



Public notice was given to *The Register-Guard* for publication on May 8, 2014.

**LANE TRANSIT DISTRICT
SPECIAL BOARD MEETING
Monday, May 12, 2014
5:30 p.m.
LTD Board Room
3500 E. 17th Avenue, Eugene
(Off Glenwood Boulevard in Glenwood)**

A G E N D A

Page No.

- | | | | |
|-------|---|-------------|---|
| I. | CALL TO ORDER | | |
| II. | ROLL CALL | | |
| | Wildish _____ Necker _____ Grossman _____ Dubick _____ | | |
| | Gillespie _____ Yeh _____ Towery _____ | | |
| III. | PRELIMINARY REMARKS BY BOARD PRESIDENT | (5 minutes) | |
| IV. | COMMENTS FROM THE GENERAL MANAGER | (2 minutes) | 4 |
| V. | ANNOUNCEMENTS AND ADDITIONS TO AGENDA | (2 minutes) | 5 |
| VI. | BOARD CALENDARS | (1 minute) | 6 |
| VII. | EMPLOYEE OF THE MONTH – JUNE 2014
[Mark Johnson] | (5 minutes) | 7 |
| VIII. | AUDIENCE PARTICIPATION | | |
| | ◆ <i>Public Comment Note:</i> This part of the agenda is reserved for members of the public to address the Board on any issue. The person speaking is requested to sign-in on the Audience Participation form for submittal to the Clerk of the Board. When your name is called, please step up to the podium and give your name and address for the audio record. If you are unable to utilize the podium, you may address the Board from your seat. | | |
| | ◆ Citizens testifying are asked to limit testimony to three minutes. | | |

IX. ITEMS FOR ACTION AT THIS MEETING

- A. Consent Calendar (1 minute) 8
1. Minutes of the March 14, 2014, Board Strategic Planning Work Session (Page 9)
 2. Minutes of the April 7, 2014, Special Board Meeting/Public Hearing (Page 24)
 3. Minutes of the April 16, 2014, Regular Board Meeting (Page 28)
- B. Fiscal Year 2014-15 Pricing Plan, and Second Reading and Adoption, Amended Fare Ordinance No. 49, an Ordinance Setting Fares for Use of District Services (5 minutes) 37
[Tom Schwetz]
(Copies of Ordinance No. 49 are available at the Lane Transit District office in Glenwood.)
- C. LTD Contract Review Board: Purchasing Policy Rules Update (10 minutes) 41
[Jeanette Bailor]
1. Motion to Convene as the LTD Contract Review Board
 2. Staff Presentation
 3. LTD Contract Review Board Discussion and Decision
 4. Adjourn Contract Review Board/Return to LTD Board Meeting

X. ITEMS FOR INFORMATION AT THIS MEETING

- A. Board Member Reports (10 minutes) 133
1. Meetings Held
 - a. Main Street Projects Governance Committee – April 24
 - b. Lane Council of Governments (LCOG) Board of Directors – April 24
 - c. Metropolitan Policy Committee – May 1
 2. No Meeting/No Reports
 - a. Lane Area Commission on Transportation (LaneACT)
 - b. Accessible Transportation Committee (ATC)
 - c. LTD Board Human Resources Committee
 - d. EmX Steering Committee
 - e. LTD Pension Trusts
 - f. Eugene Transportation Community Resource Group (TCRG) for the Eugene Transportation System Plan (TSP)
 - g. LTD Board Service Committee
 - h. LTD Board Finance Committee
 - i. Governor's Oregon Passenger Rail Leadership Council

B.	EmX Steering Committee Engagement [Tom Schwetz]	(10 minutes)	135
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D.	Monthly Financial Report – April 2014 [Todd Lipkin]	(5 minutes)	138
E.	Monthly Grant Report – April 2014 (respond if questions)		139
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G.	Monthly Performance Reports (respond if questions)		154
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A.	Budget Committee Meetings (May 21)		
B.	Labor Negotiations (June)		
C.	Fiscal Year 2013-14 Supplemental Budget (June)		
D.	Fiscal Year 2014-15 Budget Adoption (June)		
E.	Election of Board Officers (June)		
F.	Board Member Committee Assignments (June)		
G.	Safe Routes to School Report (June)		
H.	Business Commute Challenge Report (June)		
I.	Web Project Design (June)		
J.	Regional Transportation Options Plan (RTOP) (Spring/Summer)		
K.	Pension Funding Policy (TBD)		
L.	Annual Performance Report (TBD)		
M.	Bicycle Parking Study (TBD)		
N.	High-capacity Transit Corridor Projects (TBD)		
XII.	ADJOURNMENT		

The facility used for this meeting is wheelchair accessible. If you require any special physical or language accommodations, including alternative formats of printed materials, please contact LTD's Administration office as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please call 682-6100 (voice) or 7-1-1 (TTY, through Oregon Relay, for persons with hearing impairments).

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: COMMENTS FROM THE GENERAL MANAGER

PREPARED BY: Ron Kilcoyne, General Manager

ACTION REQUESTED: None

BACKGROUND:

This agenda item provides an opportunity for the general manager to formally communicate with the Board on any current topics or items that may need consideration.

ATTACHMENT: None

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: ANNOUNCEMENTS AND ADDITIONS TO AGENDA

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND:

This agenda item provides a formal opportunity for the Board president to announce additions to the agenda, and also for Board members to make announcements or to suggest topics for current or future Board meetings.

ATTACHMENT: None

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: BOARD CALENDARS

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: Board member communication regarding participation at LTD and community events and activities.

BACKGROUND:

Board members are asked to coordinate the Board Activity Calendars with their personal calendars for discussion at each Board meeting. Updated Board Activity Calendars are included with this packet for Board members.

Board members also are asked to contact Jeanne Schapper with any changes in availability for LTD-related meetings and events, and to provide their spring and summer vacation dates.

ATTACHMENTS: Board activity calendars are included separately for Board members.

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: JUNE EMPLOYEE OF THE MONTH

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

BACKGROUND:

June Employee of the Month: Bus Operator Brian Penn has been selected to receive the June Employee of the Month award. Brian has received one Monthly Value award and seven Safe Driving awards since he joined LTD in February 2007. In addition, he is a member of the Accident and Route Review Committee.

Brian was nominated for this award by a coworker who wished to recognize him for retrieving three EmX side impact panels from the side of the road, saving them from incurring further damage. He did this of his own accord and on his own time, and his initiative saved LTD time and money.

When asked to comment on Brian's selection as Employee of the Month, Transit Operations Field Supervisor Josh Schmit said:

Brian has been with LTD for seven years and has received seven Employee of the Month nominations. This is truly a testament to the kind of operator that Brian is. Brian has been a great addition to the LTD family, and I have taken notice of his ability to handle many difficult situations. He is a very capable bus operator, which is demonstrated by his six years of Safe Driving awards. Brian has a wonderful personality and is well liked by his fellow employees.

Brian continues to have a positive effect on his coworkers, and his enthusiasm is a great benefit to the many people with whom he comes in contact. Brian's commitment to quality, customer service, and building positive relationships has made many friends in the community on behalf of LTD. He is an exemplary employee who believes that how you get there matters. I know he'll continue to do great things and is very deserving of the Employee of the Month award.

AWARD:

Brian will attend the May 12, 2014, meeting to be introduced to the Board and to receive his award.

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: CONSENT CALENDAR

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: Approval of Consent Calendar Items

BACKGROUND:

Issues that can be explained clearly in the written materials for each meeting, and that are not expected to draw public testimony or controversy, are included in the Consent Calendar for approval as a group. Board members can remove any items from the Consent Calendar for discussion before the Consent Calendar is approved each month.

The Consent Calendar for May 12, 2014:

- 1) Approval of the Minutes of the March 14, 2014, Board Strategic Planning Work Session
- 2) Approval of the Minutes of the April 7, 2014, Special Board Meeting/Public Hearing
- 3) Approval of the Minutes of the April 16, 2014, Regular Board Meeting

ATTACHMENTS:

- 1) Minutes of the March 14, 2014, Board Strategic Planning Work Session
- 2) Minutes of the April 7, 2014, Special Board Meeting/Public Hearing
- 3) Minutes of the April 16, 2014, Regular Board Meeting

PROPOSED MOTION: I move that the Board adopt the following resolution:

LTD Resolution No. 2014-013: It is hereby resolved that the Consent Calendar for May 12, 2014, is approved as presented.

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MINUTES OF DIRECTORS MEETING
LANE TRANSIT DISTRICT
STRATEGIC PLANNING WORK SESSION

Friday, March 14, 2014

Pursuant to notice given to *The Register-Guard* for publication on March 9, 2014, and distributed to persons on the mailing list of the District, the Board of Directors of the Lane Transit District held a strategic planning work session on Friday, March 14, 2014, beginning at 9:00 a.m., at the Springfield Justice Center, 230 4th Street, Springfield, Oregon.

Present: Board of Directors:
Doris Towery, President
Gary Gillespie, Vice President
Michael Dubick, Secretary
Ed Necker, Treasurer
Julie Grossman
Gary Wildish
Carl Yeh

Board Budget Committee:
Jon Hinds
Dwight Collins
Donald Nordin
Edward Gerdes
Dean Kortge

Ron Kilcoyne, General Manager
Jeanne Schapper, Clerk of the Board
Lynn Taylor, Minutes Recorder

CALL TO ORDER/ROLL CALL: Ms. Towery convened the meeting of the Lane Transit District (LTD) Board to order and called the roll at 9:01 a.m. All Board and Budget Committee members were present with the exceptions of Dean Kortge who arrived at 10:20 a.m. and Dwight Collins who arrived at 12:30 p.m.

WELCOME BY BOARD PRESIDENT: Ms. Towery welcomed Board members, Budget Committee members, and staff to the District's annual strategic planning work session. She said that the meeting provided an opportunity to discuss in greater depth the budget and other matters of importance to long-range planning efforts. Ms. Towery encouraged everyone to ask questions and share opinions to enrich the process. She thanked consultants Jennifer Bell and David Funk who would be providing assistance. She reviewed the retreat agenda and thanked everyone for taking the time to participate.

WHY WE DO WHAT WE DO: RECASTING LTD'S VISION, MISSION, AND VALUES: Director of Customer Services and Planning Andy Vobora introduced Jennifer Bell of Bell+Funk to lead the discussion.

Ms. Bell said that often an organization's mission and vision statements were indistinguishable and inaccessible to frontline staff and the public. She said that LTD was a mission-driven organization, and input had been collected from employees in order to better articulate the District's mission and encourage community support. The results were a draft of *Why We Are Here* statements and supporting *How* statements, or guiding principles.

Ms. Bell summarized feedback into the following themes:

- Freedom/independence
- Equality
- Accessibility
- Community/connections
- Service
- Environment
- Economy

Ms. Bell said that based on those themes, a *Why We Are Here* statement was drafted: "We are here to provide people the independence to achieve their goals, creating a healthier, more vibrant and equitable community." She invited discussion and feedback.

Mr. Necker asked why the word "transportation" was not included. Ms. Bell said that transportation was how LTD provided freedom and independence to people; the statement tried to capture the benefits of what LTD did.

Mr. Gerdes suggested that the word "ability" would be more appropriate than "freedom."

Mr. Nordin noted that transit included a consciousness about being responsible for the environment, and a reference to sustainability was not included in the statement. Ms. Bell said that the *How* and *What* statements addressed that issue.

Ms. Bell explained how feedback had shaped the draft's *How* statements, which should be actionable and applicable to how the organization made decisions. She invited feedback on the following statement:

- We plan for the future we want.
- We collaborate with others who share our vision.
- We remain committed to serving others.
- We continuously question if there is a better way.

Planning and Development Manager Tom Schwetz asked if these statements addressed sustainability. Ms. Bell said that they did, but agreed that the references could be more overt.

Mr. Yeh said that the statements addressed those things he regarded as important about LTD's mission. The one thing he felt was missing was a reference to LTD's high visibility, which made it very much a part of the community. He said that a visitor may identify LTD as a part of the community's vibrancy in a city that cared about transportation and connecting people.

Mr. Hinds liked the terms "vibrant" and "equitable," which embodied the community's character.

Mr. Wildish said that sustainability was an important issue for him and that it was embraced at LTD through both its environmental and financial stewardship.

Mr. Gillespie said that his response to the question, "Why Are We Here?" was, "To Get You There." LTD also created living wage jobs in the community and hoped to see that referenced somewhere in the statements. He said that the real test was when the vision met the budget. It was important to periodically revisit and reevaluate the vision to see if it was being implemented as intended. Ms. Bell agreed that the statements should help inform and guide an organization's operations.

Ms. Grossman observed that the statement regarding collaboration with others who shared LTD's vision could be misconstrued as being exclusive.

Ms. Towery suggested modifying the statement by removing the words "with others who share our vision." She said that some in the community criticized LTD for being "tone-deaf" and the statement should stress collaborating with all community members in order to reach a positive conclusion.

Finance Manager Todd Lipkin said that a robust community had a vision shared by all and agreed that the statement should not be worded in a way that it could be misinterpreted.

Mr. Gerdes agreed with Mr. Lipkin. He said the statement about planning for the future "we" want also could be misinterpreted and should be broadened to embrace what the community and collaborative partners wanted.

Mr. Necker said that the phrase, "others who share our vision" could be seen as placing limits on with whom LTD would collaborate.

Mr. Dubick suggested putting the statement referring to serving others at the beginning of the list.

Mr. Lipkin suggested substituting the word "are" for "remain" in that statement.

Mr. Vobora said that the *How* statements would replace much of the core values language, and those values needed to be embedded in the document. Likewise the *What* statements would be those things delivered in the work plan section. He said that the new document would have a much different appearance, and he wanted everyone to understand those changes.

Mr. Kilcoyne added that a video shown to all employees during fall training would help them understand the new approach to expressing LTD's mission and vision.

CONNECTING THE DOTS, PART 1: Mr. Kilcoyne began with a quote by Alvin Toffler, "You must think about big things while you are doing small things so that all the small things go in the right direction." He distributed a diagram illustrating how to connect the dots from LTD's various initiatives to its larger goals. He explained that the diagram represented a layered approach to visioning. His presentation would focus on three major initiatives:

- 1) TransitStat
- 2) Desired level of Transit Service
- 3) Sustainability

TransitStat - a Model for Performance Management: Mr. Kilcoyne said LTD, as an organization, is well-run, but there always are ways to improve by becoming more efficient and working smarter to reduce stress and maximize resources. TransitStat is a system used by the Cleveland, Ohio, transit district. He said that it was initially used by municipal government and had been adapted to transit. It is a data-driven process that has produced a number of impressive outcomes for the Cleveland district, including more than \$50 million in savings and improved customer service, employee morale, and performance.

Mr. Kilcoyne said that staff had visited Cleveland and reviewed how the process works. He felt that LTD could implement the system with Cleveland's advice and assistance and without the need to hire a consultant. He said that staff had been reviewing TransitStat over the past several months, and he explained how the process would determine quantifiable strategies for achieving organizational goals. Mr. Kilcoyne introduced Director of Transit Operations Mark Johnson to describe LTD's first TransitStat project.

Mr. Johnson said that operations comprised about 80 percent of LTD's budget; and the first project focused in that area—specifically the issue of stand time. Stand time is insurance against missed trips by having operators come in and be available to cover the work in case someone was late or ill. Over the past few years, stand time had trended upwards from 900 hours in 2009 to 1,200 hours currently. He said the project had identified a goal of reducing stand time by 200 hours per month within nine months. Next steps would target other areas within operations where efficiencies and savings could be achieved.

Mr. Lipkin added that the project was about continuous improvement District wide. While this project focuses on reducing operating costs, if the internal analysis indicates that customer service would be negatively affected, then the review process might determine that the current stand time level was appropriate and why that was so.

Mr. Johnson said that the TransitStat process requires access to a large amount of data, and understanding the impacts of actions on overall service was a part of continuous improvement. Mr. Kilcoyne pointed out that the District was actually providing more service in 2009 when stand time hours were lower. He described how Cleveland's first TransitStat project reviewed overtime.

Mr. Wildish said he was pleased that frontline staff were being involved in the process as they were a source of valuable suggestions regarding day-to-day operations, and being asked for their input gave them a greater sense of ownership in the organization.

Mr. Johnson agreed and explained how employees had been asked to make suggestions for improving operations. He described the structure that supports moving a project forward from a suggestion to implementation.

In response to questions from Mr. Gillespie, Mr. Johnson said that he anticipates that as the process proceeds, every part of the organization, including operators, would be involved. He said that there was no direct relationship between stand time and the number of deadhead runs, which was why it was critical to identify what factors are involved.

Ms. Grossman asked what happened if an idea was implemented using the TransitStat process but ultimately failed to produce the desired results. Mr. Kilcoyne said that there are opportunities during implementation for course corrections, and no blame is assigned if corrections are needed. Mr. Johnson said that the process did encourage risk taking and working outside people's comfort zones.

RECESS: Ms. Towery called a brief recess at 10:12 a.m.

RECONVENE: Ms. Towery reconvened the meeting at 10:25 a.m.

CONNECTING THE DOTS, PART 2:

Desired Level of Transit Service (DLOTS) - A Discussion with the Community: Mr. Kilcoyne reviewed a map of service routes and times. He pointed out that the amount of service provided was governed by the amount of revenue the District received, not necessarily by what the community needed or what could be potentially provided to optimize ridership. He pointed out areas of residential and employment density and said that some areas were not served at an appropriate level. He said that frequency attracted ridership, and there were many areas in the community that lacked adequate coverage or warranted more frequent service than was being provided. Connectivity on the system now required passing through the downtown hubs.

Mr. Kilcoyne said that it was ultimately up to the community to determine what level of service LTD provided because it was the community that would pay for that level of service. A broad community conversation on that topic needed to be conducted, and staff were developing tools to facilitate an informed discussion by identifying the benefits of service increases along with accompanying tradeoffs.

Mr. Kilcoyne said that one of the goals was to develop consensus around a funding model that allowed LTD to provide the optimal level of benefit to the community as defined by the community. Another goal was to improve mobility/accessibility so that car-owning households could gain \$9,000 annually tax-free by owning one fewer car, and non-car-owning households had equal access opportunities with car-owning households. The third goal was to enable the communities LTD serves to be true 8-80 communities through partnerships where walking, bicycling, and transit were best friends. He explained that a community that worked for an eight-year-old and an 80-year-old (8-80) was a community that worked for all. He invited comments on how to engage the community and the timing and coordination of community discussions with other District efforts.

Mr. Nordin observed that suburban, semirural communities such as Cottage Grove were not on the map of service routes and times, and they represented 10-15 percent of the Lane County population. Mr. Kilcoyne said that LTD planners did take those communities into consideration; they were not shown simply to make the map more readable.

Ms. Towery commented that while exurb communities were only 5 percent of ridership, to the people who rode the bus in those communities, transit was critical to their ability to connect. She said that many of those communities also had high levels of poverty, and residents needed transit to connect to employment. She wanted to see another map that included those outlying areas, which also represented the direction of future economic development and job growth and were an important consideration in service level decisions.

Mr. Gillespie agreed with Ms. Towery. He said that service levels constrained people's travel. He also pointed out that those outlying communities also paid payroll taxes to support the District.

Mr. Vobora stated that in the past, the exurb communities had contributed a commensurate level of payroll tax receipts, but plant closures and economic setbacks in recent years had shifted

support of that service to the urban areas. He said that LTD wanted to be responsive to emerging demands as the outlying areas began to recover economically, but also needed to take other factors into consideration.

Mr. Nordin said that the discussion should look beyond what value an exurb community received from LTD services and the cost of those services. It also should consider that if transit was not available, residents of outlying communities would drive into the urban areas; and cities would have to pay for traffic control, road maintenance, parking, and other transportation costs that were not being paid for by exurb communities. It was important to look at the entire picture and not just the costs associated with bus service.

Mr. Gillespie suggested that holding meetings at 5:30 p.m. would not promote community engagement as people were busy at that time. The timing and coordination was critical because if LTD collected data and input at a point that was between service changes, it would not have the same impact or show responsiveness as would collecting it in a timely manner before the next service change. He said that being asked about a desired level of service raised certain expectations, such as the respondents being heard and some of the ideas being implemented.

Mr. Kilcoyne agreed and said that a critical part of the community discussion needed to be about how to pay for desired services. He said that payroll tax revenue paid to maintain the current level of operations; a discussion of what services were wanted would need to include options for funding other than the payroll tax and if the community was willing to do that.

Mr. Gerdes asked if staff had been given clear direction from the Board about meeting customer needs. He said that LTD could be a regional development driver by virtue of where it placed lines, the location of its boundaries, and the service provided to the customer (convenience/reliability). He was uncertain what role LTD played in overall community planning. For example, LTD could dramatically decrease its boundaries and apply those service cost savings to increase frequency, and, thus, convenience within more densely populated areas. That could potentially drive people to locate within certain areas of the community to access bus service.

Mr. Vobora said that the Board historically had looked at the ratio of productivity versus coverage and concluded that allocations should give the greatest percentage to productivity to achieve the greatest impact and a lesser percentage to coverage. A decision was made in the 1970s to provide rural lifeline service, and approximately 5 percent is allocated to rural service. Those considerations lent themselves to more corridor service and less neighborhood coverage.

Ms. Towery added that the Board had that discussion during the last round of service reductions and decided to preserve some lifeline services that would have been cut on the basis of productivity. That conversation is being taken up again with consideration of the annual route review and service recommendations.

Mr. Vobora cited a number of examples of how LTD was expected to react when circumstances changed, such as the movement of businesses from along transit corridors out to the Coburg area and the location of a new veterans' clinic away from existing transit service. He said that trying to be responsive to those needs meant reallocation of resources from other areas and other tradeoffs.

Mr. Gerdes asked why LTD was not more proactive with governmental entities by stating its plans and letting those entities and the business community know that if they made other choices about locating, they could not expect LTD to react immediately with service adjustments.

Ms. Towery pointed out that LTD had those conversations about the veterans' clinic. Federal regulations required that the facility be built on a transit line, but a different decision was made anyway. Mr. Kilcoyne added that LTD did a good job of coordinating with local governments, but there were still gaps in communication.

Mr. Schwetz said that recognition of the role of transit in municipal planning has increased recently. An example was the City of Eugene's recent long-range planning initiative that envisioned managing the growth of the City on the backs of transit corridors by concentrating that growth. He saw a growing expectation from both Springfield and Eugene that transit would play a key role in managing growth and enhancing quality of life in the community. He asked the group to consider to what extent the payroll tax would enable LTD to meet these new expectations and challenges over the next 20 years.

Ms. Towery agreed that there was a growing recognition of transit's role in economic development and managing responsible growth and its benefits to the community.

Mr. Hinds said that as a Budget Committee member, when confronted with the need to cut service, he looks at the word "sustainability" and considers what level of service the District could sustain. He looks at how LTD could best support a vibrant economy by expanding service that would keep dollars in the community and provide revenue from the payroll tax.

Mr. Kilcoyne said that the proposed service increases were extremely modest and the payroll tax would not support large service increases. It was necessary to look for a broader funding base, not just to expand service, but to protect existing service and guard against major changes in payroll tax revenue.

Ms. Grossman asked if it was possible to encourage growth along transit corridors by requiring businesses and agencies that chose to locate away from transit to pay an additional amount for transit service, along with the payroll tax. Mr. Vobora said that there were examples of districts doing that, although federal charter rules placed limitations on how it could be done. Staff were exploring that option with some services, such as to the airport or Junction City. He said that Lane Community College and the University of Oregon both paid for additional trips on lines serving their campuses.

Mr. Schwetz said that the Long-Range Transit Plan, which was to be presented to the Board at the March 19 regular meeting, contained an initiative related to being proactive. It was called the Frequent Transit Network, which would create a set of corridors consistent with how cities wished to manage their growth, and let the public know that LTD would commit to higher frequency if development was located along those corridors. The intent was to align the District's service investments with the goals and policies of other agencies.

Mr. Necker said that a community advisory group to City of Eugene planners had reached the conclusion that providing transit was a two-way street: development could occur along transit corridors, or corridors could reach for the development. He said that the Envision Eugene initiative included a goal of increasing development along corridors.

Mr. Gillespie commented that a recent transit-related article in *The Register-Guard* said that the gas tax no longer was a viable source of additional revenue and mentioned the vehicle miles traveled (VMT) assessment as another revenue option. He hoped that the District's lobbyist could pursue that matter at the legislature. Mr. Kilcoyne remarked that there was a VMT pilot project underway in Oregon, and a proposal had been introduced in Congress to attempt that nationally. He said that there seemed to be some support for that concept as the gas tax was a dwindling source for transportation revenue.

Mr. Kilcoyne invited final comments on how to engage the community and the timing and coordination of community discussions with other District efforts.

Mr. Gillespie said that it was important to talk to residents who did not currently ride the bus and gather as much feedback from throughout the community as possible, given the timeframe.

Mr. Gerdes agreed. He suggested presentations to organizations such as the chambers of commerce and City Club. He urged LTD to find a dynamic speaker, such as a local elected official who strongly supported transit, to persuade listeners.

Ms. Towery agreed that LTD needed champions with the political will and respect in the community to promote transit's value and benefits.

Mr. Schwetz clarified a desire from the group to have a values-based community conversation.

Mr. Wildish stressed the need to educate the community about the benefits that transit provided and the extent of LTD's service.

Ms. Grossman said that surveys provided an opportunity to tell LTD's story by serving two purposes: marketing/public relations and data collection. She agreed that having a champion to promote LTD in the community also was important.

Mr. Hinds encouraged community-based events throughout the area with maps that illustrated the location of current services and the direction of future service. Feedback from those events would help inform the planning process with what level of service people in specific neighborhoods needed.

Ms. Grossman suggested trying to connect those community events with activities that were already scheduled.

Mr. Necker shared a story about his late father-in-law's favorable impression of Eugene's transit service when he had moved to the city at age 90, and his hope that the community appreciated what it had. He suggested finding transit users to share those types of thoughts in 30-second public service spots.

Sustainability - LTD's Vision and Accomplishments: Mr. Kilcoyne said that LTD had done a good job of being sustainable; but in the last two years, the District had become more focused on how it could improve those efforts internally. He said that LTD had adopted the Environmental Management System (EMS), and staff were going through training. He saw the TransitStat process as helping to incorporate sustainability efforts throughout the organization to help it become a better community citizen.

