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Chapter 21

CONTRACT POLICIES

PUBLIC CONTRACTS

21.100 Generally.

(1) Nothing stated in this Chapter shall be construed contrary to the provisions of ORS Chapters 279 A, B, or C ("Public Contracting Code").

(2) Lane County is the "contracting agency" referenced in the Public Contracting Code and "contracting agency" powers and duties shall be exercised and performed by those employees who have expressly been delegated authority in a LM Chapter 20, 21, or 60 rule ("County rules"). These express delegations include, but are not limited to, authority to award and execute contract documents. Absent this express delegation, the County Administrator, and Department Directors as authorized by the County Administrator, may determine which public officers have authority to exercise the powers and duties of the contracting agency under County rules. Such delegations should generally be evidenced by a writing. Generally, the Department of Management Services may conduct or assist with competitive bid or RFP processes as determined by the Director of that department. Nothing in this provision is intended to modify the authority of the County Administrator and Department Directors for contract matters after contract execution.

(3) The model rules adopted by the Oregon Attorney General pursuant to ORS 279A.065 do not apply to Lane County, unless specifically adopted in these rules.

(4) Any reference in this Chapter to OAR Chapter 137 provisions shall be for the purposes of aiding in interpretation in the event of ambiguity or of providing further explanation of the manner in which the County may interpret its rule. When used as such, the reference shall be: "See OAR ____." Unless otherwise specifically noted, these OAR provisions are not adopted as rules applicable to County contracts. The applicable rules are those contained in LM Chapters 20, 21, and 60 (regarding sale of personal/surplus property).

(5) The County Administrator, with assistance of the Office of Legal Counsel as requested, is delegated authority to review the Attorney General's model rules when modified and evaluate whether Lane County should modify its rules to ensure compliance with statutory changes. If the evaluation suggests this modification may be necessary, proposed amendments shall be submitted for Board consideration.

(6) In addition to contracting agency powers and duties the County Administrator is delegated the authority to adopt all procedures necessary to implement the provisions of the County rules..

(6) An adversely affected party must timely file any available protests under LM Chapter 20 or 21 before seeking judicial review of the County's process, solicitation, contractor selection or award decisions. All administrative protests must be exhausted prior to judicial review. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 11-12-14-1, 12.14.11)*

21.101 Definitions.

(1) As used in this Chapter, the following words and phrases shall mean:

(a) Board. The Board of County Commissioners, sitting as the local contracting agency.

(b) Competitive bidding and competitive quotes. See LM 20.095.

(c) Goods or services. See ORS 279A.010.

(d) LCRB. The Lane County Board of County Commissioners, sitting as the local contract review board.

(e) Non-public improvement contract. Contracts including for goods and/or services, and contracts for emergency work, minor alteration, ordinary repair or maintenance of public improvements, and any other construction contract that is not defined as a "public improvement" under ORS 279A.010.

(f) Offeror. A general term to describe a person who submits a bid, proposal, quote (written or oral).

(g) ORPIN. The online electronic Oregon Procurement Information Network administered by the Oregon Department of Administrative Services, State Procurement Office.

(h) Personal Services Contract. See LM 20.097; LM 21.117.

(i) Public contract. See ORS 279A.010(1)(z). In addition, a public contract is any written document which sets forth the promises of the parties, one of whom is the County. More specifically, a public contract can cover purchases, sales, leases, or other acquisition or disposal of personal property or public improvements. It can also cover sales and purchases of services, including personal services. Net financial effect for the County is not a factor in determining whether a public contract exists. A public contract may bind the County to incur a financial obligation, may produce revenue, or may have little or no financial implications.

(j) Public improvement. See ORS 279A.010(1).

(k) Public officer. The County Administrator, and where otherwise delegated, Department Directors. This authority may be further delegated. The public officer is also any person authorized to conduct a procurement on the County's behalf.

(l) Request for Proposal. See LM 21.107.

(m) Responsible bidder or proposer. See ORS 279C.375, ORS 279B.110.

(n) Retainage. The difference between the amount earned by the contractor on a public contract and the amount paid, held to guarantee full performance. See ORS 279C.550. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 08-2-13-1; 2.13.08)*

21.102 Policy on Competition.

It is the policy of Lane County to encourage open and impartial competition and to encourage the economic integration of minorities, women and emerging small businesses into the business sector.

All public contracts shall be awarded by competitive procurement, except as otherwise allowed or required in ORS 279A, B, or C; ORS 282.210; or the County's public contracting policies and exemption rules. If federal funds are involved, federal laws, rules and regulations shall govern, in the event of conflict. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

21.103 Contract Execution and Processing.

(1) All contracts shall be in writing and signed by the Board, or a duly authorized delegate. Until a contract is executed by the parties, it shall not be binding.

(2) All contracts shall be processed through procedures prescribed by the County Administrator for review by legal, risk management and budget staff, except where expressly stated otherwise by the County Administrator or these rules. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)*

COMPETITIVE SELECTION

21.104 Cost and Feasibility Analysis

(1) Before conducting a procurement for certain services covered by ORS 279B and estimated to exceed a $250,000 contract amount, except as provided in (3) below of this rule, the County will: prepare proposed written findings that performing the services with the County's own personnel and resources is not feasible or demonstrate

by means of a proposed written cost analysis that performing the services by contract would cost less than performing the services with the County's own personnel and resources.

(2) The services subject to this rule are those covered by a contract where service supplier agrees to supply the County's service requirements that arise for a specified time period or an individual project, usually paid based on time and materials. The services are covered by a contract that calls primarily for the contractor's time and effort.

(3) Procurement of the following services are not covered by (1) of this rule:

(a) Client services as described in OAR 125-246-0110,

(b) Personal services purchased under County rules,

(c) Services described in ORS 279C, including but not limited to contracts for architects, engineers, photogrammetrists, transportation planners, land surveyors and related services and public improvements.

(4) When determining whether or not using the County's personnel or resources is feasible, factors include but are not limited to the factors found in ORS 279B.036 including:

(a) The County lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services, comparing the field most closely involved with a potential contractor's capability, experience or expertise in the same or similar field; or,

(b) A special circumstance requires the contracting agency to procure the services by contract as set forth in ORS 279B.036(1)(b). Special circumstances include, but are not limited to, services incidental to primary purchase or lease of real or personal property; services needed in an emergency or for urgent, temporary or occasional use such that use of County resources would delay and frustrate the purpose of the services or they will be completed in six months; where a grant funding source or state or federal law requires an independent contractor.

(5) Any cost analysis shall be conducted in accordance with ORS 279B.033.

(6) Prior to conducting the procurement, the department will submit their proposed written findings or cost analysis, including the proposed basis for a decision to proceed, to the County Administrator. The County Administrator is delegated the authority to make the determination of how to proceed based on findings or cost analysis covered by this rule.

(7) The County Administrator shall collect and provide to the Board each quarter, copies of the record of the written findings or cost analyses, and the basis for the decision to proceed, for each procurement covered by this rule. Upon request, the County Administrator or a designee will consult with Oregon Department of Administrative Services in evaluating the process covered by this rule. *(Revised by Order No. 09-12-15-2, Effective 12.15.09; 10-6-9-4, 06.09.10; 11-12-14-1, 12.14.11)*

21.105 Competitive Bidding.

Competitive bidding is a formal process by which County advertises and issues a written invitation to bid, and receive and open bids as required by ORS Chapter 279A, B, and C and these rules. An invitation to bid is a solicitation of competitive offers in which technical specifications, price and delivery (or project completion) will be the predominant award criteria.

(1) <u>When Required</u>. Generally, a formal competitive bid process is required for all public contracts unless exempt or excepted pursuant to ORS Chapter 279 A, B or C, or an LM Chapter 20 exemption rule, or such authorities provide formal bidding as an option. Nothing in this rule is intended to prohibit the County, in its discretion, from using formal bidding even though it may not be required.

(2) In preparation for an invitation to bid, the County may issue a request for information, a request for interest or other preliminary documents. It may also develop and maintain a qualified products list in accordance with LM 20.230.

(3) Advertisements.

(a) The contents of advertisements for bids shall include:

(i) a description of the project, goods or services;

(ii) the office where the specifications for the project or purchase may be reviewed;

(iii) name, title and address of person authorized to receive bids;

(iv) if prequalification is required, a statement of the class or classes of work for which bidders must be pre-qualified and the filing deadline;

(v) scheduled bid submission deadline which shall not be less than 7 days after the date of the last publication of the ad;

(vi) scheduled bid opening (immediately after bid submission deadline for public improvement contracts);

(vii) if applicable, that the contract is for a public work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act.

(b) County may use either or both of the following advertising methods in (i) or (ii) except as provided in (iii):

(i) Publish at least once in at least one newspaper of general circulation in the Lane County area;

(ii) Publish electronically on a Lane County website or other electronic posting site (e.g. ORPIN) as long as the requirements of (iv) below are met.

(iii) For public improvement contracts estimated to exceed $125,000, County shall use: either or both methods in (i) and (ii); and, publication in at least one trade newspaper of general statewide circulation.

(iv) In considering whether to advertise by the method in (i) or (ii) for a particular project, County shall weigh advertising cost savings with the method likely to encourage the greatest competition, and decide based on the greatest competition. Nothing in this rule is intended to prohibit the County from using any other method of public notice in addition to (i) or (ii).

(v) In order to conduct an electronic advertisement described above, a department shall publish weekly, for no less than 4 consecutive weeks, in at least one newspaper of general circulation, a notice that the department may publish future advertisements (listing the types) by electronic advertisement, including the world wide web location(s) (i.e., Uniform Resource Locator or URL), and providing a contact person for questions or concerns. It is within the department's discretion to decide if and how any concerns will be accommodated, subject to use of a method likely to encourage the greatest competition.

(5) Bids.

To be received and considered, all bids must be in writing and signed by the bidder or authorized representative and submitted in a sealed envelope. No oral, telegraphic, telephonic, or telephonic facsimile bids, modifications of bids, or signatures, will be considered, unless otherwise stated in the bid documents.

(a) An invitation to bid is used to initiate a sealed bidding solicitation. It shall contain the information required by ORS 279B.055(2) for non-public improvement contracts, and by ORS 279C.365 and ORS 279C.830 for public improvement contracts. The County may provide solicitation documents by electronic means or hard copy, or both. It shall include notice of the distribution method in the advertisement for the solicitation. Departments shall take steps to protect against modification of electronic documents. The County shall also notify potential bidders about the method for obtaining addenda.

(b) By signing and returning a bid, the bidder acknowledges it has read and understands the terms and conditions applicable to the solicitation document and that it accepts and agrees to be bound by the terms and conditions of the contract, including to perform the scope of work and meet the performance standards.

(c) The County may allow or require pre-qualification of bidders by setting forth the procedure and criteria in the invitation to bid. The public officer shall determine when a pre-qualification may be mandatory or permissive for a specific contract or class of contracts and the pre-qualification procedure, subject to requirements in this subsection (b) or applicable statutes. See ORS 279B.120, 279B.125, 279C.430.

(i) For public improvement contracts with mandatory pre-qualification, the County shall include in the invitation to bid the time for submitting written pre-qualification applications, and the general description of the type and nature of the contracts to be awarded. For both mandatory and permissive pre-qualification, the County shall also provide the standard form to be used.

(ii) In making a determination for non-public improvement contracts, the County will consider applicable standards of responsibility listed in ORS 279B.110(2) and discrimination pursuant to ORS 279A.110, and for public improvement contracts as set forth in ORS 279C.375(3) and ORS 279A.110. For all contracts, if a bidder fails to qualify for a mandatory pre-qualification, notice shall be provided of the reasons, length of proposed disqualification not to exceed three years, the right to a hearing before the LCRB by filing a timely notice of appeal within 3 days with the department conducting the competitive selection, waiver of the hearing if the deadline is missed, and reference to the sections of the County rules covering the appeal process. For non-public improvement contracts, the County may revoke or revise and reissue a prequalification approval upon reasonable cause to believe there has been a substantial change in conditions or bidder is no longer qualified or less qualified by providing notice of the grounds and a right to a hearing.

(iii) The County, through the public officer, may also debar a prospective bidder based on standards in ORS 279B.130 and ORS 279C.440. The same procedure for disqualification above shall be followed.

(d) For non-public improvement contracts, the County may use a multi-step invitation to bid seeking technical unpriced bids after providing public notice, and later issue an invitation to bid limited to the bidders whom the public officer has determined to be eligible under criteria set forth in the initial solicitation. The multi-step procedure shall be described in the invitation to bid. Technical unpriced bids need not be opened publicly. The opportunity to protest the solicitation in accordance with (6) below shall be provided prior to the closing of phase one. Unsuccessful bidders may protest the intent to award a contract, which should include the opportunity for affected bidders to protest exclusion from the phase two. See OAR 137-047-0257.

(e) The County may award multiple contracts when specified in the invitation to bid.

(f) Correction, Withdrawal and Late Bids. A bidder may withdraw the bid at any time prior to the deadline set for receipt of bids and deposit a new, sealed bid in accordance with the initial invitation to bid. The County may release an unopened bid which has been withdrawn to the bidder or authorized representative after voiding any date and time stamp mark. The County will not consider bids received after the time and date indicated for bid opening in the invitation to bid. A bidder may not modify any bid after it has been deposited with the public officer, except for minor informalities. All decisions to permit correction or withdrawal of bids shall be supported by written reasons.

