

RESOLUTION 2024-02

A RESOLUTION OF THE MAC RECREATION DISTRICT ADOPTING PUBLIC CONTRACTING RULES AND PROCEDURES

WHEREAS, the Madras Aquatic Center Recreation District (“District”) is a special district formed under the provisions of ORS Chapter 266 which is subject to Oregon’s public contracting laws; and

WHEREAS, District serves as its own local contract review board (“LCRB”); and

WHEREAS, pursuant to ORS 279A.065(6), District may adopt its own rules of procedure for public contracting that (a) specifically state that the model rules adopted by the Attorney General do not apply to the contracting agency, and (b) prescribe the rules of procedure that the contracting agency will use for public contracts, which may include portions of the model rules adopted by the Attorney General; and

WHEREAS, the Oregon Public Contracting Code (the “Code”) allows District to establish class special procurements and exemptions to provide for the award of one or more contracts for one or more projects within certain classes without following the competitive sealed bidding, competitive sealed proposals, or small or intermediate procurements that would otherwise be required under the circumstances; and

WHEREAS, District’s board of directors (the “Board”) desire to establish local rules and procedures governing public contracts, and adopt class special procurements and exemptions, subject to the provisions contained in this Resolution No. 2024-02 (this “Resolution”).

NOW, THEREFORE, the Board hereby resolves as follows:

1. Findings. The above-stated findings contained in this Resolution are hereby adopted.

2. Short Title. This Resolution will be known as the “Public Contracting Resolution.”

3. Adoption. The Board hereby adopts the Oregon Attorney General’s Model Public Contracting Rules (the “Model Rules”), Oregon Administrative Rules Chapter 137, Divisions 46, 47, 48, and 49, except for those provisions modified or replaced by the Public Contracting Rules and Procedures attached hereto as Exhibit A (the “Public Contracting Rules”), as the public contracting rules for District, as such Model Rules or Public Contracting Rules presently exist or as they may be amended in the future. If any conflict between the Model Rules and the Public Contracting Rules should arise, the Public Contracting Rules will control. If any conflict between the Public Contracting Rules and the Code should arise, the Code will control. The

Model Rules, Public Contracting Rules, and any amendments to the Model Rules or Public Contracting Rules, will collectively be referred to as the Madras Aquatic Center and Recreation District Public Contracting Rules (the "Rules").

4. Class Special Procurements and Exemptions. The Board hereby adopts the Class Special Procurements and Exemptions contained in the attached Exhibit B as well as the applicable Findings in Support of Adopting Class Special Procurements and Exemptions found in the attached Exhibit C.

5. Amendment; Review. The Board may amend the Public Contracting Rules at any time in the same manner as that required for the Board to adopt a resolution. District will regularly review the Rules to ensure that the Rules are consistent with applicable law.

6. Interpretation; Severability; Corrections. All pronouns contained in this Resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. Any reference to a particular law, statute, rule, regulation, code, or resolution includes the law, statute, rule, regulation, code, or resolution as now in force and hereafter amended. The provisions of this Resolution are hereby declared to be severable. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected at any time by order of the Board to cure editorial and/or clerical errors.

ADOPTED by the Madras Aquatic Center Board of Directors this 25th day of July, 2023.

Ayes: _____
Nays: _____
Abstentions: _____
Absent: _____
Vacancies: _____

_____, Board Chair

ATTEST:

Courtney Snead, Executive Director

Exhibit A
Public Contracting Rules and Procedures

A. Delegation.

1. Except as otherwise provided by the Rules, the powers and duties given to the LCRB by the Code and/or the Model Rules must be exercised and performed by the Board.
2. Except as otherwise limited by the Board or the Rules, all powers and duties given or assigned to local contracting agencies by the Rules may be exercised or performed by the executive director, including, without limitation, the authority to enter into emergency contracts pursuant to ORS 279B.080 and 279C.320.
3. All public contracts or amendments to public contracts with an estimated cost of \$25,000 or more must be approved by the Board. All public contracts or amendments to public contracts with an estimated cost of less than \$25,000 may be entered into by the executive director without Board approval. The executive director may, by written designation, allow other District staff members to enter into public contracts or amendments to public contracts with an estimated cost of \$10,000 or less without Board approval. However, emergency contracts may be entered into by either the Board or the executive director pursuant to Section F of these Rules, regardless of dollar limits, but subject to ORS 294.481.
4. For purposes of the Rules, the “executive director” means the executive director and/or his or her designee. Reference in the Model Rules to the “Chief Procurement Officer” will refer to the executive director.

B. Personal Services.

1. Definitions. “Personal Service(s)” is defined to include those services that require specialized technical, creative, professional, or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services include, without limitation, the following: attorneys, accountants, auditors, and other licensed professionals; computer programmers; artists; graphic designers; performers; and consultants. The executive director may determine whether any

additional service not specifically mentioned in this Section (B)(1) is a “Personal Service” under this definition. “Personal Services Contract(s)” means a contract for the provision of Personal Services.