Mr. Vobora reminded the Board that it had adopted an environmental commitment as part of implementing the EMS system, which consisted of a set of processes and procedures to examine specific environmental impacts of activities, products, and services and determine the best way to be a good steward of the environment. He explained how the system was being implemented at LTD with the establishment of a core team and a fence line for the process. He said that most districts drew the fence line around maintenance facilities as being the primary source of environmental hazards, but LTD had decided to draw the fence line around its entire property in order to engage all employees in the process. The core team met weekly to develop procedures, aspects, objectives, and targets. He said that employees were surveyed to identify aspects to be targeted, and a list of the top five included:

- Proper aerosol can disposal
- Five percent reduction in electricity use
- Prevention of fuel spills
- Two percent reduction in diesel fuel consumption
- Five percent reduction in water use

Mr. Vobora said that while the core team was developing processes and procedures, ultimately the entire organization would be involved in achieving the goals. He said the process would develop specific targets for each aspect and include activities to help reach those targets. For example, fuel spill prevention included not only LTD employees, but also the contractors who came onto the site for purposes of delivering fuel or landscaping. Contractors would need to be educated about LTD's expectations for protecting the environment. He described the activities related to fuel spill prevention that staff had created and implemented.

Mr. Vobora said that at some point LTD would need to decide whether or not to formally pursue ISO (International Organization for Standardization) certification. The District already was at the bronze level under the American Public Transportation Association Sustainability Program and moving toward the silver level. The District also would need to decide how to incorporate its internal Green Team into the larger sustainability initiative now being implemented.

Mr. Gillespie commended the sustainability efforts. He asked if LTD was working with other local entities that handled fuel, such as FedEx and Sanipac. Mr. Vobora said that was the intent as the plan developed.

RECASTING THE LTD ROAD MAP: Mr. Vobora said that the goal was to bring several documents, such as the Long-Range Transit Plan, Capital Improvements Program, Regional Transportation Options Plan, and others, together into an understandable and accessible format and inform employees and others of opportunities for providing input during updates of those plans.

RECESS: Ms. Towery called a recess at 12 Noon.

RECONVENE: Ms. Towery reconvened the meeting at 12:30 p.m.

LONG-RANGE FINANCIAL PLAN, PART 1: Mr. Lipkin distributed copies of the *Lane Transit District Draft FY 2015-24 Long-Range Financial Plan*.

Plan Assumptions: Mr. Lipkin began with the general revenue and cost assumptions that were ingrained in the Plan. Regarding the payroll tax, he said that when the recession occurred, tax revenues decreased; and during recovery, there was a slow increase. The assumption during that time was a steady increase up to 5 percent. Those assumptions were met, and the current draft Plan assumed a continuation of the annual 5 percent increase in the base.

Mr. Lipkin said that fare increases of approximately 5 percent, as recently proposed to the Board in the FY 2014-15 Pricing Plan, also were assumed in the Plan, with an annual growth of 5 percent through future increases in fares and ridership. The Plan also assumed that a fixed annual amount of \$4.1 million in federal formula capital funds would be allocated to preventative maintenance, with the remainder used for discretionary capital improvements.

Mr. Lipkin said that the District had been reorganized into three departments based on how they served the community: 1) Customer Services and Planning; 2) Transportation Operations; and 3) Administrative Services. He stressed that the reorganization did not increase full-time equivalents (FTEs) and the budget would be structured within these categories. He said that negotiations on the Amalgamated Transit Union (ATU) contract had just opened; and based on prior contracts, the Plan assumed a 2 percent annual increase in wages in the future. This could be adjusted as the negotiation process moved forward. He said that changes to the salaried employees' pension plan were included in the assumptions, and initially included a \$115,000 additional contribution to fund the unfunded liability and a 1 percent increase to fund the current benefit. He said the funded ratio of the ATU pension plan was moving from 55 percent to between 60 and 65 percent, with a recommended contribution of \$4.60-4.70 per hour. The District currently contributed \$4.89, and the Plan assumed that same level in the future to continue to improve the funded ratio. He said that medical insurance was assumed to increase 10 percent annually.

Mr. Lipkin indicated that fuel was budgeted currently at \$3.75 per gallon, while year-to-date costs were \$3.14 per gallon. He said that \$3.75 would be assumed in the Plan, with a 5 percent annual increase after 2015. The fuel assumption did not include a reduction in fuel consumption as higher efficiency vehicles replaced older ones in the fleet. Materials and services would be assumed to increase 2 percent annually, and the Accessible Services transfer assumption was a 10 percent increase, although that could be reduced if additional funding became available.

Mr. Lipkin said that the draft Capital Improvements Program (CIP) had recently been made available for public comment, and the assumption was that the capital transfer in the Plan was what was called for in the CIP.

Mr. Kortge asked how close the \$115,000 additional contribution would bring the pension fund to a 70-72 percent funded ratio. Mr. Lipkin replied that the ratio would increase 5 to 10 percent and was heading in the right direction. He said that many changes over the next few years to calculating, reporting, and funding pension plans would address that issue.

Mr. Gerdes asked if the ATU pension plan would be a hybrid plan. Director of Human Resources and Risk Management Mary Adams explained that a joint pension work group had developed a new model, which would have to be agreed upon during bargaining. She said that a defined contribution model had been on the table during the last two labor negotiations, and the proposed model was an improvement over the current model.

In response to a question from Mr. Gerdes, Mr. Lipkin said that the District would expect to see a reduction in contributions to the ATU pension plan in 14 years when it no longer had an unfunded

liability. The salaried employees plan could be on a similar cycle if the pension trust considered changing strategies for investments.

Mr. Kortge said that he was pleased with the progress made to address the unfunded liability of the pension plans.

Payroll Tax Panel Discussion: Director of Finance and Information Technology Diane Hellekson stated that all transit districts were subsidized in some way, but there were only two, LTD and TriMet, for which the primary source of subsidy was the payroll tax. During the 2003 legislative session, the payroll tax rate cap was raised to 0.007, phased in over a ten-year period and subject to a finding of local economic recovery. She said that LTD did not take advantage of the opportunity to increase the tax rate until January 1, 2006. The cap was again raised during the 2009 legislative session to .008, again with a finding of economic recovery as determined by the District's Board of Directors. She said that a study of local economic recovery was currently in progress, and a draft would be completed by the end of March. A final version would be delivered to the Board by the end of April to become part of the discussion about whether or not to raise the payroll tax rate.

Government Relations Manager Edward McGlone stressed that the economic recovery study did not mean that the District would raise the payroll tax rate, but that step could not be taken without the study. He said that the legislature allowed the Board to only consider two factors in determining economic recovery: regional employment and income growth, specifically within the District's boundaries. ECONorthwest had been hired to conduct that study; but beyond the study, staff were conducting a community outreach campaign to engage people in the discussion. He described various activities and events that were planned, and he encouraged Board members to participate. He said that the campaign also would include recognition of businesses for their support of transit. He said that the Board had considerable discretion in making a decision on the tax rate. He said that materials also would be developed to help engage businesses in the conversation and demonstrate that an increase was reasonable, and staff would be educated on how to facilitate discussions in different venues.

Mr. Kortge commented that discussion of a payroll tax increase suggested that the decision had already been made. He recommended that outreach wait until the study was completed and received by the Board. He said that the message should stress how the District contributed to the good of the whole community and develop a common agreement among payroll tax payers on the need for a payroll tax. He added that the message should be that everyone contributes for the good of the whole in pursuit of transit as a basic community value.

Mr. Gillespie commented that all tax increase proposals included an estimate of the impact on the average person. He did not object to putting forth that information to businesses if the tax were proposed to increase.

Mr. Yeh pointed out that people in the community already were discussing the tax increase, and he was concerned that LTD would be left out of the conversation if the campaign were delayed.

Mr. Gerdes concurred with Mr. Kortge and preferred to see discussion postponed until the report was completed. He said that if the report should determine there had not been sufficient economic recovery, business owners would feel that their time had been wasted. He recommended that the report contain a statement from ECONorthwest about how long they felt the report contents would remain viable. Ms. Hellekson said that the life of that type of report was less than a year.

Mr. Gerdes offered that some businesses might be aware of the short life of the report and perceive that a decision had already been made.

Mr. Collins said that it was important to realize that many businesses still resist paying the current payroll tax. He liked the idea of demonstrating the value of transit to the community and thanking and recognizing businesses' support. He referred to the Eugene City Council that was currently considering a sick pay issue, which could have a significant financial impact on businesses. Mr. Collins suggested that LTD track that discussion and monitor the business community's reaction.

Ms. Towery said that she had pushed to begin the community conversation because even if there was a finding of no economic recovery, it was still necessary to have the values-based discussion of what the community wanted or expected from transit. She hoped that conversation would identify what the community valued and identify ways for the District to achieve sustainable funding for services in the future.

Mr. Gillespie agreed with Ms. Towery. He said that if there was no discussion, all that would be heard in the void was the opposition. He pointed to the West Eugene EmX Extension project as an example of organized opposition before the District had begun extensive community outreach.

Ms. Grossman supported the idea of a community discussion, rather than presentation, to find out what the community valued and what services it wanted.

Mr. Necker agreed that the campaign needed to stress that no decision had been made. LTD needed to be cognizant of the fact that most people feel their input does not matter and are being informed after decisions were already made. He did not feel it was necessary to wait until after the Board had made a decision. Input collected from the community should inform the Board's decision.

Mr. Wildish said that the community needed to understand the value of LTD, and that it provided services for the entire community. He said that the District had a marvelous story to tell and the data to demonstrate its outstanding performance. He added that the community would raise other issues during conversations.

Mr. Kortge relayed a story about a fund-raising campaign in Harney County. Instead of asking for money, the Cancer Society distributed literature to tell its story. Subsequently, the organization raised more money than ever before. He said that if the focus and message to businesses are on the story about what LTD does for people and its value to the community, results will follow.

Ms. Towery added that the story should demonstrate how transit is an equity and human rights issue, and LTD is a critical underpinning to the success and prosperity of the community. She said that the discussion should be about how that can be achieved and about encouraging people to want to participate in supporting that community value.

Mr. McGlone summarized the Board's direction: not to focus on the payroll tax, but rather to have a conversation about LTD, what it did, and the value it provides; and when the study was completed, begin discussions of the payroll tax.

Mr. Hinds used the example of the City of Portland's transit system and its influence on economic development. It was imperative in an outreach campaign to ask businesses how LTD could help

them grow and serve the interests of economic development and how that could be funded in a way that benefits everyone.

Mr. Nordin suggested having transit users thank the business community for its support. This campaign could help raise riders' consciousness that they are receiving a subsidy. This allows the opportunity for them to express appreciation.

Mr. Gillespie said that LTD should tell its story and let listeners control the questions.

Mr. Collins added that people, especially the business community, need to understand that the payroll tax is LTD's primary source of financial support.

Mr. Dubick concurred with the importance of telling LTD's story and said that many of the planning documents could help inform those conversations. He liked the idea of expressing appreciation for the business community. A conversation about who LTD is would generate a conversation about what the community valued about the District. He felt the report should be put on the back burner until the Board had a better grasp of how LTD was valued in the community. A request for increased revenue should come after community support had been generated.

Ms. Towery summarized that based on the group's discussion, the community conversation should proceed but without the payroll tax as a topic; although LTD should be prepared to answer questions about potential impacts of a tax increase. This would demonstrate that LTD was paying attention to community input and developing ways to react in the future.

Mr. Nordin stated that it was clear that the payroll tax was insufficient to support transit services and a new model was needed to sustain and expand service. He said that the community could be asked what it would support as a tax to support transit.

Mr. Kilcoyne said that beginning the larger community conversation could provide an opportunity, if the report was favorable, to increase the payroll tax but might not be sufficient to fund what the community wanted from the District. He saw the conversation as the beginning of a continuum, the first step of which might be a tax increase, but then broadening the conversation beyond the business community to address other funding options.

Mr. Lipkin said that some of the DLOTS questions could be asked during the conversation to begin that process and avoid focusing on the payroll tax.

At this time, Ms. Towery announced that Ms. Hellekson was retiring at the end of the month. Ms. Towery expressed the Board and Budget Committee's appreciation for Ms. Hellekson's contributions to the District and thanked her for her service.

RECESS: Ms. Towery called a brief recess at 1:55 p.m.

RECONVENE: Ms. Towery reconvened the meeting at 2:05 p.m.

Plan Scenarios: Mr. Lipkin said that the Long-Range Financial Plan (LRFP) handout included three scenarios related to the payroll tax: 1) no payroll tax rate increase; 2) payroll tax increase on January 1, 2016; and 3) payroll tax increase on January 1, 2017. The base plan included the first scenario because that was the assumption in last year's LRFP. He reviewed each of the three scenarios and showed the results plotted on a graph. He emphasized that adjustments

would be made based on the Board's actions and asked for guidance on what should be incorporated in the LRFP to be presented in April for Board adoption. He said that regardless of what scenario was included, the first three to four years of the plan were good; but beyond that, the District would need to find additional sources of funding.

Mr. Collins asked what assumptions were made for growth of payroll tax annually. Mr. Lipkin said that the Plan assumed a growth rate of 5 percent annually in the base.

Board Guidance: Mr. Kortge stated his preference for the third scenario. He expressed that it was foolish to assume there would be no payroll tax rate increase; this would provide staff with some guidelines for long-range financial planning.

Mr. Gillespie said that choosing a scenario was asking the Board to inadvertently make a decision on the payroll tax. He asked why there was no scenario to increase the tax in 2018-19. Mr. Lipkin responded that the Board was being asked to make a choice for long-range planning purposes; and delaying the decision until 2018-19 would be insufficient for the Plan, as the compounding effect over the years would leave the Plan in a negative condition.

Mr. Gillespie clarified that he identified the 2018-19 period because that was the point at which the budget was still in the black.

Mr. Lipkin said that the earliest point at which the Board might make a decision regarding the payroll tax was during the summer, but the current direction was unlikely to result in an increase before 2016. Ms. Towery agreed that the Board had a significant amount of due diligence to accomplish, and Mr. Lipkin's estimate of a timeframe was accurate.

Mr. Gillespie said he was not ready to make a decision about which scenario should be included in the LRFP. Ms. Towery explained that a scenario was being recommended for purposes of developing a long-range plan, but with the caveat that everything could change and adjustments made.

Mr. Dubick stated that he preferred the third scenario for the reasons Mr. Kortge had previously given. It would place a marker in the Plan that could be adjusted later.

Mr. Necker said that in keeping with LTD's conservative approach and the timeline for a payroll tax decision, the first scenario should be used.

Mr. Lipkin cautioned that assuming no payroll tax increase could endanger federal funds by being unable to demonstrate that LTD could sustain the system it was creating. Mr. Vobora added that the District was required to adopt a 10-year balanced financial plan.

Mr. Kortge observed that no tax increase could place the Finance Department in a bind because of the probability of planning for debt financing of major purchases. Ms. Hellekson confirmed that the balance sheet and projections were key to LTD's credit rating for purposes of seeking debt service.

Ms. Towery polled the Board for scenario preferences:

Ms. Grossman - third scenario

Mr. Gillespie - second scenario, but could accept the third scenario

Mr. Necker - second scenario

Mr. Dubick - third scenario
Mr. Wildish - third scenario
Mr. Yeh - third scenario
Ms. Towery - third scenario

CONCLUSIONS AND NEXT STEPS: Mr. Kilcoyne said that the economic recovery study had a shelf life of nine to twelve months; and, therefore, if its conclusion were positive and the Board wanted to take action on increasing the payroll tax in 2017, that action would need to occur within the next 12 months. If the decision was postponed beyond that point, the study would need to be updated.

Ms. Towery thanked meeting participants, and Mr. Kilcoyne thanked the Board for its direction.

ADJOURNMENT: Ms. Towery adjourned the meeting at 2:30 p.m.

LANE TRANSIT DISTRICT

ATTEST:

Michael Dubick
Board Secretary

Jeanne Schapper
Clerk of the Board

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MINUTES OF DIRECTORS MEETING
LANE TRANSIT DISTRICT
SPECIAL BOARD MEETING
PUBLIC HEARING ON FARES AND SERVICE

Monday, April 7, 2014

Pursuant to notice given to *The Register-Guard* for publication on April 3, 2014, and distributed to persons on the mailing list of the District, the Board of Directors of the Lane Transit District held a regular board meeting and public hearing on Monday, April 7, 2014, beginning at 5:30 p.m., at the Bascom-Tykeson Rooms, Eugene Public Library, 100 West 10th Avenue, Eugene, Oregon.

Present: Gary Gillespie, Vice President, presiding
Ed Necker, Treasurer
Julie Grossman
Gary Wildish
Ron Kilcoyne, General Manager
Jeanne Schapper, Clerk of the Board
Lynn Taylor, Minutes Recorder

Absent: Doris Towery, President
Michael Dubick, Secretary
Carl Yeh

CALL TO ORDER/ROLL CALL: Mr. Gillespie convened the meeting of the Lane Transit District (LTD) to order and called the roll at 5:31 p.m.

PRELIMINARY REMARKS BY BOARD PRESIDENT: As presiding officer, Mr. Gillespie stated that he would be chairing the meeting for Board President Doris Towery, who was unable to attend. He noted that there were sign-up sheets available at the door for anyone wishing to testify on the proposed fare and route changes. He described the procedures for providing public testimony.

COMMENTS FROM THE GENERAL MANAGER: None.

ANNOUNCEMENTS AND ADDITIONS TO THE AGENDA: None.

PUBLIC HEARING: FISCAL YEAR 2014-15 PRICING PLAN: Director of Customer Services and Planning Andy Vobora summarized the proposed fare increases:

- \$2.00 increase in adult public 1-month pass price; \$1.00 increase in half-fare pass price
- \$5.00 increase in adult public 3-month pass price; \$2.50 increase in half-fare pass price
- \$0.30 increase in monthly group pass price (taxpayer)
- \$0.35 increase in monthly group pass price (non-taxpayer)

Mr. Vobora said that the increases were consistent with Board policies. In a comparison with fares of comparable transit districts, LTD was at the midpoint. He said that a copy of the Title VI equity analysis of the fare increases was provided in the agenda materials.

Mr. Gillespie opened the public hearing. There being no one wishing to testify, he closed the public hearing.

PUBLIC HEARING: 2014 ANNUAL ROUTE REVIEW: Mr. Vobora stated that staff were pleased with the public input, and 1,013 completed surveys had been received. That information was provided in the agenda packet, along with the verbatim comments received on the proposed changes. He reviewed the staff recommendations, details of which were in the agenda materials:

- Restoration of holiday service, which received overwhelming support from the public. Annual cost: \$72,000; annual ridership generated: 40,000
- Increased service on routes 28, 79, and 96. Annual cost: \$117,000
- Modified routing on routes 55 and 96. Annual cost: \$9,000
- Not recommended, based on staff concerns and customer feedback, were proposed changes to routes 11 and 27.

Mr. Necker asked for clarification of the modified routing that would provide service near Emerald Park. Mr. Vobora illustrated the changes in routing that would allow a stop within a three-block walking distance to the park. A multi-use path would be constructed in proximity to the stop in 2015.

Mr. Necker commented that there had been several requests to maintain service directly to the park, particularly from senior and disabled persons who were unable to walk three blocks. Mr. Vobora said that staff had explored options for a stop at the park; but there was no way, with the proposed routing, for a bus to navigate through surrounding streets.

- Modified scheduling on Route 40. Annual savings: \$17,000
- Deleted service on Route 19. Annual savings: \$67,000

Mr. Vobora added that the proposed changes to Route 19 had raised concerns about service to Willamalane's Adult Activity Center. He said that LTD and Willamalane staff had met and developed a solution that would better serve the Activity Center. He said that Willamalane currently operated a vehicle four days per week to transport people to the meal site. The proposal was for LTD to fund operation of that vehicle for a fifth day. Mr. Vobora said the annual cost was about \$8,000, which was reflected in the calculation of savings. He felt that this arrangement would actually better serve the Center.

In response to questions from Mr. Necker, Mr. Vobora said that the vehicle to be funded by LTD for a fifth day would pick up people, and would provide door-to-door service as well as shuttle service between the Center and the Springfield Station.

Mr. Gillespie asked how the fifth day of vehicle service at Willamalane would be funded. Mr. Vobora replied that RideSource funds were currently used to contract with Willamalane for that vehicle, and a fifth day of service would be added using the same funds.

Mr. Necker asked if Springfield Mayor Christine Lundberg's concerns had been addressed. Mr. Vobora said that the Mayor's concerns related to the feasibility study of Main Street that was currently in progress; she wanted to avoid changing the service in that area until the study was completed.

Mr. Gillespie stated his hope that LTD would continue efforts to provide service to the Thurston Road and Jasper Road areas. Mr. Vobora agreed that staff wanted to explore ways to provide an expanded service package in the area. Mr. Kilcoyne added that long-term plans included the

possibility of a main corridor between the Springfield Station and Thurston Station with a feeder route. He noted that Route 11 Thurston was LTD's most successful non-EmX route.

Regarding Route 55, Mr. Gillespie said that he had discussed the possibility of shuttle service to Emerald Park with Mr. Kilcoyne. Mr. Gillespie realized that the ridership was low in that section, but he hoped that some type of service could be provided in the future. He added that the additional trip to downtown would relieve some of the congestion on River Road. Mr. Vobora said that staffs' interest in that section of River Road related to the number of people with mobility devices not currently accommodated. The additional capacity would address that problem.

Mr. Gillespie opened the public hearing.

Stefan Ostrach, Eugene, spoke regarding the changes to Route 55. He said that the low ridership and boardings at Emerald Park were given as the rationale for changing the route, but he felt that three blocks was too far away from the park for most people who used the service. He explained that the current configuration of a one-way loop made no sense because when he used it to go to the park, it was a 10-minute ride to get back to his home but a 40-minute ride to get to the park. He felt that explained why the current ridership was low; ridership might increase with the proposed change. He strongly supported the downtown trip and he hoped to see service closer to Emerald Park.

Grisel Maria, Coburg Road, spoke to the changes to Route 96. She lived along the portion of Coburg Road that was being eliminated from the route and advocated for keeping Coburg Road between Crescent Avenue and Country Farm Road in the loop. She said that she often used the bus; and when the 11:00 a.m. service was eliminated, it was very inconvenient for her. She noted that a 100-unit senior citizen complex was under construction along Coburg Road, and other residential and commercial development was going to occur in the area. Those residents and businesses would need access to practical, convenient transit service.

Dale Weigandt, River Road Park and Recreation District superintendent, spoke to the changes to Route 55. He commended LTD staff for their outreach to the community. He asked that the elimination of service along Lake Drive be reconsidered. He realized that ridership was low, but the people that rode that bus needed the route to access services at Emerald Park. He said that many of those people would find it very difficult to walk three blocks to the park; and for many of them, the park represented their only means of social and physical activities. He did not want to see them cut off from those services. He hoped that if the route change was necessary, it could be delayed until the multi-use path was constructed in the neighborhood.

Heather Lambeck, Springfield, asked if there would be any change to the 6:30 a.m. bus on Route 40. Mr. Vobora said that no changes were proposed for that trip.

There being no one else wishing to testify, Mr. Gillespie closed the public hearing.

Mr. Vobora said that staff would continue to explore options for providing service to Emerald Park. He noted that some of the current riders to the park might be eligible for RideSource as an alternative to the three-block walk, and the multi-use path was scheduled to open in September 2015. He said that Route 96 north of Crescent Avenue was a challenging area to serve, and the significant amount of development anticipated in the future would necessitate an examination of how service could best be provided.

Mr. Necker asked if a RideSource vehicle could be used as a shuttle to Emerald Park from the River Road Station. He expressed his concern about eliminating the stop in front of the park. Mr.

Vobora said that the route currently circulated within the neighborhood and riders came from the station and along the route.

2013 POINT2POINT ANNUAL PROGRAM REPORT: Point2point Program Manager Theresa Brand and SmartTrips Program Coordinator Cody Franz presented highlights of the 2013 Annual Program Report.

Ms. Brand said that Point2point, the region's transportation options program, was supported by federal Surface Transportation-Urban (STP-U) funds, the Oregon Department of Transportation (ODOT), and contributions from local jurisdictions. She said that school programs included a carpool/walk/bike matching service for students, and Safe Routes to Schools programs. Another school project under development was mapping walking routes to 49 schools so that families could encourage their children to use them to get to school. Point2point also sponsored various walk/bike to school activities, along with active transportation education for students and families.

Ms. Brand described a number of events that encourage transportation options such as the Drive Less Connect online ride-matching database, the Business Commute Challenge, the Dump the Pump campaign, and the Oregon Drive Less Challenge. She said that a partnership with Lane Council of Governments resulted in the KeepUsMoving website that kept residents informed on transportation construction projects and alternate routes during construction season. She said that Point2point also was a partner in the 14-vehicle Valley Vanpool, which she estimated saved about 1.7 million miles driven in the Willamette Valley. Ms. Brand cited statistics demonstrating high participation in LTD's bus pass program. The carshare program that launched two years ago now has seven vehicles with 4,500 hours used in 2013. She added that 124 regional employers participated in the Emergency Ride Home program, which provides employees of participating employers with a ride home in the event of an emergency if they had chosen a transportation option to get themselves to work that day other than driving a car.

Mr. Franz said that the SmartTrips Springfield program used education and incentives to encourage new ways for people to meet their daily travel needs. He said that 26,000 households and 650 businesses had the opportunities to request travel tools and participate in SmartTrips neighborhood events. He cited program statistics for participation and outcomes demonstrating an increased use of transportation options. He described a variety of outreach activities and said they were well attended. He also described a number of new events planned for 2014 and invited Board members to participate.

Ms. Brand added that areas of interest in 2014 include a bikesharing feasibility study and Park & Ride facilities; and planned activities include expansion of the carsharing program, demand for secure bike parking, use of new technology in promoting transportation options, and promotion of active transportation in schools.

ADJOURNMENT: Mr. Gillespie adjourned the meeting at 6:33 p.m.

LANE TRANSIT DISTRICT

ATTEST:

Michael Dubick
Board Secretary

Jeanne Schapper
Clerk of the Board

MINUTES OF DIRECTORS MEETING

LANE TRANSIT DISTRICT

REGULAR BOARD MEETING

Wednesday, April 16, 2014

Pursuant to notice given to *The Register-Guard* for publication on April 13, 2014, and distributed to persons on the mailing list of the District, the Board of Directors of the Lane Transit District held a regular board meeting on Wednesday, April 16, 2014, beginning at 5:30 p.m., at the LTD Board Room, 3500 E. 17th Avenue, Eugene, Oregon.