(g) Clarification. If a bidder finds discrepancies or omissions in the drawings or bid documents, or is in doubt as to their meaning, the bidder shall immediately notify the public officer. If the public officer believes a clarification is necessary, an addendum will be issued to all bidders in writing preferably at least five calendar days prior to the deadline set for bid receipt but in no case less than 72 hours prior to the

deadline for bid. If there are not five calendar days left before the deadline for bid receipt, the addendum may postpone the date for bid for a minimum of five calendar days. Any addenda so issued are to be covered in the bid proposal and will become part of the contract documents.

(h) Bids Irrevocable. All bids shall be irrevocable for 30 days from the time of opening unless otherwise stated in the bid documents. Further, the bids of the three lowest un-rejected bidders shall be irrevocable and binding and the bid securities shall be retained by the public officer until there is an executed contract and the contractor has provided all required satisfactory performance bonds. All other bid securities shall be returned promptly upon award of the contract or rejection of all bids.

(6) Protest of Process and Solicitation Document.

For non-public improvement contracts, a prospective bidder may protest the competitive selection process or provision(s) in the solicitation document if they believe the process is contrary to law, or that a solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name pursuant to requirements in ORS 279B.405(2)(a) and (4). Unless otherwise specified, the protest must be filed no later than 5 calendar days before bid opening. The County shall issue a written decision no less than three business days before bids are due, unless otherwise decided by the County. The County may exercise the response options set forth in OAR 137-047-0730(4) and (5). For public improvement contracts, a prospective bidder may protest specifications or contract terms and conditions pursuant to OAR 137-049-0260(3), (4) and (5). Unless otherwise specified in the invitation to bid, the protest shall be filed no later than 10 days before bid opening.

(7) Opening of Bids.

The public officer will not examine any bid prior to opening. The officer shall note on the envelope containing the bid the date and hour received. All bids submitted to the County will be opened publicly at the time, date and place designated in the invitation to bid and by the public officer. Any bid or modification received after the designated deadline shall be returned unopened to the bidder. To the extent practicable, the public officer shall read aloud the amount of the bid, the name of the bidder and such other information as the public officer considers appropriate, and record the same. The bid record for a public improvement contract shall be open to public inspection after the opening, with the exception of certain information covered by a public records exemption. The bid record for a non-public improvement contract shall be open to public inspection after the issuance of an intent to award, with the exception of certain information covered by a public records exemption. If the County receives a records request, including subpoena, covering information the bidder believes is covered by an applicable public records exemption, it shall be the bidder's responsibility to defend and indemnify the County for any costs associated with establishing such an exemption. The bidder's act in submitting a bid constitutes its acceptance of this responsibility.

(8) Evaluation of Bids.

(a) Evaluation of bids will be conducted by the public officer in cooperation with the department requesting the bid, if any, and shall be based on minimum requirements established by the bid documents, compliance with public bidding procedures, bidder responsibility, ethical practice, product acceptability, ORS 279B.055(6)(a), and LM Chapter 20. See also, OAR 137-049-0380.

(b) Goods and services that have been manufactured, produced or performed in this state shall be preferred, if price, fitness, availability and quality are otherwise equal. See ORS 279A.120.

(c) The public officer shall, for the purpose of evaluating bids, apply any preference in ORS 279A.120 (resident bidder), ORS 279A.125 (preference for recycled materials) or ORS 282.210.

(d) The public officer shall make all necessary investigation to determine whether the apparent lowest responsible bidder has met responsibility requirements. See ORS 279C.375(3); ORS 279B.110.

(e) Where the methods and factors which have cost implications over the life of the product have been identified in the bid documents pursuant to LM 20.115, a life cycle cost analysis shall be made of all bids to determine the lowest responsible bidder.

(f) Invitations to bid may solicit lump sum offers, unit price offers, or a combination of the two, as well as additive or deductive alternates. The County may use evaluation methods as described in OAR 137-049-0380(2) or any other method reasonably likely to result in similar comparisons.

(g) For public improvement contracts, if all responsive bids from responsible bidders exceed the County's cost estimate, the County may negotiate value engineering and other options (excluding those likely to affect the field of competition) with the lowest responsive, responsible bidder to attempt to bring the bid within the cost estimate. However, a negotiated contract under this provision shall not be awarded if there is significant change in the scope of the project from the original bid proposal. The County may discontinue the negotiation at any time. Nothing in this rule prohibits the County from conducting a new solicitation process. To the extent bidder's records used in the negotiation are public records, they are exempt from disclosure until after contract award or termination of the negotiation, and then subject to disclosure in accordance with ORS 192.410 through ORS 192.505. See OAR 137-049-0430.

(9) Mistakes in Bids.

Minor informalities may be waived. Mistakes discovered in bids after opening where the intended correct bid is clearly evident or properly substantiated may be corrected. Where the intended correct bid is not clearly evident or cannot be substantiated by accompanying documents, the bid may not be accepted. The County reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a contract when it finds such action to be in the public interest. See OAR 137-049-0350 and OAR 137-047-0470.

(10) Rejection.

The County reserves the right to cancel a solicitation, or reject any or all bids in whole or in part when the cancellation or rejection is in the County's best interests as determined by the County. This includes rejecting any bid not in compliance with all prescribed public bidding procedures and requirements, and for good cause, rejecting all bids upon a finding that it is in the public interest to do so. See OAR 137-049-0440(5), OAR 137-047-0640, OAR 137-047-0650. If all bids are rejected in whole or in part, new bids may be called for as in the first instance or initial bids may be considered with opportunity for supplemental submission. If there is partial rejection, the County may solicit supplemental information only from the bidders who submitted bids and may set an expedited deadline on the conditions that such deadline is within what could reasonably be expected as part of the original competitive process and that it is unlikely readvertising publicly would lead to greater competition. The public officer is delegated the authority to reject all bids, prepare findings of best interests and provide written notice of rejection of all bids including the reasons therefore to all bidders However, if the rejection is of what initially appears to be the successful bid, the Board or the County Administrator, depending upon authority to execute the contract, shall exercise the right to reject the apparent successful bid. In addition, if partial rejection under this rule occurs as a result of the filing of a protest, any portion of the protest not resolved in favor of the protestor shall proceed to the Board or County Administrator. The Board and County Administrator may also exercise authority to act in accordance with this provision.

(11) Reserved.

(12) Notice of Intent to Award.

The County shall provide written notice of its intent to award to a particular bidder or bidders at least fourteen (14) days before the award, unless the County department determines that a shorter notice period is more practicable.

(13) Protests of Intent to Award.

Unless otherwise specified in the bid documents, all written protests of the intent to award must be filed within seven (7) days of the date of the notice of intent to award. Protests of intent to award shall be considered by the Board if it would approve and award the contract. Protests of intent of award shall be handled by the County Administrator, or designee, for those contracts to be awarded by the County Administrator.

(a) The protest for a non-public improvement contract shall specify the applicable grounds for the protest as set forth in ORS 279B.410(1). The protest for a public improvement contract shall specify the applicable grounds for protest set forth in OAR 137-049-0450(4)(c) which is adopted.

(b) For contracts to be awarded by the Board, if the public officer determines there is sufficient merit to reject bids under LM 21.105(10), he or she may do so. If any portion of the protest remains, the Board shall be provided and may consider a complete copy of the written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to the Department or revise the award.

(c) For County Administrator awarded contracts, the County Administrator has authority to reject bids pursuant to LM 21.105(10), and authority to affirm, reverse, send back to the department or revise the award of the contract in order to correct any errors made in the original award, so that the contract is awarded to the bidder legally entitled to receive an award pursuant to public contract law and regulations and the criteria stated in the documents. The County Administrator shall deliver this decision to the Board. The decision shall be final seven days after it is delivered to the Board, unless within that time the Board elects to review the matter. If the Board elects review, a complete copy of the written record shall be delivered to the Board within a reasonable time period. The Board may consider this written record, and any other evidence provided at a public meeting and shall issue its decision by Board Order. The Board may affirm, reverse, send back to department, or revise the decision of the County Administrator, or his or her designee. Upon adoption of the order, the decision will be final.

(14) For public improvement contracts, the County shall submit a completed responsibility determination form covering the selected contractor, along with any attachments, to the Construction Contractors Board within 30 days after the contract award. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06; 08-2-13-1; 2.13.08; 09-12-15-2, 12.15.09; 11-12-14-1, 12.14.11)*

21.106 Bid, Payment and Performance Securities.

(1) Bid Security.

(a) Unless otherwise provided below, all bids shall require as bid security a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check, of the bidder in an amount not to exceed 10 percent of the bid. The dollar amount or percentage required as security shall be stated in the bid documents.

(b) The public officer is delegated the authority to waive the bid security requirement described above prior to bid opening for any goods or services contract, any construction contract as defined in ORS 279C.320(1), and any public improvement contract not exceeding $100,000 except a contract for highway, bridge, or other transportation projects which cannot exceed $50,000. The public officer must reasonably believe:

(i) That waiving the bid security requirement will probably result in lower bids or an increased number of bids, and

(ii) That waiving the bid security requirement will not endanger completion of the project if rebidding is necessary because the successful bidder is unable or unwilling to sign the contract or provide any required performance bond, and

(iii) That the potential for cost to the County of rebidding the project is outweighed by the benefits.

(2) Payment and Performance Security.

(a) All bid solicitation documents for public improvement and other construction contracts shall require a payment and performance bond be filed with the County in accordance with ORS 279C.380, unless exempt under LM 20.275. All bids for goods or services contracts may require a payment and performance bond, if the public officer determines it is in the County's best interest to do so.

(b) Payment and performance bonds are not required for public improvement and other construction contracts if the amount of the contract does not exceed $100,000, except contracts for highway, bridge, or other transportation projects which do not exceed $50,000 pursuant to LM 20.275.

(c) In cases of emergency or as described in ORS 279C.380(4), the requirement for a performance and payment bond may be excused if the declaration of such emergency is made in accordance with LM 21.128.

(3) Public Works Bond.

(a) The County's solicitation document shall require that each contractor and subcontractor have a public works bond on file with the Construction Contractors Board before starting work on the project unless exempt under ORS 279C.836(4) (not required to pay prevailing rates of wage), or ORS 279C.836(7) (disadvantaged minority, women, or emerging small business), or ORS 279C.836(8) (project price does not exceed $100,000), or ORS 279C.836(9) (County excuses due to emergency). Except as to emergencies, the Contractor shall notify the County before starting work if it is relying on an exemption to the public works bond requirement. The Contractor shall require each subcontractor to provide a similar notification to the Contractor and County. If requested by County, the contractor shall submit written documentation from the Construction Contractors Board or its website, evidencing the receipt of this bond and receipt of such bonds for any subcontractors. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.0; 05-12-14-9, 1.1.065; 08-2-13-1; 2.13.08)*

21.107 Requests for Proposals.

(1) Description. Requests for proposals (hereinafter RFP) are a means of soliciting competitive proposals or offers for entering into a contract for personal services, goods, goods and services, equipment, non-public improvement construction related services (ORS 279C.320), or public improvement contracts for which an RFP process is appropriately authorized (ORS 279C.335(2)). Generally, an RFP is appropriate when price and specification will not necessarily be the predominant basis for award. An RFP process is one, but not the only means of competition for personal services contracts.

(2) When Required and Requirements. Proposals submitted in response to an RFP are offers as are bids. See OAR 137-047-0310, 137-049-0280. Unless otherwise specified in ORS 279A, B, or C or these rules, references to "bids" and "bidder" and "invitation to bid" shall, to the extent practicable within the proposal process be deemed equally applicable to "proposals," "proposers," and "requests for proposals." The RFP process must generally comply with the requirements stated in LM 21.105 above, unless otherwise stated, and shall comply with requirements in ORS 279B.060 for non-public improvement contracts and ORS 279C.400 and ORS 279C.405 for public improvement contracts. In addition, all RFP documents shall state:

(a) The composition and role of the evaluation committee;

(b) The evaluation criteria to be used in awarding the contract and the weight assigned to each criterion;

(c) Provide for an opportunity to protest the solicitation in accordance with LM 21.107 (6);

(d) The contract terms;

(e) Describe the right to protest as stated in LM 21.107(14);

(f) Invite the submission of sealed, written offers to be publicly opened at a designated time and place;

(g) Describe the method of contract selection, including award without negotiation, negotiation with highest ranked proposer, competitive negotiations, multiple-tiered competition or any combination of these methods or any other method authorized by these rules.

(h) An RFP process, if appropriately authorized for a public improvement contract, is not required to include first-tier subcontractor disclosure and reciprocal preference for non-resident bidders.

(i) Departments are encouraged to include diversity in the evaluation criteria in RFPs for contracts in which direct services are to be provided to the public. See Lane County Diversity Action Plan.

(3) The County may issue a request for information, a request for interest, a request for qualifications or other preliminary documents, or consult as set forth in ORS 279B.210 (for non-public improvement contracts) and ORS 279C.405(1) (for public works contracts), in order to obtain information in preparation of a request for proposals.

(4) Advertisements and Proposals. LM 21.105(3) and (5). References to "bid" or "bidder" there include "proposal" or "proposer." By signing and returning a proposal, in addition to the acknowledgment in LM 21.105(5)(b), the proposer agrees to be bound by the terms and conditions of the contract, including the final negotiated scope of work and performance standards.

(5) Reserved.

