self-assessed ability to speak English less than "very well." Individuals who do not speak English as the primary (or preferred) language and who have limited ability to read, write, speak, or understand English. Individuals who are LEP may be competent in English for certain types of communication (like speaking) but still be LEP for other purposes (like reading or writing).
4. Language Assistance Services. Oral and written language services needed to assist individuals who are LEP to communicate effectively with Fire District personnel and to provide individuals who are LEP meaningful access and equal opportunity to participate fully in the services, activities, or other programs
5. Meaningful Access. Language assistance that results in accurate, timely, and effective communication at no cost to the individual who is LEP. Meaningful access denotes access that is not significantly restricted, delayed

or inferior as compared to programs or services provided to persons who are proficient in the English language.

6. Primary Language. An individual's primary language is the language in which the individual most effectively communicates.
7. Qualified Interpreter or Translator. A qualified interpreter (or translator) is an interpreter who has had their specialized vocabulary (medical or legal terminology) proficiency assessed.
8. Translation. The replacement of written text from one language (source language) to an equivalent written text in another language (target language).
9. Vital Documents. A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits or is required by law.

D. PROCEDURE:

1. Stayton Fire District will take reasonable steps to ensure that persons with LEP have meaningful access and an equal opportunity to participate in services, activities and programs offered. The Fire District shall provide effective communications to individuals who may have LEP with substantially the same level of services received by individuals who are not limited in English proficiency.
2. Stayton Fire District members will promptly identify the language and communication needs of persons with LEP as needed to ensure effective communication. If necessary, members may use a language identification cards, online services or posters to determine the preferred language.
3. Stayton Fire District has access to interpreters through Language Line Services. Contact information is in each Fire District vehicle and facility.
4. When 9-1-1 calls are received at the PSAP from a person with LEP the call taker will attempt to identify the primary language and use Language Line Services to communicate with the caller. Dispatch will relay the information to the responders. In the event of a time critical situation responders may use any means available to communicate with a person with LEP including bilingual family members, bilingual bystanders, written communications, gestures and or digital communications. If a responder encounters a person with LEP on a response call, it must be noted on the Patient Care Form and in the narrative of the alarm report in District Incident RMS. Documentation must include what actions were taken to assist the person with LEP. All HIPPA and confidentiality regulations still apply when dealing with a person(s) with LEP.

5. In a non-emergency situation LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and after the LEP person has understood that an offer of an interpreter, at no charge to the person, has been made by Stayton Fire District. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, competent interpreter services will be provided to the LEP person. In order to ensure confidentiality of information and accurate communication children should not be used to interpret
6. Any person who believes they have been subject to discrimination based on their primary or preferred language may file a grievance using the complaint procedures outlined in **Policy Appendix (Notice of Nondiscrimination)**.
7. It is possible to encounter a language where translation is extremely difficult to obtain or achieve in a short period of time. In these situations the Fire District personnel must do what is in the best interest of the person(s) needing help.
8. On an ongoing basis, Stayton Fire District will assess changes in demographics, types of services or other needs that may require reevaluation of this Operational Guideline and its procedures. In addition, the Fire District will regularly assess the efficacy of these procedures, including but not limited to mechanisms for securing interpreter services, equipment used for the delivery of language assistance, complaints and community feedback. Website LEP.gov is a good source for LEP information. It also has a LEP Mapping Tool showing the highest percent of LEP individuals by language spoken. The data can be broken down by State.
  - a. Data from 2015 shows the total number of LEP over the age of 5 in Marion County was 31,827.
    - i. 85% Spanish
    - ii. 6% Russian
    - iii. 5% All Other
    - iv. 2% Chinese
    - v. 1% Japanese
    - vi. 1% Vietnamese
  - b. Data from 2015 does not break down the percentages for Linn County but shows a range of LEP over the age of 5 to be greater than 1000 and less than 10,000.