Present: Doris Towery, President
Gary Gillespie, Vice President
Michael Dubick, Secretary
Ed Necker, Treasurer
Julie Grossman
Gary Wildish
Carl Yeh
Ron Kilcoyne, General Manager
Jeanne Schapper, Clerk of the Board
Lynn Taylor, Minutes Recorder

CALL TO ORDER/ROLL CALL: Ms. Towery convened the meeting of the Lane Transit District (LTD) to order and called the roll at 5:35 p.m.

PRELIMINARY REMARKS BY BOARD PRESIDENT: None.

COMMENTS FROM THE GENERAL MANAGER: Mr. Kilcoyne announced that the month of February 2014 had been free of preventable accidents, despite severe weather conditions. He announced that LTD's two applications for ConnectOregon V funds had been unanimously ranked first and second by the Lane Area Commission on Transportation (LaneACT) in its list of priorities. He said that staff had been examining the drop in ridership experienced during the past nine months, and it appeared that lower enrollments at Lane Community College (LCC) was a major factor. He noted that in March 2014, weekday ridership was lower than the previous year but weekend boardings were higher. He added that members of the EmX Steering Committee would be surveyed to determine what direction the Committee should take as the West Eugene EmX Extension moved into the next phase and planning for other projects began.

ANNOUNCEMENTS AND ADDITIONS TO THE AGENDA: None.

BOARD CALENDARS: Mr. Kilcoyne reviewed activities planned for the month of May 2014. He noted that a May 12 special meeting was likely, and it was possible that the May 21 regular meeting would be canceled. The May 21 Budget Committee Meeting, however, would be held at 6:00 p.m., regardless.

EMPLOYEE OF THE MONTH - MAY 2014: The Board recognized Bus Operator Mike Funderburk as the May Employee of the Month.

Ms. Towery thanked Mr. Funderburk for his service and dedication to LTD's mission. She presented him with a certificate of appreciation, a check, and a pin commemorating his award. Mr. Funderburk thanked the Board for the award and expressed his appreciation for the recognition.

AUDIENCE PARTICIPATION: Ms. Towery explained the procedures for providing public testimony.

Bob Macherione, Eugene, representing Our Money, Our Transit (OMOT), observed that while it was the Board's policy to not spend reserves below \$3 million, in years 2017-2019, the Long-Range Financial Plan (LRFP) showed reserves at \$2.5 million. He questioned why the Board would approve that level of spending. He said that when the Gateway EmX line was opened, basic service was cut. He said that the District was losing ridership, over-servicing some areas, under-servicing others, and basic service should be protected. He did not hear those issues addressed by the Board. He expressed doubt that other sources of revenue for transit would become available, and costs were increasing. The Board should pay attention to spending.

Josef Siekiel-Zdzienicki, Eugene, addressed the impact of declining LCC enrollments on LTD's ridership. He asked what the current percentage of student riders was and if ridership by the general public had declined as well. He suggested that the Board be provided with that information. Regarding the new transit station proposed in Glenwood, he felt that the developer of the hotel/convention center that was planned for that area should pay the costs of the station, rather than seeking grant funds. He objected to the use of public funds to benefit a for-profit enterprise.

Rob Zako, representing Better Eugene-Springfield Transit, referred to a presentation by Gil Penalosa, 8-80 Cities advocate, about the importance of transportation choices. He said that the Business Commute Challenge in May was a local initiative to promote the use of a variety of transportation modes. He encouraged Board members, as community leaders, to participate in the challenge.

ITEMS FOR ACTION AT THIS MEETING:

MOTION **Consent Calendar:** Mr. Yeh moved adoption of LTD Resolution No. 2014-008: It is hereby resolved that the Consent Calendar for April 16, 2014, is approved as presented. Mr. Necker provided the second. The Consent Calendar consisted of the Minutes of the March 19, 2014, Regular Board Meeting.

VOTE The motion was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Minutes of the February 19, 2014, Regular Board Meeting: Ms. Towery clarified that the February 19, 2014, Regular Board Meeting Minutes had been pulled from the March 19, 2014, Consent Calendar at the request of a Board member who wished to change his vote on an Action

Item. Further discussion and resolution regarding the February 19 minutes were postponed to the April 16 meeting in order to determine proper protocol for changing a vote after the conclusion of a Board meeting. She said that staff had researched the matter, and according to *Robert's Rules of Order*, the vote would stand as previously recorded in the minutes.

MOTION Mr. Necker moved adoption of LTD Resolution No. 2014-009: It is hereby resolved that the minutes for the February 19, 2014, Board meeting are approved as presented. Mr. Wildish provided the second.

VOTE The motion was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Annual Route Review: Fiscal Year 2014-15 Service Proposal: Director of Customer Services and Planning Andy Vobora said that the Board had held two public hearings and staff had conducted extensive public outreach on the proposal. Staff recommended adoption of the FY 2014-15 service package as provided in the agenda materials. He noted that discussions were in progress with Dale Weigandt, River Road Park and Recreation District Superintendent, about options for Emerald Park service. He added that River Road Park and Recreation had a different structure for using their vehicles than Willamalane Parks and Recreation, so it would be more challenging to find a solution.

MOTION Ms. Grossman moved the following resolution: LTD Resolution No. 2014-010: It is hereby resolved that the LTD Board of Directors approves the Fiscal Year 2014-15 service recommendations as presented at the April 16, 2014, Board meeting. Mr. Yeh provided the second.

Mr. Gillespie asked if it would be necessary to amend the service package once a solution for Emerald Park had been identified. Mr. Vobora said that the amount involved would be small and could be addressed through administrative action. Mr. Kilcoyne concurred.

VOTE The resolution was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Fiscal Year 2014-15 Pricing Plan and First Reading Amended Fare Ordinance No. 49, An Ordinance Setting Fares for Use of District Services: Mr. Vobora said that the plan represented a small adjustment in monthly pass prices and a standard adjustment in group pass prices. He said that little public comment had been received, perhaps due to LTD's policy of implementing changes in small increments. He added that there had been no adjustment since 2010.

Mr. Necker asked if the decline in LCC student riders affected revenue from group passes. Mr. Vobora said that it did, and he added that staff were beginning to aggressively market the group pass program to businesses.

Ms. Towery said that she anticipated that commercial and industrial development in the Coburg area would increase the group pass program. Mr. Vobora agreed and said that staff also had begun discussions with the Lane Livability Consortium about expanding residential-based group pass programs. He felt it could be a successful model.

Ms. Grossman asked if there were other types of group pass programs and if it was possible to have a group pass for a destination such as the YMCA. Mr. Vobora said that other types included neighborhood passes, but those were more challenging to implement than one based on a residential facility. He said that LTD had attempted a pass program with a local organization, but the pricing model broke down quickly when people realized they could get an inexpensive transit pass by claiming membership. He said that some employers, such as PeaceHealth, purchased passes at almost full price.

Mr. Kilcoyne said that the low cost of a group pass program was based on the concept of revenue neutrality and assumed a percentage of non-use.

Mr. Gillespie said that he hoped that funding could be secured to restore the student bus pass program. Mr. Vobora said that LTD was still seeking sustainable local funding. Government Relations Manager Edward McGlone added that discussions with the legislature about a sustainable source of funding for student passes also were being held.

Ms. Towery said that the pilot project at Hamlin Middle School should be used to demonstrate how the student pass program could help improve academic and attendance outcomes.

Ms. Grossman suggested collaborating with the Lane Coalition for Healthy Active Youth to advocate for student pass programs.

MOTION Mr. Yeh moved that Ordinance No. 49 be read by title only. Mr. Gillespie provided the second.

VOTE The motion was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Mr. Vobora read the ordinance title: ***Ordinance No. 49, an Ordinance Setting Fares for Use of District Services.***

Fiscal Year 2015-2024 Capital Improvements Program: Finance Manager Todd Lipkin said that the Fiscal Year 2015-2024 Capital Improvements Program (CIP) had been available for public review through April 13, 2014, and a public hearing was held at the Board's March 19, 2014, meeting. He that said the only comment received was the one heard during the public hearing.

In response to a question from Mr. Wildish, Mr. Lipkin explained that the first column of dollar amounts on Page 9 of the CIP was the current fiscal year estimate and provided as a reference; it was not included in the totals for FY 2015-2024, which represented the CIP being presented for approval.

Mr. Wildish asked what percentage of boardings occurred in the frequent transit network. Mr. Kilcoyne said that EmX generated about 25 percent of boardings, and staff could provide statistics for the other routes included in the network.

Mr. Wildish noted that the cost of converting an existing bus to no emissions was high and asked how that compared to the purchase of a new vehicle. Mr. Lipkin said that it cost \$600,000 to purchase a new hybrid-electric bus; the cost was about the same to convert an existing vehicle to no emissions with a 12-year life. He said that the cost of a new all electric vehicle was \$2 million. He said that LTD was applying for grant funds for the conversions and would not go forward with the project if funds were not awarded. Mr. Lipkin said that the Federal Transit Administration was promoting the use of no emission technology and had made \$24 million available nationally for conversions.

MOTION Mr. Yeh moved the following resolution: LTD Resolution No. 2014-011: It is hereby resolved that the Fiscal Year 2015-2024 Capital Improvements Program is approved as presented. Mr. Gillespie provided the second.

VOTE The motion was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

Mr. Lipkin remarked that the CIP was a rolling document; it was updated annually and more frequently as needed. He said that staff were working to improve the structure of the document so that it was more accessible, and he welcomed comments and suggestions from Board members.

Fiscal Year 2015-2024 Long-Range Financial Plan: Mr. Lipkin stated that the first year of the Long-Range Financial Plan (LRFP) formed the basis for the budget to be presented to the Board at its May 2014 meeting. He noted that reserves remained above the Board-mandated level of \$3 million until 2017, which is the seventh year of the plan. The outlying years of the plan were so variable and subject to revision that staff allowed for some deviation below the \$3 million level, knowing that adjustments would be made as needed to assure that the Board goal was met.

Mr. Lipkin said that all of the assumptions in the LRFP were the same as those discussed during the Board's strategic work session, with the exception of a slight increase in preventive maintenance dollars and a slight decrease in the current year transfer to the Accessible Services Fund.

MOTION Mr. Wildish moved the following resolution: LTD Resolution No. 2014-012: Resolved, that the LTD Board of Directors approves the FY 2015-2024 Long-Range Financial Plan as presented. Mr. Dubick provided the second.

VOTE The motion was approved as follows:
AYES: Dubick, Gillespie, Grossman, Necker, Towery, Yeh, Wildish (7)
NAYS: None
ABSTENTIONS: None
EXCUSED: None

ITEMS FOR INFORMATION AT THIS MEETING:

Board Member Reports: Mr. Necker noted that the Accessible Transportation Committee's April meeting had been canceled.

Transportation for America: Mr. Kilcoyne introduced Chris Rall, the Pacific Northwest representative for Transportation for America (T4A).

Mr. Rall said that T4A was an alliance of business, civic, and elected leaders united to advocate for investment in innovative transportation solutions to support strong local economies. He said that the biggest crisis related to transportation was the precarious condition of the federal Highway Trust Fund, which, without congressional action, would be unable to fund projects in Fiscal Year 2015. Reasons for this crisis included no federal gas tax increase since 1993, more efficient vehicles, less driving, and inflation.

Mr. Rall said that Oregon was slated to receive \$487 million in federal highway funds in 2014, with an additional \$97 million in transit funding. He said that LTD received \$6 million in federal formula funds annually, with a total of about \$11 million in federal highway and transit funds coming to the region annually. If Congress did not act and those were no longer available, the impacts would be draconian.

Mr. Rall distributed a T4A handout titled *Saving the Nation's Transportation Fund*. He said that T4A was proposing solutions to the funding crisis to create a robust federal program and strategies for directing more funds to local transportation projects. The goal was to raise \$30 billion annually, and the menu of options included:

- Increase the federal gas tax by \$0.17 per gallon
- Replace the existing per-gallon tax with a sales tax of 11 percent
- Introduce a fee of \$4.00 on each barrel of oil
- Add a sales tax of 5.5 percent to fuel purchases
- Index the gas tax to construction costs and raise one of the above taxes/fees a lesser amount

Mr. Rall acknowledged that there would be an increased cost to individuals, but T4A estimated it would be approximately the cost of a coffee and pastry per week. He said that the intent of the proposal was to increase formula funds in order to repair and maintain current infrastructure and make investments to become more economically competitive. Mr. Rall noted that the New Starts program was not part of the dedicated federal transportation funds; it was appropriated annually from the General Fund, and T4A hoped to see it become a more stable and secure program. He said that T4A also was interested in options for directing more funds to projects at the local jurisdiction level, such as a program similar to TIGER grants.

Mr. Rall said that T4A was asking agencies, businesses, and metropolitan planning organizations around the country to support the proposal and communicate that support to congressional representatives. He had made that request to the Metropolitan Policy Committee (MPC) at a recent Committee meeting. He requested that the LTD Board encourage the MPC to endorse the proposal, and he distributed a handout titled *Connect Your Community* to the Board. He introduced the benefits of becoming a dues-paying member of T4A to the Board, including workshops, information sharing, best practices, and technical support. He said that the cost of a membership for LTD would be approximately \$1,400 annually.

Mr. Wildish said that many things had changed since the transportation funding structure was established; and changes in driving habits, more efficient vehicles, and other factors made that structure no longer sustainable.

Scenario Planning Update: Planning and Development Manager Tom Schwetz introduced Brenda Wilson, Executive Director of Lane Council of Governments (LCOG). He said that the region's scenario planning efforts were prompted by legislative action in 2009, which required the development of scenarios and a cooperatively selected preferred scenario that would aim to achieve state goals for reducing greenhouse gas (GHG) emissions.

Mr. Schwetz said that the first step of establishing a baseline, or reference, scenario had been completed, and work had begun on developing alternative scenarios and evaluating and comparing them. Strategies would be tailored to individual jurisdictions. He reviewed the cooperative selections process, which would include the Lane County Board of Commissioners and the city councils of Eugene, Springfield, and Coburg. LTD's Board of Directors would be asked to provide advice on the feasibility of transit strategies within each scenario.

Mr. Schwetz said that the GreenSTEP model, developed by the Oregon Department of Transportation (ODOT), was used to determine the outcomes of various plans currently in place, with a focus on GHG emissions reduction. He reviewed the outcomes of current plans and said that alternative scenarios would mix various policy bundles at different levels to see what different outcomes could be achieved. He said that scenarios would be refined and a preferred scenario selected during the summer and fall of 2014, with a report due to the legislature in January 2015.

In response to questions from Mr. Yeh and Ms. Grossman, Mr. Schwetz said that one reason for the projection of more miles driven was likely based on population and employment growth in the area. He said that road policies related to road construction and development, while community design policies related to land use.

Full Membership with the Lane Council of Governments (LCOG): Mr. Schwetz said that LCOG was established in 1945 and has a provision in its Board's charter that membership is limited to representation from elected bodies within Lane County. LTD has held a non-voting position on the LCOG Board since 2007; however, there are no statutory prohibitions on LTD's membership. The issue at hand is whether or not LTD had an interest in LCOG amending its charter in order for LTD to become a voting member. He said that dues would be approximately \$14,000 annually. Mr. Schwetz said that the agenda materials listed some of the benefits of membership and pointed out that it would also provide LTD with more direct access to, and participation in, a healthy regional process.

Ms. Wilson stated that there were currently 32 voting members on the LCOG Board. She said that a major advantage was the ability to vote on those policy issues that impacted the entire region, such as the LCOG Board decision to establish the MPC as the regional entity to make policy decisions with federal and state transportation dollars. She said that in order to allow LTD a voting membership, it would be necessary to revise the charter; although if the LCOG Board took that step, it did not obligate LTD to move forward with full voting membership.

Mr. Dubick commented that it was frustrating during his tenure as LTD's representative on the LCOG Board to be unable to cast a vote on issues, knowing there were many strong connections between LTD and LCOG in terms of providing services within the region. He felt that LTD labored somewhat under a bias against non-elected boards but should have a voice in regional matters.

Mr. Yeh said that as the current LTD representative to the LCOG Board, he had some interest in the District becoming a voting member, but he questioned whether or not the membership was worth the cost.

Ms. Towery asked if LCOG Board members were supportive of LTD becoming a voting member. Ms. Wilson said that some members did not feel that LTD should be a full voting member because its Board was appointed and not elected. She said that the LCOG Board was scheduled to take up the matter at its April 24 meeting unless she had an indication from LTD that it was not interested in full voting membership.

In response to a question from Mr. Necker, Ms. Wilson said that because LTD was a non-voting member, its representative could not be an officer or serve on the Executive Committee, which was an advisory committee that made policy recommendations to the full Board. She mentioned that one vote could make a difference on close policy decisions. She added that LTD was a long-time regional partner with LCOG and many of the other Board members.

Ms. Towery said that the cost of annual dues would need to be considered, but she recognized the value of full membership. She agreed with Mr. Dubick that there was a bias against appointed Boards, yet members of those governing bodies gave the same amount of effort, time, and consideration to their responsibilities as did members of elected boards. She supported moving forward with LCOG membership and having an equal place at the table with regional partners.

Mr. Necker also supported pursuing voting membership.

Mr. Gillespie pointed out that LTD was a voting member of the MPC.

Mr. Wildish said that LTD had an influence on the lives of many individuals, and its boundaries were much larger than many of the other members of LCOG. He supported being a voting member.

Ms. Grossman also supported full LCOG membership and agreed with Mr. Wildish about the reach of LTD's decisions.

Mr. Yeh said that he struggled with whether or not there were enough decisions made at LCOG Board meetings that LTD needed to vote on to justify the cost of full membership. He was willing to voice LTD's position at LCOG, whether or not he was able to vote.

Ms. Wilson listed the numerous services that LCOG provided in the region in addition to transportation and land use planning, such as Metro Television, water and air quality monitoring, telecommunication, broadband, address scrubbing, senior and disabled services, adult protective services, Meals on Wheels, Medicaid and food stamp eligibility determinations, and transportation to eligible individuals. She added that the LCOG Board made the guiding decisions regarding all of these services.

Ms. Grossman shared the concern about whether or not the gap between being a non-voting and voting member was worth \$14,000.

Mr. Dubick maintained that he felt somewhat constrained during policy discussions as an ex officio member of the LCOG Board. He said that LTD lacked a certain credibility if it was unable to vote.

Mr. Gillespie agreed that as an ex officio member, LTD could have some influence but not a final say on regional policy matters. He also was concerned as to whether or not it was worth \$14,000 to be able to vote. He asked if there were annual increases in LCOG dues. Ms. Wilson replied that the LCOG Board voted every December on a dues schedule for the coming fiscal year. She stressed that if the LCOG Board agreed to allow LTD to become a voting member, LTD would then need to decide if it wished to do so; LTD also could decide to withdraw from membership in the future.

Mr. Dubick asked for a listing of all of LTD's memberships; the annual costs; and, to the extent possible, the benefits received from those memberships.

Ms. Towery said that there were other significant benefits derived from LTD's partnership with LCOG, such as senior and disabled services and the transportation brokerage. She hoped to see a list of those types of benefits provided to the Board as it considered LCOG membership.

Mr. Schwetz emphasized that the Board was being asked to take a speculative action. He said that some factors to consider were the alignment between LTD and LCOG interest, LTD's image as a good regional partner, and the value of fully participating in LCOG's Board in a way that was transformative. He thought that a one-year membership might not be a good test as it took some time to become part of a group and establish a role as a strong regional partner.

Mr. Necker said that as a member of the Senior and Disabled Services Advisory Council, he saw many ways that LCOG and LTD benefited from their partnership and connections and could see value in full membership.

Ms. Towery summarized that there was general support on the LTD Board for pursuing full LCOG membership, although there were still questions and concerns that would need to be addressed.

Monthly Financial Report - March 2014: Mr. Lipkin said that all financial indicators looked good; payroll taxes were up 8.2 percent over the same time last year, and state-in-lieu was up 7.5 percent. He said that costs were under control and below 75 percent at the nine-month point in the budget. He said that total revenue was slightly below projections, but some preventative maintenance funds had not yet been recorded. He expected to be very close to budget by the end of the fiscal year.

Monthly Performance Reports: In response to a question from Mr. Gillespie, Mr. Lipkin explained that the productivity report data referred to rides per hour.

ADJOURNMENT: Ms. Towery adjourned the meeting at 7:37 p.m.

LANE TRANSIT DISTRICT

ATTEST:

Michael Dubick
Board Secretary

Jeanne Schapper
Clerk of the Board

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: FISCAL YEAR 2014-15 PRICING PLAN AND SECOND READING AND ADOPTION, AMENDED FARE ORDINANCE NO. 49

PREPARED BY: Andy Vobora, Director of Customer Services and Planning

ACTION REQUESTED: Conduct the second reading and adoption of LTD Ordinance No. 49

BACKGROUND:

The Board conducted the first reading of the Amended Ordinance No. 49 on April 16, 2014. Public hearings were conducted on March 19, 2014, and on April 7, 2014, and the Board was provided all testimony received in writing, via telephone calls, and through on-line surveys.

Staff have prepared the second reading of Amended Ordinance No. 49 for the May 12, 2014, Board meeting. If the Board chooses to make adjustments to the proposed fare changes, staff would develop a revised pricing plan, the ordinance update process would begin again, and the July 1, 2014, fare change implementation date would be moved to September 1, 2014. If the Board adopts the fare increases as proposed, a copy of the Amended Ordinance No. 49 will be filed with the County Clerk and made available for public inspection.

The following fare changes are recommended:

Fare Type	Cost		Change	
	Existing	Proposed	Absolute	Percentage
Adult Monthly Pass	\$48.00	\$50.00	\$2.00	4.2%
Half-Fare & Youth Monthly Pass	\$24.00	\$25.00	\$1.00	4.2%
Adult 3-Month Pass	\$130.00	\$135.00	\$5.00	3.8%
Half-Fare & Youth 3-Month Pass	\$65.00	\$67.50	\$2.50	3.8%
Group Pass Monthly Contract Rate - Taxpayer	\$5.12	\$5.42	\$0.30	5.8%
Group Pass Monthly Contract Rate - Non-Taxpayer	\$5.95	\$6.30	\$0.35	5.8%

ATTACHMENT: Ordinance No. 49

PROPOSED MOTIONS:

(1) I move that Ordinance No. 49 be read by title only.

Following an affirmative vote, the ordinance title should be read:

Ordinance No. 49, an Ordinance Setting Fares for Use of District Services.

(2) I move the following resolution:

LTD resolution No. 2014-014: Be it resolved that the LTD Board of Directors hereby adopts Lane Transit District Ordinance No. 49, an Ordinance Setting Fares for Use of District Services.

ORDINANCE NO. 49

AN ORDINANCE SETTING FARES FOR THE USE OF DISTRICT SERVICES, AND AMENDING AND RESTATING ORDINANCE NO. 48.

WHEREAS the Lane Transit District fare rates are evaluated on an annual basis;

WHEREAS the proposed Monthly Pass, Three-Month Pass, and Group Pass fare rates were recently presented at a public hearing, and written comment having been received;

BE IT ENACTED BY LANE TRANSIT DISTRICT:

Lane Transit District Ordinance No. 48 is amended and restated in its entirety to read as follows:

1 .01 Definitions. As used in this ordinance, unless the context requires otherwise:

- (1) "District" means Lane Transit District.
- (2) "Service Area" means the area designated in Lane Transit District Ordinance No. 42, as such area is now constituted and as it may be altered from time to time hereafter by ordinance of this District.

1.02 Fares.

- (1) Fares on the District transit system shall vary according to the status of the rider and method of payment and shall be in accordance with the following schedule:

(a) Cash Fare (Effective 7/01/12)

	Monday-Sunday
Adult (ages 19-64)	\$1.75
Youth (ages 6-18)*	\$.85
Half-Fare**	\$.85
Senior (ages 65 and older)	Free

(b) Ten-Ride Ticket Books (Effective 9/01/12)

	Monday-Sunday
Adult (ages 19-64)	\$16.00
Youth (ages 6-18)*	\$ 8.00
Half-Fare**	\$ 8.00

(c) Monthly Pass (Effective 7/01/14)

Pass Type	Monthly Price	Three-Month Price
Adult (ages 19-64)	\$50.00	\$135.00
Youth (ages 6-18)*	\$25.00	\$ 67.50
Half-Fare**	\$25.00	\$ 67.50
Senior (ages 65 and older)	Free	Free

* Youth fare applies to ages 6-18. Children age five and under ride free with parent or guardian.

** LTD's EZ Access Program provides a Half-Fare Program for persons with disabilities and Medicare cardholders. The EZ Access Program also provides the Honored Rider pass, which provides free rides for persons 65 years of age and older. The Half-Fare and Honored Rider photo identification cards may be obtained at the LTD Customer Service Center.

(d) Day Pass (Effective 7/01/12)

Adult (ages 19-64)	\$3.50
Youth (ages 6-18)*	\$1.75
Half-Fare**	\$1.75

- (2) Group Pass Program. The general manager, or his/her designated representative, is authorized to sign contracts on behalf of the District to provide transit service to groups of riders at reduced rates pursuant to policies established by the Board at its May 2, 1990, meeting, as amended, or pursuant to such policies as the Board may hereafter adopt by resolution or ordinance.

Group Pass (Effective 1/01/15)

Pass Type	Monthly Rate
Taxpayer	\$5.42 taxpayer
Non-Taxpayer	\$6.30 non-taxpayer

- (3) Special Event Discounts. The promotional distribution of free tickets from time to time is necessary or convenient for the provision of a public transit system. The general manager, or his/her designated representative, is authorized to reduce or eliminate fares, or to approve the distribution of free tickets for use of District facilities during special events, or at specified times, on a finding by the general manager, or his/her designated representative, that the fare reduction or elimination will promote

increased use of the District's public transit system or will otherwise further the provision of a public transit system.

(4) Reduced Fares for Low-Income Persons. The general manager, or his/her designated representative, is authorized to sign contracts with local nonprofit agencies whereunder the District may agree to provide transit fare instruments at reduced prices to such agencies, for distribution to low-income persons within the service area who need transportation assistance. Definitions of those who are "low income persons" and "who need transportation assistance" shall be part of such contracts, verbatim or by reference.

(5) Paratransit. Fare structure (*Effective 7/01/12*):

RideSource	\$3.50 one way
Escort*	\$3.50 one way
RideSource Shopper**	\$2.00 round trip
Social Service Agencies***	100 percent
Book of Ten Tickets	\$35.00

* Escort is limited to door-to-door transportation for medical rides.

** RideSource Shopper is specialized transportation service for grocery shopping. RideSource Shopper fares are based on round-trip rides. All other fares are one-way rides.