2. Contracts for Personal Services. Except as provided in Section (B)(3), below, Personal Services Contracts may be directly appointed, or awarded from proposals that are solicited informally, either orally or in writing. When proposals are sought, they will be solicited from a sufficient number of qualified prospective proposers to ensure that no fewer than two qualified proposers submit proposals. If fewer than two qualified proposers submit proposals, the efforts made to solicit proposals will be documented in District’s files. The selection may be based on criteria, including, without limitation, each proposer’s: (a) particular capability to perform the services required; (b) experienced staff available to perform the services required, including each proposer’s recent, current, and projected workloads; (c) performance history; (d) approach and philosophy used in providing services; (e) fees and/or costs; and/or (f) ability to provide timely performance in the area where the services are to be performed. Price may be considered but need not be the determining factor. Proposals may also be solicited by using a written request for proposals, at District’s discretion.
3. Contracts for Architectural, Engineering, and Surveying Services, and Related Services. Personal Services Contracts for architectural, engineering, photogrammetric mapping, transportation planning, land surveying, and/or related services, all as defined by ORS 279C.100, will be awarded in accordance with the source selection procedures set forth in ORS 279C and Division 48 of the Model Rules (except as otherwise provided in these Rules). Notwithstanding the foregoing, such Personal Services Contracts may be awarded pursuant to ORS 279C.115 or 279C.120 when applicable. When using the informal selection procedures described in OAR 137-048-0210, the executive director will submit a request for proposals to a minimum of three prospective consultants drawn from the following: (a) District’s list of consultants that is created and maintained under OAR 137-048-0120; (b) another contracting agency's list of consultants that is created and maintained under OAR 137-048-0120; or (c) all consultants that the contracting agency reasonably can locate that offer the desired architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services, or any combination of the foregoing. Where the executive director is unable to located three

prospective consultants from the sources listed above, the executive director will submit requests for proposals to those prospective consultants identified from the sources listed above and document efforts to locate a minimum of three prospective consultants.

C. Special Procurements; Exemptions.

1. The Board may exempt from competitive bidding certain contracts or classes of contracts for the procurement of goods and services according to the procedures described in ORS 279B.085. In accordance with OAR 137-047-0285(2), District will give public notice of District's approval of a special procurement for goods and services in the same manner as public notice of competitive sealed bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice will describe the goods or services or class of goods or services to be acquired through the special procurement. District will give affected persons at least seven days from the date of the notice of approval of the special procurement to protest the special procurement.
2. The Board may exempt certain contracts or classes of contracts for public improvements from competitive bidding according to the procedures described in ORS 279C.335. When exempting a public improvement from competitive bidding, the Board may authorize the contract to be awarded using a request for proposal process for public improvements, according to the processes described in OAR 137-049-0640 through 137-049-0690.

D. Small Procurements.

1. Public contracts for goods and services \$10,000 or less are not subject to competitive bidding requirements. The executive director may make a reasonable effort to obtain competitive quotes in order to ensure the best value for District. District may amend a public contract awarded as a small procurement beyond the \$10,000 limit in accordance with OAR 137-047-0800, provided the cumulative amendments do not increase the total contract price to a sum that is greater than \$12,500.
2. Public contracts for public improvements with a contract price of less than \$10,000 are not subject to competitive bidding requirements. The executive director may make reasonable efforts to obtain competitive quotes in order to ensure the best value for District.

E. Intermediate Procurements.

1. A contract for procurement of goods and services that exceeds \$10,000 but does not exceed \$150,000 may be awarded according to the processes for intermediate procurements described in ORS 279B.070. District may amend a public contract awarded as an intermediate procurement in accordance with OAR 137-047-0800.
2. A contract for a public improvement estimated by District to not exceed \$100,000 may be awarded according to the processes for intermediate procurements described in OAR 137-049-0160. District may increase the contract price of a public improvement awarded as an intermediate procurement through change order or amendment pursuant to OAR 137-049-0160.

F. Emergency Contracts.

1. For purposes of this Section F, “emergency” is defined as circumstances and/or conditions that (a) could not have reasonably been foreseen, (b) create a substantial risk of loss, damage, or interruption of services or a substantial threat to property, public health, welfare, or safety, and (c) require prompt execution of a contract to remedy the condition.
2. The executive director has the authority to determine when emergency conditions exist sufficient to warrant an emergency contract. The nature of the emergency and the method used for the selection of the contractor will be documented.
3. Emergency contracts may be awarded as follows:
 - a. Goods and Services. Emergency contracts for procurement of goods, services, and construction services that do not constitute public improvements may be awarded pursuant to ORS 279B.080 and Section A, “Delegation,” of these Rules.
 - b. Construction Services. District hereby adopts the procedures of OAR 137-049-0150 for awarding contracts for construction services under emergency conditions. For emergency contracts awarded under this section, District will ensure competition that is reasonable and appropriate under the emergency circumstances which may include, without limitation, written requests for offers, oral requests for offers, or direct appointment without competition in cases of extreme necessity.