(6) Protest of Process and Solicitation Document. LM 21.105(6). References to “bid” or “bidder” there include “proposal” or “proposer.”

(7) Opening. LM 21.105(7) above. References to "bid" or "bidder" there include "proposal" or "proposer." However, proposals need not be read aloud, and the County is only required to list and record the names of the proposers at the opening. It may record any additional information deemed necessary in its discretion.

(8) Evaluation of Proposals. The evaluation committee shall evaluate the proposals according to the criteria stated in the RFP, compliance with public contracting procedures, proposer responsibility, ethical practice, product acceptability, and ORS Chapter 279A, B, and C. The award shall be to the responsible proposer whose proposal is determined in writing to be the most advantageous to the County, not restricted to price, based on evaluation factors set forth in the RFP and any authorized negotiations. . The department responsible for issuing the RFP shall mail notice of the evaluation committee recommendation to the proposers within two days of the committee's decision unless otherwise stated in the RFP. Negotiations with proposers regarding contract terms may occur only after the award or only as provided in the RFP. See OAR 137-047-0262, OAR 137-049-0650.

(9) Methods of Selection. For non-public improvement contracts, the County may use any one or combination of methods of contractor selection set forth in ORS 279B.060. See OAR 137-047-0262 and 137-047-0261, except (2) and (6) are adopted. Prior to initial closing, the County shall provide an opportunity to protest as in LM 21.105(6); and after the notice of intent to award, an opportunity to protest the award as in LM 21.105(13) with the ability to protest exclusion from any phase of a multi-step or multi-tiered process based on criteria in OAR 137-047-0720(2) which is adopted, if such opportunity was not previously provided. In addition, the County may use portions of these methods of contractor selection to develop a multi-tiered competitive process designed to identify, at one or more stages, a class of proposers that fall within a

competitive range based on criteria established for that stage, or to otherwise eliminate from consideration a class of lower ranked proposers. In doing so, the County shall provide notice of the method of selection in the RFP, evaluate all responsive proposals, and provide at least an opportunity to protest the solicitation process or document, and the award as set forth in this subsection.

(10) Bid, Payment and Performance Security. Unless otherwise provided in the RFP bid, payment and performance security requirements may be waived if the contract will not be a public improvement or other construction contract or if it will be for a public improvement contract not exceeding $100,000 except for a highway, bridge or other transportation project which does not exceed $50,000. Bid, payment and performance securities shall be provided if the contract will be for a public improvement exceeding these dollar amounts.

(11) Mistakes in Bids. See LM 21.105(9). References to “bid” includes “proposal.”

(12) Rejection. See LM 21.105(10). References to "bid" includes "proposal." References to "bidders" includes "proposers." References to "bid documents" include "request for proposal documents." References to "opening bids" include "opening proposals."

(13) Notice of Intent to Award. LM 21.105(12). References to “bid” and “bidder” shall include “proposal” and “proposer.” A notice of the recommendation of the evaluation committee is considered a notice of intent to award the contract, unless stated otherwise.

(14) Protest of Intent to Award/Evaluation Committee Recommendation. Anyone responding to an RFP who is not recommended for award by the evaluation committee may protest the recommendation to the decision maker, either the Board or the County Administrator, depending upon which has authority to execute the contract pursuant to LM 21.105(13). References to “bid documents” include “request for proposal documents” and references to “bid” include “proposal,” except for the grounds in LM 21.105(13)(a). The applicable grounds for this protest are set forth below.

(a) A protest must be made in writing, be received before the contract is awarded by the decision maker, clearly state the ground(s) for the protest, and indicate what condition(s) resulted in the proposal not being recommended for award. Any protest which does not comply with the applicable procedures may be rejected.

(b) Unless otherwise stated in the RFP, the protest must be received by the department which issued the RFP not later than seven (7) calendar days after notice of the evaluation committee's decision was mailed. Upon receipt of the protest, the department shall notify the proposer recommended for award of the protest and the evaluation committee's recommendation. The proposer and the committee shall have three calendar days from the date the protest was filed to respond to the protest in writing if they so desire.

(c) When a protest is filed, the department responsible for preparing the RFP shall prepare a written analysis of the protest and make a recommendation to the decision maker as to appropriate action to be taken.

(d) The grounds for protest include any one or more of the following:

(i) The evaluation committee has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials.

(ii) Different criteria were used to evaluate different proposals.

(iii) The evaluation committee unfairly applied the evaluation criteria to a proposal.

(iv) A member or members of the evaluation committee had a relationship with a proposer that represented a conflict of interest.

(v) The criteria used to evaluate the proposals did not pertain to the services or products requested.

(vi) A member or members of the evaluation committee demonstrated bias toward a proposal or a proposer.

(vii) The County abused its discretion in rejecting the protestor's proposal as nonresponsive.

(viii) The evaluation of the proposals is otherwise in violation of any provisions of ORS 279A or ORS 279B.

(ix) All higher ranked proposals are nonresponsive.

(e) If the decision maker is the Board, the department which issued the RFP shall present the issues orally or in writing at a public meeting. The appellant shall then have 10 minutes to specifically address the protest criteria, and the evaluation committee's recommendation and the recommended proposer(s) shall have a total of 10 minutes to respond, divided between them as they wish. If the decision maker is the County Administrator, the decision shall be made on the written record.

(f) If a protest is timely filed, the Board or County Administrator, as appropriate, shall consider the evaluation committee's recommendation and the allegations of the protest before rendering a final decision. The decision maker may grant or deny the protest, reject proposals, or cancel the solicitation pursuant to LM 21.107(12) or remand to the department or evaluation committee for further information or consideration. In the event of remand, the department will report back to the decision maker as soon as reasonably possible if the protest remains pending. The County Administrator's response to the protest will be in writing. If the Board is the decision maker, it shall evaluate any protest before rendering a decision and shall state reasons and conclusions reached either in writing or on the record in a public meeting, with a Board Order referencing reasons for its decision on the protest. Any decision to overturn the recommendation shall be based on a finding that one of the criteria of LM 21.107(14)(d) above occurred to the substantial prejudice of the protestor. The protestor must be eligible and next in line to be awarded the contact if the protest was successful.

(g) The procedures above are mandatory to the extent they establish the time and manner for protests to be submitted to the County, including that the protest be in writing specifying the grounds and timely filed, and that there be a written response. The County will not consider late protests. The other protest procedures above are directory and failure to follow or complete the action in the manner provided shall not invalidate the County's decision, and the goal is to provide a reasonable time and manner process for the County to consider a protest.

(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 08-2-13-1; 2.13.08; 09-12-15-2, 12.15.09; 11-12-14-1, 12.14.11)

21.108 Letters of Interest.

(1) Description. Letters of Interest (LOIs) are expressions of interest in a particular contract by potential contractors. Typically, potential contractors submit a letter in response to the County's solicitation which states they are interested in providing a good or service. This preliminary process should be used cautiously in order to avoid any chill to competition.

(2) When Applicable.

(a) LOIs may be used as a means of determining whether a potential contractor is a sole source under LM 20.096 and LM 21.111 and to support findings as set forth in LM 21.111. This includes where the fundamental nature of the purchase is so limiting that it is likely that only one seller/provider exists or there is likely only one qualified seller/provider available to contract with the County for the purchase. There may be additional facts to support the sole source findings.

(b) An LOI process may be used as a preliminary phase of an RFP

process. If the County receives more than one LOI such responses may be included on a list of potential contractors who will be mailed a bid, RFP or RFPs solicitation document.

(3) Requirements. LOIs may be sought in the following manner:

(a) An advertisement must be run in a newspaper of general countywide circulation and/or electronically as authorized by LM 21.105(3) at least once and not less than five days before the LOIs are due. Additional advertisements may also be published in other newspapers.

(b) The advertisement must contain a description of the nature of the work to be performed or good to be provided, the term of the contract, the person to whom LOIs are to be submitted and the date the LOIs are due. There must be a sufficient description of the service or good that potential competitors will be able to evaluate whether they are qualified, able and wish to perform. The ad shall include an opportunity to submit comments or objections to the prospective purchase using this process or to support findings in LM 21.111

(c) If there is only one LOI submitted, County shall obtain sufficient proof, as it deems necessary, of basic ability to perform, including but not limited to, an adequate level of professional, fiscal and management capability. These factors may be included in the findings as set forth in LM 21.111.

(d) If the County receives more than one LOI response, all parties responding shall receive an opportunity to compete for the contract pursuant to a bid invitation, RFP, or Request for Personal Services (RFPS) pursuant to LM 21.118(6). If this occurs, the competition must be open to all potential competitors, and not just those submitting LOIs. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 09-12-15-2, 12.15.09; 11-12-14-1, 12.14.11)*

21.109 Small Procurements.

The County may award a non-public improvement contract for goods or services, when the amount does not exceed $5,000 or 3 years in length. See ORS 279B.065, ORS 279C.335. The County may award a public improvement contract when the amount is less than $5,000 and does not exceed 3 years in length.

(1) The contract award may be direct without competitive selection subject to (2) below. Use of competitive quotes are encouraged, particularly for new purchases or projects.

(2) A small procurement contract should not be considered separately when it is a component of a larger purchase or project in one year, and when considered as a whole would require a competitive selection. Any contract terms should be consistent with the County's legal requirements and limitations, or as may be further described in procedures adopted by the County Administrator.

(3) The Department Directors and County Administrator are delegated the authority to award small procurement contracts, and such authority may be further delegated. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06)*

21.110 Intermediate Procurements.

The County may award an intermediate procurement contract for goods or services, either related to a public improvement or non-public improvement, when the amount does not exceed $100,000. The County may use any LM Chapter 21 procedures for obtaining information in preparation for soliciting quotes or prequalifying a product. The three quotes as required by LM 20.105(1)(c) may be either oral or written for non-public improvement contracts exceeding $5,000 but not $50,000, and for public improvement contracts equal to or greater than $5,000 but not exceeding $50,000. The County shall keep a written record of the source and amount of quotes received. For intermediate contracts exceeding $50,000 but not $100,000, the County department shall prepare a written solicitation, the quotes must be written, and unsuccessful quoters shall have the

right to protest the award decision in accordance with LM 21.105(13)(a) and (b). The written solicitation shall provide notice of the right to protest the award. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. An intermediate procurement acquisition should not be made when it is a component of a larger purchase or project in any single year, and when considered as a whole would require a different competitive selection than as provided by this or another rule.

The award of any contract as an intermediate procurement under this rule shall be to the offeror whose quote or proposal will best serve the interests of the County, taking into account price as well as considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 05-12-14-9, 1.1.06; 08-2-13-1; 2.13.08)*

21.111 Sole Source.

For non-public improvement contracts, if there is only one source for goods or services, or a class of goods or services of the quality required by the County, a contract may be awarded to that source without competition.

(1) The County must make written findings which may include at least one of the following:

(a) That the efficient utilization of existing goods requires acquisition of compatible goods or services;

(b) That the goods or services are required for the exchange of software or data with other public or private agencies and are available from only one source;

(c) That the goods or services are for use in a pilot or an experimental project; or

(d) Other findings that support that the goods or services are available from only one source.

(2) There may be only one qualified seller/provider available to contract, such as in specific circumstances under (1)(c) or (d) of this rule. Prior to awarding a contract, if there are known potential contractors, the County shall make a reasonable effort to notify them of the intended purchase or project. For contracts exceeding $100,000 "reasonable effort" includes at least one of the following actions in the County's discretion: formal request for information, or request for qualifications or use a Letter of Interest (LOI) selection process as set forth in LM 21.108.

(3) If the County intends to make several purchases of the product or service from a particular seller or provider for a period not to exceed 3 years, it may so state in the documentation required in (1) above and such documentation shall be sufficient notice as to subsequent purchases.

(4) Department directors, or their designee, are delegated authority to make the written findings in (1) and (3) above for contracts equal to or less than $50,000.

(5) For sole source contracts exceeding $50,000, Departments shall provide the County Administrator with proposed written findings in (1) and (3) above; and the County Administrator has authority to approve written findings in (1) and (3) of this rule. The proposed findings and the County Administrator's determination shall be documented and maintained by the respective department.

(6) Except as provided in (7) of this rule, if the amount of the purchase exceeds $100,000, public notice of the determination that goods or services are available from only one source shall be published in accordance with LM 21.105(3) or through other public notice reasonably likely to reach at least as many potential sellers/providers. Unless otherwise specified in the public notice of the sole source procurement, a person or entity whose interests are adversely affected must deliver a written protest within 5 days of the public notice to the County Administrator and to be decided by the Board.

The written protest shall include a detailed statement of the legal and factual grounds for the protest based on (1) above, a description of the resulting harm and the relief requested. Unless otherwise specified in the public notice of the sole source procurement, the Board may consider the written record, and any other testimony provided at the public meeting and shall issue its decision by Board Order.

(7) To the extent purchases meeting the circumstances in (1) are covered by an approved special procurement, the terms of the special procurement instead apply. Discretionary use of the LOI process in accordance with LM 21.108 satisfies the public notice and protest requirements for purchases covered by (1)(a) and (b) of this rule in addition to other circumstances where the fundamental nature of the purchase is so limiting that it is likely only one seller/providers exists.