*** Social service agencies will contract for service and pay 100 percent of the marginal cost of service.

2.01 Large-quantity Pass Purchases. The District will provide a discount of five (5) percent to private sales organizations authorized by the District to sell passes to the general public.

ADOPTED this 12th day of May, 2014.

President and Presiding Officer

ATTEST:

Secretary

Recording Secretary

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: LTD CONTRACT REVIEW BOARD: PURCHASING POLICY RULES UPDATE

PREPARED BY: Jeanette Bailor, Purchasing Manager

ACTION REQUESTED: As the LTD Contract Review Board, approve and adopt the updated Purchasing Policy and Rules

BACKGROUND:

The Lane Transit District/Contract Review Board (LTD/CRB) last approved LTD's purchasing and public contracting policy on December 13, 2010, and there have been no major changes since that time.

There have been some minor new changes that are housekeeping issues, such as removing references to the "Assistant General Manager," which is no longer a position, and updating the policy to reflect the current requirements of the Federal Transit Administration (FTA) and the clauses required by FTA.

One policy change reflects an Oregon legislative update. It allows LTD to add a 10 percent preference for locally fabricated or processed goods. A further preference may be given to a qualifying bidder/proposer that resides in or is headquartered in Oregon. This preference will not apply if federal funds are used in the purchase. After review and approval by LTD's Leadership Council and the Environmental and Sustainability Management System Core Team, a sustainable purchasing policy section also has been added.

RESULTS OF RECOMMENDED ACTION:

The LTD Purchasing Policy will be updated to reflect procedural changes.

ATTACHMENTS:

- 1) Revised Purchasing Policy and Rules
- 2) Lane Transit District Resolution No. 2014-015

PROPOSED MOTION:

I move that the LTD Board of Directors, acting as the LTD Contract Review Board, hereby adopts LTD Resolution No. 2014-015, A Resolution Adopting the Lane Transit District's Purchasing Policy and Rules, as revised on May 12, 2014.

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EXHIBIT A LANE TRANSIT DISTRICT PURCHASING POLICY AND RULES

On June 18, 1985, Lane Transit District's Board of Directors adopted Ordinance 30 creating a local contract review board for LTD. This local contract review board is known as the LTD Contract Review Board ("LTD/CRB"). Pursuant to ORS 279A.065(5), LTD/CRB hereby adopts the following purchasing policy and public contracting rules (the "Rules"). The following Rules are in lieu of the model rules adopted by the Attorney General; therefore, the Attorney General model rules do not apply to LTD. These Rules apply to all public contracts for goods and services made by or on behalf of LTD. All public contracts must be authorized, have funds available, be charged to the proper budget line item, and satisfy all pertinent governmental legal requirements, including all requirements set forth in these Rules.

SECTION 1. Definitions.

For the purposes of these Rules, the following definitions apply:

- 1.1 **Addendum or Addenda:** A document from LTD that sets forth an addition or deletion to, a modification in, or an explanation of a Solicitation Document.
- 1.2 **Affected Person or Affected Offeror:** An Offeror or Person whose ability to participate in a procurement is adversely affected by an LTD decision.
- 1.3 **Bid:** A written, competitive Offer submitted in response to an Invitation for Bid, binding on the Offeror, in which price and conformance to specification will be the award criteria.
- 1.4 **Bidder:** An Offeror that submits a Bid in response to an Invitation for Bid.
- 1.5 **Blanket Purchase Order or BPO:** A long-term contractual tool that will require purchase orders to release specific items or products for delivery to LTD during a contract period.
- 1.6 **Board of Directors:** The Board of Directors of LTD.
- 1.7 **Class Special Procurement:** A contracting procedure that differs from the procedures described for Competitive Procurements under these Rules and is for the purpose of entering into a series of contracts over time for the acquisition of a specified class of goods or services.
- 1.8 **Closing Date:** The date and time announced by LTD as the deadline for the receipt of an Offer (at least five days after last advertisement of the Solicitation Document).
- 1.9 **Competitive Procurement:** The solicitation of competitive Offers through the issuance of a Solicitation Document.
- 1.10 **Contract Period:** The period of contract performance for rolling stock and replacement parts shall not exceed five years, inclusive of options, as defined in FTA C 4220.1F. The length of all other contracts shall be based upon sound business judgment, including

consideration of issues such as the nature of the item being purchased, the need to afford the contractor a reasonable opportunity to recapture any start-up costs, the need to afford competing vendors the opportunity to do business with LTD, and the relative benefit to LTD of a longer or shorter contract term. All contracts must specify a contract period of performance, either in the form of delivery schedules for contract deliverables such as commodities, or a specific end date for service contracts.

- 1.11 Contract-Specific Special Procurement:** A contracting procedure that differs from the procedures described for Competitive Procurements under these Rules and is for the purpose of entering into a single contract or a number of related contracts for the acquisition of specified goods or services on a one-time basis or for a single project.
- 1.12 Contracting Agency:** A public body authorized by law to conduct a procurement, including without limitation LTD, the Director of the Oregon Department of Administrative Services, and any person authorized by a contracting agency to conduct a procurement on the contracting agency's behalf. Contracting Agency does not include the judicial department or the legislative department.
- 1.13 Contractor:** The person or entity awarded the Public Contract in response to a solicitation by LTD.
- 1.14 Date of Solicitation Document:** The date when the first advertisement for the Solicitation Document is published.
- 1.15 Descriptive Literature:** Written materials submitted by an Offeror to provide information concerning the products available in response to a Solicitation Document.
- 1.16 Emergency Contract:** Those contracts meeting the criteria set forth in Section 6.9.
- 1.17 Foreign Contractor:** A contractor that is not domiciled, or registered to do business, in the state of Oregon.
- 1.18 General Manager:** The General Manager of Lane Transit District
- 1.19 Grant:** An agreement under which a Contracting Agency receives moneys, property, or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Contracting Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions; or an agreement under which a Contracting Agency provides moneys, property, or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities, or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Contracting Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions. Grant does not include a Public Contract for a Public Improvement, for Public Works, or for emergency work, minor alterations, or ordinary repair or maintenance necessary to

preserve a Public Improvement, when under the Public Contract a Contracting Agency pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which grant funds were provided to the Contracting Agency, moneys that the Contracting Agency has received under a Grant.

- 1.20 Invitation for Bid or IFB:** All documents issued by LTD used for soliciting Bids from prospective Bidders and used to explain offering procedures and requirements.
- 1.21 Lowest Responsible Bidder:** The lowest priced, responsible Bidder who has substantially complied with all prescribed public bidding procedures and requirements and who has not been disbarred by LTD under Section 13 and ORS 279B.130, disqualified pursuant to Section 6.2.4, or, if in connection with the procurement of a Public Improvement Contract, has not be disqualified pursuant to Section 41.10 and ORS 279C.440 to 279C.450.
- 1.22 LTD:** Lane Transit District.
- 1.23 Offer:** A Bid, Proposal, or other written response to a Solicitation Document as applicable.
- 1.24 Offeror:** A Bidder, Proposer, or other Person, as applicable, who submits an Offer.
- 1.25 Person:** An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity that has legal capacity to enter into a Contract.
- 1.26 Personal Services:** Services performed as an independent contractor in a professional capacity, where the primary purpose of the Contract is to acquire specialized skills, knowledge, and resources in the application of scientific expertise, or exercise of professional, artistic, or management judgment, including but not limited to the professional services of the following:
 - 1.26.1** Accountant;
 - 1.26.2** Attorney;
 - 1.26.3** Architectural or land use planning consultant;
 - 1.26.4** Physician;
 - 1.26.5** Dentist;
 - 1.26.6** Registered professional engineer, appraiser, or surveyor;
 - 1.26.7** Passenger aircraft pilot;
 - 1.26.8** Aerial photographer;
 - 1.26.9** Timber cruiser;
 - 1.26.10** Broadcaster;

- 1.26.11 Artist in the performing or fine arts, including but not limited to photographer, filmmaker, painter, weaver, and sculptor;
- 1.26.12 Consultant;
- 1.26.13 Educational or human custodial caretaker; and
- 1.26.14 Services requiring specialized skills, knowledge, and resources in the application of technical or scientific expertise or the exercise of professional, artistic, or management discretion or judgment.

However, Personal Services do not include:

- a. Services, even if rendered in a professional capacity, if the predominant result of the Contract is a product (for example, a contract with a landscape architect to design a garden is for personal services, but a contract to design a garden and supply all the plants is not);
 - b. Labor that is of a type that generally can be done by any competent worker, including but not limited to janitorial work, security guard work, crop spraying, laundry, and landscape maintenance; and
 - c. Trade-related activities, even if a specific license is required to engage in the activities.
- 1.27 **President:** The presiding officer of LTD/CRB and who is the same person who serves as President of the LTD Board of Directors.
 - 1.28 **Product Sample:** A representative specimen of the item that will be offered by an Offeror in response to a Solicitation Document. Unless otherwise provided in the Solicitation Document, the Product Sample shall be the exact product or a representative portion of the product offered by the Offeror.
 - 1.29 **Proposal:** A written, competitive Offer submitted in response to a Request for Proposal, binding on the Proposer, in which price, conformance to specification, and other listed factors will be part of the award criteria.
 - 1.30 **Proposer:** An Offeror who submits a Proposal in response to a Request for Proposal.
 - 1.31 **Public Contract or Contract:** A sale or other disposal, or a purchase, lease, rental, or other acquisition, by LTD of personal property, services, including Personal Services, Public Improvement, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. Public Contract does not include grants.
 - 1.32 **Public Improvement:** A project for construction, reconstruction, or major renovation on real property by or for LTD. However, Public Improvement does not include either:
 - (i) projects for which no funds of LTD are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
 - (ii) any emergency work, minor alteration, ordinary repair, or maintenance necessary in order to preserve a Public Improvement.

- 1.33 Public Works:** Has the meaning set forth in ORS 279C.800(5).
- 1.34 Receipt of Offer:** Occurs when an Offer and any associated documentation is actually received by LTD at the delivery point and/or by the person designated in the Solicitation Document.
- 1.35 Request for Proposal or RFP:** All documents issued by LTD used for soliciting Proposals from prospective Proposers and explaining offering procedures and requirements.
- 1.36 Responsive Offer (also Responsive Bid or Responsive Proposal):** An Offer that is in substantial compliance with applicable solicitation procedures, these rules, and all requirements and criteria set forth in the Solicitation Document.
- 1.37 Responsible Offeror (also Responsible Bidder or Responsible Proposer):** An Offeror who meets the standards set forth in Section 26.1, has not been disqualified by LTD under Sections 6.2.4 or 33.3, and has not been debarred under Section 13.
- 1.38 Revenue Contracts:** Third-party contracts whose primary purpose is to either generate revenues in connection with a transit-related activity or create business opportunities utilizing an FTA-funded asset. These contracts are required to be awarded utilizing competitive selection procedures and principles suitable to the type and scope of the activity involved.
- 1.39 Rules:** These rules adopted by LTD/CRB.
- 1.40 Signature:** Any mark, word, or symbol attached to or logically associated with a document and executed or adopted by a Person with the intent to be bound.
- 1.41 Signed:** A written document that contains a signature.
- 1.42 Solicitation Document:** An Invitation for Bid, Request for Proposal, or other document issued to invite Offers from prospective Offerors pursuant to the Rules.
- 1.43 Special Procurement:** Unless context requires otherwise, a Class Special Procurement, a Contract-Specific Special Procurement, or both.
- 1.44 Submittal Period:** The span of time between the date of the Solicitation Document and Closing Date.
- 1.45 Written or Writing:** Conventional paper documents, whether handwritten, typewritten, or printed, in contrast to spoken words. It also includes electronic transmission or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

SECTION 2. General Purchasing Authority Policy.

- 2.1** LTD Public Contracting and purchasing is centralized. As such, pursuant to ORS 279A.075, LTD/CRB hereby delegates the following contracting authority:

2.1.1 The persons holding the following positions are authorized to enter into Public Contracts for LTD up to the following amounts.

a.	Purchasing Manager	\$75,000
b.	Purchasing Specialist	\$10,000
c.	Inventory Supervisor	\$10,000
d.	Parts Clerk	\$ 2,500

2.1.2 The Purchasing Manager also shall have authority to enter into Sole Source procurements in an amount of \$75,000 or less, pursuant to Section 6.8 of the Rules. The General Manager shall have authority for any Sole Source procurement above \$75,000.

2.1.3 In the absence of the Purchasing Manager or Inventory Supervisor, the Director of Finance shall act as the Purchasing Manager. In the absence of the Inventory Supervisor, the Purchasing Manager shall make purchases over \$2,500 and the Purchasing Assistant shall make purchases up to \$10,000. The Parts Clerk shall make purchases in an amount of \$2,500 or less. The Inventory Supervisor and Purchasing Assistant shall make all purchases up to \$10,000. The Purchasing Manager shall sign Contracts and contract modifications in the amount of \$75,000 or less. The General Manager shall sign all other Contracts exceeding \$75,000.

2.2 No LTD employee shall enter negotiations with any Contractors without receiving authority from the Purchasing Manager.

2.3 The Purchasing Manager shall be responsible for determining the most effective procurement method, in accordance with these Rules.

2.4 The Purchasing Manager shall see that all Solicitation Documents are circulated to pertinent LTD personnel prior to a Solicitation Document being mailed to Offerors.

2.5 Petty cash in the amount of \$50 or less may be used when the procurement is a non-repetitive purchase.

SECTION 3. Contract Review Board Powers; Procedures; Meetings.

3.1 LTD/CRB shall consist of members of the Board of Directors. LTD/CRB and all of its members shall have all the powers granted to it under ORS 279A.060 et seq. The President of the Board of Directors shall be the President of LTD/CRB.

3.2 LTD/CRB meetings may be held at Board of Directors meetings, or at another time after public notice. The Board of Directors may sit as LTD/CRB during its meetings without formal adjournment of the Board of Directors meeting and formally convening the LTD/CRB meeting, by announcing that it is sitting as LTD/CRB.

3.3 Notices of LTD/CRB meetings or other actions shall be of the same type and given in the same manner as notices of meetings or actions of the Board of Directors. LTD/CRB notices may be published as part of the Board of Director notices when the actions that are the subject of the notices will occur on the same date and at the same place.

- 3.4 A majority of the members of LTD/CRB shall constitute a quorum. Exercise of LTD/CRB authority shall be by majority vote of the entire LTD/CRB.
- 3.5 LTD/CRB proceedings shall be governed by the same procedural rules that govern the Board of Directors proceedings, insofar as they are consistent with these Rules and are applicable to LTD/CRB under ORS Chapters 279, 279A, 279B, and 279C.
- 3.6 Meetings of LTD/CRB may be held by conference call after the required public notice. If the meeting is held by conference call, the President shall conduct the meeting using a speakerphone to ensure all attending the meeting may hear.
- 3.7 On urgent or perfunctory matters, the President may poll the members of LTD/CRB by telephone. Electronic transcripts of the polling calls shall be made and retained. In the course of the poll, any member of LTD/CRB may request the matter be discussed by conference call or deferred to a meeting.
- 3.8 Prior to conference calls or telephone polls, the press and public, including persons directly interested in the subject matter of the poll, shall be given reasonable notice so that they may be present with the President at the time of the meeting or poll.
- 3.9 The agenda of the meetings of LTD/CRB shall include the following:
 - 3.9.1 Unanimous consent calendar, including a brief description of each contract exempted and the amount of the contract.
 - 3.9.2 A brief description of proposed exemptions, including the amount of each contract.
 - 3.9.3 The agenda of a meeting of LTD/CRB may be included in the agenda of a meeting of the Board of Directors when the two meetings will be at the same place and on the same date.
- 3.10 Records of LTD/CRB proceedings shall be made in the same manner as those of Board of Directors proceedings and may be made a part of the latter records.

SECTION 4. Statutory Exceptions to the Oregon Public Contracting Code and the Competitive Procurement Requirements of these Rules.

These Rules requiring Public Contracts to be awarded through the Competitive Procurement process do not apply to the following types of contracts:

- 4.1 Contracts between other Contracting Agencies or the federal government.
- 4.2 Contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals. If federal funds are to be used by LTD for the procurement, this exemption is not available.
- 4.3 Contracts for insurance.
- 4.4 Grants.

- 4.5 Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested.
- 4.6 Acquisitions or disposal of real property or an interest in real property.
- 4.7 Energy performance savings contracts.
- 4.8 Contracts, agreements or other documents approved by the General Manager and entered into, issued, or established in connection with:
 - 4.8.1 The incurring of debt by LTD, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements, or other documents, regardless of whether the obligations that the contracts, agreements, or other documents establish are general, special, or limited; or
 - 4.8.2 The investment of funds by LTD as authorized by law, and other financial transactions of LTD that by their character cannot practically be established under the Competitive Procurement procedures required by Oregon law or these Rules.
- 4.9 Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303, and 243.565.
- 4.10 Any procurement that is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by LTD/CRB, similar to 10 U.S.C. 381 or Section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.

SECTION 5. Additional Exceptions: Class Special Procurements.

LTD/CRB finds that the following Class Special Procurements are unlikely to encourage favoritism in awarding Public Contracts or diminish competition for Public Contracts and that these Class Special Procurements will result in substantial cost savings to LTD or the public and will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under the Competitive Procurement requirements of these Rules. LTD, therefore, adopts the following Class Special Procurements:

- 5.1 Contracts for Rolling Stock may be awarded pursuant to the “Competitive Proposal” procedure detailed in FTA Circular 4220.1F, as amended from time to time. For the purposes of this Section 5.1, “Rolling Stock” means buses, transportation vans, vehicles used to repair or support those vehicles, and any other vehicle or component included in the definition of Rolling Stock by federal statute, regulation, or guideline.

The contract term limit for rolling stock shall not exceed five years, inclusive of options, without prior written FTA approval when FTA funds are involved.

- 5.2 All contracts for utility services regulated by federal, state, or local regulating authority.
- 5.3 Contracts for equipment repair or overhaul if one of the following criteria are satisfied:

- 5.3.1** The service or parts required are unknown and cannot be determined without extensive preliminary dismantling or testing;
- 5.3.2** The service or parts required are for sophisticated equipment and the service or parts installation requires specially trained personnel that are available from only one source; or
- 5.3.3** LTD shall solicit quotes from at least three firms, where practicable, and award to the firm whose offer is most advantageous to LTD considering all factors.
- 5.4** LTD may procure contracts for Personal Services or trade services using the RFP process under these Rules rather than the IFB process under these Rules.
- 5.5** LTD/CRB may adopt other Special Procurements in accordance with the following procedures:
 - 5.5.1** A written request for a Special Procurement shall be submitted to LTD/CRB. Such request shall describe the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the Special Procurement, and the circumstances that justify the use of a Special Procurement under the standards set forth in Sections 5.5.2.
 - 5.5.2** LTD/CRB finds that the written request submitted under Section 5.5.1 demonstrates that the use of a Special Procurement as described in the request or an alternative procedure prescribed by LTD/CRB will:
 - a.** Be unlikely in that the exemption will encourage favoritism in the award of Public Contracts or substantially diminish competition for Public Contracts; and
 - b.** Result in substantial cost savings to LTD or the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under the Competitive Procurement procedures of these Rules.
 - 5.5.3** In the case of a Contract Specific Special Procurement, public notice of LTD's request for the approval of a proposed Contract Specific Special Procurement must be published at least once in at least one newspaper of general, county-wide circulation in Lane County a minimum of seven (7) days prior to approval and a minimum of fourteen (14) days prior to award of the Contract. The public notice shall describe the goods or services to be acquired through the Contract Specific Special Procurement.

In the case of a Class Special Procurement, public notice of LTD's request for the approval of a proposed Class Special Procurement must be published at least once in at least one newspaper of general, county-wide circulation in Lane County a minimum of seven (7) days prior approval and a minimum of fourteen (14) days prior to award of any Contract under the Class Specific Special Procurement. The public notice shall describe the class of goods or services to be acquired through the Class Special Procurement.

- 5.5.4** If a Public Contract is awarded through a Special Procurement, LTD shall award the Contract to the Offeror whom Offer LTD determines in writing to be the most advantageous to LTD.
- 5.5.5** When LTD/CRB approves a Class Special Procurement under this Section 5, LTD may award Public Contracts to acquire goods or services within the class of goods or services in accordance with the terms of LTD/CRB's approval without making a subsequent request for a Special Procurement.
- 5.5.6** A Person may protest the approval of or request for approval of a Special Procurement in accordance with Section 36.3.

SECTION 6. Additional Statutory Exceptions.

6.1 Affirmative Action.

- 6.1.1** The provisions of these Rules may not be construed to prohibit LTD from engaging in public contracting practices designed to promote affirmative action goals, policies, or programs for disadvantaged or minority groups.
- 6.1.2** Pursuant to ORS 279A.100, LTD may limit competition on Public Contracts for goods and services, or on other Public Contracts with an estimated cost of \$50,000 or less to carry out affirmative action policies, in accordance with policies and procedures established by LTD.

6.2 Emerging Small Businesses.

- 6.2.1** As set forth in ORS 279A.105, LTD may require a Contractor to subcontract some part of a Contract to, or to obtain materials to be used in performing the Contract from:
 - a.** A business enterprise that is certified under ORS 200.055 as an emerging small business; or
 - b.** A business enterprise that is:
 - (i)** Certified under ORS 200.055 as an emerging small business; and
 - (ii)** Is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.
- 6.2.2** A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
 - a.** Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or

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

6.2.3 LTD may require that a Public Contract be awarded to a "Responsible Bidder" defined in ORS 200.005, who LTD determines has made good faith efforts as prescribed in ORS 200.045(2). For purposes of this Section 6.2, "Responsible Bidder" includes a responsible Proposer that has made good faith efforts as prescribed in ORS 200.045(3).

6.2.4 DBE Disqualification.

- a.** LTD may disqualify a Person from bidding or participating in any LTD Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Public Contract pursuant to ORS 200.075(1) after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (d) and (e) of this Section 6.2.4.
- b.** As provided in ORS 200.065 and 200.075, LTD may disqualify or suspend a Person's right to submit an Offer or to participate in a Contract (e.g., act as a subcontractor) as follows:
 - (i)** For a DBE Disqualification under ORS 200.065, LTD may disqualify a Person upon finding that the Person engaged in any of the activities made unlawful by ORS 200.065(1) or (2), or if the Person has been disqualified by another Contracting Agency pursuant to ORS 200.065.
 - (ii)** For a DBE Disqualification under ORS 200.075, LTD may suspend a Person upon finding that the Person engaged in any of the acts prohibited by ORS 200.075(a) through (c).
- c.** LTD may disqualify or suspend a Person's right to submit Offers or participate in Public Contracts only for the length of time permitted by ORS 200.065 or 200.075, as applicable.
- d.** LTD must notify the Person in writing of a proposed DBE Disqualification pursuant to this Section 6.2.4, served personally or by registered or certified mail, return receipt requested. This notice must:
 - (i)** State that LTD intends to disqualify or suspend the Person;
 - (ii)** Set forth the reasons for the DBE Disqualification;

- (iii) Include a statement of the Person's right to a hearing if requested in writing within the time stated in the notice and that if LTD does not receive the Person's written request for a hearing within the time stated, the Person shall have waived its right to a hearing;
 - (iv) Include a statement of the authority and jurisdiction under which the hearing will be held;
 - (v) Include a reference to the particular sections of the statutes and rules involved;
 - (vi) State the proposed DBE Disqualification period; and
 - (vii) State that the Person may be represented by legal counsel.
- e. Hearing. LTD shall schedule a hearing upon its receipt of the Person's timely request. LTD shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing prior to the hearing.

6.2.5 If federal funds are involved in the procurement, LTD shall not provide a preference to emerging small businesses under this Section 6.2.

6.3 Preference for Oregon goods and services; Nonresident Offeror.

6.3.1 “**Nonresident Offeror**” means an Offeror who is not a resident Offeror.

6.3.2 “**Resident Offeror**” means an Offeror that has paid unemployment taxes or income taxes in this state during the twelve (12) calendar months immediately preceding submission of the Offer, has a business address in this state and has stated in the Offer whether Offeror is a “Resident Offeror” under this Section 6.3.

6.3.3 For the purposes of complying with this Section 6.3, LTD may request, either in a Solicitation Document, following the Closing Date, or at any other time determined appropriate by LTD, any information LTD determines is appropriate and necessary to allow LTD to determine if the goods or services or Personal Services are manufactured or produced in Oregon. LTD may use any reasonable criteria to determine if goods or services or Personal Services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that LTD applies those criteria equally to each Offeror.

6.3.4 When evaluating Offerors pursuant to Sections 26, 27, and 28, LTD shall add a preference of 10 percent for Goods fabricated or processed entirely in Oregon or Services or Personal Services performed entirely in Oregon. Furthermore, the 10 percent preference may be exceeded if LTD finds, via a written order, that good cause exists to establish the higher preference and the reasons and evidence is explained. A further preference may be given to a qualifying Offeror that resides in or is headquartered in Oregon. The preferences may NOT be used for emergency work, minor alterations, ordinary repairs or maintenance of public

improvements, or construction work described in ORS 279C.320 (contracts for construction other than public improvements).

6.3.5 If federal funds are involved in the procurement, LTD shall not provide a preference for Oregon goods and services under this Section 6.3.

6.4 Recycled Materials Preference.

6.4.1 Notwithstanding provisions of law requiring LTD to award a Contract to the Responsible Bidder with the lowest Responsive Bid or the Responsible Proposer with the best Proposal or provider of a quotation, and in accordance with Section 6.4.2, LTD shall give preference to the procurement of goods manufactured from recycled materials.

6.4.2 In comparing goods from two or more Offerors, if at least one Offeror offers goods manufactured from recycled materials, and at least one Offeror does not, LTD shall select the Offeror offering goods manufactured from recycled materials if each of the following four conditions exists:

- a. The recycled product is available;
- b. The recycled product meets applicable standards;
- c. The recycled product can be substituted for a comparable non-recycled product; and
- d. The recycled product's costs do not exceed the costs of non-recycled products by more than five percent (5%) or a higher percentage if a written determination is made by LTD and set forth in the Solicitation Document. For purposes of making the foregoing determination, LTD shall consider the costs of the goods following any adjustments LTD makes to the price of the goods for purposes of evaluation pursuant to this Section 6.4.