- G. Appeals of Prequalification Decisions and Debarment Decisions. Review of District's prequalification and debarment decisions will be as set forth in ORS 279B.425. The procedures in ORS 279B.425 will apply to hearings on such decisions.
- H. Cooperative Purchases. Subject to applicable Board approval requirements stated in the Rules, District may purchase goods under the Oregon Cooperative Purchasing Program or from any similar federal or regional program including, without limitation, programs pursuant to 10 USC 281 and the E-Government Act of 2002 (Public Law 107-347). Purchases under other federal or state laws will be permitted upon a finding by the Board that the law is sufficiently similar in effectuating or promoting transfers of property between contracting agencies.
- I. Electronic Advertising. Pursuant to ORS 279B.055 and 279C.360, electronic advertisement of public contracts in lieu of publication in a newspaper of general circulation in the area where the contract is to be performed is authorized when it is likely to be cost-effective to do so. The executive director will have the authority to determine when electronic publication is appropriate, and consistent with District's public contracting policies. Notwithstanding the foregoing, publication of public improvement contracts with an estimated cost in excess of \$125,000 will also be made in at least one trade newspaper of general statewide circulation.
- J. Brand Names or Products, "or Equal."
1. Specifications. District may enter into public contracts for the procurement of Brand Name "or Equal" products, including products to be incorporated into a public improvement, subject to the requirements of this rule. Solicitation specifications for public contracts must not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections (a) and (b) of this rule.
 - a. "Or Equal" Specification. District may specify a particular brand name, make or product suffixed by "or equal," "or approved equal," "or equivalent," "or approved equivalent," or similar language if there is no other practical method of specification.
 - b. Specifying a Particular Make or Product. District may specify a brand name, make, or product without an "or equal" or equivalent suffix if there is no other practical method of specification and after documenting the procurement file

with the following information: (i) a brief description of the solicitation(s) to be covered including volume of contemplated future purchases; (ii) the brand name, mark, or product to be specified; and (iii) the reasons for seeking this procurement method, including, without limitation, a finding that (I) it is unlikely that specification of the brand name, mark or product will encourage favoritism in the award of the public contracts or substantially diminish competition, (II) specification of the brand name, mark, or product would result in substantial cost savings to District, and/or (III) efficient utilization of existing equipment or supplies requires the acquisition of compatible equipment or supplies.

2. Public Notice. District will (a) make reasonable effort to notify all known suppliers of the specified product and invite such suppliers to submit competitive bids or proposals, or (b) document the procurement file with findings of current market research to support the determination that the product is available from only one seller. This requirement is satisfied by electronically posting a notice as provided in OAR 137-047-0330 for a reasonable period of time or by documenting direct contact with such suppliers in the procurement file.

K. Single Seller and Sole Source.

1. Sole Source Purchasing. District may purchase a particular product or service available from only one source if District meets the requirements of ORS 279B.075 and OAR 137-047-0275. Prior to purchase and in accordance with ORS 279B.075, District must determine in writing that the product or service is available from only one seller or source. District's single seller/sole source determination (which will be placed in the procurement file) will include the following: (a) a description of the product or service to be purchased; (b) a brief description of the contract or contracts to be covered including volume of contemplated future purchases; and (c) District's findings in support of a single seller/sole source which may include those items listed in ORS 279B.075(2).
2. Sole Source, Multiple Purchases. If District intends to make several purchases of the product of a particular manufacturer or seller over an extended period, District must so state in the solicitation file, the solicitation document, if any, and the public notice required pursuant to OAR 137-047-0275(2). Such documentation and public

notice constitute sufficient notice as to subsequent purchases. Such purchase may not be made for a period in excess of five years without new findings supporting continuation of the sole source procurement.

Exhibit B
Class Special Procurements and Exemptions

- A. CLASS SPECIAL PROCUREMENTS. District may award a public contract under a class special procurement pursuant to the requirements of ORS 279B.085. Such procurements allow District to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, and/or small or intermediate procurements. The Board declares the procurements listed below as class special procurements. Unless otherwise specified in a particular special procurement rule, such contracts may be awarded in any manner that the executive director deems appropriate to District's needs, including, without limitation, by direct appointment. Except as otherwise provided, the executive director will make a record of the method of award.
1. Advertising Contracts, Purchase Of. The executive director, acting on behalf of District, may purchase media advertising, regardless of dollar value, without competitive bidding.
 2. Advertising Contracts, Sale Of. The executive director, acting on behalf of District, may authorize the sale of advertising in District publications and for District activities, regardless of dollar value, without competitive bidding.
 3. Equipment Repair and Overhaul.
 - a. Conditions. The executive director, acting on behalf of District, may enter into a public contract for equipment repair and/or overhaul without competitive bidding, if (i) service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing, and/or (ii) service and/or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source. District purchases under this rule must be within the limits and pursuant to the methods in Section (3)(b) of this rule.
 - b. Process and Criteria. The executive director will use competitive methods wherever possible to achieve best value and must document in the procurement file the reasons why a competitive process was deemed to be impractical. If the anticipated purchase is more than \$150,000 competitive quotes must be obtained and retained in the procurement

file.