**POLICY 12.21      DIRECTION FOR PERSONS WITH LIMITED ENGLISH  
PROFICIENCY**

**A.      PURPOSE**

1.      Follow this procedure if during the interaction with patients or victims at the scene of an emergency incident and if it is determined that the patient falls under the LEP standard that is set forth in Policy 12.20. This following action should not delay patient care.
2.      Using resources available at the scene, you must inform the person of their right to use a Language Line Service free of charge.
3.      If the person wants to use the Language Line Service, the Language Line Service is either the App on the iPads or you can find the phone number and Pin number in the clipboard in the apparatus.
4.      For the App on the iPads, you can touch the language App then select either voice or video and follow the directions/prompts.
5.      To use the phone, call the number posted on the informational sheet in the clipboard then enter the Pin number as you are prompted to do so.
6.      Once either program has responded, make sure the person needing the service can see or hear what is being said and/or seen on the screen.
7.      Limit the use of this service to what is needed and disconnect as soon as you are done.

***POLICY 12 APPENDIX***

- Guide for Initial Response to Incidents on Unprotected Lands  
Outside of Stayton Fire District Boundaries
  - District Grievance Form
  
- Notice of Limited English Proficiency Non-discrimination

## Guide for Initial Response to Incidents on Unprotected Lands Outside of Stayton Fire District Boundaries

1. Areas Outside Stayton Fire District we respond to.
  - a. Three Pools (day use area)
2. Types of calls we respond to.
  - a. Three Pools
    - Medical = R-85, R-82, R-80, C-80 monitor
    - Rescue = R-85, R-82, R-80, C-80 monitor, C-80 discretion to respond
    - Fire = R-85 & T-85, R-82, C-80 monitor/discretion to respond
3. Level of responsibility/control we have.
  - Initial response/size up
  - Initiate command (if first arriving unit)
  - Transfer command to Authority Having Jurisdiction
  - Assist until additional AHJ resources arrive
4. The District will bill for Response into unprotected areas Boundaries
  - Based on the service provided
5. The District may bill for the following types of incidents.
  - All incidents outside Stayton Fire District boundaries
6. How we establish our fee schedule for response.
  - OSFM Conflagration Rates
7. The Duty Officer's role.
  - Monitor
  - Monitor/discretion to respond
8. Response to other outside/unprotected areas.
  - All areas outside of 85E, 85U and 82U by Mutual Aid request only

\* Create document outlining our response policy to unprotected areas

\* The bridge going into Jawbone Flats is limited to 3 tons

\* Vehicle Access into Jawbone Flats – no fire apparatus, support vehicles only

\* Identify trailheads and maps for METCOM to use as common place names (working on a current list to send them)

Stayton Fire District

\* Marion County Emergency Management: USFS if posting past the pavement Research MCEM posting informational signs notifying the public they are entering an unprotected area that has limited and/or delayed emergency response resources.

- Opal Creek Trail Head/Jawbone Flats
- Three Pools
- End of Pavement on Little North Fork Road

Original - Assistant Fire Chief  
Copy 2 Assistant Fire Chief  
Copy 3 Return to Grievant  
Copy 4 Disciplinary Officer

STAYTON FIRE DISTRICT

GRIEVANCE FORM – *STEP 1*

**Submission of Complaint** -- All portions of this section must be completed by the Grievant within five (5) working days from the date notification of disciplinary action is received.

Employee Name \_\_\_\_\_ Work Location \_\_\_\_\_

Employee District ID Number \_\_\_\_\_

Statement of Grievance \_\_\_\_\_

Specific policy or regulation alleged to have been violated (cite source) \_\_\_\_\_

\_\_\_\_\_

**Appeal:**

Reason for Appeal \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Remedy Sought \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Upon completion of this section, Grievant shall present the original and copies 2 and 3 to the Assistant Fire Chief. Copy 4 should be retained by Grievant.

GRIEVANCE FORM – Step 2

Assistant Chief – Receipt and response \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Signature

Upon completion of this section, the Assistant Fire Chief shall retain the original, present copy 2 to Grievant, and forward copy 3 to the Disciplinary Officer.