(8) To the extent practicable, the County shall negotiate with the sole source to obtain contract terms advantageous to the County. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 09-12-15-2, 12.15.09)*

21.112 Brand Name.

This rule applies to non-public improvement contracts, and LM 20.210 and LM 20.215 applies to public improvement contracts. Specifications shall not expressly or implicitly require any product of a particular manufacturer or seller except pursuant to this rule or the class-specific authorizations in LM Chapter 20. The County may identify products by brand names so long as it includes language similar to "or equal," "or equivalent," or "equal or superior to." The County shall determine, in its sole discretion, whether an offeror's alternative product is "equal" or "equivalent," or "superior." The Department directors shall be delegated authority to determine that only an identified brand name will meet the County's need and shall document such decision in writing, subject to any review and reversal by the County Administrator, in his or her discretion. Any written decision must be based on one or more of the criteria in ORS 279B.215(2). *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

21.112A Cooperative Procurements.

The County may participate in, sponsor, conduct, or administer cooperative procurements as set forth in ORS 279A.200 through ORS 279A.225. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 08-2-13-1; 2.13.08)*

21.112B Exhaustion of Remedies .

An adversely affected bidder, proposer, quoter, or person affected by a sole-source procurement requiring public notice and opportunity to protest, must exhaust all avenues of administrative review and relief applicable to the purchase as set forth in these rules before seeking judicial review of the County's selection or contract award decision. Such review and relief includes, but is not limited to, opportunities to protest or to submit comments or objections to the County through a Letter of Interest process. (*Revised by Order No. 09-12-15-2, Effective 12.15.09)*

TYPES OF CONTRACTS

21.113 Goods, Materials and/or Services Contracts.

(1) A goods or materials contract (excluding personal services) is one that calls primarily for an end product and in which the County purchases, obtains some interest in, or leases personal property. A service contract is one that calls primarily for a contractor's time and effort, and does not include work connected with manufacturing a product or personal services. A service contract includes one for a trade-related activity to accomplish routine functions of a type that can generally be done by any competent worker, even though a specific license is required. A contract may be a combination of goods, materials and services.

(2) Goods and/or service contracts may only be executed after appropriate competitive selection has been completed.

(3) Title to all personal property shall be described on all formal title documents and bills of sale as: Lane County, Lane County Public Service Building, Eugene, Oregon 97401.

(4) For contracts involving the rental, lease or lease purchase of equipment, the Risk Manager should be consulted regarding insurance requirements.

(5) Departments are encouraged to include a provision concerning equal access and treatment for diverse cultures for contracts in which direct services are to be provided to the public. See Lane County Diversity Action Plan. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06; 08-2-13-1; 2.13.08)*

21.114 Maintenance and Repair Contracts.

Contracts for the maintenance or repair of equipment or public improvements are subject to the public contract laws and regulations.

(1) Contracts for maintenance or repair of equipment must comply with the requirements of LM 20.175. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.115 Public Improvement and Construction Contracts.

(1) When the County procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to ORS 279C, the County will not:

(a) Procure the personal services 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 personal services; or

(b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.

(2) Section (1) of this rule does not apply to a procurement that qualifies as a construction manager/general contractor procurement or a design-build procurement. "Affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the contractor**.**

(3) Public improvements shall usually be performed by contract. When the project is estimated to cost more than $125,000, the provisions of ORS 279C.305 and LM 21.105(3) shall be followed. Unless otherwise approved by the Board, public improvement projects shall be performed according to the capital improvements list adopted by the Board pursuant to ORS 279C.305.

(4) Public improvement and construction contracts must comply with a number of requirements. Care should be taken to see that any applicable requirements including, but not limited to, from those among the following list are met:

(a) Advertisement (including Asbestos Abatement) - ORS 279C.360 and LM 21.105(3) above. See, OAR 137-049-0210.

(b) Bid security - ORS 279C.365(4), LM 20.275, LM 21.106 above.

(c) Performance security - ORS 279C.380, LM 20.275, LM 21.106 above.

(d) Public Works Bond - LM 21.106.

(e) Responsibility Determination Form - ORS 279C.375, LM 21.105(14).

(f) Prevailing rates of wage - ORS 279C.800 to 279C.855.

(g) Retainage - For project completion, ORS 279C.555 to ORS 279C.565, LM 21.116 below. For untimely filed certified statements of payment of prevailing wages, ORS 279C.845.

(h) Prompt payment policies - ORS 279C.505, ORS 279C.515.

(i) Subcontractor clauses - see ORS 279C.515, ORS 279C.830, ORS 279C.580.

(j) Insurance - see LM 21.305 below.

(k) Exempt contracts over $100,000 evaluation report required - see ORS 279C.355.

(l) Contractor shall certify that an employee drug testing program is in place at the time of contract execution, and that such a program will be maintained throughout the contract period including any extensions. Failure of contractor to certify, to have, or to maintain such a drug testing program is grounds for rejection of a bid or immediate termination of the contract. Contractor shall also certify that it will require any subcontractors to demonstrate to Contractor that it will have such a drug testing program. ORS 279C.505(2).

(m) First-tier subcontractor disclosure for contracts greater than $100,000. ORS 279C.370.

(5) The County Administrator is delegated the authority to make final acceptance of a public improvement and may further delegate this authority to a representative by a signed written document. If it is determined that the project should not be finally accepted, the matter shall be brought to the attention of the Board. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 09-12-15-2, 12.15.09)*

21.116 Retainage.

(1) Retainage of five percent of the contract price of the work completed shall be withheld on all public improvements contracts until the project is at least 50 percent complete, after which the retainage may be reduced, upon the County Administrator's approval, in accordance with ORS 279C.570(7).

(2) Deposit of Securities in lieu of retainage.

(a) Notwithstanding LM 21.116(1) above, Lane County shall reduce the retainage in an amount equal to the market value of bond, securities or other instruments deposited by the contractor in accordance with the procedures set out below. The types of bonds, securities or instruments which may be accepted include those in OAR 137-049-0820(4). Bonds or securities, or other instruments offered for deposit in lieu of retainage shall be as authorized in OAR 137-049-0820(2), which is hereby adopted.

(b) All bonds, securities, or instruments in lieu of retainage shall be deposited with a bank or trust company in Lane County, Oregon, in an account for the benefit of Lane County established for this purpose. Upon deposit, the bank or trust company shall prepare an Assignment and Safekeeping Receipt in the form set out in Exhibit "A." The contractor shall deliver in person one copy of this receipt to the Department of Management Services.

(i) Bonds or securities deposited shall be in fully transferable form. Any nonnegotiable bonds or securities shall have all necessary instruments attached to enable the County to effect transfer of title should the contractor be unable to fulfill the contract obligations.

(ii) Bonds or securities deposited in lieu of retainage shall be released only upon the written instructions and authorization of the County. Upon default, the County may elect to authorize the bank or trust company to transfer any securities deposited under these provisions, rather than undertake to transfer such securities itself.

(c) If at any time the market value of the bonds or securities deposited in lieu of retainage drops below five percent of the contract price of the work completed, the County may withhold from payments due the contractor an amount sufficient to maintain its appropriate retainage protection. Withheld amounts shall only be released to the extent of the market value of additional bonds or securities deposited by the contractor in accordance with this section.

(3) Retainage Deposited in Interest Bearing Account. In accordance with ORS 279C.560(4), cash retainage may be deposited upon the request of the contractor in an interest bearing account with earnings to accrue to the contractor.

(4) Surety Bond in Lieu of Retainage. In accordance with ORS 279C.560(6), upon approval of the County Administrator, the contractor may deposit a surety bond for all or a portion of the retainage. The bond shall be in a form acceptable to the County Administrator. The retainage shall be accordingly reduced, and the contractor shall accept like bonds from subcontractors and suppliers.

(5) All retainage on public contracts for public improvements, less costs as allowed by statute, shall be released within 30 days after the work under the contract has been completed and the County Administrator or the Board has authorized final acceptance thereof. If not so released, interest shall be paid in accordance with ORS 279C.570(8). *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 09-12-15-2, 12.15.09)*

ASSIGNMENT AND SAFEKEEPING RECEIPT *No.* ___

THIS ASSIGNMENT is to satisfy the requirements for deposits of bonds or securities in lieu of retainage on public improvements contracts set out in LM 21.116.

Subject to the conditions below, the undersigned does hereby assign, transfer and set over to Lane County all right, title and interest in and to the bonds and securities listed in the attached Schedule "A" for the use and purpose of retainage on the public contract between Lane County and the undersigned, identified as

_____.
(Project Identification)

_____ agrees that the bonds or securities listed in Schedule
(Bank or Trust Company)
"A" will be held in trust for the purposes stated here, and shall be released only upon the written instructions and authorization of Lane County.

Periodic interest payments or other disbursals which do not reduce the face amount of the bonds or securities shall accrue and may be credited or paid to the undersigned.

If a bond or security deposited under this assignment reaches maturity while subject to these conditions, it may be disbursed to the undersigned without specific authorization from Lane County, if, and only if, the undersigned replaces the matured bond or security with an identical one of equal or greater value.

If the bonds or securities deposited are to be credited to more than one public contract, the distribution shall be as stated on Schedule "A."

SCHEDULE "A"

1. DESCRIPTION OF THE BONDS OR SECURITIES.

2. NAME OF CONTRACTOR/ASSIGNOR.

3. IDENTIFICATION NUMBER OF THE CONTRACT OR PROJECT.

4. PAR VALUE OF SECURITIES OR BONDS (AND THE MARKET VALUE, IF DIFFERENT).

5. MATURITY DATES OF SECURITIES OR BONDS.

Signed and dated at _____, Lane County, Oregon, this __day of _____, 20_.

_____
(Signature of Depositor/Assignor)
Address: _____
_____

ACCEPTANCE

_____ (Bank or Trust Company) hereby accepts the foregoing Assignment and Safekeeping Receipt *No.* __, in the total amount of $ _____, this ___ day of _____, 20 , and hereby acknowledges receipt of the bonds or securities listed in Schedule "A" above to hold in trust for Lane County for the uses and purposes above-stated.

_____
(Authorized Signature)

_____

Exhibit "A" to LM 21.116(2)

(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05)

21.117 Personal Service Contracts.

(1) Personal service contracts are those as described in LM 20.097.

(2) Personal service contracts shall not be used to engage persons who would be deemed County employees, rather than independent contractors. Two of the primary differences are the amount of control the County has the right to exercise over the individual and the method of payment. That a County employee supervises or has the right to supervise the individual (i.e., assign work, review work, review performance) is an indicator the individual would be an employee, not an independent contractor. That the individual is paid for time and services is an indicator the person is an employee, whereas, that he or she is paid for results or for a total project is an indicator the individual is an independent contractor. All personal services contractors must meet the independent contractor standards of ORS 670.600.

(3) Generally, all personal services contracts shall require the contractor to defend, indemnify and hold the County, its Commissioners, officers, agents and employees harmless from all damages, losses and expenses and to defend all claims, proceedings, lawsuits and judgments arising out of the contractor's performance or failure to perform the contract. When the Office of Legal Counsel determines the risk of a substantial judgment against the County is minimal, this provision may be waived.

(4) Reasonable care shall be taken in the use of personal service contracts to verify that they do not violate the terms of any collective bargaining agreement to which the County is a party. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 11-12-14-1, 12.14.11)*

21.118 Selection of Personal Service Contractor.
The following procedures apply to the selection of personal service contractors unless an exemption, special procurement, or other LM Chapter 20 or 21 rule would allow a different competitive selection under the circumstances. They include, but are not limited to, screening and selection procedures for architects, engineers, photogrammetrists, transportation planners, land surveyors ("qualification based consultants") and other related service providers as defined and described in ORS 279C.100 – ORS 279C.125.

(1) Direct Contracting.

(a) Dollar Amount $10,000 or less. The County may contract directly with any qualified contractor without competitive selection, except as provided in (b)..

(b) Dollar Amount $25,000 or less. The County may contract directly, and without competitive selection, with any qualification based consultant or provider of related services (as defined by ORS 279C.100(6)), for public improvement projects involving a highway, bridge or other transportation .

(c) Emergency. Without limiting any other authority to contract directly for services in emergencies, County may directly appoint a consultant for architectural, engineering, photogrammetric mapping, transportation planning or land surveying services in an emergency.

(2) Dollar Amounts Greater Than (1) (a) or (b) But Equal to or Less Than $50,000. For contracts greater than the amounts in (1)(a) or (b) above and up to $50,000, the County shall solicit at least three prospective contractors who appear to meet the minimum requirements for the proposed contract, inform each in reasonable detail of the contract and determine the prospective contractor's interest and ability to perform the contract. If three quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered. For all such contracts, quotations shall be solicited from appropriate minority, women and emerging small business enterprises certified by the State pursuant to ORS Chapter 200, and as specified through County administrative procedures. The Department shall keep a written record of the prospective contractors contacted, their responses, and basis for recommending the award.

(3) Dollar Amounts Greater than $50,000 But Equal to or Less Than $100,000. Where the contract is greater than $50,000 and equal to or less than $100,000, the County shall comply with (2) above, except that they will prepare a written solicitation, including but not limited to specification/scope of work and receive written offers. The contract should be awarded to the offeror whose quote or proposal will best serve the interests of the County, in the discretion of the County after considering any applicable criteria such as in (5) below. Pricing information may also be solicited and considered. The County shall keep the written solicitation and response documents and written basis for recommending the award. Unsuccessful offerors shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

(4) Greater Than $100,000 and Qualification Based Selection. Where a contract fee (except for a qualification based consultant) is estimated to be greater than $100,000, the County shall comply with (3) above, and conduct_ interviews of at least the two most qualified prospective contractors, if two or more are available. Interviews may be either by telephone, in person or by written questions. Unsuccessful quoters shall have the right to protest the award decision to the Board of County Commissioners in accordance with procedures set forth in LM 21.105(13).