4. Purchase of Used Personal Property. If the anticipated purchase does not exceed \$150,000, District may directly purchase used personal property and equipment if such property is suitable for District's needs and can be purchased for a lower cost than substantially similar new property. District's research determining that the property can be purchased for a lower cost than substantially similar new property must be documented in the procurement file. For the purpose of this rule, the cost of used property will be based upon the life-cycle cost of the property over the period for which the property will be used by District.
5. Information Technology Contracts. The executive director, acting on behalf of District, will comply with the requirements of this rule for the procurement of information technology contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file. Information technology contracts will be solicited in accordance with the following: (a) if the anticipated purchase price is more than \$10,000 but less than \$150,000, competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements; and (b) if the anticipated purchase price exceeds \$150,000, District will solicit written proposals in accordance with District rules governing requests for proposals.
6. Telecommunications Systems - Hardware and Software Contracts. The executive director, acting on behalf of District, will comply with the requirements of this rule for the procurement of telecommunications systems contracts. Competitive methods will be used wherever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file. Telecommunications systems contracts will be solicited in accordance with the following: (a) if the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing intermediate procurements; and (b) if the anticipated purchase exceeds \$150,000, District will solicit written proposals in accordance with District rules governing requests for proposals.

7. Telecommunications Services. The executive director, acting on behalf of District, may enter into a public contract for telecommunications services without competitive bidding if no competition exists within the area for the service required. To determine whether competition exists, the executive director will consider the following factors: (a) determination of alternative providers available within the geographic and service market area; (b) the extent to which alternative services offered are comparable or substitutable in technology, service provided and performance; and (c) the extent to which alternative providers can respond to District's interest in consistency and continuity of services throughout its service area, volume discounts, equitable service for all users, centralized management and limiting District liability. District will use competitive methods wherever possible to achieve best value. If competition exists (as determined herein) and the anticipated purchase is \$10,000 or more but less than \$150,000 competitive quotes will be obtained and retained in the procurement file pursuant to the rules governing Intermediate Procurements. If the anticipated purchase exceeds \$150,000, District will solicit written proposals in accordance with District rules governing requests for proposals.
8. Copyrighted and Library Materials. District may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, without limitation, new books, periodicals, curriculum materials, reference materials, audio and visual media, and non-mass marketed software from a particular publisher or its designated distributor.
9. Requirements Contracts. The executive director, acting on behalf of District, may establish requirements contracts for the purposes of minimizing paper work, achieving continuity of products, securing a source of supply, reducing inventory, combining District requirements for volume discounts, standardization among District departments, and/or reducing lead time for ordering. Purchases under requirements contracts may be utilized in accordance with the following: (a) the requirement contract must have originally been let by competitive procurement procedures unless otherwise allowed by District's rules; (b) District departments may purchase the goods or services from the awarded contractor without first undertaking additional competitive procurement procedures; and (c) the term of any District requirements contract, including

renewals, will not exceed five years unless otherwise exempted pursuant to ORS 279B.085.

10. Purchases under Federal Contracts. When the price of goods and services has been established by a contract of the federal government pursuant to a federal contract award, District may purchase the goods and services in accordance with the federal contract without subsequent competitive bidding. In exercising its authority under this special procurement, District will obtain and document permission from the appropriate federal agency to purchase under the federal contract and document the cost savings to be gained for District from the anticipated purchases under the federal contract. District will not contract pursuant to this rule in the absence of a cost savings to District by using this method.
11. Hazardous Material Removal and Cleanup. District may directly acquire services to remove or clean up hazardous material or oil from any vendor in an emergency or when ordered to do so by the Oregon Department of Environmental Quality pursuant to its authority under ORS Chapter 466. In doing so, the following conditions apply:
 - a. To the extent reasonable under the circumstances, District will encourage competition by attempting to obtain informal price quotations or proposals from potential suppliers of goods and services;
 - b. The District department responsible for managing or coordinating the cleanup will prepare a written description of the circumstances that require the cleanup and/or a copy of the DEQ order for the cleanup to the executive director, together with a request for contract authorization;
 - c. The District department responsible for managing or coordinating the cleanup will record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made; and
 - d. The timeline for cleanup must not permit use of intermediate procurement procedures.
12. Insurance—Employee Benefit and Other. District may purchase employee benefit insurance and other insurance without

competitive bidding, regardless of dollar amount, subject to the terms of any collective bargaining agreement between District and represented employee groups.