6.5 Cooperative Procurements and Price Agreements.

6.5.1 For the purposes of these Rules, the following definitions shall apply:

- a. **“Administering Contracting Agency”** means a Contracting Agency that solicits and establishes the original Contract for procurement of goods, services or Public Improvements in a Cooperative Procurement.
- b. **“Cooperative Procurement”** means a procurement conducted by or on behalf of LTD and one or more other Contracting Agencies. “Cooperative procurement” includes but is not limited to multiparty Contracts and Price Agreements.
- c. **“Cooperative Procurement Group”** means a group of Contracting Agencies joined through an intergovernmental agreement for the purposes of facilitating Cooperative Procurements.

- d. **“Interstate Cooperative Procurement”** means a Permissive Cooperative Procurement in which the Administering Contracting Agency is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules, or regulations to enter into Public Contracts and in which one or more of the participating agencies are located outside this state.
- e. **“Joint Cooperative Procurement”** means a Cooperative Procurement in which the participating Contracting Agencies or the Cooperative Procurement Group and the agencies’ or group’s contract requirements or estimated contract requirements for Price Agreements are identified.
- f. **“Original Contract”** means the initial Contract or Price Agreement solicited and awarded during a Cooperative Procurement by an Administering Contracting Agency.
- g. **“Permissive Cooperative Procurement”** means a Cooperative Procurement in which the Purchasing Contracting Agencies are not identified.
- h. **“Purchasing Contracting Agency”** means a Contracting Agency that procures goods, services, or Public Improvements from a Contractor based on the original Contract established by an Administering Contracting Agency.

6.5.2 LTD may participate in, sponsor, conduct, or administer Cooperative Procurements for the procurement of any goods and services, but not for Public Improvements, as follows:

- a. Joint Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer a Joint Cooperative Procurement, LTD may do so only in accordance with ORS 279A.210.
- b. Permissive Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer a Permissive Cooperative Procurement, LTD may do so only in accordance with ORS 279A.215.
- c. Interstate Cooperative Procurement. If LTD chooses to participate in, sponsor, conduct, or administer an Interstate Cooperative Procurement, LTD may do so only in accordance with ORS 279A.220.
- d. If LTD is required to provide public notice in connection with a Cooperative Procurement, LTD may satisfy such notice requirements by including the information required in the Solicitation Document related to the Cooperative Procurement and by including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to LTD’s intent to establish a Contract or Price Agreement through the Cooperative Procurement.

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

6.6 Full and Open Competition.

6.6.1 **Restrictions on Competition.** All procurement transactions over \$5,000 will be awarded competitively, without providing an unfair competitive advantage to any potential vendor. Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- a. Unreasonable requirements placed on firms in order for them to qualify to do business.
- b. Unnecessary or excessive experience, excessive bonding, insurance, warranty, or similar requirements which affect an otherwise qualified firm's ability to compete. Such requirements must also, however, be established in a manner consistent with protection of the Agency's interests.
- c. Noncompetitive pricing practices between firms or between affiliated companies.

6.7 **Small Procurements.** LTD may, without following the requirements for an IFB or RFP set forth in these Rules, procure micro-purchases for goods, services, or supplies not exceeding \$5,000, if the Purchasing Manager or the Director of Finance determines the price is fair and reasonable. A contract awarded under this Section 6.6 may be amended if approved by the Purchasing Manager or the Director of Finance, but the cumulative amendments cannot exceed \$6,000.

If federal funds are used in the procurement, micro-purchases shall not exceed \$3,000, and any amendments must be in accordance with federal rules and regulations. If federal funds are used, LTD must document determination that price is fair and reasonable and how the determination was derived; splitting of procurements to avoid competition is prohibited; and if competition is not obtained, equitable distribution among qualified suppliers is required.

6.8 **Intermediate Procurements.** LTD may, without following the requirements for an IFB or RFP set forth in these Rules, procure intermediate purchases of goods, supplies, and/or services exceeding \$5,000 but not exceeding \$150,000, (not exceeding \$100,000 for federally funded small procurements) provided such Contracts are awarded in accordance with the Intermediate Procurement procedures set forth in this Section 6.7. LTD must find that the awarding of a Contract using these Intermediate Procurement procedures will not encourage favoritism or diminish competition, and will result in substantial cost savings to LTD. In making this determination, LTD shall comply with the following:

6.8.1 Reasonable efforts are made to obtain at least three quotes prior to awarding a Contract pursuant to this Section 6.7. If three quotes are not available, fewer will suffice if a written record is made of the effort to obtain quotes. A written record is made of all sources of the quotes received.

- 6.8.2** A written documentation that the price is reasonable will be placed in the file.
- 6.8.3** LTD shall not award Contracts totaling in excess of \$150,000 to any one Contractor during one fiscal year pursuant to this Section 6.7.
- 6.9 Sole Source.** LTD may, without following the Competitive Procurement requirements of the Rules and without competition, award contracts for goods or services if the LTD Purchasing Manager has determined, in writing, that the goods or service are available from only one source (“Sole Source”) and the following criteria are met:
- 6.9.1** LTD Purchasing Manager's written finding includes the following:
- a.** That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
 - b.** That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
 - c.** That the goods or services are for use in a pilot or an experimental project; or
 - d.** Other findings that support the conclusion that the goods or services are available from only one source.
- 6.9.2** If LTD Purchasing Manager's findings fall under Section 6.8.1(d) above, LTD shall document that LTD has undertaken reasonable efforts to identify alternate sources and has determined that competition is inadequate. Further, LTD shall:
- a.** Prepare a cost analysis in connection with any procurements under a Section 6.8.1(d) Sole Source exception; and
 - b.** If the Sole Source procurement is over \$100,000, LTD shall advertise the procurement in a publication that crosses state boundaries and shall not contract for the procurement for a minimum of five (5) calendar days after the date of publication.
- 6.9.3** To the extent reasonably practical, LTD shall negotiate with the Sole Source to obtain contract terms advantageous to LTD.
- 6.9.4** If federal funds are involved, LTD shall report Sole Source contracts to the FTA, as required by FTA regulations.
- 6.10 Emergency Contracts.** LTD may, without following the Competitive Procurement requirements of the Rules and without competition, make or authorize procurements of goods or services in an emergency. In making such a procurement, LTD shall document the nature of the emergency and describe the source selection methods used for the procurement.

- 6.10.1** For a contract of \$50,000 or less, the General Manager shall, by written resolution, document the nature of the emergency and describe the source selection methods used for the procurement.
- 6.10.2** For a contract over \$50,000, LTD/CRB shall, by written resolution, document the nature of the emergency and describe the source selection methods used for the procurement.
- 6.10.3** A contract must be awarded within sixty (60) days following the written resolution of the General Manager or Board of Directors.

SECTION 7. Specifications for Contracts.

- 7.1** Except as set forth in Sections 7.3 and 7.4 below, specifications for public contracts shall not expressly or implicitly require any product by any brand name or mark, nor the product of any particular manufacturer or seller unless the products so identified are followed by the terms “or equal specifications.” Notwithstanding the foregoing, nothing in this Section 7, shall prohibit LTD from specifying one or more comparable products as examples of quality, performance, functionality, or other characteristics of the product needed by LTD.
- 7.2** LTD shall determine what constitutes a product that is equal or superior to the product specified, and any such determination by LTD shall be final.
- 7.3** If federal funds are not utilized in the procurement, LTD may develop and maintain a list of qualified products in instances where the testing or examination of goods before initiating the procurement is necessary or desirable to best meet LTD’s requirements, such as (i) when it is impractical to create specific design or performance specifications for a type of product to be purchased; or (ii) when there are certain safety requirements the product must meet. If LTD desires to develop a list of qualified products, LTD shall follow the procedure set forth below in this Section 7.
 - 7.3.1** LTD must make reasonable efforts to notify all known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of products. Notification shall include public notice, published at least once in at least one newspaper of general, county-wide circulation in Lane County.
 - 7.3.2** LTD may establish deadlines for the submission of applications of similar products; however, applicants shall be allowed to submit applications until at least fifteen (15) days prior to the advertisement of the procurement document which will rely on the list of qualified products.
 - 7.3.3** If an application for inclusion in a list of products is denied, or an existing inclusion is revoked, LTD shall notify the applicant in writing. The applicant may appeal to LTD/CRB for a review of the denial or revocation.
- 7.4** Whenever a “brand name or equal” specification is used, minimum needs must be carefully identified and salient physical and functional characteristics of the brand name product must be clearly set forth in the solicitation. LTD may also specify a particular product or list of products by brand name or mark without the term “or equal specifications” if LTD determines that only the identified product or list of products will

meet its needs and such determination is based on one or more of the following written determinations:

- 7.4.1 The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings to LTD;
- 7.4.2 There is only one manufacturer or seller of the product of the quality required;
- 7.4.3 Efficient utilization of existing goods, equipment, or supplies requires the acquisition of compatible goods, equipment, or supplies; or
- 7.4.4 The use of such particular product or list of products by brand name or mark is unlikely to encourage favoritism in awarding Public Contracts or diminish competition for Public Contracts.

The inclusion of a particular product by brand name or mark pursuant to this Section 7.4 shall be subject to review only as provided under Section 36.7.

SECTION 8. Competitive Procurement and Procedures.

- 8.1 In general, all Public Contracts awarded by LTD shall be awarded through the Competitive Procurement process, except as otherwise allowed by law and/or as set forth in these Rules. Notwithstanding any exceptions to Competitive Procurement allowed by these Rules, LTD may nevertheless award a Contract using the Competitive Procurement process in these Rules.
- 8.2 If federal funds are involved, federal laws, rules and regulations shall govern the procurement in the event of a conflict with these Rules or any applicable Oregon statutory laws or regulations. Further, if federal funds are involved in the procurement, federal laws, rules, and regulations shall govern and preempt any Competitive Procurement exceptions listed under Section 4, Section 5, or Section 6 of these Rules in the event of a conflict between the federal laws, rules, and regulations and Section 4, Section 5, or Section 6 of these Rules.
- 8.3 Except as otherwise expressly allowed by these Rules, LTD must award a Public Contract using either an IFB or an RFP.
 - 8.3.1 **Invitation for Bid.** LTD may use the IFB process, when: (i) no discussion with Offerors is needed; (ii) complete specifications and requirements for the purchase are available; and (iii) LTD believes it will receive optimum value by the selection of the lowest-priced offer meeting all specifications and requirements.
 - 8.3.2 **Request for Proposal.** LTD may use the RFP process when LTD believes it will receive optimum value by (i) negotiating with the Offerors as permitted under Sections 10 and 11.2; (ii) selecting the offer based on both price and non-price related factors; and (iii) the Contract to be awarded is for personal or trades services as set forth in Section 5.4 or the requirements of Section 5.5 have been met.

- 8.4 Procurement of Architectural and Engineering Services.** LTD shall procure architectural and engineering services in accordance with the procedures set forth in Section 40 of these Rules.
- 8.5 Contracts for Public Improvements.** The general Competitive Procurement processes and procedures set forth in these Rules, as supplemented or modified by Section 41, shall be applicable to the procurement of Contracts for Public Improvements.
- 8.6 Economic Purchasing.** Procurement activity will be reviewed by the Purchasing Manager at least annually to determine if certain classes of purchases should be consolidated or broken out to obtain more economic pricing. Where appropriate, analysis will also be made of lease versus purchase alternatives or any other appropriate methodology to determine the most economical approach.
- 8.7 Time and Material Contracts.** Time and Material contracts are to be used only after a documented determination that no other type of contract is suitable. Such contracts will specify a ceiling price (a limitation of funding) that the contractor shall not exceed except at its own risk. Prior to the use of a Time and Material contract, the Contracting Officer shall make a determination that the contractor's accounting system is adequate to properly segregate and bill costs.
- 8.8 Cost Plus Percent of Cost Contracts.** Contracts that are structured with payment provisions based on the incurrence and payment of actual costs, such as direct labor, with a fixed mark-up on the actual costs incurred for (a) profit, (b) indirect costs, or (c) both, are prohibited by federal statute and shall not be used.

SECTION 9. Solicitation Documents.

All Solicitation Documents for either an IFB or RFP shall contain the following:

- 9.1** General solicitation information as follows:
- 9.1.1** All information required by ORS 279B.055(2);
 - 9.1.2** Notice and information about pre-Offer conferences, including, without limitation, the time, date, and place of any pre-Offer conferences, whether such conferences are mandatory or voluntary, and that any statement by LTD at such conference is not binding on LTD unless confirmed in writing;
 - 9.1.3** The form, instructions, and requirements for Offer preparation and submission, including whether Offers may be submitted by facsimile;
 - 9.1.4** The Closing Date and time after which Offers will not be accepted;
 - 9.1.5** The address to which Offers are to be delivered;
 - 9.1.6** The time, date, and place set for opening of Offers;
 - 9.1.7** The office where the Solicitation Document may be reviewed;

- 9.1.8** A statement that each Offeror to a Solicitation Document must identify whether the Offeror is a “resident Offeror,” as defined in ORS 279A.120;
 - 9.1.9** Offeror’s certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4);
 - 9.1.10** Contractor’s certification of compliance with the Oregon tax laws in accordance with ORS 305.385;
 - 9.1.11** A statement explaining how LTD will notify Offerors of Addenda, if any, and how to obtain Addenda, if any;
 - 9.1.12** The purchase description, specifications, delivery and performance schedule, inspection and acceptance requirements;
 - 9.1.13** Offer protest specifications;
 - 9.1.14** Procedures for claiming a confidential information exemption;
 - 9.1.15** If LTD intends to award Public Contracts to more than one Offeror pursuant to Section 26.6;
 - 9.1.16** Any applicable preferences pursuant to ORS 279A.120, 279A.125, 279B.055(6)(b), or 282.210; and
 - 9.1.17** Any other information LTD considers applicable.
- 9.2** As part of the terms and conditions of all Contracts, LTD shall include all applicable provisions of FTA Circular 4220.1f, as amended, and all required provisions from ORS Chapters 279A, 279B, and 279C, including without limitation:
- 9.2.1** Payment of laborers and materialmen furnishing labor or material; contributions to the Industrial Accident Fund; liens and withholding taxes in compliance with ORS 279B.220 or 279C.505;
 - 9.2.2** Hours of labor in compliance with ORS 279B.020 and 279B.235 or 279C.520;
 - 9.2.3** Payment for medical care and attention to employees in compliance with ORS 279B.230 or 279C.530;
 - 9.2.4** Maximum hours and overtime in compliance with ORS 279B.235 or 279C.520;
 - 9.2.5** Prevailing wage rates in compliance with ORS 279C.800 to 279C.870 or if federal funds are used, include Davis Bacon Act provisions (40 USC §276(a));
 - 9.2.6** Performance security requirements;
 - 9.2.7** If federal funds are involved, FTA-mandated third-party contract clauses (see Attachment A);

- 9.2.8 If the Contract calls for demolition work, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective in compliance with ORS 279C.510(1);
- 9.2.9 If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost-effective in compliance with ORS 279B.225 or 279C.510(2);
- 9.2.10 Overtime requirement for local governments in compliance with ORS 279B.020 or 279C.540 and 279C.545;
- 9.2.11 A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279B.230(2) or 279C.530(2));
- 9.2.12 Contractor's certification of compliance with Oregon tax laws in accordance with ORS 305.385.
- 9.2.13 If federal funds are involved, federal laws, rules, and regulations applicable to the project shall govern in the event they conflict with any provisions required by ORS 279A.100 to 279A.155.
- 9.2.14 If federal funds are involved and the contract is in excess of \$10,000 the following termination provisions shall be included.
 - 9.2.14.1 Termination for Default - Remedies for Breach. All contracts in excess of the small purchase limit as defined herein shall include contractual provisions that allow for administrative or legal remedies in instances where contractors violate or breach the contract terms. The following clause will be inserted in all contracts:

Termination for Default -

- (a) (1) LTD may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—
 - (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
 - (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a) (2) of this clause); or
 - (iii) Perform any of the other provisions of this contract (but see paragraph (a) (2) of this clause).
- (2) LTD's right to terminate this contract under subdivisions (a) (1) (ii) and (1) (iii) of this clause may be exercised if the Contractor does not cure such

failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

- (b) If LTD terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to LTD for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) fires, (3) floods, (4) epidemics, (5) quarantine restrictions, (6) strikes, (7) freight embargoes, and (8) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.
- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.
- (e) If this contract is terminated for default, LTD may require the Contractor to transfer title and deliver to LTD, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.
- (f) LTD shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of

payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. LTD may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect LTD against loss because of outstanding liens or claims of former lien holders.

- (g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of LTD.
- (h) The rights and remedies of LTD in this clause are in addition to any other rights and remedies provided by law or under this contract.

9.2.14.2 Termination for Convenience

Termination for cause and for convenience provisions shall be included in all contracts in excess of \$10,000, including the manner by which termination will be effected and the basis on which a settlement will be accomplished. The following clause will be inserted in all contracts:

Termination for Convenience - LTD may terminate this contract, in whole or in part, for its convenience at any time by giving at least 10 days' written notice to Contractor of such termination and specifying the effective date thereof.

If the contract is terminated for the convenience of LTD, the Contractor shall be paid in accordance for its allowable costs (as determined by 48 C.F.R. Part 31.2) and overhead incurred through the effective date of termination, less payments of compensation previously made. Contractor shall also be paid that portion of the Fee earned to the date of termination. Further, Contractor shall be reimbursed for the actual eligible costs and overhead, not otherwise reimbursed under this contract, incurred by Contractor to implement the termination, to the extent allowable pursuant to 48 C.F.R. Part 31.2.

Upon receipt of the notice of termination, Contractor shall immediately (1) discontinue those Contract Services affected (unless the notice directs otherwise), and (2) deliver to LTD all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated or prepared in performing the affected Contract Services, whether completed or in process. In the event of termination for any reason, all finished or unfinished documents and other materials shall immediately become the property of LTD.

9.3 Evaluation Process.

- 9.3.1** The procurement document shall contain a statement that LTD may reject any Offer not in compliance with all prescribed procedures and requirements and other applicable laws, and that LTD may reject for good cause any or all Offers upon LTD's finding that it is in its best interest to do so. Reasons for any such cancellation or rejection shall be documented in writing and made part of the solicitation file.
- 9.3.2** The procurement document shall contain a statement that LTD may delay or suspend any solicitation or procurement upon LTD's finding that it is in its best interest to do so. Reasons for any such delay or suspension shall be documented in writing and made part of the solicitation file.
- 9.3.3** If the Solicitation Document is an IFB, LTD shall set forth objective evaluation criteria in the Solicitation Document in accordance with ORS 279B.055(6). Examples of objective evaluation criteria include, but are not limited to, conversion costs, transportation costs, volume weighting, trade-in allowances, cash discounts, depreciation allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas, performance history on other private and Public Contracts, experience of key personnel, adequacy of equipment and physical plant, financial ability, sources of supply, references, and warranty provisions.
- 9.3.4** If the Solicitation Document is an RFP, LTD shall set forth in the Solicitation Document the manner and/or method for evaluating Proposals and the evaluation criteria LTD will use in evaluating Proposals. Further, LTD may employ any combination of the procurement methods of Contractor selection set forth in ORS 279B.060(6)(b). Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management capability, technical expertise, personnel qualifications, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or facilities, financial ability, sources of supply, references, and warranty provisions. Further, if LTD is willing to negotiate the terms and conditions of the contract, LTD must state that in the Solicitation Document and identify the areas open to negotiation.
- 9.3.5** Objective evaluation factors included in a Solicitation Document need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall:
- a.** Be reasonable estimates based upon information LTD staff has available concerning future use; and
 - b.** Treat all Offers equitably.
- 9.4** LTD's Purchasing Manager also may include any other special terms and conditions applicable to the contracts to be awarded including, without limitation, provisions regarding whether the Contract can assign or delegate its obligations or subcontract without the prior written approval of LTD.

SECTION 10. Competitive Range, Multi-Tiered and Multi-Step Proposals.

- 10.1** If the RFP calls for the establishment of a competitive range or allows for multi-tiered or multi-step Proposals, or allows for discussions or negotiations, LTD, in addition to procedures applicable to RFP process set forth in these Rules, shall follow the procedures set forth in Section 10 for competitive range, multi-tiered and multi-step RFPs.
- 10.2** In addition to the procedures set forth in these Rules for RFPs, LTD shall employ the procedures set forth in this rule for multi-step RFPs:
- 10.2.1** Solicitation Protest. Prior to the closing of the initial phase of a multi-step or multi-tiered RFP, LTD shall provide an opportunity to protest the solicitation under Section 36.5 and ORS 279B.405.
- 10.2.2** Addenda Protest. LTD may, but is not required to, provide an opportunity to protest any Addenda issued during the second phase of a multi-step or multi-tiered RFP pursuant to Section 18.
- 10.2.3** Exclusion Protest. LTD may, but is not required to, provide an opportunity for a Proposer to protest exclusion from the competitive range or exclusion from the second phase of a multi-step or multi-tiered RFP process as set forth in Section 36.5.
- 10.2.4** Administrative Remedy. If protests under Sections 10.2.2 or 10.2.3 are provided for in the RFP, failure of a Proposer to so protest shall be considered a failure by Proposer to pursue an administrative remedy made available to the Proposer by LTD.
- 10.2.5** Award Protest. LTD shall provide an opportunity to protest its intent to Award a Contract pursuant to Section 36.5 and ORS 279B.410. An Affected Offeror may protest, for any of the bases set forth in Section 36.4.2, its exclusion from the competitive range or any phase after the initial phase of a multi-step or multi-tiered RFP, or an Addendum issued following closing of the initial phase, if LTD did not previously provide Proposers the opportunity to protest such exclusion or Addendum.
- 10.3** When LTD's RFP process conducted pursuant to ORS 279B.060(6)(b) calls for LTD to establish a competitive range at any stage in the RFP process, it shall do so as follows:
- 10.3.1** Determining Competitive Range.
- a.** LTD shall establish a competitive range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the RFP. After such evaluation, LTD shall determine and rank the Proposers in the competitive range.
 - b.** LTD may increase the number of Proposers in the competitive range if LTD's evaluation of Proposals establishes a natural break in the scores of Proposers indicating that a number of Proposers greater than the initial

competitive range are closely competitive, or have a reasonable chance of being determined the Responsible Proposer with the best Responsive Proposal. LTD may decrease the number of Proposers in the initial competitive range only if the excluded Proposers have no reasonable chance to be the Responsible Proposer with the best Responsive Proposal.

10.3.2 LTD shall provide written notice to all Proposers identifying Proposers in the competitive range. LTD may, but is not required to, provide an opportunity for Proposers excluded from the competitive range to protest LTD's evaluation and determination of the competitive range in accordance with Section 36.4.

10.3.3 After determination of the competitive range and after any protest period provided in accordance with Section 10.3.2 expires, or after LTD has provided a final response to any protest, whichever date is later, then LTD may either:

- a. Provide written notice to all Proposers in the competitive range of its intent to Award the Contract to the highest-ranked Proposer in the competitive range; or
- b. Engage in discussions with Proposers in the competitive range and accept revised Proposals from them as set forth in Section 10.3.4 and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations as set forth in Section 10.3.5 with the Proposers in the competitive range.
- c. An unsuccessful Proposer may protest LTD's intent to Award in accordance with Section 36.6 and ORS 279B.410.

10.3.4 If LTD chooses to enter into discussions with and receive best and final Proposals (see Section 36.6), LTD shall proceed as follows:

- a. LTD shall initiate oral or written discussions with all Proposers submitting Responsive Proposals or all Proposers in the competitive range (collectively "Eligible Proposers") regarding their Proposals with respect to the provisions that were identified in the RFP as the subject of discussions. LTD may conduct discussions for the following purposes:
 - (i) Informing eligible Proposers of deficiencies in their initial Proposals;
 - (ii) Notifying eligible Proposers of parts of their Proposals for which LTD would like additional information; or
 - (iii) Otherwise allowing Eligible Proposers to develop revised Proposals that will allow LTD to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.
- b. LTD may conduct discussions with each Eligible Proposer necessary to fulfill the purposes of this Section 10.3, but need not conduct the same amount of discussions with each Eligible Proposer. LTD may terminate

discussions with any Eligible Proposer at any time. However, LTD shall offer all Eligible Proposers the same opportunity to discuss their Proposals with LTD before LTD notifies Eligible Proposers of the date and time pursuant to Section 10.3.6 that best and final Proposals will be due.

- (i)** In conducting discussions, LTD:
 - (1)** Shall treat all Eligible Proposers fairly and shall not favor any Eligible Proposer over another;
 - (2)** Shall disclose other Eligible Proposer's Proposals or discussions only in accordance with ORS 279B.060(6)(a)(B) or (C); and
 - (3)** May adjust the evaluation of a Proposal as a result of a discussion under this section. The conditions, terms, or price of the Proposal may be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP.

- (ii)** At any time during the time allowed for discussions, LTD may:
 - (1)** Continue discussions with a particular Eligible Proposer;
 - (2)** Terminate discussions with a particular Eligible Proposer and continue discussions with other Eligible Proposers; or
 - (3)** Conclude discussions with all remaining Eligible Proposers and provide notice pursuant to Section 10.3.6 to the Eligible Proposers requesting best and final Proposals.

10.3.5 After the protest period provided in accordance with Section 36.6 expires, or after LTD has provided a final response to any protest, whichever date is later, LTD shall commence negotiations in accordance with this Section 10.3.5.

- a.** LTD may commence serial negotiations with the highest-ranked Eligible Proposers or commence simultaneous negotiations with all Eligible Proposers as follows:
 - (i)** After initial determination of which Proposals are responsive; or
 - (ii)** After initial determination of the competitive range in accordance with Section 10.3.1; or
 - (iii)** After conclusion of discussions with all Eligible Proposers and evaluation of revised Proposals (see Section 10.3.4).

- b.** Conducting Negotiations.
 - (i)** Scope. LTD may negotiate:

- (1) The statement of Work;
 - (2) The Contract price as it is affected by negotiating the statement of Work; and
 - (3) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP or Addenda thereto. Accordingly, Proposers shall not submit, and LTD shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda thereto.
- (ii) At any time during discussions or negotiations that LTD conducts in accordance with Sections 10.3.4 or 10.3.5, LTD may terminate discussions or negotiations with the highest-ranked Proposer, or the Proposer with whom it is currently discussing or negotiating, if LTD reasonably believes that:
- (1) The Proposer is not discussing or negotiating in good faith; or
 - (2) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.
- c. If LTD is conducting serial negotiations and LTD terminates negotiations with a Proposer in accordance with Section 10.3.5.b(ii), LTD may then commence negotiations with the next highest scoring Proposer in the competitive range, and continue the process described in this Section 10.3.5 until LTD has either:
- (i) Determined to Award the Contract to the Proposer with whom it is currently discussing or negotiating; or
 - (ii) Completed one round of discussions or negotiations with all Proposers in the competitive range, unless LTD provided for more than one round of discussions or negotiations in the RFP, in which case LTD has completed all rounds of discussions or negotiations required.
- d. If LTD chooses to conduct competitive negotiations, LTD may negotiate simultaneously with competing Proposers. LTD:
- (i) Shall treat all Proposers fairly and shall not favor any Proposer over another; and
 - (ii) May disclose other Proposer's Proposals or the substance of negotiations with other Proposers only if LTD notifies all of the Proposers with whom LTD will engage in negotiations of LTD's

intent to disclose before engaging in negotiations with any Proposer.