For contracts with qualification based consultants, the County shall comply with (3) above except that it shall not solicit or use pricing information to determine the

compensation until after initially selecting the highest ranked proposer. In addition, the County will begin negotiating with the highest ranked proposer on a fair and reasonable price in addition to any other contract provisions it believes are in the County's best interest to negotiate. If agreement is not reached within a reasonable time, County may move to the second highest ranked proposer for a similar negotiation, and continue the process with the next in line until agreement is reached. See OAR 137-048-0210(4).

(5) Criteria. The following criteria shall be considered, as appropriate, in the evaluation and selection of personal service contractors:

(a) Specialized experience in the type of work.

(b) Capacity and capability to perform the work within necessary time and other limitations.

(c) 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.

(d) Availability to and familiarity with the area in which the specific work is located.

(e) Any other factors relevant to the particular contract.

(6) Requests for Professional Services (RFPS).

(a) Description. A request for professional services (RFPS) is a selection procedure used when the County requires the services of the most highly qualified professional based on demonstrated competence and qualifications, and where a fair and reasonable price rather than lowest competitive price is the focus. It may be used in the discretion of the County, on a project-by-project basis, except when a qualifications based process is required for selecting qualification based consultants. Such a process is required for public improvement projects where the estimated fee to be paid any of these consultants under a contract exceeds $100,000.

(b) Requirements.

(i) An advertisement shall appear at least once in at least one newspaper of general circulation in the area where the project is to be located and/or published electronically in compliance with LM 21.105(2), and shall briefly describe the project, the services sought, where copies of the solicitation may be obtained and the deadline for submitting a response.

(ii) The solicitation document shall contain, at a minimum, the information in LM 21.118(6)(b)(i) above, specifications, project requirements, a statement of the particular professional qualifications for the project, the evaluation criteria, and the screening or evaluation method to be used. It shall also reserve the County's right, at any time during the solicitation or contract process, to reject any or all proposals or cancel the solicitation, without liability, if there is good cause or if doing so would be in the public interest. The contract terms should also be included.

Proposals may be opened so as to avoid disclosure of contents during, when applicable, the process of negotiation.

Proposals are not required to be open for public inspection until after the notice of intent to award; however, the County may continue to withhold trade secrets as defined in ORS 192.501 and information submitted to a public body in confidence as described in ORS 192.502.

(iii) An evaluation committee shall review, score and rank the proposals according to solicitation criteria and results of any oral interviews. Criteria may include, but is not limited to, specialized experience, capabilities and technical competence to meet project requirements, methodology to meet project requirements, availability and resources to perform the work, proportion of candidate staff's time spent on project, experience of key staff, demonstrated ability to successfully complete similar projects, references and recommendations, history in meeting deadlines, submitting accurate estimates, producing quality work, meeting financial obligations, contract

administration status of licensing, proposed solutions to any perceived design or construction problems, ownership status and employment practices regarding minority, women and emerging small businesses or historically underutilized businesses; availability and familiarity with project locale, and project management approach. Proposed compensation may be included as evaluation criteria except for solicitations for qualification based consultants where the estimated contract fee exceeds $100,000.

(iv) Contract negotiations, including refining scope of services, with the highest ranked professional shall be directed toward an agreement on a compensation level which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the personal services. County may solicit or use a compensation proposal for services covered by ORS 279C.110 and exceeding a fee estimate of $100,000 only after evaluating and ranking candidates.

(v) If an agreement is not reached in a reasonable time, the County may terminate negotiations with the highest ranked proposer and begin with the second ranked, and then to the third, if applicable. If no agreement is reached, the solicitation may be terminated.

(vi) A prospective contractor may protest the solicitation process or document in accordance with LM 21.105(6). Contractor may protest the contract award in accordance with process in LM 21.105(13). A proposer submitting a protest of the award must demonstrate that the protesting proposer is the highest ranked proposer because the proposals of all higher ranked proposers failed to meet the requirements of the RFPs or because the higher ranked proposers otherwise are not qualified to perform the services. Untimely protests will not be considered.

(7) Other Competitive Processes. Except when qualification based selection is required, County may use other methods of selection for personal service contractors including, but not limited to, formal bid, RFP, sole source, emergency, special procurement, or any other exemption in LM Chapter 20.

(8) Amendments. The selection procedures stated in LM 21.118(1) - (7) above shall be utilized for any amendment of a personal services contract which is more than 50 percent of the original contract amount, or when the aggregate of amendments are more than 50 percent of the original amount. However, they need not be utilized if the scope of the amendment was clearly included in the original selection such that prospective contractors understood this amendment may occur. In addition, they need not be used if the project described in the personal service contract consists of work that has been substantially described, planned or otherwise previously studied or rendered in an earlier contract with the consultant that was awarded pursuant to LM Chapter 20 and 21 rules and the amendment (or new contract) is a continuation of that project. A contract may be awarded directly under this circumstance pursuant to the waiver criteria in (9) below.

(9) Waiver. The selection procedures described above may be waived by the County Administrator prior to selection of the personal services contractor or to permit an amendment in excess of the 50 percent limit of LM 21.118(8) above for any of the following reasons:

(a) An emergency exists which could not have been reasonably foreseen and which requires prompt execution of a contract, or

(b) The contractor is the only person within a reasonable area who performs this type of work, or

(c) When good cause is demonstrated to the County Administrator, such that he or she believes award of the contract without utilizing the selection procedures is in the public's interest.

(d) This subsection (9) does not apply to initial contracts with qualification based consultants. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06; 08-2-13-1; 2.13.08; 11-12-14-1, 12.14.11)*

21.120 Requirements and Pricing Contracts.
Requirements contracts, or pricing agreements, provide for the establishing of unit prices for goods or services (including personal services) when the County knows it will need them, but is unable to determine the quantity in advance. Generally, the vendor agrees to supply some or all of the County's requirements within a specified period of time. Competitive selection and contract/amendment execution authority is governed by the rules which apply to the underlying contract type, i.e., materials, materials and services, services, personal or professional services.

(1) In conducting competitive selection, the County shall inform all potential bidders/proposers:

(a) Whether it will consider awarding and executing more than one requirements contract for a single type of service or good; and

(b) If it anticipates awarding more than one contract, the method to be used in selecting which contractor will perform specific services or provide certain goods.

(2) All requirements contracts shall provide that:

(a) The County will purchase a specified minimum amount of goods or services; or

(b) A maximum, not to exceed amount of goods or services; and

(c) The contract may be canceled upon 30 days written notice by the County; and

(d) The term of the contract, including renewals, shall not exceed three years.

(3) The County shall determine a reasonable estimate of the total dollar amount of a requirements contract, including from all amendments, throughout the term of the contract. That dollar figure shall be the basis for determining contract/amendment execution authority under LM 21.145 and 21.147.

(4) When the price of goods and services has been established by a requirements contract including standard contract provisions such as County protection from risk and liability as appropriate, and has been processed and approved by the Board or County Administrator, the County may purchase the goods and services from the supplier without subsequent competitive selection. In order to purchase or pay for goods and/or services under an executed requirements contract, the following steps apply:

(a) For a services/requirements contract, if the scope of work is originally defined in general terms, and the parties anticipate further defining of the work as it arises, i.e., personal services on a project by project basis, the additional defining of the scope of work shall be in writing and executed as an amendment. For contracts approved by the Board, the County Administrator shall have authority to execute any amendment which does not exceed $100,000. Subject to (b) below, for contracts with a total estimated cost of less than $300,000, the County Administrator may delegate authority to execute an amendment for a project not exceeding $50,000 to a Director of the department originating the contract, and for Public Works also to the County Engineer for transportation projects. Subject to (b) below, for contracts with a total estimated cost of $300,000 or greater, the County Administrator may delegate authority to execute an amendment for a project not exceeding $100,000 to a Director of a department originating the contract, and for Public Works also to the County Engineer for transportation projects. For contracts approved by the County Administrator, the County Administrator may delegate authority to execute an amendment not exceeding $50,000 to the County employees designated above, subject to (b) below.

(b) The County Administrator may delegate authority in writing as set forth in (a) if the amendment:

(i) supplements, and is not inconsistent with the main requirements contract which continues to apply; and

(ii) the amendment covers only such topics as scope of work, roles and responsibilities, tasks, costs, names of persons assigned to each task, criteria for work acceptance, deliverables, and due dates that are within the time period of the main contract; and

(iii) there are no other added provisions which affect risk to the County or public. The County Administrator's written delegation shall include the limitations in this provision and any others deemed necessary, in his or her discretion, or as directed by the Board.

(c) The delegation of authority in (a) and (b) applies only to amendments that are within the approved total contract amount. Authority to execute amendments that increase the total contract amount is governed by LM 21.147.

(d) For all other requirements contracts where the services and/or goods and costs are specifically defined in the original contract, i.e., delivery of rock, specific purchases may be made pursuant to the parties' agreement. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 08-2-13-1; 2.13.08; 11-12-14-1, 12.14.11)*

21.122 Revenue Contracts.

Revenue contracts must comply with all public contract laws and regulations and LM Chapter 21.

(1) The County Administrator and the Director of the Department of Management Services each individually are delegated the authority to execute certificates of title and bills of sale for County-owned personal property duly sold under established procedures and may further delegate this authority in writing.

(2) A revenue contract which involves elements of an interest in real property (for example, a caretaker or concessionaire agreement or a lease), may also have to comply with laws regarding the disposition of publicly owned real property. The Department considering such a contract should consult with the Office of Legal Counsel regarding appropriate procedures and contract terms.

(3) Disposition of personal property must comply with LM 60.405. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04)*

21.124 Intergovernmental Agreements.

(1) Intergovernmental agreements are exempt from competitive selection.

(2) Under the authority of Chapter II, Section 8 of the Lane County Home Rule Charter and ORS Chapter 190, it is the policy of Lane County to offer services to other public agencies where feasible. Lane County must be compensated for the complete cost of providing all intergovernmental services. An intergovernmental agreement should be utilized whenever possible as the implementing document. The Board in its discretion may approve waivers to the policy of complete compensation. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

21.126 Grants.

"Grant" means a federal, state or other agreement in which the County receives and disburses funding for purposes itemized in the grant, and subject to ORS 279A.010(1)(i) and to the conditions set forth in the grant. A "Grant" includes a County sub-grant when the subcontractor was identified and approved by the grantor (including after any appropriate County competitive selection) and the County merely passes through the grant funds received, in whole or in part, without modifying any terms or conditions of the original grant, except as related to County administration and oversight of the grant conditions. A subcontract may not be a sub-grant if the County does modify, and may be more appropriately analyzed as a service contract, or a materials and service contract, intergovernmental agreement, etc. depending upon the subject matter. *(Revised by Order No. 98- 12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05)*

21.127 Amendments.

(1) Selection Procedures. All amendments including but not limited to change orders, extra work, and modifications, shall comply with public contract laws and regulations regarding competitive bidding and selection procedures. The selection procedures of LM 21.118(1) - (7) above shall not apply to amendments to personal services contracts, except when the total of all amendments exceed 50 percent of the original amount. A waiver of the selection procedure pursuant to LM 21.118(9) above may nonetheless be sought in those cases.

(2) Generally, a contract amendment should include a reference to the original contract by title and/or date, terms of amendment including citation to specific provisions in the original contract being amended, and ending with a provision that "except as set forth above, all provisions of the original contract dated _____ remain unchanged." *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 11-12-14-1, 12.14.11)*

21.128 Emergency Contracts.

(1) An emergency is generally defined, but not limited to, as a set of circumstances creating a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen or is beyond the control of the County or its employees. If such an emergency exists which requires the prompt execution of a contract to remedy the situation, the provisions of LM 20.255 shall be appropriately followed.

(2) In exercising authority under LM 20.255, and in order to declare an emergency the County shall:

(a) Make written findings describing the circumstances which support a substantial risk of loss, damage, interruption of services or threat to public health or safety that could not have been reasonably foreseen or is beyond the control of the County or its employees; and describing the harm anticipated to result from failing to establish the contract on an expedited basis.

(b) For all construction services, the County shall use a competition that is reasonable and appropriate under the emergency circumstances. For other goods or services, the County shall to the extent reasonable under the circumstances, encourage competition by attempting to make informal quote solicitations from potential suppliers of goods or services. The County may make direct appointments without competition in cases of extreme necessity, as determined by the County in its discretion.

(c) Record the measures taken under (b) above to encourage competition, the amounts of the quotes or proposals obtained, if any, and the reason for selecting the contractor.

(d) Limit the work or subject of purchase under the resulting contract to what is necessary and appropriate, including a time period, to address the conditions creating the emergency. No dollar limit applies to emergency contracts.

(e) Execute the contract within 60 days following the declaration that an emergency exists, unless the LCRB grants an extension.

(f) Emergency contracts may be modified or amended to address the conditions described in the original declaration or the declaration may be amended to describe additional work or purchases which are necessary.