13. Disposal of Abandoned, Seized, and/or Non-Owned Property. Contracts or arrangements for the sale or other disposal of abandoned, seized, and/or other personal property not owned by District at the time District obtains possession of such property are not subject to competitive procurement procedures. The executive director may select any method of disposal including, without limitation, donation to a charitable organization.
14. Disposal of Surplus Property.
 - a. Methods. Surplus property may be disposed of by any commercially reasonable method upon a determination by the executive director that the method of disposal is in the best interests of District. Factors that may be considered by the executive director include, without limitation, costs of sale, administrative costs, and public benefits to District. The executive director will maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred. For the purpose of this rule, “commercially reasonable method” includes, without limitation, transfer or sale to another District department or agency, auction, bid, liquidation sale, fixed-price sale, trade-in, donation, and any other method determined reasonable under the circumstances by the executive director.
 - b. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$500, or for which the costs of sale are likely to exceed sale proceeds, may be disposed of by any means determined to be cost-effective, including by disposal as waste. Prior to disposing of property pursuant to this subsection (b), the District official proposing to dispose of the property will obtain a written confirmation from another District official determining that the value of the property is less than \$500. The District official making the disposal will make a record of the value of the item and the manner of disposal.

- c. Restriction on Sale to District Employees. District employees will not be restricted from competing, as members of the public, for the purchase of publicly-sold surplus property, but will not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

- 15. Temporary Extensions or Renewals. District may enter into contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired, contract, other than contracts for public improvements, without competitive bidding.

- 16. Temporary Use of District Property. District may negotiate and enter into a license, permit, and/or other contract for the temporary use of District-owned property without using a competitive selection process under the following circumstances: (a) the contract results from an unsolicited proposal to District based on the unique attributes of the property or the unique needs of the proposer; (b) the proposed use of the property is consistent with District's use of the property and the public interest; and (c) District reserves the right to terminate the contract without penalty, in the event that District determines that the contract is no longer consistent with District's present or planned use of the property or the public interest.

- 17. Sponsorship Agreements. Sponsorship agreements, under which District receives or makes a gift, donation, or consideration in exchange for official recognition may be awarded by any method deemed appropriate by District, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

- 18. Concession Agreements. District may enter into contracts that grant a franchise or concession to a private entity, individual, or other government to promote or sell, for its own business purposes, specified types of goods or services from District property and under which the concessionaire or promoter makes payments to District based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off District property. A concession agreement does not include an agreement which represents a rental, lease, license, permit, or other arrangement for the use of public property. Concession agreements

may be awarded by any method deemed appropriate by the executive director, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.

19. Donated Materials and/or Services. District may accept donated services and/or materials regardless of dollar amount under the following circumstances: (a) the donor has agreed to donate all, or a portion of, the materials and/or services necessary to perform the work; and (b) the donor enters into a license or agreement with District whereby the donor agrees to comply with public contract requirements applicable to the particular project and any requirements that District deems necessary or beneficial.
20. Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt. District may enter into contracts for gasoline, diesel fuel, heating oil, lubricants, and/or asphalt without competitive bidding subject to the following: (a) prior to selection of the contractor, District obtains quotes (written or oral) from at least three vendors in the area; (b) District makes its purchase from the least expensive source of those providing quotes; and (c) the reasons why a competitive process was deemed to be impractical must be documented in the procurement file.

B. EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS. District may award a public improvement contract under an exemption to competitive procurement pursuant to the requirements of ORS 279C.335. Such procurements allow District to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals, and/or small or intermediate procurements. The Board declares the public improvement contracts described below to be exempt from competitive bidding. Unless otherwise specified in a particular exemption rule, such contracts may be awarded in any manner that the executive director deems appropriate to District's needs, including by direct appointment or otherwise. Except as otherwise provided, the executive director will make a record of the method of award.

1. Use of Existing Contractors. When a public improvement is in need of minor alteration, repair or maintenance at or near the site of work being performed by a District contractor, District may hire that contractor to perform such work subject to the following:

- a. The contractor was hired through a selection process permitted by District's public contracting rules;
- b. The executive director first obtains a price quotation for the additional work from the contractor that is competitive and reasonable;
- c. The total cost of the proposed work will not exceed the Bureau of Labor and Industries' threshold specified in ORS 279C.810(2); and
- d. The original contract is amended to reflect the new work and is approved by the executive director before work begins.

Exhibit C

Findings in Support of Adopting Class Special Procurements and Exemptions

ORS 279B.085 and 279C.335 authorize the LCRB, upon adoption of appropriate findings, to establish special selection, evaluation and award procedures for, or exempt from competition, the award of a specific contract or classes of contracts. Pursuant to that authority, the Board has, after notice and an opportunity to comment at a regular meeting of the Board, adopted Resolution No. 2024-02 which establishes classes of contracts and the solicitation methods for their award, together with the following specific findings in support thereof, or a determination that no findings are required.

A. SPECIFIC FINDINGS – CLASS SPECIAL PROCUREMENTS. The Board approves the specific findings for the establishment of special solicitation methods for the classes of public contracts described below and also finds that the establishment of each class of contract and the methods approved for their award is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts, and will result in substantial cost savings to District, and/or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065, or 279B.070 or under any rules adopted thereunder.

1. Advertising Contracts, Purchase of.

- a. Alternate Award Process. Contracts may be awarded in executive director's discretion.
- b. Cost Savings and Other Benefits. Size of and frequency of average advertisement (including all notices required to be published by District by applicable statute or regulation) does not justify the cost of solicitation. Time period of recognition of need to advertise until date of advertisement is too short to issue solicitation.
- c. Effect on Competition. The potential market is limited because not all advertisers work in all markets. Choice of advertising medium is somewhat price sensitive, but is primarily driven by location and size of circulation compared to District's target audience.