- e. Any oral modification of a Proposal resulting from negotiations under this Section 10.3.5 shall be reduced to writing by the Proposer.

10.3.6 If best and final Proposals are required, LTD shall establish a common date and time by which Proposers must submit best and final Proposals. Best and final Proposals shall be submitted only once; provided, however, LTD may make a written determination that it is in LTD's best interest to conduct additional discussions or negotiations or change LTD's requirements and require another submission of best and final Proposals. Otherwise, no discussion of or changes in the best and final Proposals shall be allowed prior to award of the Contract. Proposers shall also be informed that if they do not submit notice of withdrawal or another best and final Proposal, their immediately previous Proposal will be construed as their best and final Proposal. LTD shall evaluate Proposals as modified by the best and final Proposal. LTD shall conduct evaluations as described in Section 26, 27, and 28. LTD shall not modify evaluation factors or their relative importance after the date and time that best and final Proposals are due.

SECTION 11. Multi-Step IFB and RFP Procurements.

11.1 Multi-Step Sealed Bids. If LTD considers it impractical to initially prepare an IFB that contains a procurement description to support a Contract award based on price, LTD may procure goods or services by using a multi-step IFB process pursuant to ORS 279B.055(12). A multi-step IFB process is a phased process that seeks necessary information or unpriced technical Bids in the initial phase and invites Bidders who submitted technically eligible Bids in the initial phase to submit competitive sealed price Bids on the technical Bids in the second, final phase. As with any IFB process, LTD shall award the Contract to the lowest Responsible Bidder. If time is a factor, LTD may require Bidders to submit a separate sealed price Bid during the initial phase to be opened after the technical evaluation.

11.1.1 Public Notice. Whenever the multi-step IFB process is used, public notice for the first phase shall be given in accordance with Section 14. Public notice is not required for the subsequent phases. However, LTD shall give notice of subsequent phases to all Bidders that submitted a Bid in the first phase and inform Bidders of the right to protest any Addenda issued after the closing of the initial phase pursuant to Section 18 and inform any Bidders excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 36.4.

11.1.2 In addition to the procedures set forth in these Rules for IFBs, LTD shall employ the procedures set forth in this rule for multi-step IFBs:

- a. **Solicitation Protest.** Prior to the closing of the initial phase, LTD shall provide an opportunity to protest the solicitation under Section 36.5 and ORS 279B.405.

- b.** Addenda Protest. LTD may, but is not required to, provide an opportunity to protest any Addenda issued during the second phase pursuant to Section 18.
- c.** Exclusion Protest. LTD may, but is not required to, provide an opportunity for a Bidder to protest exclusion from the phase of the multi-step IFB process as set forth in Section 36.4.
- d.** Administrative Remedy. If protests under Sections 11.1.2.b or 11.1.2.c are provided for in the IFB, failure of a Bidder to so protest shall be considered a failure by a Bidder to pursue an administrative remedy made available to the Bidder by LTD.
- e.** Award Protest. LTD shall provide an opportunity to protest its intent to Award a Contract pursuant to Section 36.6 and ORS 279B.410. An Affected Offeror may protest, for any of the bases set forth in Section 36.4.2, its exclusion from the second phase of a multi-step IFB.

11.1.3 Initial Phase of the Multi-Step IFB Process.

- a.** A multi-step IFB shall be initiated by the issuance of an IFB in the form and manner required for competitive sealed Bids except as hereinafter provided. In addition to the requirements set forth in Section 9, the multi-step IFB shall provide:
 - (i)** That unpriced technical Bids are requested;
 - (ii)** Whether price Bids are to be submitted at the same time as unpriced technical Bids; if they are, that such price Bids shall be submitted in a separate sealed envelope;
 - (iii)** That the IFB is a multi-step sealed IFB procurement, and priced Bids will be considered only in the second phase and only from those Bidders whose unpriced technical Bids are found eligible in the initial, first phase;
 - (iv)** The criteria to be used in the evaluation of unpriced technical Bids;
 - (v)** That LTD, to the extent that it finds it necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Bids;
 - (vi)** That the goods or services being procured shall be furnished generally in accordance with the Bidder's technical Bid as found to be finally eligible and shall meet the requirements of the IFB; and
 - (vii)** Whether Bidders excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.

- b.** After receipt of unpriced technical Bids, Addenda to the IFB shall be distributed only to Bidders who submitted unpriced technical Bids.
- c.** Unpriced technical Bids need not be opened publicly.
- d.** Unpriced technical Bids submitted by Bidders shall be evaluated solely in accordance with the criteria set forth in the IFB. Unpriced technical Bids shall be categorized as:
 - (i)** Eligible;
 - (ii)** Potentially eligible; that is, reasonably susceptible of being made eligible; or
 - (iii)** Ineligible. IF LTD finds a Bid ineligible, it shall record in writing the basis for determining the Bid ineligible and make it part of the procurement file.

11.1.4 LTD may initiate the second phase of the IFB process if, in LTD's opinion, there are sufficient eligible unpriced technical Bids to assure effective price competition in the second phase without technical discussions. If LTD finds that such is not the case, LTD may issue an Addendum to the IFB or engage in technical discussions as set forth in Section 11.1.5.

11.1.5 LTD may seek clarification of a technical Bid by any eligible, or potentially eligible Bidder. During the course of such discussions, LTD shall not disclose any information derived from one unpriced technical Bid to any other Bidder. Once discussions are begun, any Bidder who has not been notified that its Bid has been finally found ineligible may submit supplemental information amending its technical Bid at any time until the closing of the second phase as established by LTD. Such submission may be made at the request of LTD or upon the Bidder's own initiative.

11.1.6 If LTD determines a Bidder's unpriced technical Bid to be ineligible, such Bidder shall not be afforded an additional opportunity to supplement its technical Bid.

11.1.7 Mistakes may be corrected or Bids may be withdrawn during the initial phase:

- a.** Before unpriced technical Bids are considered;
- b.** After any discussions have commenced under Section 11.1.5;
- c.** When responding to any Addenda of the IFB; or
- d.** In accordance with Section 23.

11.1.8 After closing of the Initial Phase, LTD may issue Addenda that modify the specifications for the IFB or modify other terms and conditions of the IFB. LTD shall issue the Addenda to all Bidders who initially submitted unpriced-technical Bids. LTD may then require those Bidders provided the Addenda to submit revised unpriced, technical Bids.

11.1.9 Second Phase of Multi-Step IFB Process.

- a. Upon the completion of phase one, LTD shall either:
 - (i) Open price Bids submitted in the initial phase (if price Bids were required to be submitted) from Bidders whose unpriced technical Bids were found to be eligible; or
 - (ii) If price Bids have not been submitted, technical discussions have been held, or Addenda to the IFB have been issued, invite each eligible Bidder to submit a price Bid.
- b. The second phase shall be conducted as any other IFB procurement except:
 - (i) As specifically set forth in this rule; and
 - (ii) No public notice need be given of this invitation to submit price Bids because such notice was previously given.

11.2 Multi-Step Sealed Proposals. LTD may procure goods or services by using a multi-step RFP process pursuant to ORS 279B.060(6)(b)(G). A multi-step RFP process is a phased process that seeks necessary information or unpriced technical Proposals in the initial phase and invites Proposers who submitted technically eligible Proposals in the initial phase to submit competitive sealed price Proposals on the technical Proposals in the second, final phase. As with any RFP process, LTD shall award the Contract to the Responsible Proposer submitting the best, Responsive Proposal. If time is a factor, LTD may require Proposers to submit a separate sealed price Proposal during the initial phase to be opened after the technical evaluation.

11.2.1 Public Notice. Whenever the multi-step RFP process is used, public notice for the first phase shall be given in accordance with Section 14. Public notice is not required for the subsequent phases. However, LTD shall give notice of subsequent phases to all Proposers that submitted a Proposal in the first phase and inform Proposers of the right to protest any Addenda issued after the closing of the initial phase pursuant to Section 18 and inform any Proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Section 36.4.

11.2.2 Initial Phase of the Multi-Step RFP Process.

- a. A multi-step RFP shall be initiated by the issuance of an RFP in the form and manner required for competitive sealed Proposals except as hereinafter provided. In addition to the requirements set forth in Sections 9 and 10, the multi-step RFP shall provide:
 - (i) That unpriced technical Proposals are requested;

- (ii) Whether price Proposals are to be submitted at the same time as unpriced technical Proposals; if they are, that such price Proposals shall be submitted in a separate sealed envelope;
 - (iii) That the RFP is a multi-step sealed RFP procurement, and priced Proposals will be considered only in the second phase and only from those Proposers whose unpriced technical Proposals are found qualified in the initial, first phase;
 - (iv) The criteria to be used in the evaluation of unpriced technical Proposals;
 - (v) That LTD, to the extent that it finds it necessary, may conduct oral or written discussions for the purposes of clarification of the unpriced technical Proposals;
 - (vi) That the goods or services being procured shall be furnished generally in accordance with the Proposer's technical Proposal as found to be finally qualified and shall meet the requirements of the RFP; and
 - (vii) Whether Proposers excluded from subsequent phases have a right to protest the exclusion before the notice of intent to Award. Such information can be given or changed by Addenda.
- b. After receipt of unpriced technical Proposals, Addenda to the RFP shall be distributed only to Proposers who submitted unpriced technical Proposals.
 - c. Unpriced technical Proposals need not be opened publicly.
 - d. Unpriced technical Proposals submitted by Proposers shall be evaluated solely in accordance with the criteria set forth in the RFP. Unpriced technical Bids shall be categorized as:
 - (i) Qualified;
 - (ii) Potentially qualified; that is, reasonably susceptible of being made qualified; or
 - (iii) Unqualified. IF LTD finds a Proposal unqualified, it shall record in writing the basis for determining the Proposal unqualified and make it part of the procurement file.

11.2.3 LTD may initiate the second phase of the RFP process if, in LTD's opinion, there are sufficient qualified unpriced technical Proposals to assure effective price competition in the second phase without technical discussions. If LTD finds that such is not the case, LTD may issue an Addendum to the RFP or engage in technical discussions as set forth in Section 11.2.4.

- 11.2.4** LTD may seek clarification of a technical Proposal by any qualified, or potentially qualified, Proposer. During the course of such discussions, LTD shall not disclose any information derived from one unpriced technical Proposal to any other Proposer. Once discussions are begun, any Proposer who has not been notified that its Proposal has been finally found unqualified may submit supplemental information amending its technical Proposal at any time until the closing of the second phase as established by LTD. Such submission may be made at the request of LTD or upon the Proposer's own initiative.
- 11.2.5** If LTD determines a Proposer's unpriced technical Proposal to be unqualified, such Proposer shall not be afforded an additional opportunity to supplement its technical Proposal.
- 11.2.6** Mistakes may be corrected or Proposals may be withdrawn during the initial phase:
- a.** Before unpriced technical Proposals are considered;
 - b.** After any discussions have commenced under Section 11.2.4;
 - c.** When responding to any Addenda of the RFP; or
 - d.** In accordance with Section 23.
- 11.2.7** After closing of the Initial Phase, LTD may issue Addenda that modify the specifications for the RFP or modify other terms and conditions of the RFP. LTD shall issue the Addenda to all Proposers who initially submitted unpriced-technical Proposals. LTD may then require those Proposers provided the Addenda to submit revised unpriced, technical Proposals.
- 11.2.8** Second Phase of the Multi-Step RFP Process.
- a.** Upon the completion of the first phase, LTD shall either:
 - (i)** Open price Proposals submitted in the initial phase (if price Proposals were required to be submitted) from Proposers whose unpriced technical Proposals were found to be qualified; or
 - (ii)** If price Proposals have not been submitted, technical discussions have been held, or Addenda to the RFP have been issued, invite each qualified Proposer to submit a price Proposal.
 - b.** The second phase shall be conducted as any other RFP procurement except:
 - (i)** As specifically set forth in this rule; and
 - (ii)** That no public notice need be given of this request to submit price Proposals because such notice was previously given.

SECTION 12. Prequalification.

- 12.1** LTD may, in accordance with these Rules and ORS 279B.120 to 279B.130, permit or require prospective Offerors to prequalify. If LTD permits or requires Offerors to prequalify, LTD shall provide the following:
- 12.1.1** The information required to be submitted by the prospective Offerors;
 - 12.1.2** The form(s) and application(s) to be used by the prospective Offerors seeking prequalification;
 - 12.1.3** The time for submitting an application for prequalification;
 - 12.1.4** The period of time the prequalification will be valid; and
 - 12.1.5** The type and nature of the contract(s) that the prospective Offeror will be qualified to compete for.
 - 12.1.6** If the procurement is federally funded, the standards of FTA Circular 4220.1f, as amended, will be followed for Offeror prequalification.
- 12.2** The deadline for receipt of prequalification applications must be set long enough after the date the notice of prequalification is issued or advertised to allow prospective Offerors a reasonable opportunity to complete and submit the application materials. In no event may the deadline be set earlier than fifteen (15) days after the issue date of the notice of prequalification.
- 12.3** If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be refutably presumed to be qualified to perform substantially similar Contracts for LTD.
- 12.4** LTD shall approve or deny each application in accordance with ORS 279B.120 and 279B.125 and these Rules.
- 12.5** In determining whether to approve an application, LTD may only consider the applicable standards set forth in ORS 279B.110(2).
- 12.6** If LTD subsequently has reasonable cause to believe that there has been a substantial change in the condition of a prospective Offeror, heretofore prequalified, who is no longer qualified or is less qualified, LTD may revoke or revise or reissue the prequalification upon reasonable notice to the prospective Offeror. The notice shall state the reasons found under ORS 279B.120 for revocation or revision of the prequalification and shall inform the Offeror of its right to a hearing under ORS 279B.425. A revocation or revision does not apply to any Contract for which advertisement of a Solicitation Document commenced prior to the date the notice of revocation or revision was received by the prequalified prospective Offeror.
- 12.7** Any information submitted by an Offeror or prospective Offeror in connection with an application for prequalification that the Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."

- 12.8** Any prospective Offeror who wishes to appeal a revocation or revision may do so in accordance with ORS 279B.125.

SECTION 13. Debarment of Prospective Offerors.

- 13.1** LTD may debar prospective Offerors from consideration of the award of a Contract by LTD for the reasons set forth in ORS 279A.110 or after providing notice and the opportunity for hearing as set forth in ORS 279B.130.
- 13.2** LTD shall provide such notice required under ORS 279B.130, in writing, personally delivered or sent by registered or certified mail, to the prospective Offeror. The notice shall specify the following:
- 13.2.1** That LTD intends to debar the prospective Offeror;
 - 13.2.2** The reasons for the debarment;
 - 13.2.3** The period of debarment, which period may not be longer than three (3) years; and
 - 13.2.4** A statement of the prospective Offeror's appeal rights and appeal deadlines.
- 13.3** LTD shall notify the prospective Offeror, in writing, personally delivered or sent by registered or certified mail, of the debarment of the Offeror. The notice shall specify the following:
- 13.3.1** The effective date and period of the debarment;
 - 13.3.2** The reasons for the debarment; and
 - 13.3.3** A statement of the debarred Offeror's appeal rights and appeal deadlines.
- 13.4** Notwithstanding the limitation on the term for debarment in ORS 279B.130(1)(b), LTD may determine that a previously debarred Offeror is not responsible prior to Award of a Contract.
- 13.5** LTD may attribute improper conduct of a Person or its affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of debarment where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.
- 13.6** If a prospective Offeror wishes to appeal a debarment by LTD, such prospective Offeror may do so in accordance with ORS 279B.130.

SECTION 14. Public Notice of Procurement.

- 14.1** LTD shall provide public notice of every formal Solicitation Document in accordance with this Section 14. Such notices shall be in the manner specified in Section 14.2 and contain all information set forth in Section 14.2. Notices may also contain any other appropriate information. LTD may charge a fee or require a deposit for copies of the

Solicitation Documents. LTD may give additional notice using any method determined by LTD to foster and promote competition, including:

- 14.1.1** Mailing notice of availability of Solicitation Documents to any prospective Offerors that have expressed an interest in LTD's procurements; or
 - 14.1.2** Placing notice on LTD's Web site if the requirements of Section 14.3 are met.
- 14.2** Unless LTD authorizes the publication of notice of the Solicitation Document in electronic format on its Web site, every Solicitation Document shall be advertised by publication at least once in at least one newspaper of general circulation in the area where the contract is to be performed and in as many additional issues and publications as LTD's Purchasing Manager may determine to be necessary or desirable to foster and promote competition. All advertisements for Solicitation Documents shall state:
- 14.2.1** Where, when, how, and for how long the Solicitation Documents may be obtained;
 - 14.2.2** That the Closing Date shall not be less than fourteen (14) days from the first notice for an IFB or thirty (30) days from the first notice for an RFP, unless LTD determines that a shorter interval is in LTD's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation Document given in accordance with Section 14.2 and the Closing Date be less than seven (7) days as set forth in ORS 279B.055(4)(f).
 - 14.2.3** The address where Offers will be received and the name and title of the person designated to receive Offers;
 - 14.2.4** The date that prequalification applications must be filed, if prequalification is a requirement;
 - 14.2.5** The character of the services or work to be done or the products or goods to be purchased;
 - 14.2.6** The office where specifications for the Contract and terms and conditions of the Contract may be reviewed;
 - 14.2.7** The date, time, and place that Offers will be publicly opened;
 - 14.2.8** That each Offer must contain a statement as to whether the Offeror is a "Resident Bidder" as defined in ORS 279A.120;
 - 14.2.9** That LTD may reject any Offer not in compliance with all prescribed public contracting procedures and requirements and may reject for good cause any or all Offers upon a finding by LTD that it is in LTD's best interest to do so;
 - 14.2.10** Whether or not a contractor must be licensed under ORS 468A.720;
 - 14.2.11** If applicable, the federal funding amount or percentage of the project that will be paid for by federal funds;

14.2.12 If applicable, that the Contract is for a Public Work subject to ORS Chapter 279C or the Davis Bacon Act (40 U.S.C. §276(a)); and

14.2.13 Any other information LTD deems appropriate.

14.3 If LTD/CRB desires to advertise the procurement on its Web site, it shall: (i) publish notice of its intent to do so weekly, for not less than four (4) consecutive weeks, in at least one newspaper of general circulation in the area where the Contract is to be performed; and (ii) post in its business office a notice of its intent that LTD will publish the advertisement on its Web site. This notice shall include LTD's Web site address where the procurement will be advertised.

14.4 If the Contract is for a Public Improvement having an estimated cost in excess of \$125,000, then in addition to the foregoing requirements of this Section 14, LTD shall follow the procedures set forth in Sections 39 and 41 of these Rules.

SECTION 15. Pre-Offer Conferences.

At the option of LTD, pre-Offer conferences may be held to explain the procurement requirements and/or to conduct site inspections. LTD may require attendance at the pre-Offer conference as a condition for making an Offer. Such conferences shall be announced to all prospective Offerors in the Solicitation Documents. The pre-Offer conference shall be held within a reasonable time after the Solicitation Documents have been issued to allow Offerors to become aware of it, but sufficiently before the Closing Date to allow consideration of the conference results in preparing Offers. Statements at the pre-Offer conference shall not change the Solicitation Document unless confirmed to all prospective Offerors by means of a written Addendum to the Solicitation Document.

SECTION 16. Offer Preparation and Submission.

16.1 Offers shall be typed or prepared in ink and shall be Signed in ink by the Offeror or authorized representative of the Offeror.

16.2 Offers shall be submitted in a sealed envelope, appropriately marked and in accordance with the instructions in the Solicitation Document.

16.3 Offeror shall submit its Offer on the form(s) provided in the Solicitation Document, unless otherwise instructed in the Solicitation Document.

16.4 Alterations, corrections, or erasures, if any, to its Offer shall be initialed in ink by Offeror and submitted prior to opening of the Offers and in accordance with the requirements for submitting an Offer set forth in the Solicitation Document.

16.5 Offers shall include all documents, descriptive literature, and/or samples required under the Solicitation Document. LTD will dispose of product samples, or make them available for Offerors to retrieve, in accordance with the Solicitation Document.

16.6 It is Offeror's responsibility to ensure that its Offer is actually submitted in the manner and format specified in the Solicitation Document and to the delivery point and/or person

designated in the Solicitation Document. LTD will not be responsible for any Offer not submitted in accordance with the requirements of the Solicitation Document.

- 16.7** It is Offeror's responsibility for ensuring that LTD receives its Offer prior to the Closing Date, regardless of the method used to deliver and submit the Offer.
- 16.8** Any information submitted by Offeror in connection with an Offer that Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."
- 16.9** The Offer is Offeror's offer to enter into a Contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the Offeror for LTD's acceptance for the period specified in Section 24 below. LTD's award of the Contract constitutes acceptance of the Offer and binds the Offeror to the Contract.
- 16.10** Except to the extent the Proposer is authorized to propose certain terms and conditions pursuant to Section 10, a Proposer shall not make its Proposal contingent upon LTD's acceptance of any terms or conditions (including specifications) other than those contained in the Solicitation Document.
- 16.11** By signing and submitting the Offer, the Offeror acknowledges that it has received and understands the terms and conditions of the Solicitation Document and that it accepts and agrees to be bound by those terms and conditions. If the RFP permits proposal of alternative terms under Section 10, the Proposer's Proposal shall include the non-negotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by LTD.
- 16.12** LTD may authorize Offerors to submit facsimile Offers. If LTD determines that Bid or Proposal security is or will be required, LTD should not authorize facsimile Offers unless LTD has another method for receipt of such security. Prior to authorizing the submission of facsimile Offers, LTD shall determine that its equipment and personnel are capable of receiving the size and volume of anticipated Offers within a short period of time. In addition, LTD shall establish administrative procedures and controls: (i) to receive, identify, record, and safeguard facsimile Offers; (ii) to ensure timely delivery of Offers to the location of the opening of Offers; and (iii) to preserve the Offers as sealed. LTD shall include a provision that it shall not be responsible for any failure attributable to the transmission or receipt of the facsimile Offer.

SECTION 17. Offer Security.

- 17.1** LTD may, but does not have to, require Offer security for Contracts other than Public Improvement Contracts. If LTD does require Offer security, it shall not exceed ten percent (10%) of the Offeror's Offer.
- 17.2** LTD shall require Offer security on all Public Improvement Contracts in accordance with Section 39 of these Rules.
- 17.3** The following forms of Offer security will be accepted by LTD:
 - 17.3.1** A Surety Bond from a surety company authorized to do business in the State of Oregon and meeting any applicable federal regulations;

17.3.2 An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or

17.3.3 A cashier's check, certified check, or savings and loan secured check.

17.4 Return of Offer Security. Subject to Section 17.5 below, LTD shall return the Offer security of all Offerors after a Contract has been executed, or all Offers have been rejected. LTD may return the Offer security of unsuccessful Offerors after Offer opening but prior to award, if the return does not prejudice the Contract Award and provided that the security of at least the three (3) lowest Offerors is retained pending the execution of a Contract.

17.5 Retention of Offer Security. LTD may retain Offer security in accordance with ORS 279B.055(3) if the Offer is in response to an IFB or in accordance with ORS 279B.060(3) if the Offer is in response to an RFP.

SECTION 18. Addenda to Solicitation Documents.

18.1 LTD may modify a Solicitation Document only by written Addenda. The Offeror shall provide written acknowledgment of the receipt of any Addendum issued either with the Solicitation Document or separately prior to Offer opening, on the form included with the Addendum. Offeror must acknowledge the Addendum by including the Addendum number and signing the "Receipt of Addendum" section. If the Addendum is issued prior to the Closing Date, this Signed acknowledgment must be returned at the same time and in the same envelope with the Offer.

18.2 The Solicitation Document shall notify all prospective Offerors of how LTD will make Addenda available before the Closing Date, and at each subsequent step or tier of evaluation, if LTD will engage in a multi-step IFB process in accordance with Section 11.1 of these Rules, or a multi-tiered or multi-step RFP process in accordance with Section 10 and Section 11.2 of these Rules. For example, LTD may mail notice of Addenda to all prospective Offerors known to have obtained Solicitation Documents or may provide notice by posting such notice of Addenda on LTD's Web site.

18.3 All Addenda shall be issued within a reasonable time to allow prospective Offerors to consider them in preparing their Offers. Where circumstances mandate quick action, and where the change or correction described in an Addendum is minor, as determined at the discretion of LTD, the time period between issuance of the Addendum and the Closing Date may be as little as seventy-two (72) hours, but in the absence of such a finding by LTD, the time period shall be at least five (5) calendar days. If necessary, LTD may notify prospective Offerors by telephone, followed by written confirmation.

18.4 Notwithstanding Section 18.3 of these Rules, an Addendum that modifies the evaluation criteria selection process or procedure for any tier of competition under a multi-step IFB or a multi-tiered or multi-step RFP issued in accordance with ORS 279B.060(6)(d) and Section 10 through Section 11 must be issued no fewer than five (5) days before the beginning of that tier or step of competition, unless LTD determines that a shorter period is sufficient to allow Offerors to prepare for that step or tier of competition. LTD shall document the factors in making such determination.

18.5 Unless the Addendum provides a different deadline, an Offeror must submit any protest or request for change to the Addendum within twenty-four (24) hours following the issuance of the Addendum, or until the last day the Offeror may submit a request for change under Section 20 or protest under Section 36.5, whichever is longer. If a request for change or protest is made pursuant to this section, LTD will only consider requests for change or protests to the Addendum. LTD will not consider requests for change or protests on any matter not directly addressed by the Addendum. Notwithstanding any provision of this Section 18, LTD is not required to provide a protest period for Addenda issued after the initial Closing Date during a multi-tier or multi-step procurement process.

SECTION 19. Pre-Closing Date Modification or Withdrawal of Offer.