(g) For public improvement contracts, the emergency declaration may also state that the County waives the requirement of furnishing a performance or payment bond under ORS 279C.380(4) or public works bond under ORS 279C.836(9). Such bonding requirements are excused once the emergency is declared. *(Revised by Order No. 05-2-16-8, Effective 2.28.05; 08-2-13-1; 2.13.08)*

21.129 Purchase Orders.
Purchase orders may be used to obtain goods, materials, services, personal or professional services, to implement a purchase pursuant to a requirements contract, to implement a purchase utilizing a contract competitively bid by other political subdivisions when the specifications indicated that more than one political subdivision could utilize the bid award, and to purchase price-regulated items when the rate or price has been set by Federal, State or local regulatory authority.

(1) Quotations for purchase orders shall be solicited from appropriate minority, women and emerging small business enterprises, who are certified by the State pursuant to ORS Chapter 200. The County Administrator shall implement this requirement through administrative procedure.

(2) Purchases of more than $100,000 can be made by purchase order only in implementation of an appropriately awarded written contract or to purchase price-regulated items or the printing of ballots. Appropriate selection procedures in LM Chapters 20 and 21 should be followed. Purchase orders shall not be utilized to circumvent the public contract law or regulations.

(3) A purchase order for goods, materials or services relating to public improvement and construction projects shall comply with and include all applicable contract provisions. .

(4) The Director of Management Services or his or her delegate shall have the discretion to require a written contract in lieu of a purchase order, whenever he or she believes a contract to be in the best interests of the County.

(5) The Director of the Department of Management Services is delegated authority to dispatch all purchase orders. He or she may further delegate such authority in writing. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 05-2-16-8, 2.28.05; 11-12-14-1, 12.14.11)*

STANDARD PROVISIONS

21.130 Standard Contract Provisions.
The following standard public contract clauses shall be included expressly or by reference where appropriate in every contract of the County, and as reflected in the main contract.

(1) Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.

(2) Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.

(3) Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.

(4) Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(5) For public improvement and construction contracts only, if contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine

the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.

(6) Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.

(7) With certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

(a) All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or

(b) All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and

(c) All work performed on the days specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal/professional service contracts as designated under ORS 279A.055, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for public improvement contracts), including contracts involving a collective bargaining agreement, contracts for services, and contracts for fire prevention or suppression. For contracts other than construction or public improvements, this subsection (7) does not apply to contracts for purchase of goods or personal property.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(8) The hourly rate of wage to be paid by any contractor or subcontractor or other persons who are parties to the contract to workers used in performing all or part of the work contemplated by the public works contract shall be not less than the applicable prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and ORS 279C.840. For projects also covered by the federal Davis-Bacon Act (40 USC §3141 et seq.), workers on the public works must be paid by contractors and subcontractors or other such contracting parties the higher of the applicable state or federal prevailing rate of wage.

(9) The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.

(10) Unless otherwise provided by the contract or law, the County has a right to exercise the following remedies for a contractor's failure to perform the scope of work or failure to meet established performance standards:

(a) Reduce or withhold payment;

(b) Require Contractor to perform, at the Contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or

(c) Declare a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.

(11) As to public improvement and construction contracts, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A list of entities who have enacted such laws or regulations is found in the Oregon Standard Specifications for Construction, Section 00170.01 currently in effect and published through Oregon Department of Transportation. If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, the contractor shall immediately give notice to the County. The County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

(12) The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, for public improvement contracts, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs and overhead per ORS 279C.655. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279C.660 for a public improvement contract.

(13) If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this clause, the County shall have no further obligation to the contractor for payments beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

(14) Unless otherwise provided by the contract or law, Contractor agrees that County, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Agreement for the purpose of making audits, examinations, excerpts, copies and transcripts. Contractor shall retain and keep accessible such books, documents, papers, and records for a minimum period of (6) six years after County makes final payment on this Agreement. Copies of applicable records shall be made available upon request, and payment of copy costs is reimbursable by the County.

(15) By execution of this contract, contractor certifies, under penalty of perjury that:

(a) To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and

(b) Contractor has not discriminated against minority, women or small business enterprises or one that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

(16) The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the goods or services or personal services covered by this Agreement, except if the County has good cause and the contract provides otherwise.

(17) Contractor agrees to not assign this contract or any payments due hereunder without the proposed assignee being first approved and accepted in writing by County.

(18) Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.

(19) The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.

(20) All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.

(21) The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractors Board registration or Landscape Contractors Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits, or certificates is grounds for rejection of a bid or immediate termination of the contract.

(22) Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate there from shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the County, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under this contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

(23) If as a result of this contract, the contractor produces a report, paper, publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 1/2" by 11" paper, the contractor shall conform to the Lane County Recycled Paper Procurement and Use policy, LM 2.440 through 2.448, by using recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements.

(24) The Oregon Standard Specifications for Construction adopted by the State of Oregon, and the Manual on Uniform Traffic Control Devices, each as is currently in effect, shall be applicable to all road construction projects except as modified by the bid documents.

(25) As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved site, if feasible and cost-effective.

(26) As to public improvement contracts for demolition, the contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

(27) When a public contract is awarded to a nonresident bidder and the contract price exceeds $10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 05-12-14-9, 1.1.06; 08-2-13-1; 2.13.08; 09-12-15-2, 12.15.09; 10-6-9-4, 6.9.10; 11-12-14-1, 12.14.11)*

21.131 Approving Appropriateness and Format of Standard Contract Provisions

Departments shall consult with Office of Legal Counsel before determining that particular standard contract may not be applicable to a specific contract. In addition, a different format incorporating standard contract provisions in LM 21.130 based on contract type may be approved by the Office of Legal Counsel. Departments who wish to use the provisions in this alternate format may do so. *(Revised by Order No. 10-6-9-4, Effective 6.9.10; 11-12-14-1, 12.14.11)*

AUTHORITY TO AWARD, EXECUTE, CANCEL

21.135 Contract Awards.

(1) The award of contracts shall be made by the public officer delegated the authority to execute the contract or, if no delegation has been made, the Board. The authority to award may be further delegated by the public officer to a representative and should generally be evidenced by a writing.

(2) In an RFP process, the evaluation committee's recommendation for award of the contract shall be considered and finally decided by either the Board or the County Administrator, depending upon authority to execute the contract per County rules.

(3) Generally, where the County is the purchaser in a bid or RFP process a contract should be awarded to the responsible bidder submitting the lowest responsive bid or to the responsible proposer submitting the best responsive proposal. Where the County is the seller, the award will generally be made to the highest quote or highest responsible proposal. Where interviews or substantive proposals have been sought, the award shall generally be made to the party submitting the quote or proposal which best meets the needs of the County based on the criteria established by the County in any solicitation, and in conformity with prescribed selection procedures, rules and law. An award may be made as a whole, or by item or groups of items as long as consistent with any solicitation documents. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 11-12-14-1, 12.14.11)*

21.137 Grant Applications.

(1) For grants from $0 - $ 5,000, the Department Directors are delegated authority to approve and execute all documents in the application process and the acceptance of the award. For grants exceeding $5,000 - $100,000, the County Administrator is delegated authority to approve and execute all documents in the application process and the acceptance of the award.

(2) For grants over $100,000, the Board shall approve the preliminary application and acceptance of the grant. This may be done in one Board action if the application contains complete information, and the grant is ultimately awarded without unusual conditions, or there may be separate Board actions to approve grant application submittal and grant award acceptance. The County Administrator is delegated authority to approve and execute all other grant documents in the application process.

(3) The County Administrator is delegated authority to approve and execute all documents to continue a grant that was approved by the Board pursuant to LM 21.137(2), so long as the continuation is substantially similar to the original proposal approved by the Board.

(4) The County Administrator may further delegate the authority in (1), (2), and (3) to a representative by a signed written agreement. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 02-1-30-1, 1.30.02; 05-2-16-8, 2.28.05)*

21.139 Fair Board.

Pursuant to ORS 565.230 the Fair Board may conduct contracting activities for contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property. Pursuant to ORS 565.230, the Fair Board has authority to award and execute all contracts relating to fairground facilities and operations, except those contracts which transfer an interest in real property. It is also delegated authority to cancel or terminate such contracts as provided in the contract or by law. The Fair Board may further delegate authority under this provision to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 11-12-14-1, 12.14.11)*

21.141 Construction and On-Site Construction Change Orders.

The Director of the Department of Public Works has authority over construction or renovation of roads and other transportation facilities. The Director for Department of Management Services has authority over the construction, renovation, remodeling and maintenance of County facilities and related capital expenditures. These Directors are delegated the authority to execute an on-site construction change order to a contract for the construction within their authority, if all of the following conditions are met:

(1) The change would not increase the cost of the project by more than 10 percent of the contract price or $25,000, whichever is less,

(2) The change order is necessary for completion of the contract,

(3) Failure to immediately authorize the change could result in a work stoppage or severe slowdown, causing undue and unnecessary costs, or result in a hazard to the public and

(4) It is in the best interest of the County to authorize the order and facilitate completion of the project. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 11-12-14-1, 12.14.11)*

21.143 Cancellation of Award.

(1) The Board reserves the right to cancel the award of any contract at any time prior to the execution of said contract by all parties without any liability against the Board or Lane County. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

DELEGATION OF AUTHORITY TO EXECUTE CONTRACTS AND AMENDMENTS

21.145 Delegation of Authority to Execute Contracts.

(1) The County Administrator is delegated authority to execute the following types of contracts:

(a) All contracts which have been competitively bid and awarded by the Board.

(b) All contracts and agreements not exceeding $100,000 nor three years in length.

(c) Subcontracts and subgrants not exceeding $100,000 which implement grants.

(d) Amendments to contracts or modifications to grants, subgrants, and subcontracts as described in LM 21.147.

(e) All computer software licenses not exceeding a purchase price of $100,000 with a potential term exceeding three years and which may be terminated upon discontinued use of software; and any accompanying computer maintenance agreements not exceeding $100,000, if the vendor is a sole source.

(f) Insurance nonwaiver agreements and insurance endorsements to original policies.

(g) Land use improvement agreements, Building Program Quick Start Agreements and acceptance and release of land use performance bonds.

(h) Real property leases, licenses and permits, caretaker agreements involving the lease of property, and concessionaire agreements, not exceeding $100,000 nor three years in length.

(i) Emergency contracts which do not exceed $100,000, and which are executed within 60 days of the declaration of the emergency, except as provided in LM 20.255

(j) Contracts and assignments for the collection of County judgments.

(k) All contracts with terms of three years or less that implement public improvement projects described on the adopted Public Works five-year Capital Improvement Program list, the adopted Parks Capital Improvement Program priorities list, and the Public Works and Management Services public improvement lists prepared for filing with the Commissioner of the Bureau of Labor and Industries (BOLI) pursuant to ORS 279C.305. This delegation includes, without limitation, those contracts reflecting the County paid portion of the project, those reflecting any amount to be paid by other governmental agencies or housing development entities for assisted housing projects, and those covering environmental mitigation responsibility.

(l) All projects, services, materials/product purchases, contracts specifically listed as part of budget adoption order, or a supplemental budget adoption order.

(m) Any other type of contract the award of which has been expressly approved by the Board.

(2) The Department Directors are delegated authority to execute contracts, grant application, and acceptance documents equal to or less than $5,000 and not exceeding 3 years in length, subject to compliance with any contract procedures established by the County Administrator. *(Revised by Order No. 98-12-2-4, Effective 12.2.98; 04-6-30-12, 6.30.04; 05-2-16-8, 2.28.05; 08-5-7-10, 5.7.08)*

21.147 County Administrator's Delegation of Authority to Execute Amendments. The County Administrator is delegated authority to execute amendments which comply with LM 21.127(1) above as follows:

(1) For personal or professional services contracts where the original amount is equal to or less than $500,000, the County Administrator may execute any individual amendment which does not exceed $100,000, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount. For personal or professional services contracts where the original amount is greater than $500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount, but the total of all amendments of that contract shall not exceed 50 percent of the original contract amount.

(2) For grants or sub-grants where the original amount is equal to or less than $500,000, the County Administrator may execute any individual amendment which does not exceed $100,000. For grants or sub-grants where the original amount is greater than $500,000, the County Administrator may execute any individual amendment which does not exceed 20 percent of the original contract amount. The delegation of authority provided in LM 21.137(3) applies only to grant continuations which are substantially

similar to the original proposal approved by the Board pursuant to LM 21.137(2); all other grant amendments are governed by this subsection.

(3) The County Administrator is delegated authority to execute all amendments which are included in aggregate cost increase percentages in LM 20.110, and authority to sign competitively selected amendments which meet the criteria of (5) below.

(4) The County Administrator is delegated authority to execute an amendment when combined with all other amendments and the original contract amount total $100,000 or less. This includes the authority to execute an amendment to extend such an agreement for an additional contract period at $100,000 or less.

(5) For contracts which include the subject matter in LM 21.145(1)(e), (f), (g), (h), (i), (j) above, or any other situation not covered by LM 21.147 (1), (2), (3), or (4) above, the County Administrator is delegated authority to execute any amendment which does not exceed $100,000 and which is less than three years in length; however, this authority does not include extending a contract beyond three years, unless authorized by other Lane Manual rule or Board decision.