- d. Effect on Favoritism. Minimal effect on favoritism due to the lack of competitors and specialized contracting needs.

2. Advertising Contracts, Sale of.

- a. Alternate Award Process. The executive director may authorize the sale of advertising in District publications and for District activities, regardless of dollar value, without competitive bidding.
- b. Cost Savings and Other Benefits. Avoids an unnecessary solicitation expense.
- c. Effect on Competition. The sale of advertising is not for the purpose of generating revenue for District, but rather is utilized to offset the cost of publication. Businesses generally purchase advertising space in the spirit of good will and as a means of supporting community activities.
- d. Effect on Favoritism. Minimal since any interested individual or business who wishes to advertise may do by contacting District staff.

3. Equipment Repair and Overhaul.

- a. Alternate Award Process. Contracts may be awarded in the executive director's discretion.
- b. Cost Savings and Other Benefits. The need for equipment repair cannot be planned for and often must be handled on an expedited basis to avoid additional expense and adverse impact on the public's ability to utilize District's services. Experience with a single contractor can help improve reliability over the course of several projects.
- c. Effect on Competition. Allows contractor to be selected based on ability to provide accurate, reliable, and fast service.
- d. Effect on Favoritism. Requirement that executive director obtain competitive quotes when practical helps ensure that favoritism will not be greater than if statutory request for proposals process were used.

4. Purchase of Used Personal Property.
 - a. Alternate Award Process. Contracts to be awarded in executive director's discretion.
 - b. Cost Savings and Other Benefits. District is responsible to manage expenditures in the best interests of the public. Cost savings can be achieved through the purchase of used property and equipment in certain instances. District purchases used property and equipment when it meets District's needs and is cost-effective. Considerations include type, quantity and estimated useful life of the used item.
 - c. Effect on Competition. No impact on competition as this class special procurement allows District to respond to unique opportunities that become available sporadically and without notice. Used equipment and property is usually sold on a first-come, first-served basis. When used equipment or property does become available, District must be able to respond immediately in order to obtain the property or equipment.
 - d. Effect on Favoritism. No impact on favoritism since District is responding to unique opportunities. When a used item is available, there is often little competition available and sources for used items of the type, quality and quantity required by District are inconsistent.
5. Information Technology Contracts.
 - a. Alternate Award Process. Competitive methods will be used wherever possible to achieve best value. In situations where a competitive process is deemed to be impractical, the reasons must be documented in the procurement file.
 - b. Cost Savings and Other Benefits. Rapid changes in technology and technology pricing make it necessary for District to be able to purchase needed computer equipment quickly. It is frequently possible to take advantage of lower pricing due to the frequent price changes in the market place.
 - c. Effect on Competition. Generally, there is sufficient competition among vendors in the area of information technology and software for District to secure competitive

quotes. District is required to make a good-faith effort to secure competitive quotes under this rule

- d. Effect on Favoritism. Minimal effect on favoritism as District is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

6. Telecommunications Systems – Hardware and Software Contracts.

- a. Alternate Award Process. Competitive methods will be used whenever possible to achieve best value. The reasons why a competitive process was deemed to be impractical must be documented in the procurement file.
- b. Cost Savings and Other Benefits. Rapid changes in technology and technology pricing make it necessary for District to be able to purchase needed telecommunications hardware and software quickly. It is important that District be able to take advantage of price competition in the marketplace.
- c. Effect on Competition. Since deregulation, there is generally sufficient competition among vendors of telecommunications hardware and software for District to secure competitive quotes. District is required to make a good-faith effort to secure competitive quotes under this rule.
- d. Effect on Favoritism. Minimal since District is required to obtain competitive quotes where practical. As price is the primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

7. Telecommunications Services.

- a. Alternate Award Process. The executive director may enter into a public contract for telecommunications services without competitive bidding, if no competition exists within the area for the service required.
- b. Cost Savings and Other Benefits. The executive director will use competitive methods wherever possible to achieve best

value. If competition exists, competitive quotes will be obtained.

- c. Effect on Competition. It is important that District take advantage of price competition in the marketplace. There may be circumstances, however, where sufficient competition does not exist in the relative geographic and service market area. In such cases, District will follow this rule in determining whether sufficient competition exists to make a competitive procurement.
- d. Effect on Favoritism: Since deregulation, there is generally sufficient competition among vendors of telecommunications services for District to secure competitive quotes. Because price is a primary factor, it is unlikely that this special procurement will encourage favoritism in the awarding of public contracts.