19.1 Offers, once submitted, may be modified in writing prior to the Closing Date. Any modifications shall be prepared on the Offeror's letterhead, Signed by an authorized representative, and shall state that the new document supersedes or modifies the prior Offer. Offeror shall prepare and submit any modification in accordance with the requirements of Section 16. Facsimile modification shall not be accepted unless expressly authorized in the Solicitation Document. To ensure the integrity of the procurement process, the envelope containing any modifications to an Offer shall be marked as follows:

Offer Modification
Offer Number or Other Identification

19.2 Offers may be withdrawn by written notification on Offeror's letterhead, Signed by an authorized representative, delivered to the individual and location specified in the Solicitation Document, and received prior to the Closing Date. Offers also may be withdrawn in person prior to the scheduled Closing Date upon presentation of appropriate identification and evidence of authority satisfactory to LTD.

19.2.1 Unopened Offers withdrawn under this Section 19.2 may be released to the Offeror after voiding any date and time stamp.

19.2.2 Requests to withdraw Offers shall be marked as follows:

Offer Withdrawal
Offer Number or Other Identification

19.3 All documents relating to the modification or withdrawal of an Offer shall be made a part of the appropriate procurement file.

SECTION 20. Request for Change or Clarification.

20.1 An Offeror may submit a written request for a change to the Solicitation Document and/or Contract terms and conditions. Unless otherwise specified in the Solicitation Document, an Offeror must deliver the written request for change to LTD not less than ten (10) days prior to the initial Closing Date. In submitting a request for change, the

Offeror shall include a statement of the requested change(s) together with the detailed reason for the requested change. All requests for change shall be marked as follows:

Request for Change
Offer Number or Other Identification

- 20.2** LTD shall not consider an Offeror's request for change after the deadline established for submitting such request. LTD shall provide notice to the applicable Offeror if it entirely rejects a request. If LTD is agreeable to the request, in whole or in part, LTD shall issue an Addendum, in accordance with Section 18, reflecting its determination.
- 20.3** Prior to the deadline for submitting a request for change, an Offeror may request that LTD clarify any provision of the Solicitation Document. LTD's clarification to an Offeror, whether orally or in writing, does not change the Solicitation Document and is not binding on LTD unless LTD amends the Solicitation Document by an Addendum.

SECTION 21. Receipt, Opening, and Recording of Offers.

- 21.1** Upon LTD's receipt of an Offer and/or modification to an Offer, LTD shall time-date stamp or mark by hand the time and date of receipt of the Offer and shall store the Offer and/or modification, unopened, in a secure place until Offer opening. If Offers or modifications are opened inadvertently or are opened prior to the time and date set for Offer opening, the Offers or modification documents shall be resealed and stored for opening at the correct time. If an Offer or modification to an Offer is resealed, documentation of this procedure shall be placed in the procurement file.
- 21.2** Offers and modifications shall be opened publicly at the time, date, and place designated in the Solicitation Document.
 - 21.2.1** In the case of an IFB, if witnesses are present at the Offer opening, and to the extent practicable, the name of each Offeror, the Offer price(s), and such other information as LTD considers appropriate, shall be read aloud. On voluminous Offers, Offerors may be advised, as part of the Solicitation Document, that the Offers will not be read aloud.
 - 21.2.2** In the case of an RFP, if the Solicitation Document so provides, LTD will not read Offers aloud at the public opening. Further, Proposals may be opened in a manner to avoid disclosure of contents to competing Proposers during, when applicable, the process negotiation, but LTD shall record and make available the identity of all Proposers from and after opening of the Proposals. Notwithstanding ORS 192.410 to 192.505, LTD does not have to open Proposals to public inspection until after the notice of intent to award a Contract is issued. Further, the fact that Proposals are opened at a meeting defined in ORS 192.610 does not make their contents subject to disclosure, regardless of whether LTD fails to give notice of, or provide for an executive session for the purpose of, opening Proposals.
- 21.3** Except as provided above, the opened Offers shall be available for public inspection. Notwithstanding the requirement to make Offers available for public inspection, LTD may

withhold from disclosure to the public materials that are exempt or conditionally exempt from disclosure under ORS 192.501 and 192.502. LTD may verify and determine that the information claimed to be exempt under ORS 192.501 and/or 192.502, in fact, is exempt or conditionally exempt from disclosure. If LTD determines that such designation is not in accordance with applicable law, LTD shall make those portions of the Offer available for public inspection. Offeror shall clearly designate any such information as exempt/conditionally exempt under ORS 192.501 and/or 192.502. Further, Offeror shall separate such material designated as exempt/conditionally exempt from other submitted materials. Prices, makes, model, or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary.

SECTION 22. Late Offers, Late Withdrawals, and Late Modifications.

- 22.1** Any Offer, request for modification of an Offer, or request for withdrawal of an Offer received by LTD after the Closing Date will be considered late. Except as set forth in Section 22.2 below, late Offers or late requests for modification or withdrawal shall not be considered by LTD.
- 22.2** A late Offer, late request for modification of an Offer, or late request for withdrawal of an Offer shall be considered by LTD either if: (i) expressly permitted in Section 23 or (ii) the Offeror has an original, unaltered receipt issued by LTD acknowledging the timely receipt of the Offer or request for modification or withdrawal and such receipt contains LTD's time-date stamp clearly and legibly showing that the Offer or request for modification or withdrawal was received prior to the Closing Date.

SECTION 23. Mistakes in Offers.

- 23.1** This Section 23 proscribes the actions LTD may take if LTD discovers mistakes in an Offer after the Closing Date but prior to award of the Contract.
- 23.2** LTD shall carefully consider a request to clarify or withdraw an Offer because of a mistake to protect the integrity of the Competitive Procurement process and to assure fairness. If the mistake is attributable to an error in judgment, LTD shall not allow the Offeror to correct or withdraw the Offer. If the mistake is attributable to a minor informality or a clerical error, LTD may take the following action:
- 23.2.1** LTD may waive, or permit the Offeror to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Offer, or is an insignificant mistake that can be waived or corrected promptly without prejudice to other Offerors or LTD. A minor informality does not affect price, quantity, quality, delivery, or substantive contractual conditions. Examples of minor informalities include, but are not limited to, the failure of an Offeror to:
- a.** Submit the correct number of Signed Offers or the correct number of other documents required by the Solicitation Document;
 - b.** Sign the Offer form in the designated block, provided Offeror's signature appears in the Offer, evidencing an intent to be bound; or

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

23.2.2 LTD may permit the Offeror to correct a clerical error if the intended Offer and clerical error are clearly evident on the face of the Offer, and the Offeror confirms LTD's correction in writing. A clerical error is an Offeror's error in transcribing its Offer. Examples of clerical errors include typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. For discrepancies between unit prices and extended prices, unit prices shall prevail.

23.2.3 LTD may permit an Offeror to withdraw an Offer based on one or more clerical errors in the Offer only if the Offeror shows with objective proof and by clear and convincing evidence:

- a. The nature of the error;
- b. That the error is not a minor informality under this Section 23 or an error in judgment;
- c. That the error cannot be corrected or waived under this Section 23.2;
- d. That Offeror acted in good faith in submitting an Offer that contained the claimed error and in claiming that the alleged error in the Offer exists;
- e. That Offeror acted without gross negligence in submitting an Offer that contained a claimed error;
- f. That Offeror will suffer substantial detriment if LTD does not grant Offeror permission to withdraw the Offer;
- g. That LTD's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on LTD or the public it represents; and
- h. That Offeror promptly gave notice of the claimed error to LTD.

The criteria in Section 23.2.3 shall determine whether LTD will permit an Offeror to withdraw its Offer after Closing. These criteria also shall apply to the question of whether LTD will permit an Offeror to withdraw its Offer without forfeiture of its Bid bond (or other Offer security), or without liability to LTD based on the difference between the amount of the Offeror's Offer and the amount of the Contract actually awarded by LTD, whether by Award to the next lowest responsive and Responsible Bidder or the Responsible Proposer with the best Proposal, or by resort to a new solicitation.

23.3 LTD shall reject any Offer in which a mistake is clearly evident on the face of the Offer and the intended correct Offer cannot be substantiated from accompanying documents,

i.e., documents submitted with the Offer pursuant to the Solicitation Document requirements.

- 23.4** The procedures and criteria set forth in this Section 23 are Offeror's only opportunity to correct mistakes or withdraw Offers because of a mistake. Following Award, an Offeror is bound by its Offer, and may withdraw its Offer or rescind a Contract entered into pursuant to these Rules only to the extent permitted by applicable law.

SECTION 24. Time for Acceptance.

Offers are "Firm Offers," irrevocable and binding on the Offeror for not less than thirty (30) days from the Closing Date, unless otherwise specified in the Solicitation Document.

SECTION 25. Extension of Time for Acceptance of Offers.

Notwithstanding Section 24, after opening Offers, LTD may request, orally or in writing, that Offerors agree, in writing, to extend the time during which LTD may accept their Offers. If the Offerors agree to such extension, the Offer shall continue as a Firm Offer for the agreed-upon extension.

SECTION 26. Evaluation.

- 26.1** Responsibility. Before awarding a Contract, LTD shall make a determination that the Offeror submitting the lowest Responsive Bid or the best Responsive Proposal is responsible. LTD shall use the standards set forth in ORS 279B.110 and Section 33 to determine if a Bidder or a Proposer is responsible. If LTD determines a Bidder or Proposer is not responsible, it shall prepare a written determination of non-responsibility as required by ORS 279B.110 or 279C.375 and shall reject the Offer. If the determination of non-responsibility is made in connection with the procurement for a Public Improvement, LTD shall provide a copy of its written determination to the Construction Contractors Board ("CCB").

If the procurement is federally funded, LTD shall ensure the contractor and subcontractors are not debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. LTD shall do so by reviewing the Excluded Parties Listing System located at <http://epls.arnet.gov/> before entering into any third party contract.

A written determination of responsibility shall be placed in the contract file.

- 26.2** LTD may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material, and may require any of the following prior to award:
- 26.2.1** Demonstration, inspection, or testing of a product prior to award for such characteristics as quality or workmanship;
 - 26.2.2** Examination of such elements as appearance, finish, or feel; or

- 26.2.3** Other examinations to determine whether the product conforms to the specifications set forth in the Solicitation Document.
- 26.3** LTD shall evaluate product acceptability only in accordance with the evaluation criteria set forth in the Solicitation Document and only to determine that the product does, in fact, meet the criteria provided in the Solicitation Document. LTD shall reject any Offer that provides a product that does not meet the requirements set forth in the Solicitation Document. LTD's rejection of an Offer because it offers goods and/or services that do not conform to the requirements of the Solicitation Document is not considered a disqualification and is not appealable under ORS 279B.130.
- 26.4 Evaluation of Bids.** If LTD solicited Bids using an IFB, the following procedures apply:
- 26.4.1** The Contract, if awarded, shall be awarded to the Responsible Bidder with the lowest Responsive Bid. LTD shall evaluate the Bids using only the objective criteria that was set forth in the IFB to determine the Responsible Bidder that submitted the lowest Responsive Bid. In determining the lowest Responsive Bid, LTD shall add a percent increase to the Bid of any nonresident Bidder equal to the percent, if any, of the preference given that Bidder in the state in which the Bidder resides.
- 26.4.2** Nothing in this Section 26.4 shall be deemed to permit a Contract award to a Responsible Bidder submitting a higher quality item than that designated in the IFB if such Bidder does not also have the lowest Responsive Bid.
- 26.4.3** After Bid opening, LTD may conduct discussion with Responsible Bidders, submitting apparent Responsive Bids, for the purpose of clarification to assure full understanding of the Bid. All Bids, in LTD's sole discretion, which need clarification shall be accorded such an opportunity. LTD shall document clarification of any Bidder's Bid in the procurement file.
- 26.4.4** Except as permitted by Section 26.4.3, LTD shall not negotiate with any Bidder.
- 26.5 Evaluation of Proposals.** If LTD solicited Proposals using an RFP, the following procedures apply:
- 26.5.1** The Contract, if awarded, shall be awarded to the Responsible Proposer with the best Responsive Proposal. LTD shall evaluate the Proposals using only the criteria that was set forth in the RFP and allowed by applicable law. LTD shall evaluate the Proposals to determine the Responsible Proposer that submitted the best Responsive Proposal.
- 26.5.2** If LTD permitted negotiation in accordance with Section 10, LTD may negotiate with Proposers in determining the best Proposal by a Responsible Proposer.
- 26.6 Award.**
- 26.6.1 General.** In general, if awarded, LTD shall award the Contract to the Responsible Bidder who submitted the lowest Responsive Bid or to the Responsible Proposer who submitted the best Responsive Proposal. In awarding the Contract, LTD shall evaluate the Offer only on the basis set forth

in the Solicitation Document, these Rules, and applicable law. If consistent with the provisions of the Solicitation Document and it is in the public interest, LTD may award by item, groups of items, or entire Offer.

- 26.6.2** An IFB or RFP may call for pricing of multiple items of similar or related type with Award based on individual line item, group total of certain items, a “market basket” of items representative of LTD’s expected purchases, or the grand total of all items.
- 26.6.3 Multiple Awards.** Notwithstanding Section 26.6.1, LTD may award multiple Contracts under an IFB or RFP in accordance with the criteria set forth in the Solicitation Document. Multiple awards shall not be made if a single award will meet LTD’s needs, including but not limited to adequate availability, delivery, service, or product compatibility. Multiple awards may not be made for the purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy. A notice to prospective Offerors that multiple Contracts may be awarded for the IFB or RFP shall not preclude LTD from awarding a single Contract for such procurement. If the IFB or RFP permits the award of multiple Contracts, LTD shall specify in the Solicitation Document the criteria it will use to choose from the multiple Contracts when purchasing goods or services.
- 26.6.4 Partial Awards.** If after evaluation of Offers, LTD determines that an acceptable Offer has been received for only parts of the requirements of the Solicitation Document:
- a. LTD may award a Contract for the parts of the Solicitation Document for which acceptable Offers have been received; or
 - b. LTD may reject all Offers and may issue a new Solicitation Document on the same or revised terms, conditions, and specifications.
- 26.6.5 All or None Offers.** LTD may award all or none Offers if the evaluation shows an all or none award to be the lowest cost for Bids or the best of the Proposals of those submitted.
- 26.7** If federal funds are involved, a cost or price analysis must be made for every procurement, including Contract modifications, as outlined in FTA Circular 4220.1F, as amended.
- 26.7.1** LTD can accomplish a price analysis by comparison of proposed prices received in response to a Solicitation Document, by comparison of prior Contract prices for same or similar products or services, by comparison with competitive published price lists, and by comparison of proposed prices with independent cost estimates.
- 26.7.2** A cost analysis must be performed when the Offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost.

A cost analysis will be necessary when adequate price competition is lacking, including sole source procurements (which include contract modifications and change orders), unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

Profit is to be negotiated as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles contained in Part 31 of the Federal Acquisition Regulations.

Receipt of a single responsive and responsible bid or proposal is not, by itself, conclusive evidence that competition was inadequate; the Contracting Officer must determine if there was a perception of competition which would affect the bid or proposal. Under these circumstances, award is not considered a sole source. The Contracting Officer, however, must investigate the reason why no other bids or proposals were received; verify that the specification was not unduly restrictive and that the solicitation cannot be modified in a manner that would result in greater competition; and document the file accordingly.

The contract file must include a sole source determination signed by the Purchasing Manager explaining the reasons for the award on a noncompetitive basis.

SECTION 27. Life Cycle Costing.

- 27.1** In determining the lowest Bid or best Proposal, LTD may use "Life Cycle Costing," provided LTD meets the requirements of Section 27.2. As used in this rule, "Life Cycle Costing" means determining the cost of a product for its estimated useful life, including its disposal.
- 27.2** If LTD uses Life Cycle Costing in connection with a procurement, LTD must comply with the following requirements:
- 27.2.1** LTD shall identify in the Solicitation Document those factors that, for evaluation purposes, will have cost implications over the life of the product and that will be used to adjust the Bid or Proposal price of the product;
 - 27.2.2** The Solicitation Document shall clearly set out the factors and the methodology to be used in calculating the Life Cycle Costing adjustments; and

- 27.2.3** The Life Cycle Costing adjustments shall be applied to the price of the product(s) offered in the Bid or Proposal. After application of the Life Cycle Costing adjustments, the Bid or Proposal that results in the lowest overall ownership costs shall be considered the lowest Bid or best Proposal for purposes of price evaluation of the product(s).

SECTION 28. Low Tie Offers.

- 28.1 Definition.** "Low Tie Offers" are either (i) low tie Responsive Bids from Responsible Bidders; or (ii) high tie Responsive Proposals from Responsible Proposers that are identical in price, fitness, availability, and quality.
- 28.2 Award.** If awarded, LTD shall award the Contract in the following order of precedence:
- 28.2.1** LTD shall prefer the goods or services that have been manufactured in Oregon in accordance with ORS 279A.120.
- 28.2.2** If Low Tie Offers remain tied after application of Section 28.2.1, preference shall be awarded according to the following order of precedence:
- a.** Preference shall be given to the Offeror whose principal offices or headquarters are located in Oregon.
 - b.** If a tie still remains after applying subsection a. above, award shall be made by drawing lots among any tied Oregon Offerors. LTD shall give such Offerors notice and an opportunity to be present when the lots are drawn.
 - c.** If none of the tied Offerors is located in Oregon, award of the Contract shall be made by drawing lots among all tied Offerors.
- 28.2.3** If federal funds are to be used in the procurement, neither Section 28.2.1 nor Sections 28.2.2.a. and b. shall apply. In such event, award of the Contract shall be made by drawing lots pursuant to Section 28.2.2.c.

SECTION 29. Notice of Intent to Award.

- 29.1** LTD shall provide written notice of its intent to award to all Bidders and Proposers pursuant to ORS 279B.135 at least seven (7) days before the award of a Contract, unless LTD determines that circumstances require prompt execution of the Contract, in which case LTD may provide a shorter notice period. LTD shall document the specific reasons for the shorter notice period in the procurement file.
- 29.2** LTD's award shall not be final until the later of the following:
- 29.2.1** The expiration of the protest period provided pursuant to Section 36.6; or
 - 29.2.2** LTD provides written responses to all timely-filed protests denying the protests and affirming the award.

SECTION 30. Documentation of Award.

- 30.1 Basis of Award.** Following award of a Contract, LTD shall make a record showing the basis for determining the successful Offeror as part of the procurement file.
- 30.2 Contents of Award Record.** LTD's record shall consist of the following:
- 30.2.1** Offers received by LTD.
 - 30.2.2** If in response to an IFB, the completed Bid tabulation sheet and written justification for any rejection of lower Bids.
 - 30.2.3** If in response to an RFP, the completed evaluation of Proposals and written justification for any rejection of higher scoring Proposals.
 - 30.2.4** If LTD engaged in any methods of Contractor selection described in ORS 279B.060(b)(6) and Sections 10 and 11.2, written documentation of the content of any discussions, negotiations, best and final Offers, or any other procedures LTD used to select a Proposer to which LTD awarded a Contract.

SECTION 31. Foreign Contractor (ORS 279A.120).

If the amount of the Contract exceeds \$10,000 and the Contractor is a "Nonresident Bidder," the Contractor shall promptly report to the Oregon Department of Revenue on forms to be provided by the Department of Revenue the total Contract price, terms of payment, length of Contract, and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report shall be forwarded to LTD. LTD must satisfy itself that the requirement of this Section 31 has been complied with before LTD issues a final payment on the Public Contract. For the purposes of these Rules, a Nonresident Bidder is defined under ORS 279A.120(a).

SECTION 32. Availability of Award Decisions.

- 32.1 Contract Documents.** To the extent required by the Solicitation Document, LTD shall deliver to the successful Offeror a Signed purchase order, Price Agreement, or other Contract documents, as applicable.
- 32.2 Notification of Unsuccessful Offerors.** LTD will notify unsuccessful Offerors within three (3) days of a Contract award. Tabulations of received Bids or evaluation summaries of received Proposals may be obtained for a nominal charge, either in person or by submitting a written request to LTD accompanied by payment. If the request is in writing, it must include the Solicitation Document number and have a self-addressed, postage-prepaid envelope enclosed.
- 32.3 Availability of Procurement File.** After notice of intent to award under Section 29, LTD shall make the completed procurement file available for public review at LTD's main office in accordance with these Rules and applicable law. Notwithstanding the requirement to make the procurement file available for public inspection, as set forth in Section 21, LTD may withhold from disclosure to the public materials that are exempt or conditionally exempt from disclosure under ORS 192.501 and 192.502.

- 32.4 Copies from Procurement File.** Copies of material from the procurement file may be obtained upon payment of a reasonable copying charge.
- 32.5 Debriefing.** If the procurement utilized the RFP process, unsuccessful Proposers may, within three (3) days after receipt of notice of intent to award, submit to LTD a written request for a debriefing of the award decision. LTD shall hold a debriefing for all unsuccessful Proposers who timely submitted a written request within five (5) days after receipt of such requests, or as soon as reasonably practical. LTD will cover the following topics at the debriefing:
- 32.5.1** LTD's evaluation of the significant weaknesses or deficient factors in the unsuccessful Proposers' Proposals;
 - 32.5.2** The overall evaluated cost and technical rating of the successful Proposal, the overall evaluated cost and technical rating of the unsuccessful Proposals of the debriefed Proposers, and the overall ranking of all Proposals;
 - 32.5.3** A summary of the rationale for the award;
 - 32.5.4** In the case of a Proposal that proposes a commercial item as an end item under the Contract, the make and model of the item being provided by the successful Proposer; and
 - 32.5.5** The debriefing will not include a point-by-point comparison of all Proposals, and LTD will not disclose any information that is exempt from disclosure by these Rules and/or applicable law.

SECTION 33. Rejection of Offers.

- 33.1** LTD has the right to reject any or all Offers if it is in LTD's best interest, as determined by LTD. If LTD rejects all Offers, LTD shall notify all Offerors of the rejection of all Offers, along with the reasons for rejection of all Offers.
- 33.2** LTD shall reject an Offer upon finding that the Offer:
- 33.2.1** Is contingent upon LTD's acceptance of terms and conditions that differ from the Solicitation Document;
 - 33.2.2** Takes exceptions to terms and conditions (including specifications) in the Solicitation Document or Contract;
 - 33.2.3** Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
 - 33.2.4** Is not in substantial compliance with the Solicitation Document or the prescribed public solicitation process; or
 - 33.2.5** Is late.
- 33.3** LTD shall reject an Offer upon finding that the Offeror:

- 33.3.1** Has not prequalified, if prequalification was required;
- 33.3.2** Has been debarred as set forth in Section 13 and ORS 279B.130 or disqualified pursuant to Section 6.2.4;
- 33.3.3** Has been declared ineligible under ORS 279.361 by the Bureau of Labor and Industries, if the Contract is for a Public Work; or if the contractor has been found to be debarred, suspended, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements by reviewing the Excluded Parties Listing System located at <http://epls.arnet.gov/>.
- 33.3.4** Is not qualified by the CCB, if the Contract is for a Public Improvement;
- 33.3.5** Has not submitted the required Offer security, if required by the Solicitation Document;
- 33.3.6** Is not a Responsible Offeror. In determining if an Offeror is responsible, LTD must determine pursuant to ORS 279B.110 that the Offeror has appropriate financial, technical, material, equipment, facility, and personnel resources and expertise necessary to demonstrate Offeror's ability to meet all Contract requirements. In making this determination, LTD may investigate to determine if Offeror has a satisfactory record of contract performance, a satisfactory record of integrity, a satisfactory record of compliance with public policy, and is legally qualified to contract with LTD. LTD may require Offeror to supply all necessary information in connection with its inquiry into Contractor's responsibility; or
- 33.3.7** Has not met the requirements of ORS 279A.105, if required by the Solicitation Document.

For the purposes of this Section 33, LTD may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this Section 33 or to apply the debarment provisions of ORS 279B.130.

SECTION 34. Cancellation, Delay, or Suspension of Procurement.

- 34.1** LTD may cancel, delay, or suspend an IFB, RFP, or any other procurement if LTD finds it is in LTD's best interest, as determined by LTD. LTD reasons for such cancellation, delay, or suspension, as applicable, shall become part of the procurement file.
- 34.2** If such cancellation, delay, or suspension is prior to the Closing Date, LTD shall provide notice of such cancellation, delay, or suspension in the same manner as LTD initially provided notice of the solicitation. If such cancellation, delay, or suspension is after the Closing Date, LTD shall provide notice to all Offerors who submitted Offers.
- 34.3** LTD shall not be liable to any Offeror for any loss or expense caused by or resulting from the cancellation, delay, or suspension of a solicitation or award.

SECTION 35. Disposition of Offers if Solicitation Document Canceled.

- 35.1 Prior to Offer Opening.** When a Solicitation Document is canceled prior to Offer opening, all Offers received will be returned to Offerors unopened, if submitted with a clearly visible return address. If there is no return address on the envelope, the Offer will be opened to determine the source and then returned to Offeror.
- 35.2 After Offer Opening.** If LTD cancels the procurement after opening, LTD may either return the Offers or retain them for the procurement file. If all Offers are rejected, LTD shall retain any Offers received as part of LTD's procurement file.

SECTION 36. Protest Procedures.

36.1 Offerors may protest to LTD that they were prejudiced by LTD's procurement or award procedures. All protests must be submitted in writing to LTD in accordance with these Rules. The Purchasing Manager will inform FTA immediately of a protest received by LTD that involves a procurement funded by FTA.

36.2 General Procedures.

36.2.1 All protests shall be marked as follows:

Offer or Award Protest
Offer Number or Other Identification

36.2.2 The burden is on the protesting Offeror to produce evidence to sustain its protest. Unless a hearing is required by statute, LTD may base its decision on Offeror's or LTD's written materials or, in its discretion, may allow oral testimony. If oral testimony will be allowed, LTD shall provide the protesting Offeror with notice of such allowance, and the oral testimony shall be heard within ten (10) business days after the protesting Offeror receives the notice allowing oral testimony.

36.2.3 If federal funds are used in the procurement at issue, an Offeror may seek review by the FTA after the Offeror has complied with the protest procedures of this Section 36 and if otherwise permitted under FTA Circular 4220.1F, as amended. The FTA also may entertain a protest that alleges that LTD failed to have or follow its written protest procedures. Any protest to the FTA must be filed by the Offeror with the FTA not later than five (5) days after the date the protesting Offeror receives notice of the decision of LTD, or within five (5) days after the protesting Offeror knows or has reason to know that LTD has failed to render a final decision.

36.2.4 Unless otherwise required by federal rules or regulations or Oregon statutes, LTD shall not be obligated to postpone Offer opening or award of a Contract pending resolution of a protest where LTD determines that proceeding with the selection process or award is in the best interest of LTD. LTD shall document the basis and include it in the procurement file.