(6) For intergovernmental agreements and requirements contracts, the County Administrator is delegated authority to execute amendments based on the dollar amount of original contract and underlying subject matter, i.e., goods and/or services, personal services, grant, etc. *(Revised by Order No. 98-12-2-4, Effective 12.2.98, 02-1-30-1, 1.30.02; 04-6-30-12, 6.30.04; 08-2-13-1; 2.13.08)*

21.148 Department Directors' Authority to Execute Amendments.
For original contracts, grant application and acceptance documents, not exceeding $5,000, the Department Directors are delegated authority to execute contract and grant amendments (excluding personal service contracts) which do not exceed 25% of the initial contract amount, but the total of all amendments for that contract shall not exceed 25% of the original contract or grant amount. The Department Directors are delegated authority to execute such contract amendments for personal service contracts which do not exceed 50% of the initial $5,000 contract amount, but the total of all amendments for that contract shall not exceed 50% of the original contract amount. *(Revised by Order No. 05-2-16-8, Effective 2.28.05)*

21.149 Further Delegation and Termination.

(1) Contract Termination. The County Administrator is delegated the authority to cancel or terminate contracts including amendments, as provided in the contract or by law.

(2) Additional Delegation. The County Administrator may further delegate authority under LM 21.145 and 21.147 to a representative by signed written document. *(Revised by Order No. 98-12-2-4, Effective 12.2.98)*

INSURANCE

21.300 Generally.

(1) In all contracts involving work upon a County facility or County-owned property, and in contracts involving a significant risk of liability to the County, the department handling the contract shall consult with the Risk Manager prior to advertising for bid, RFP, RFPS or obtaining quotes to determine whether the contractor will be required to provide an additional named insured endorsement in favor of Lane County for the life of the contract. If such endorsement is not obtainable, a certificate of insurance directed to the County may be substituted.

(2) The County must be informed in advance in writing of all cancellation.

(3) Limits of liability and types of coverage will be set by the Risk Manager based upon risk and exposure in the performance of the contract. Generally, the limits shall not be less than those established in the Oregon Tort Claims Act, ORS Chapter 30.

(4) Where appropriate, as determined by the Risk Manager, contractor will be required to furnish evidence of Workers' Compensation Insurance as required by ORS Chapter 656.

(5) Lane County reserves the right to secure insurance, if the contractor fails to do so, and the cost of same may be deducted from payments due to the contractor. *(Revised by Order No. 85-6-12-13, Effective 6.12.85; 05-12-14-9, 1.1.06; 11-12-14-1, 12.14.11)*

21.305 Standard Insurance Provisions for Construction Contracts.

(1) General. Contractor shall not commence any work until he or she obtains, at his or her own expense, all required insurance. Such insurance must have the approval of County as to limit, form and amount. Contractor will not permit any subcontractor to commence work on this project until the same insurance requirements have been complied with by such subcontractor.

(a) Types. The contractor shall obtain and maintain for the full period of the contract, the following types of insurance: Worker's Compensation Insurance and Comprehensive General Liability Insurance.

(b) Evidence. As evidence of specified insurance coverage, County may, in lieu of actual policies, accept certificates issued by the insurance carrier showing such policies in force for the specified period. Each policy or certificate will bear an endorsement or statement waiving right of cancellation or reduction in coverage, unless notice in writing has been delivered by registered mail to County. Should any policy be canceled before final payment by County to contractor and contractor fails immediately to procure other insurance as specified, County reserves the right to procure such insurance and to deduct the cost thereof from any sum due contractor under this contract.

(c) Adequacy of Performance. Any insurance bearing on adequacy of performance shall be maintained after completion of the project for the full guaranty period. Should such insurance be canceled before the end of the guaranty period and contractor fails immediately to procure other insurance, as specified, County reserves the right to procure such insurance and to charge the cost thereof to contractor.

(d) Payment of Damages. Nothing contained in these insurance requirements is to be construed as limiting the extent of contractor's responsibility for payment of damages resulting from his or her operations under this contract.

(2) Worker's Compensation Insurance. The industrial accident protection to be provided shall be in full compliance with ORS Chapter 656.

(3) Comprehensive General Liability Insurance.

(a) Before commencement of the work, contractor shall submit written evidence that he or she and all subcontractors have obtained for the period of the contract, full Comprehensive General Liability Insurance coverage. This coverage shall provide for: bodily injury, broad form property damage, automatic contractual liability, products, completed operations, personal injury and automobile. The Comprehensive General Liability Insurance will include as Additional Named Insureds County, its Commissioners, officers, employees and agents.

(b) Except as provided in this subsection (b), the limits of Liability Insurance must not be less than those provided in the Oregon Tort Claims Act, ORS Chapter 30 for local public bodies, or the minimum amounts required by the funding source providing funds for the contract, whichever is greater.

However, to encourage bidding on small contracts by small firms, the limits of liability may be set at different levels by the Risk Manager prior to bids being advertised, depending upon the risk involved and the exposure created by the

fulfilling of the contract, as long as there would not be a conflict with a funding source requirement. *(Revised by Order No. 85-6-12-13, Effective 6.12.85)*

REAL PROPERTY

21.400 Real Property Acquisition, Management and Disposition Policy.

(1) The Department of Management Services shall be responsible for procuring real property interests for County needs, as directed by the Lane County Board of Commissioners, through purchase and lease, for managing County-owned, rented and tax-foreclosed real property and for disposing of surplus real property, with the exception of County rights-of-way, parcels of land and other real property interests purchased through the General Road Fund, Solid Waste Management Fund, and Parks Fund. The Department of Management Services shall maintain records on County-owned and occupied property, shall cause all property related transactions to be properly filed and/or recorded and shall represent the County's interest in all property matters in accordance with applicable Federal, State and local laws, rules and regulations. The Board shall have final authority on all real property matters, except as delegated elsewhere in this chapter.

(2) The Department of Public Works shall be responsible for acquiring real property interests for Public Works projects and for managing and disposing of any excess real property interest or parcels of land acquired through the General Road Fund, Solid Waste Management Fund, or Parks Fund. The Department of Public Works shall maintain records on County-owned and occupied real property interests, rights-of-way and parcels of land acquired through the General Road Fund, Solid Waste Management Fund, and Parks Fund, shall cause all such transactions to be properly filed and/or recorded and shall represent the County's interest in all such matters in accordance with applicable Federal, State and local laws, rules and regulations. The Board shall have final authority on all property matters related to the General Road Fund, except as delegated elsewhere in this chapter.

(3) Pursuant to ORS 93.808, authority to approve the conveyance and recordation of an instrument conveying title or interest to Lane County is hereby delegated to the Department Director to approve the recordation of transactions of under $100,000, or the Right-of-Way Manager or Property Management Officer for transactions less than $50,000. The County Administrator will approve amounts under $250,000 and amounts over $250,000 will go to the Board of County Commissioners for approval.

(4) No action of Lane County officers, employees or agents in acquiring, managing or disposing of real property shall be binding upon Lane County, if undertaken through fraud, breach of fiduciary duty or through purported exercise of powers not specifically delegated by law.

(5) The County Administrator is delegated authority to sign State of Oregon Well Ownership Information Forms required to be recorded for county-owned land pursuant to ORS 537.788. *(Revised by Order No. 01-5-30-9, Effective 5.30.01; 03-8-20-1, 8.20.03)*

21.410 Real Property Acquisition.

(1) All contracts for real property acquisition shall be acted upon by the Board through prescribed agenda process. Upon Board approval, the County Administrator will be delegated authority to sign the contracts on behalf of the Board and copies will be distributed in accordance with standard contract routing procedures.

(2) Acquisition of real property interests for Public Works projects shall be negotiated by the Public Works Department in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" and other applicable Federal, State and local rules and regulations. The Department shall establish such internal procedures as necessary to insure that independent appraisals and unbiased reviews are used to determine fair market value for property acquisition for such

purposes. Funding for acquisition of real property interests for Public Works projects will be included in normal budgeting procedures and as part of the project costs projected through the Public Works Five-Year Capital Improvements Program. *(Revised by Order No. 98-4-1-11, Effective 4.1.98; 03-8-20-1, 8.20.03)*

21.420 Management of County-Owned or County-Utilized Real Property.

(1) The Department of Management Services shall be responsible for the lease or rental of County-owned land and buildings, subject to the provisions of state statutes and other applicable laws and regulations.

(2) The Department of Management Services is delegated authority to negotiate rental agreements subject to established contract procedures and Board approval. Rental of County-owned property shall normally be on a month-to-month basis. The Department shall also be responsible for collection of rents. It is the intent of the Board to utilize County-owned real property as a revenue source where possible, and to keep such property on the tax rolls where reasonable to do so. The Department of Public Works is delegated similar authority with regard to rental units on County rights-of-way or County real property acquired through the General Road Fund.

(3) The Department of Management Services is authorized to negotiate caretaker agreements, where rent of County-owned or leased property is included as part of remuneration for services rendered by the occupant, subject to established contract procedures and Board approval.

(4) The Department of Management Services is delegated the authority to negotiate any license for the utilization of County-owned real property, and the Department of Public Works is delegated the authority to negotiate any license for the utilization of County rights-of-way or real property acquired from the General Road Fund for other than road purposes, subject to established contract procedures, the following conditions and such other conditions deemed necessary by the Department:

(a) All licenses to utilize County-owned real property are subject to 30 days termination, unless a shorter term is specified.

(b) A statement shall be signed by the person utilizing County-owned real property, County rights-of-way or County real property acquired through the General Road Fund holding the County harmless from all claims arising out of that person's license, including liability for any ad valorem taxes arising as a result of the license.

(5) Lease of real property by Lane County shall be negotiated by the Department of Management Services in keeping with the needs of the County Department requesting additional space and in keeping with space allocation procedures established by the Board or County Administrator. Lease agreements shall be subject to the established contract review and execution procedures.

(6) Lane County reserves the right to contract for management of real property owned and leased by Lane County to be utilized in land banking and low income housing programs. *(Revised by Order No. 98-4-1-11, Effective 4.1.98)*

21.425 Disposition of County-Owned Real Property.

(1) Subject to deed restrictions and Federal and State laws, it shall be the policy to dispose of County-owned lands not needed for public purposes at market value, except that real property which may be utilized by a governmental agency for a public purpose within a reasonable period of time after acquisition, as determined by the Board or the Department of Management Services, shall be retained by the County until further order of the Board.

(2) The following procedures shall be followed in disposition of County-owned land:

(a) Real Property Officers, or other staff members, as delegated by the Directors of the Departments of Management Services and Public Works, are authorized

to negotiate the sale, subject to Board approval, of real property having a true cash value of $20,000 or less, if the County has no present or future need of the property, as determined by the Department of Public Works in the case of excess County rights-of-way and other property purchased through the General Road Fund, and the Department of Management Services in the case of other excess County-owned property. If funding and staffing levels permit the Department of Management Services may provide assistance with real property disposition to the Public Works Department on request. Such negotiations may only occur after the property has been offered for sale through procedures defined in ORS Chapter 275.

(b) The Director of Public Works in the case of excess rights-of-way and other property acquired through the General Road Fund, and the Director of Management Services in the case of other excess property are authorized to negotiate the sale of real property having a true cash value of $50,000 or less, if the County has no present or future need of the property as determined by those respective Departments, subject to Board approval. Such negotiations may only occur after the property has been offered for sale through procedures defined in ORS Chapter 275.

(c) County-owned land acquired in any manner whatsoever shall be sold in accordance with the provisions of ORS Chapter 275, when such sale is deemed by the Board to be in the best interests of Lane County. The Department of Public Works, for sales of excess County rights-of-way and other property acquired through the General Road Fund, and the Department of Management Services, for other excess County-owned property, shall prepare the Board Order directing the Sheriff to conduct the sale in accordance with ORS 275.110, and shall deliver a certified copy thereof, together with the information required by ORS 275.120 to the Sheriff. The Sheriff shall then conduct the sale in accordance with ORS Chapter 275 and shall make return to the Board. Upon receiving a copy of the return, the department which initiated the sale shall prepare the deed and other relevant documents for signature by the Board.

(d) The Department of Management Services may provide assistance to the Department of Public Works in real property disposition on request if funding and staffing levels permit.

(e) Notwithstanding the provisions of LC 21.425(2)(c), the private sale of County-owned land may occur in accordance with the provisions of ORS 275.225, when such sale is deemed by the Board to be in the best interests of Lane County. The Board may authorize the sale of County land by private sale if each parcel to be sold is assessed at less than $5,000 on the most recent assessment roll prepared for the County and unsuited for the construction or placement of structures thereon under current zoning ordinances and building codes of the County.

(3) Conveyance shall be by quitclaim deed without title insurance for land obtained by tax foreclosure, except as may be negotiated with purchaser at his or her expense. Other conveyances shall normally be by bargain and sale deed, with the County providing title insurance.

(4) Real property acquired by tax foreclosure may be sold to the record owner or a contract purchaser of record as provided in ORS 275.180, when any of the following conditions exist:

(a) The property was placed on the foreclosure list as a result of an error or omission in the records of the Department of Assessment and Taxation.

(b) The property was the residence of the record owner or contract purchaser of record at the time of the foreclosure.

(c) The record owner or contract purchaser of record suffered from a mental or physical incapacity or inability during the foreclosure and redemption period, satisfactory evidence of which is presented to the Board of Commissioners. *(Revised by Order No. 98-4-1-11, Effective 4.1.98)*

21.430 Donation of Tax-Foreclosed Property for Low-Income Housing, Social Services or Child Care.

(1) Findings

(a) ORS 271.330(2) specifically permits counties to transfer county-owned property, tax-foreclosed or otherwise, to municipal or nonprofit corporations, with or without consideration, for the purpose of providing low-income housing, social services or child care. ORS 456.355-456.370 further provides that counties have certain powers, including the power to convey property with or without consideration, to certain entities including nonprofit corporations, in order to aid in the development of housing projects.