8. Copyrighted and Library Materials.
 - a. Alternate Award Process. Contracts may be awarded in the executive director's discretion.
 - b. Cost Savings and Other Benefits. This special procurement is necessary to allow District to acquire special needs products that are unique and for which a single copyright owner or licensee is the only source of the material. Eliminates unnecessary competitive solicitation when a competitive market does not exist.
 - c. Effect on Competition. By their nature, copyrighted materials are protected for the use of a single owner and are often produced by a single supplier who may be the owner of the copyright or its licensee. Instructional materials are adopted through a statewide process under the authority of the Oregon Department of Education, District generally purchases its instructional materials through Northwest Textbook Depository. This allows District to benefit from the regional purchase and warehousing of these materials and the associated savings. This rule allows District to participate in the largest possible bulk purchasing activity of instructional materials in the region.
 - d. Effect on Favoritism. Not effect on favoritism due to the lack of competitors and specialized contracting needs.
9. Requirements Contracts.
 - a. Alternate Award Process. District initially awards requirements contracts as a result of competitive procurement or an applicable special procurement. This special procurement allows such a contract to be converted into one that will allow District to secure a constant source of supply for the contracted-for goods.
 - b. Cost Savings and Other Benefits. Allows District to reduce inventory, combine District requirements for volume discounts, standardize goods among District departments, and reduce lead time for ordering.
 - c. Effect on Competition. It is unlikely that this special procurement will diminish competition for District contracts

as District initially enters into such contracts through a competitive process or applicable special procurement.

- d. Effect on Favoritism. Minimal effect on favoritism since District initially enters into such contracts through a competitive process or special procurement.

10. Purchases under Federal Contracts.

- a. Alternate Award Process. This special procurement allows the executive director to make purchases of goods and services when the price has been established by a contract of the federal government, which contract was awarded through a competitive procurement process.
- b. Cost Savings and Other Benefits. District may use this special procurement method when it determines that there is a cost savings to be made in avoiding the solicitation process.
- c. Effect on Competition. The contracts are awarded through competitive processes and Oregon companies are not excluded or disadvantaged in participating in bidding or otherwise competing for federal contracts.
- d. Effect on Favoritism. Minimal effect on favoritism since the contracts are awarded at the price most advantageous to the federal government. District is required to document the cost savings it will achieve by using the contract. These facts ensure that District purchases the desired goods or services at the best price available, rather than from a preferred contractor.

11. Hazardous Material Removal and Cleanup.

- a. Alternate Award Process. Contracts may be awarded in the executive director's discretion.
- b. Cost Savings and Other Benefits. When District is ordered to remove or clean up hazardous material, it must respond within a very short time period. This time period generally does not allow for District to take the time necessary to solicit written bids or proposals for the work to be performed. Failure to comply within the allotted time period could make District liable for delays in responding to cleanup or removal

orders. Such delay might also expose District to potential liability from third parties if the cleanup is not completed quickly.

- c. Effect on Competition. This special procurement will only be used in an emergency or in situations where a remedial order is in effect and therefore there is no time to utilize a competitive procurement method. Routine competitive procurement methods will be used where time permits.
- d. Effect on Favoritism. Minimal effect on favoritism since District will follow competitive procurement procedures unless precluded by time constraints.

12. Insurance – Employee Benefit and Other.

- a. Alternate Award Process. District may purchase employee benefit insurance and other insurance without competitive bidding, regardless of dollar amount subject to the terms of any collective bargaining agreement.
- b. Cost Savings and Other Benefits. The nature, type, specific services to be provided and timing of employee benefit insurance are dictated by collective bargaining agreements between District and represented labor groups. District must fulfill its contractual obligations to represented employee groups to provide appropriate employee benefits. District relies on its professional insurance broker or agent-of-record to solicit competitive proposals from responsible companies to furnish employee benefit coverages and other insurance coverages.
- c. Effect on Competition. Minimal effect on competition since District's agent-of-record solicits proposals from employee benefit insurance providers and other insurance providers under conditions that foster competition among a sufficient number of potential suppliers. District evaluates the proposals submitted to furnish employee benefit insurance for the best value to District given the requirements specified by the employee benefits portions of District's agreements with represented labor groups.
- d. Effect on Favoritism. No impact on favoritism as this special procurement responds to unique opportunities.

13. Disposal of Abandoned, Seized or Non-Owned Property.

- a. Alternate Award Process. Abandoned, seized, or non-owned property may be disposed of in the executive director's discretion.
- b. Cost Savings and Other Benefits. Avoids an unnecessary solicitation expense by allowing the executive director to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the executive director to establish programs for donation to charitable organizations.
- c. Effect on Competition. No impact on competition as this special procurement responds to unique opportunities.
- d. Effect on Favoritism. No impact on favoritism as this special procurement responds to unique opportunities.

14. Disposal of Surplus Property.

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- a. Alternate Award Process. Surplus property may be disposed of in the executive director's discretion.
 - b. Cost Savings and Other Benefits. Avoids an unnecessary solicitation expense by allowing the executive director to determine whether the cost of solicitation is justified by the value of the property to be disposed. Allows the executive director to establish programs for donation to charitable organizations.
 - c. Effect on Competition. No impact on competition as this special procurement Responds to unique opportunities.
 - d. Effect on Favoritism. No impact on favoritism as this special procurement responds to unique opportunities.