Original - Assistant Fire Chief  
Copy 2 Assistant Fire Chief  
Copy 3 Return to Grievant  
Copy 4 Disciplinary Officer

GRIEVANCE FORM – Step 3

**Request for Review Board** This section must be completed by the Grievant. Copy 2 of the completed Grievance Forms (Steps 1 and 2) must be attached.

I hereby request that a Review Board be convened to consider the grievance outlined on the attachments. My Representative is:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Upon completion of this section, Grievant shall present the original and copies 2, 3 and 4 and all attachments to the Assistant Fire Chief.

GRIEVANCE FORM – Step 4

**Acceptance of Request and Appointment of Representative**

This section is to be completed by the Assistant Fire Chief within five (5) working days of receipt.

I hereby accept the request for a Review Board to consider the outlined grievance.  
My Representative is:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Selection of Third Member of Review Board**

This section is to be completed by the Assistant Fire Chief within ten (10) working days of receipt.

The two appointed members of the Review Board shall select a third member of the Review Board, who shall serve as Chairperson of the Board. The Board Representative is:

\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Upon completion of this section, the Assistant Fire Chief shall retain the original, present copy 2 to the Grievant, forward copy 3 to the Disciplinary Office and forward copy 4 to the Review Board.

GRIEVANCE FORM – Step 5

Original	- Assistant Fire Chief
Copy 2	Assistant Fire Chief
Copy 3	Return to Grievant
Copy 4	Disciplinary Officer

**Review Board Convenes** This section must be completed by the Assistant Fire Chief.

The Review Board has set \_\_\_\_\_ to convene at \_\_\_\_\_ to  
(Date) (Time)

honor the request that the grievance outlined on the attachments be reviewed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

The Review Board shall convene within fifteen (15) working days of the selection of a Board Chairperson.

**Review Board's Action**

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

The Assistant Fire Chief shall function as Coordinator, to include summoning witnesses and gathering facts and testimony from all parties.

GRIEVANCE FORM – Step 6

Original	- Assistant Fire Chief
Copy 2	Assistant Fire Chief
Copy 3	Return to Grievant
Copy 4	Disciplinary Officer

**Summary of Review Board’s Findings**

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

Upon completion of this section, copy 2 will be presented to the Grievant, copy 3 to the Disciplinary Officer and copy 4 to the Grievant’s file. The original and all attachments shall be filed with the Fire Chief.

**Acceptance of Review Board’s Findings**

This section must be completed by the Fire Chief. Copy 2 of the completed Grievance Forms – Steps 1,2 and 3 and the report of the Review Board must be attached.

I hereby acknowledge receipt of the Review Board’s findings in the grievance outlined on the attachments as reviewed by the Review Board.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Modifications** (If any)

I find that the following modification(s) to Grievant’s disciplinary action is in order as the result of the Review Board’s findings.

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\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

The Fire Chief shall take the appropriate action within five (5) working days after receipt of the Review Board’s findings.



**Homeland  
Security**

## NOTICE OF NONDISCRIMINATION

Stayton Fire District complies with Federal civil rights laws and is committed to providing its programs and services without discrimination in accordance with:

- *Title VI of the Civil Rights Act of 1964*, which prohibits discrimination based on **race, color, or national origin** (including **language**).
- *Section 504 of the Rehabilitation Act of 1973*, which prohibits discrimination based on **disability**.
- *Title IX of the Education Amendments Act of 1972*, which prohibits discrimination based on **sex** in education programs or activities.
- *Age Discrimination Act of 1975*, which prohibits discrimination based on **age**.
- *U.S. Department of Homeland Security regulation 6 C.F.R. Part 19*, which prohibits discrimination based on **religion** in social service programs.