(b) The Board believes that safe, sanitary, affordable housing is essential to the stability and vitality of the County.

(c) While property remains in County ownership as a result of tax-foreclosure, it fails to contribute to the tax revenue stream for taxing districts at the same time it requires maintenance at County expense.

(d) The Board believes it is of much greater benefit to County residents to have such properties developed and used to provide low-income housing than to remain unused in County ownership.

(2) Definitions.

(a) "Low-Income Family" means a family whose annual income does not exceed 80 percent of the median income for the area, as determined annually by HUD.

(b) "Municipal Corporation" means any governmental organization duly organized under the laws of the State of Oregon which has as one of its powers the authority to provide housing for low-income individuals or families.

(c) "Nonprofit Corporation" means any corporation not for profit organized under ORS CH. 65 for the purpose of undertaking, constructing, or operating decent, safe and sanitary housing for low-income individuals or families.

(3) Notification of Availability of Tax-Foreclosed Property. When the foreclosed property is deeded to the County, the County Real Estate Division responsible for managing such properties (hereinafter "Real Estate Division") shall notify the cities in Lane County, the Lane County Housing Authority and such nonprofit corporations which request notice, that properties are eligible for transfer under this program. The Real Estate Division shall not schedule Sheriff's sale on these properties until 60 days after the notice is mailed. A municipal or nonprofit corporation may request the Real Estate Division withhold from Sheriff's sale one or more specific properties for a period not exceeding six months to allow time for the requesting entity to consider making a proposal under LM 21.430(4) below.

(4) Procedure for Requesting Transfer.

(a) A municipal or nonprofit corporation may request transfer of tax foreclosed property owned by the County at anytime. The request shall be in writing, specifically identifying the property and describing the proposed use.

(b) The Real Estate Division shall in a timely manner, investigate the proposal and prepare a report for the Housing Policy Board, or other entity as designated by the Board, which covers the identity of the requesting entity; the proposed use of the property; the entity's ability (financial and otherwise) to accomplish the proposal; the location of the property and its market value and zoning; the taxes owing at the time the property was deeded to the County; and any costs incurred by the County to date in managing the property.

(c) The requesting entity shall cooperate with the Real Estate Division in the investigation, including making available as necessary such documentation as financial statements and development plans. The Real Estate Division shall work with staff to the Housing Policy Board (HPB) in conducting the investigation and preparing the report.

(d) The HPB shall review the report, direct further review as deemed necessary and make a recommendation to the Board. If the HPB's recommendation is to

deny the request, the County Commissioner(s) on the HPB shall orally convey the recommendation to the Board and no further actions shall take place on the request unless directed by the Board.

(e) If the HPB's recommendation is to approve the request, the Real Estate Division shall schedule a public hearing on the request, as covered by ORS 271.330 and ORS 456.355-456.370. The Division shall duly publish notice of the hearing on the transfer for two successive weeks, before the hearing, and shall prepare the ordinance and appropriate agenda materials.

(f) At the conclusion of the hearing, the Board shall make a decision as to whether to grant or deny the request, based solely on its determination and judgment as to what is in the best interest of the public. Approval of any request shall be on such terms and conditions as deemed appropriate by the Board, and may be for consideration or for no consideration.

(5) Transfer. If approved, the transfer of title shall occur by quitclaim deed, which may provide, if so directed by the Board, that title shall revert to the County if the property ceases to be used for low-income housing purposes during a specified time period. If the requesting entity desires a bargain and sale deed, such a deed shall be provided if a title report from a title insurance company selected by the County shows clear title and the requesting entity pays for the title insurance policy; the deed may also include a reversionary clause. Terms and conditions imposed by the Board or at its direction not appropriate to a deed shall be contained in a development agreement between the County and the entity. These may include conditions of development appropriate to the project, and elements and consequences of default.

(6) Fees. There is no fee for a request pursuant to LM 21.430(3). The requesting entity shall tender with its request pursuant to LM 21.430(4) a non-refundable administrative fee of $400 for processing the request. In addition, the requesting entity shall pay for the out-of-pocket costs of the transfer, including but not limited to the publication costs, and recording fees.

(7) Other Properties/Other Uses. The Board recognizes that ORS 271.330 permits donation of property acquired in some manner other than through tax foreclosure, and further that it permits donation to municipal or nonprofit corporations for social services or child care purposes. Should a municipal or nonprofit corporation desire to have the Board consider donation of property obtained by any manner for statutorily-identified purposes, the same process as described above should generally be followed. The ordinance shall specify the public benefit of the transfer, any restrictions deemed reasonable by the Board, any necessary repayment of constitutionally dedicated funds used in the acquisition or improvement of the property and the source of repayment, and the appraised value of the property if it is not tax-foreclosed property.

(8) The provisions of LM 21.430(1)-(7) above are discretionary and not mandatory, despite the use of directory language ("shall" or "will"). Regardless of these provisions, the County specifically reserves the right to schedule a Sheriff's sale or sell any particular piece(s) of property at such time and in such manner as the Board deems in the County's best interest. *(Revised by Order No. 93-3-9-6, Effective 3.9.93)*

21.435 Designation of County Forests, Parks, and Recreational Areas

(1) Upon the completion of those requirements set forth in LM 21.430, the Director of the Department of Management Services may, in consultation with the Parks Manager, prepare a list of foreclosed properties to be designated and set aside for county forests, parks, and recreation areas. Only properties outside the corporate limits of a city shall be considered for inclusion on the property list.

(2) In preparing the property list, due consideration shall be given to at least the following:

(a) Environmental issues;

(b) Overall benefit to the County;

(c) Financial needs of the affected departments.

(3) The property list shall be brought before the Board of County Commissioners who may, by order, designate and set aside any such properties for county forest, public park, or recreational area uses. Any properties so set aside shall thereafter be managed by the Parks Division.

(4) Property designated under LM 21.435(3) may thereafter be alienated, sold, or conveyed pursuant to ORS 275.330 following the statutory process and requirements.

(5) If a designated property is alienated, sold, or conveyed pursuant to ORS 275.330(2), the proceeds shall be held for maintenance and improvement of existing park and recreation lands or future acquisition of lands to be set aside for park or recreational purposes. *(Revised by Order No. 05-2-2-2, Effective 2.2.05)*

21.440 Sale of County Timber & Log Export Regulations

(1) Subject to ORS Chapter 275 and other Federal and State Laws it shall be the policy of Lane County to sell County Timber to the highest bidder.

(2) Definitions. As used in this subchapter, the following words and phrases shall mean:

(a) County Lands. Lands owned or managed by Lane County.

(b) County Timber. Any timber owned or managed by Lane County.

(c) County Timber Sale Contract. Any contract with Lane County for the sale of County timber.

(d) Export. Unprocessed timber loaded on a vessel or other conveyance with a foreign destination, or is present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

(e) Performance Bond. The security required by a County timber sale contract that ensures satisfactory performance of contract requirements by the timber sale purchaser.

(f) Person. An individual, partnership, a public or private corporation, an unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

(g) Unprocessed timber or Unprocessed County timber. Trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

(i) Lumber or construction timbers, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture;

(ii) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;

(iii) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in LM 21.440(2)(g)(ii) above and are sawn on 4 sides, with wane less that 1/4 of any face, not exceeding 8-3/4 inches in thickness;

(iv) Chips, pulp, or pulp products;

(v) Veneer or plywood;

(vi) Poles, posts, or piling cut or treated with preservatives for use as such;

(vii) Shakes or shingles;

(viii) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp;

(ix) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips;

(x) Firewood cut in pieces 48 inches or less in length.

(3) Criteria for Eligibility to Bid on County Timber Sale Contracts.

(a) In addition to all other requirements of law, any person submitting a bid for the purchase of County timber must certify, in a form and manner specified by the County Administrator or Designee, that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(b) In addition to all other requirements of law, a person previously not eligible to bid for County timber under LM 21.440(3)(a) above may bid for County timber if the person certifies in form and manner specified by the County Administrator or Designee that:

(i) The person will not export directly or indirectly unprocessed County timber; and

(ii) Unless exempted by LM 21.440(6) below, the person has not exported unprocessed timber from County lands for a period of not less than 24 months prior to the date of submission of the bid; and

(iii) The person will not sell, transfer, exchange or otherwise convey unprocessed County timber to any other person without obtaining a certification from the person that meets the reporting requirements below.

(4) Prohibition of Indirect Substitution.

(a) In addition to all other requirements of law, no person who is prohibited from purchasing County timber directly from the County may purchase County timber from any other person.

(b) Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from this prohibition.

(5) Prohibition of Export of County Timber. All unprocessed timber, as defined in LM 21.440(2) above, which originates from County lands, may not be exported.

(6) Surplus Timber. The prohibitions against export contained in this provision shall not apply to specific quantities of grades and species of unprocessed timber originating from County land which, at the time of harvest, the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

(7) Reporting Requirements.

(a) Before the execution of a timber sale contract or the County in any other manner sells County timber, a purchaser of County timber must:

(i) Notify the County Administrator or Designee of the delivery destination of all timber purchased. Notification will be made in a form and manner described by the County Administrator or Designee; and

(ii) Deliver to the County Administrator or Designee a certification of the eligibility to purchase County timber of any person to whom the purchaser intends to sell, trade, exchange, or otherwise convey the purchased County timber, and their intent to comply with the terms and conditions contained in this section. Certification will be made in a form and manner as prescribed by the County Administrator or Designee. Obtaining certification shall not relieve the purchaser's

responsibility to provide the County Administrator or Designee with an accounting of the delivery destination of that timber.

(b) Any performance bond required by a County timber sale contract may be retained by the County Administrator or Designee until he or she receives satisfactory notification of County timber delivery destination.

(c) Failure to provide the County Administrator or Designee with a final accounting of the delivery destination of County timber will be considered a violation of this provision. Violators shall be subject to the penalties contained in LM 21.440(8) below.

(8) Remedies for Violation.

(a) The County Administrator or Designee shall keep a written record of all persons whom he or she believes have violated the requirements of this provision.

(b) A person whose name appears on the record for violations as stated in LM 21.440(8)(a) above, and who again violates the requirements of this provision shall be disqualified from bidding on or purchasing County timber for a period of five years following the date of the violation.

(c) The County Administrator or Designee may cease operations on and/or terminate any County timber sale contract entered into with a person who has violated the requirements of this provision.

(d) The County Administrator or Designee may assess damages for violations of this provision according to the following formula:

(i) D = (OSV+AC)-(PR+RSV), where:

(aa) D = Damages and Expenses.

(bb) OSV = Original Sale Value (timber only - does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales.

(cc) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law.

(dd) PR = Payments Received.

(ee) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the County Administrator or Designee's estimate of remaining volume, multiplied by the dollar values stated in the contract.

(e) The County Administrator or Designee shall promptly notify the person in writing of any action taken under LM 21.440(8)(b), (c), or (d) above. The notice shall include the nature and date(s) of the violation(s), and where appropriate, the date of contract termination and/or cessation of operations, the period of disqualification, and the amount of assessed damages and how they were calculated. If the person is disqualified, the notice shall also include a statement of the appeal rights and procedure described in paragraph LM 21.440(8)(f) below.

(f) A person who receives notification from the County Administrator or Designee of disqualification may appeal the decision to the Board of County Commissioners.

(i) A written request must be received by the County Administrator, 125 E. 8th Ave., Eugene, OR., 97401, no later than 15 days after the date of the County notification.

(ii) After a timely appeal request is received, the Board of County Commissioners will schedule a public hearing. The appellant will receive at least 15 days' written notice of the hearing.

(iii) Following the hearing, the Board of County Commissioners shall make written findings and issue a written decision. A copy of the findings and decision will be mailed to the appellant. The Board's decision shall be final.

(g) If a person does not timely appeal a disqualification notice, then the decision of the County Administrator or Designee shall be final.

(h) The County Administrator or Designee's decision to cease operations, terminate a timber sale contract, or assess damages shall be final.

(9) Log Branding and Marking Requirements.

(a) All County timber originating from county timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, one end of all logs originating from County timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the County Administrator or Designee.

(b) If properly marked County timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with a county brand specifically used for this purpose and signifying the unprocessed timber is County timber ineligible for export. The County's export restriction branding hammers can be obtained from the County Administrator or Designee, at cost, upon request.

(10) Timber Sale Contracts. All County timber sale contracts shall contain the following provision:

> "The Federal Forest Resources Conservation and Shortage Relief Act of 1990 and state law prohibits the export of unprocessed timber originating from County lands. Violations of that Act, ORS 526.801 to 528.831 or the Lane County Log Export Regulations may result in termination of this contract, assessment of damages, disqualification from bidding on or purchasing County timber for up to five years, or federal or state legal action. "

(11) Enforcement.

(a) Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the County Administrator or Designee, or contracted by the County Administrator or Designee to other County, state or federal agencies. Any alleged violations of the export prohibition provisions of these log export regulations will be referred by the County Administrator or Designee to the appropriate federal or state agency for prosecution or other legal action.

(b) Once the County Administrator makes a final decision that assesses damages, the full amount of damages shall be immediately due and payable. If payment is not made within 30 days, the County may enforce payment through civil legal proceedings. *(Revised by Order No. 95-9-20-2, Effective 9.20.95; 11-12-14-1, 12.14.11)*