15. Temporary Extensions or Renewals.

- a. Alternate Award Process. No competitive selection required.
- b. Cost Savings and Other Benefits. Allows District to prepare for competitive solicitation when existing contracts expire without notice due to administrative error.

- c. Effect on Competition. Delays competition by not more than one year.
- d. Effect on Favoritism. No impact on favoritism. At expiration of temporary extension, standard competitive procedures will apply.

16. Temporary Use of District Property.

- a. Alternate Award Process. Contracts may be awarded in executive director's discretion.
- b. Cost Savings and Other Benefits. Allows District to respond to unsolicited proposals for unique revenue opportunities.
- c. Effect on Competition. No effect on competition as no competitive market exists.
- d. Effect on Favoritism. No impact on favoritism as this special procurement responds to unique opportunities.

17. Sponsorship Agreements.

- a. Alternate Award Process. Contracts may be awarded in the executive director's discretion.
- b. Cost Savings and Other Benefits. This special procurement allows District to respond to unsolicited proposals for revenue or marketing opportunities that would otherwise be unknown or unavailable.
- c. Effect on Competition. Mandatory open competition would likely discourage creative proposals from sponsors or District participation. Sponsorship often results from the match between a unique attribute of an event or asset and unique characteristics of the sponsor for which no competitive market exists.
- d. Effect on Favoritism. Minimal effect on favoritism as this class of special procurements responds to unique opportunities.

18. Concession Agreements.

- a. Alternate Award Process. Executive director may adopt rules for awarding contracts similar to those rules used for personal service contracts.
- b. Cost Savings and Other Benefits. Allows District to take advantage of unique revenue opportunities. Not a contract for the acquisition or disposal of goods or services. Most similar to personal services contracts because the quality of the concession may be more important than price factors. Allows a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from District property. Concessionaire makes payments to District based, in part, on the Concessionaire's revenues from the concession.
- c. Effect on Competition. Minimal effect on competition as this special procurement responds to unique opportunities.
- d. Effect on Favoritism. Minimal effect on competition as this special procurement responds to unique opportunities.

19. Donated Materials and/or Services.

- a. Alternate Award Process. Subject to the requirements of this special procurement, the executive director will award such contracts in the executive director's discretion, including through direct solicitation.
- b. Cost Savings and Other Benefits. Avoids unnecessary expenditure when services and/or materials are donated to District. Affords District the ability to take advantage of such donated materials and/or services, enables District to use its limited funds in other areas, and frequently results in materials and/or services District would not otherwise be able to afford.
- c. Effect on Competition. No competitive market exists or equivalent vendors will be identified and allowed to compete.
- d. Effect on Favoritism. Not effect on favoritism since services and/or materials are donated.

20. Gasoline, Diesel Fuel, Heating Oil, Lubricants, and Asphalt.

- a. Alternate Award Process. Subject to the requirements of this special procurement, the executive director will award such contracts in the executive director's discretion, including through direct appointment.
- b. Cost Savings and Other Benefits. The purchases under this special procurement are likely to be at levels that qualify as small or intermediate contracts and the process is similar to the process required for intermediate contracts. The exemption is provided because over a period of time the total dollar amount of goods purchased from a single source may exceed the dollar maximum for intermediate contracts.
- c. Effect on Competition. This special procurement encourages competition by requiring an informal competitive process and requiring District to use the least expensive source of those providing quotes.
- d. Effect on Favoritism. This special procurement discourages favoritism by requiring an informal competitive process and requiring District to use the least expensive source of those providing quotes.

B. SPECIFIC FINDINGS – EXEMPTIONS FOR PUBLIC IMPROVEMENT CONTRACTS. The Board approves the specific findings for the exemptions described below and also finds that the establishment of each class of contracts and the methods approved for their award is unlikely to encourage favoritism in the awarding of public improvement contracts or substantially diminish competition for public improvement contracts, and the awarding of public improvement contracts under each exemption will result in substantial cost savings to District.

1. Use of Existing Contractors.

- a. Alternate Award Process. From time to time, District needs to perform repair or maintenance functions at or near a site where a contractor, already hired by District through a competitive selection process, is performing other work. The executive director may obtain an informal price quotation from the contractor already at or near the site to perform the additional work. If the executive director determines that the informal price quotation is competitive for work of that type, then the contractor may be awarded the additional work

without the need for competitive bidding provided that the value of the additional work, as estimated by the contractor, does not exceed \$25,000.

- b. Cost Savings and Other Benefits. District will achieve cost savings because the cost of the additional work will be lower than if the work was competitively bid because the contractor is already mobilized at or near the site of the work and will not need to recover the cost of mobilization as would a new contractor.
- c. Effect on Competition. It is unlikely that this exemption will substantially diminish competition in the award of District contracts, as the contractor was originally selected through a competitive bidding process.
- d. Effect on Favoritism. Not applicable where the contractor has already been selected through an appropriate contracting method. The occurrence of such additional work is often unforeseen and District is not required to provide the contractor with the work if the estimated price is not competitive.