### To File a Complaint

If you think that Stayton Fire District has failed to provide these services or discriminated in another way based on race, color, national origin (including language), disability, sex, or age, you can file a complaint in person or by mail, fax or email with: Fire Chief Jay Alley, [jay\\_alley@staytonfire.org](mailto:jay_alley@staytonfire.org), Fax 1-503-769-1487, 1988 W. Ida St. Stayton OR 97383

You can also file a civil rights complaint with the U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL):

**E-mail:** [CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov) (fastest method to submit your complaint)

**Fax:** 202-401-4708

**U.S. Mail:**

U.S. Department of Homeland Security  
Office for Civil Rights and Civil Liberties  
Compliance Branch  
245 Murray Lane, SW  
Building 410, Mail Stop #0190  
Washington, D.C. 20528

For additional information: [www.dhs.gov/crcl](http://www.dhs.gov/crcl)  
Phone: 202-401-1474 Toll-Free: 1-866-644-8360

### Information and Services for Persons with Disabilities and Persons with Limited English Proficiency

Stayton Fire District

- Provides free aids and services, such as qualified sign language interpreters and written information in other formats (large print, audio, accessible electronic formats, etc.), to communicate effectively with persons with disabilities.
- Provides free language services, such as qualified foreign language interpreters and information written in other languages, to ensure meaningful access to programs and activities for persons with limited English proficiency.

**If you need these services, please contact:**

Administrative Assistant, Stayton Fire District,  
1988 W. Ida St. Stayton OR 97383, Office phone  
1-503-769-2601.



## AVISO DE NO DISCRIMINACIÓN

**Stayton Fire District** cumple con las leyes federales de derechos civiles y está comprometido a proporcionar programas y servicios libres de discriminación, de conformidad con:

- *Título VI de la Ley de Derechos Civiles de 1964*, que prohíbe la discriminación basada en la **raza, color, o nacionalidad** (incluido el idioma).
- *Artículo 504 de la Ley de Rehabilitación de 1973*, que prohíbe la discriminación basada en la **discapacidad**.
- *Título IX de la Ley de Enmiendas a la Educación de 1972*, que prohíbe la discriminación basada en el **sexo** en los programas o actividades educativos.
- *Ley de Discriminación por Edad de 1975*, que prohíbe la discriminación basada en la **edad**.
- *Normativa 6, Parte 19, del Código de Regulaciones Federales (C.F.R.) del Departamento de Seguridad de EE. UU.*, que prohíbe la discriminación basada en la **religión** en los programas de servicios sociales.

### Para presentar una queja

Si considera que **Stayton Fire District** no ha proporcionado estos servicios, o ha discriminado de cualquier otra manera por motivos de raza, color, nacionalidad (incluido el idioma), discapacidad, sexo, o edad, puede presentar una queja en persona o por correo postal, fax o correo electrónico a: **Fire Chief Jay Alley**, [jay.alley@staytonfire.org](mailto:jay.alley@staytonfire.org), Fax 1-503-769-4187, 1988 W Ida ST, Stayton, OR 97383.

Asimismo, puede presentar una queja de derechos civiles ante la Oficina de Derechos Civiles y Libertades Civiles (CRCL) del Departamento de Seguridad Nacional de EE. UU.:

#### Correo electrónico:

[CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov) (la forma más rápida de presentar su queja)  
Fax: 202-401-4708

#### Correo postal de EE. UU.:

U.S. Department of Homeland Security  
Office for Civil Rights and Civil Liberties  
Compliance Branch  
245 Murray Lane, SW  
Building 410, Mail Stop #0190  
Washington, D.C. 20528

Para obtener más información: [www.dhs.gov/crcl](http://www.dhs.gov/crcl)  
Teléfono: 202-401-1474 Línea gratuita: 1-866-644-8360

### Información y servicios para personas con discapacidades o con dominio limitado del inglés

#### **Stayton Fire District**

- Ofrece asistencia y servicios gratuitos, como servicio profesional de intérpretes de lengua de señas, e información escrita en otros formatos (letra grande, audio, electrónico, etc.) para permitir una comunicación eficiente con personas con discapacidades.
- Ofrece servicio gratuito de idiomas, como servicio profesional de intérpretes de idiomas extranjeros e información escrita en otros idiomas, para garantizar el acceso satisfactorio a programas y actividades para personas con dominio limitado del inglés.

**Si necesita estos servicios, comuníquese con:**

**Administrative Assistant, Stayton Fire District,**  
1988 W. Ida St. Stayton OR 97383, Office phone  
1-503-769-2601