36.3 Protests and Judicial Review of Special Procurements.

36.3.1 An Affected Person may protest the approval of or request for approval of a Special Procurement. Pursuant to ORS 279B.400(1), before seeking judicial review of the approval of a Special Procurement, an Affected Person must file a written protest with LTD and exhaust all administrative remedies.

36.3.2 Delivery. Notwithstanding the requirements for filing a writ of review under ORS Chapter 34 pursuant to ORS 279B.400(4)(a), an Affected Person must deliver a written protest to LTD within seven (7) days after the first date of public notice of the approval of a Special Procurement by LTD, unless a different protest period is provided in the public notice of the approval of a Special Procurement.

36.3.3 Content of Protest. The written protest must include:

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

36.3.4 Contract Review Authority Response. LTD shall not consider an Affected Person's protest of the approval of a Special Procurement submitted after the timeline established for submitting such protest under this Section 36.3 or such different time period as may be provided in the public notice of the approval of a Special Procurement. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, in whole or in part, it may in its sole discretion implement the sustained protest in the approval of the Special Procurement or revoke the approval of the Special Procurement.

36.3.5 Judicial Review. An Affected Person may seek judicial review of LTD's decision relating to a protest of the approval of a Special Procurement in accordance with ORS 279B.400.

36.4 Protests and Judicial Review of Multi-Tiered and Multi-Step Solicitations.

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

36.4.2 Basis for Protest. An Affected Offeror may protest its exclusion from a tier or step of competition only if the Offeror is Responsible and submitted a Responsive Offer and but for LTD's mistake in evaluating the Offeror's or other Offerors' Offers, the protesting Offeror would have been eligible to participate in the next tier or step of competition. For example, the protesting Offeror must claim it is eligible for inclusion in the competitive range if all ineligible higher-scoring Offerors are removed from consideration, and those ineligible Offerors

are ineligible for inclusion in the competitive range because: their Proposals were not Responsive, or LTD committed a substantial violation of a provision in the Solicitation Document or of an applicable procurement statute, and the protesting Offeror was unfairly evaluated and would have, but for such substantial violation, been included in the competitive range.

- 36.4.3 Delivery.** Unless otherwise specified in the Solicitation Document, an Affected Offeror must deliver a written protest to LTD within five (5) business days after issuance of the notice of the competitive range or notice of subsequent tiers or steps.
- 36.4.4 Content of Protest.** The Affected Offeror's protest shall be in writing and must specify the grounds upon which the protest is based.
- 36.4.5 LTD Response.** LTD shall not consider an Affected Offeror's multi-tiered or multi-step solicitation protest submitted after the timeline established for submitting such protest under Section 36.4, or such different time period as may be provided in the Solicitation Document. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either issue an Addendum under Section 18 reflecting its disposition or cancel the procurement or solicitation under Section 34.
- 36.4.6 Judicial Review.** Judicial review of LTD's decision relating to a multi-tiered or multi-step solicitation protest shall be in accordance with ORS 279B.420.

36.5 Protests and Judicial Review of Solicitations.

- 36.5.1 Purpose.** A prospective Offeror may protest the procurement process or the Solicitation Document, including its specifications, terms, and/or conditions for a Contract solicited under ORS 279B.055, 279B.060, and 279B.085 as set forth in ORS 279B.405(2)(a). Pursuant to ORS 279B.405(3), before seeking judicial review, a prospective Offeror must file a written protest with LTD and exhaust all administrative remedies.
- 36.5.2 Delivery.** Unless otherwise specified in the Solicitation Document, a prospective Offeror must deliver a written protest to LTD not less than five (5) business days prior to the Closing Date.
- 36.5.3 Content of Protest.** The protest must include a detailed statement of the legal and factual grounds for the protest, include the claimed prejudice to the Offeror, demonstrate how the procurement process is contrary to law or how the Solicitation Document is flawed, include evidence or supporting documentation for the grounds on which the protest is based, and include the course of action the prospective Offeror would like LTD to take.
- 36.5.4 LTD Response.** LTD shall not consider a Prospective Offeror's solicitation protest submitted after the timeline established for submitting such protest under this Section 36.5, or such different time period as may be provided in the Solicitation Document. LTD shall consider the protest if it is timely filed and meets the conditions set forth in Section 36.5.4 and ORS 279B.405(4). LTD

shall issue a written disposition of the protest no less than three (3) business days prior to the Closing Date, unless LTD makes a written determination that circumstances exist that require a shorter time limit. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either issue an Addendum reflecting its disposition under Section 18 or cancel the Procurement or solicitation under Section 34.

36.5.5 Extension of Closing. If LTD receives a protest from a prospective Offeror in accordance with this Section 36.5, LTD may extend the Closing Date if LTD determines an extension is necessary to consider and respond to the protest.

36.5.6 Judicial Review. Judicial review of LTD's decision relating to a solicitation protest shall be in accordance with ORS 279B.405.

36.6 Protests and Judicial Review of Contract Award.

36.6.1 Purpose. An Offeror may protest the award of a Contract, or the intent to award a Contract, whichever occurs first, if the conditions set forth in ORS 279B.410(1) are satisfied. An Offeror must file a written protest with LTD and exhaust all administrative remedies before seeking judicial review of LTD's Contract award decision.

36.6.2 Delivery. Unless otherwise specified in the Solicitation Document, an Offeror must deliver a written protest to LTD within five (5) business days after issuance of the notice of intent to award the Contract.

36.6.3 Content of Protest. An Offeror's written protest shall include a detailed statement of the legal and factual grounds for the protest, the claimed prejudice to the Offeror, and the course of action the Offeror would like LTD to take.

36.6.4 LTD Response. LTD shall not consider an Offeror's Contract award protest submitted after the timeline established for submitting such protest under this Section 36.6, or such different time period as may be provided in the Solicitation Document. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, in whole or in part, LTD may in its sole discretion either award the Contract to the successful protestor or cancel the procurement or solicitation.

36.6.5 Judicial Review. Judicial review of LTD's decision relating to a Contract award protest shall be in accordance with ORS 279B.415.

36.7 Protests and Judicial Review of Qualified Products List Decisions.

36.7.1 Purpose. A prospective Offeror may protest LTD's decision to exclude the prospective Offeror's goods from LTD's qualified products list under Section 7 and ORS 279B.115. A prospective Offeror must file a written protest and exhaust all administrative remedies before seeking judicial review of LTD's qualified products list decision.

36.7.2 Delivery. Unless otherwise stated in LTD's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list, a

prospective Offeror must deliver a written protest to the LTD within five (5) business days after issuance of LTD's decision to exclude the prospective Offeror's goods from the qualified products list.

36.7.3 Content of Protest. The prospective Offeror's protest shall be in writing and must specify the grounds upon which the protest is based.

36.7.4 LTD Response. LTD shall not consider a prospective Offeror's qualified products list protest submitted after the timeline established for submitting such protest under this Section 36.7, or such different time period as may be provided in LTD's notice to prospective Offerors of the opportunity to submit goods for inclusion on the qualified products list. LTD shall issue a written disposition of the protest in a timely manner. If LTD upholds the protest, it shall include the successful protestor's goods on the qualified products list.

36.7.5 Judicial Review. Judicial review of LTD's decision relating to a qualified products list protest shall be in accordance with ORS 279B.425.

36.8 Judicial Review of Other Violations. All protests of any other violation of ORS Chapter 279A or 279B by LTD for which no judicial remedy is otherwise provided in the Oregon Public Contracting Code is subject to judicial review as set forth in ORS 279B.420.

SECTION 37. Contract Modification.

37.1 Additional Goods or Services. Any amendments for additional work or product requested by LTD, which is reasonably within the scope of work under the original Contract, including change orders, extra work, field orders, or other changes in the original specifications that increases the original Contract price, may be made with the Contractor without the Competitive Procurement process, provided one or more of the following criteria is satisfied:

37.1.1 The original Contract (i) was let under the Competitive Procurement process; and (ii) imposes a binding obligation on the parties covering the terms and conditions of the additional work or product; or

37.1.2 The aggregate increase resulting from all amendments to a Contract shall not exceed ten percent (10%) of the initial Contract amount, or twenty percent (20%) of the initial Contract amount if such aggregate increase does not exceed \$100,000.

37.1.3 The use of tag-ons is prohibited and applies to the original buyer as well as to others. Tag-on is defined as the addition of work (supplies, equipment, or services) that is beyond the scope of the original contract that amounts to a cardinal change and is subject to noncompetitive procurement procedures.

37.2 Small or Intermediate Contract. LTD may amend a Contract awarded as small or intermediate Procurement pursuant to this Section 37, only if the total price of the Contract after the increase does not exceed the amount set forth in Section 6.6 for Small Procurements if Contract was originally awarded under Section 6.6 or Section 6.7 for Intermediate Procurements in the Contract was originally awarded under Section 6.7.

- 37.3 Emergency Contract.** LTD may amend a Contract awarded as an emergency if the emergency justification for entering into the Contract still exists, and the amendment is necessary to address the continuing emergency.
- 37.4 Price Agreements.** LTD may amend or terminate a Price Agreement as follows:
- 37.4.1** As permitted by the Price Agreement;
 - 37.4.2** As permitted by this Section 37;
 - 37.4.3** If the circumstances set forth in ORS 279B.140(2) exist; or
 - 37.4.4** As permitted by applicable law.
- 37.5 Change Order Procedure.** Before an amendment or change order (change notice) to a contract or purchase order can be made, the following steps must occur:
- 37.5.1** Identify the change and ensure that the change is desired or required and that it falls within the original scope of the project. Unforeseen conditions that occur in a construction project that must be remedied to proceed with construction are allowable. The Project Manager must identify the need for a change in writing, which might be in a simple handwritten format or e-mail.
 - 37.5.2** The Project Manager must make an independent estimate of the cost of the change. The Project Manager must identify the estimated cost in writing, in an internal document, which may be in a simple handwritten format or e-mail.
 - 37.5.3** The request for a proposal for the change must go to the Contractor or Consultant on the project, giving a description of the change in whatever terms are needed to allow the Contractor/Consultant to respond.
 - 37.5.4** The written response from the Contractor should be reviewed, comparing the proposed cost to the estimated cost previously established. The proposal should contain supporting documentation for costs of materials or for any subcontractor work proposed. It should also contain pertinent drawings or other supplemental information needed to identify the work.
 - 37.5.5** The Project Manager will then make a statement about the reasonability of the price. The statement may be in a simple handwritten format or e-mail.
 - 37.5.6** This information makes up a complete change order request package, which will then go to Purchasing to review and process a change order to the purchase order and/or contract.
- 37.6 Options.** An option is a unilateral right in a contract by which, for a specified time, the buyer may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. The use of options must be limited to quantities of goods or services that are reasonably anticipated to be required by the Agency during the term of the contract; options may not be included solely with the intent of assigning them to another entity in the future; however, contracts may

include a provision allowing assignment to other agencies in the event of a change in the Agency's anticipated requirements, in accordance with FTA regulations and guidance.

37.6.1 The option quantities or periods must be defined in the solicitation; contained in the offer upon which a contract is awarded; and evaluated as part of the initial award process; i.e., the options must be evaluated in combination with bid prices for the base quantity to determine the low bidder. When an option has not been evaluated to determine the low bidder for award of the contract, exercise of the option will be considered a sole source procurement and must be justified as such.

37.6.2 The exercise of an option must be in accordance with the terms and conditions of the option as stated in the initial contract, and an option may not be exercised unless it is determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised, cost and other factors considered.

37.6.3 If sequential options (e.g., a series of one-year extensions) exist, the failure to timely and properly exercise any option will void all subsequent options.

37.7 Piggybacking. LTD may exercise options in contracts of other public agencies ("piggybacking") in accordance with FTA regulations and guidance.

SECTION 38. Right to Audit Records.

38.1 Contractors and subcontractors shall maintain all fiscal records relating to Contracts with LTD in accordance with generally accepted accounting principles ("GAAP"), unless otherwise specified in the Solicitation Document or Contract documents. Additionally, Contractors and subcontractors shall maintain all other records relating to Contracts with LTD in a manner to clearly document the following:

38.1.1 Contractors' and subcontractors' performance under the Contract(s); and

38.1.2 Any claims arising from or relating to Contractors' and subcontractors' performance under the Contract(s). Contractors and subcontractors shall make all records (books, fiscal records, and all other records and documents, hereafter the "Records") relating to their performance and any claims under a Contract with LTD reasonably accessible to LTD, whether or not litigation has been filed in connection with such claims.

38.2 Inspection and Audit. LTD may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the Records of any Person who has submitted cost or pricing data according to the terms of a Contract with LTD to the extent that the Records relate to such cost or pricing data. If a Person must provide cost or pricing data under a Contract with LTD, that person or entity shall maintain such Records and keep such Records accessible and available for a minimum period of three (3) years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is longer, unless a shorter period is otherwise authorized by LTD in writing.

38.3 Inspection; Contract Audit. LTD shall be entitled to inspect, examine, copy, and audit any of Contractors' or subcontractors' Records as provided under Section 38.1. Contractors and subcontractors shall maintain and keep such Records accessible and available for a minimum period of three (3) years from the date of final payment under the Contract or subcontract, as applicable, or until the conclusion of any audit, controversy, or litigation arising out of or related to the Contract, whichever date is later, unless a shorter period is otherwise authorized by LTD in writing.

SECTION 39. Performance Security.

39.1 Public Improvements Contract. Unless the required performance bond is waived under ORS 279C.380 or exempted by all of LTD/CRB pursuant to Section 39.3 below, Contractor shall execute and deliver to LTD, a payment bond and a performance bond, each in a sum equal to the Contract price, for any Public Improvement Contracts.

39.2 Other Public Contracts. LTD may require performance and payment security for other Public Contracts.

39.3 Exemption and/or Waiver. If all members of LTD/CRB concur:

39.3.1 LTD/CRB may exempt certain contracts or classes of contracts from the requirements for performance and/or payment security pursuant to ORS 279C.390; provided, however, LTD may require payment and/or performance security even though the Contract is one of a class exempted by LTD/CRB.

39.3.2 LTD/CRB may waive the performance and/or payment security requirements in cases of emergency pursuant to ORS 279C.380(4).

39.3.3 If federal funds are used in the procurement of a Public Improvement Contract in excess of \$100,000, the exemptions under this Section 39 are not available.

39.4 Requirement for Surety Bond. LTD shall only accept a surety bond furnished by a surety company authorized to do business in Oregon as performance security, unless specified in the Solicitation Document. If specified in the Solicitation Document, LTD may accept the following alternative forms of payment and performance security: (i) a cashier's check or certified check in an amount equal to one hundred percent (100%) of the Contract price; or (ii) an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in an amount equal to one hundred percent (100%) of the Contract price.

39.5 Time for Submission. The apparent successful Offeror must furnish the required performance bond and payment bond within ten (10) days of LTD's request. If Offeror fails to furnish the bond prior to the deadline, LTD may reject the Offer, may forfeit the Offeror's Offer security, and may award the Contract to the Bidder with the next lowest Responsive Offer with the next highest-scoring Offer.

SECTION 40. Procurement of Architectural and Engineering Services.

40.1 LTD will use qualification-based competitive proposal procedures based on the Brooks Act, Chapter 11 of Title 40 of the United States Code, and 49 U.S.C. §5325(b), when contracting for architectural and engineering services which include program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying mapping, or related services.

40.1.1 **If federal funds are not used in the procurement, the following definition applies: “Related Services”** means personal services, other than architectural, engineering, and land surveying services, that are related to the planning, design, engineering, or oversight of public improvement projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, environmental impact studies, hazardous substances or hazardous waste or toxic substances testing services, wetland delineation studies, wetland mitigation studies, Native American studies, historical research services, endangered species studies, rare plant studies, biological services, archaeological services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services, and owner’s representative services or land-use planning services.

40.2 Selection Procedure.

40.2.1 General. Competitive RFP procedures, based on the Brooks Act, shall be used when procuring Consultant services. The Brooks Act requires that:

- a. An Offeror’s qualifications be evaluated;
- b. Price be excluded as an evaluation factor;
- c. Negotiations be conducted with only the most qualified Offeror; and
- d. Failing agreement on price, negotiations with the next most qualified Offeror be conducted until a Contract award can be made to the most qualified Offeror whose price is fair and reasonable.

40.2.2 State Funds. If LTD: (i) receives moneys from the State Highway Fund or a grant or loan from the State that will be used to pay for any portion of the design and construction of the project; and (ii) where the total amount of any grants, loans, or moneys from either the State Highway Fund or the State exceeds ten percent (10%) of the value of the project; and (iii) where the value of the project exceeds \$900,000, LTD shall use an RFP procurement process set forth under Section 40.2.1 and shall select a Consultant on the basis of qualifications. LTD may consider pricing factors only after it has selected candidates based on qualifications. In selecting candidates based on qualifications, LTD may consider some or all of the following:

- a. Specialized experience, capabilities, and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;
- b. Resources available to perform the work and the proportion of the candidate staff's time that would be spent on the project, including any specialized services, within the applicable time limits;
- c. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- d. Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
- e. Availability to the project locale;
- f. Familiarity with the project locale; and
- g. Proposed project management techniques.

40.3 Ties Among Proposers. If LTD determines after the ranking of Proposers that two or more Proposers are equally qualified, LTD shall select the Proposer to which the Contract will be awarded pursuant to Section 28.

40.4 Request for Change or Clarification. Consultants who are prospective Offerors may submit a written request for a change or clarification to the Solicitation Document and/or Contract terms and conditions pursuant to the procedures set forth in Section 20.

40.5 Protest and Judicial Review Procedures.

40.5.1 Solicitation Protest and Request. Consultants may submit a written protest of anything contained in the Solicitation Document, pursuant to the procedures provided under Sections 36.2 and 36.5.

40.5.2 Protest of Consultant Selection. LTD shall provide to all Proposers a copy of the selection notice that LTD sent to the highest ranked Proposer. A Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to LTD pursuant to the procedures provided under Section 36.2 and 36.6.

40.6 Cancellation. LTD may cancel a solicitation or reject all Proposals or responses to a Solicitation Document issued pursuant to this Section 40, without liability to LTD at anytime after issuing the Solicitation Document, if LTD determines it is in its best interest to do so, as determined by LTD. Consultants responding to a Solicitation Document are solely responsible for all costs they may incur in connection with submitting Proposals.

SECTION 41. Public Improvement Contracts.

- 41.1 Application.** This Section 41 applies to Public Improvement Contracts and addresses matters covered in ORS Chapter 279C, except for Architectural, Engineering, Land Surveying, and Related Services, which are addressed in Section 40. LTD shall follow all applicable sections of these Rules, including those for IFB and RFP procurements, in connection with the procurement of Public Improvement Contracts except to the extent this Section 41 requires alternate or additional procedures.
- 41.2 Construction Contracts other than Public Improvements.** LTD may enter into Contracts for minor alteration, ordinary repair, or maintenance of Public Improvements, as well as any other construction Contract that is not defined as a “Public Improvement” under ORS 279A.010, in accordance with the provisions these Rules applicable to trade services.
- 41.3 Competitive Procurement.** LTD shall solicit Bids for Public Improvement Contracts by IFB, except as otherwise allowed or required pursuant to these Rules, ORS 279C.335, and federal statutes and regulations.
- 41.4 Exceptions.** As provided above in Section 41.3, all Public Improvement Contracts shall be based upon competitive Bids except:
- 41.4.1** A Contract for a Public Improvement if the value of such Contract is less than \$5,000. In awarding a Contract under this Section 41.4.1, LTD shall follow the procedures for Small Procurements set forth in Section 6.6.
- 41.4.2 Emergency Contracts.** Pursuant to ORS 279C.335(5) and this Section 41.4.2, LTD may declare that emergency circumstances exist that require prompt execution of a Contract for emergency construction or repair work. In awarding an Emergency Contract under this Section 41.4.2, LTD shall follow the procedures for Emergency Contracts set forth in Section 6.9. Further, pursuant to ORS 279C.380(4) and this Section 41.4.2, the emergency declaration may also state that LTD waives the requirement of furnishing a performance bond and payment bond for the Emergency Contract.
- 41.4.3 Intermediate Procurements.** Public Improvement Contracts estimated by LTD not to exceed \$100,000, or not to exceed \$50,000 in the case of Contracts for highways, bridges, and other transportation projects, may be awarded in accordance with intermediate level procurement procedures set forth in this Section 41.4.3. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this Section 41.4.3 or to circumvent competitive procurement requirements under the Section 41.3. Intermediate procurements under this Section 41.4.3 need not be made through IFB process. However, nothing in this Section 41.4.3 may be construed as prohibiting LTD from conducting a procurement that does not exceed the thresholds in Section 41.4.3 under an IFB process. LTD shall follow the procedures set forth below in procuring a Public Improvement Contract under this Section 41.4.3:
- a. Selection Criteria.** The selection criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility, and similar factors.

- b. **Request for Quotes.** LTD shall utilize written requests for quotes whenever reasonably practicable. Written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. When requesting quotations orally, prior to requesting the price quote LTD shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. For Public Works Contracts, oral quotations may be utilized only in the event that written copies of the prevailing wage rates are not required by the Bureau of Labor and Industries.
- c. **Number of Quotes; Record Required.** LTD shall seek at least three competitive quotes and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available LTD shall make a written record of the effort made to obtain those quotes.
- d. **Award.** If LTD awards a Contract, LTD shall award the Contract to the prospective Contractor whose quote will best serve LTD's interests, taking into account the announced selection criteria. If Award is not made to the Offeror offering the lowest price, LTD shall make a written record of the basis for Award.
- e. **Amendments.** A Contract awarded under this Section 41.4.3 may be amended only if the total price of the Contract after the increase does not exceed the thresholds set forth in this Section 41.4.3.

41.4.4 LTD may exempt other Public Improvement Contracts or a class of Public Improvement Contracts from the competitive bidding requirements of this Section 41.4 upon approval of the following findings:

- a. It is unlikely that the exemption will encourage favoritism in the awarding of Public Improvement Contracts or substantially diminish competition for Public Improvement Contracts; and
- b. The awarding of Public Improvement Contracts under the exemption will result in substantial cost savings to LTD. In making the finding, LTD may consider the type, cost, and amount of the Contract, the number of persons available to Bid, and such other factors as may be deemed appropriate.
- c. In making findings to support an exemption for a class of Public Improvement Contracts, LTD shall clearly identify the class using the classes defining characteristics, including project descriptions and locations, time periods, contract values, and other factors that distinguish the class from LTD's overall construction program. However, LTD may not distinguish a class solely based on its funding sources or its method of procurement.

In granting exemptions under this Section 41.4.4, LTD shall, when appropriate, direct the use of alternate contracting methods that take account of market realities and modern practices and are consistent with the public policy of encouraging competition.

Before final adoption of Findings exempting a Public Improvement Contract or class of Public Improvement Contracts under this section, LTD shall hold a public hearing. Notification of the public hearing shall be published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days prior to the hearing. The notice shall state that the public hearing is for the purpose of taking comments on LTD's draft Findings for an exemption from the Competitive Procurement requirement. At the time of the notice, copies of the draft Findings shall be made available to the public. At the option of LTD, the notice may describe the process by which the Findings are finally adopted and may indicate the opportunity for any further public comment. At the public hearing, LTD shall offer an opportunity for any interested party to appear and present comment. If LTD is required to act promptly due to circumstances beyond its control that do not constitute an emergency, notification of the public hearing can be published simultaneously with LTD's solicitation of offers, as long as responses to the solicitation are due at least five (5) days after the meeting and approval of the Findings.

41.5 Solicitation Documents. Pursuant to ORS 279C.365 and this Section 41.5, in addition to the information required under Section 9.1, the Solicitation Document for a Public Improvement project shall include the following:

41.5.1 Identification of the Public Improvement project, including the character of the work, applicable plans, specifications, and other contract documents;

41.5.2 A statement that LTD will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the CCB, or is licensed by the State Landscape Contractors Board, as applicable and as required by law; and

41.5.3 Whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects.

41.5.4 As set forth in Section 17, a requirement for Offer Security to be submitted concurrently with the Offer.

41.6 Evaluation Process. In addition to the evaluation factors set forth in Section 9.3, LTD, if the Solicitation Document is an RFP, may include the following additional evaluation factors set forth in Section 41.12.

41.7 Construction Contract Provisions. In addition to the information required under Section 9.2, the Solicitation Document for a Public Improvement project shall include all contract terms and conditions, including warranties, insurance, and bonding requirements, that LTD considers appropriate for the Public Improvement project. LTD must also include the following provisions required by Oregon law as follows:

41.7.1 Payment of claims by public officers in compliance with ORS 279C.515;

41.7.2 Environmental and natural resources regulations in compliance with ORS 279C.525;

- 41.7.3 Claims for overtime in compliance with ORS 279C.545;
- 41.7.4 If the Contract is for a Public Improvement, a condition that the Contractor shall demonstrate it has established a drug-testing program for employees in compliance with ORS 279C.505(2);
- 41.7.5 Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515;
- 41.7.6 Person's right to file a complaint with the CCB for all Contracts related to a Public Improvement Contract in compliance with ORS 279C.515;
- 41.7.7 Fee paid to BOLI, if applicable, in compliance with ORS 279C.830(2);
- 41.7.8 Prompt payment policy in compliance with ORS 279C.570;
- 41.7.9 Contractor's relations with subcontractors in compliance with ORS 279C.580;
- 41.7.10 Notice of claim in compliance with ORS 279C.605;
- 41.7.11 Contractor's certification that all subcontractors performing work described in ORS 701.005(2) (i.e., construction work) will be registered with the CCB or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract;
- 41.7.12 Progress payments in compliance with ORS 279C.570; and
- 41.7.13 Retainage in compliance with ORS 279C.550 to 279C.570.

41.8 First-Tier Subcontractors: Disclosure and Substitution.

41.8.1 Required Disclosure. Within two (2) working hours after the Closing Date on an IFB for a Public Improvement having a contract price anticipated by LTD to exceed \$100,000, all Bidders shall submit to LTD a disclosure form as described by this Section 41.8, identifying any first-tier subcontractors (those entities that would be contracting directly with the prime Contractor) that will be furnishing labor or labor and materials on the Contract, if awarded, whose subcontract value would be equal to or greater than:

- a. Five percent (5%) of the total contract price, but at least \$15,000; or
- b. \$350,000, regardless of the percentage of the total contract price.

41.8.2 Bid Closing, Disclosure Deadline, and Bid Opening. For each IFB to which this Section 41.8 applies, LTD shall:

- a. Receive Bids until the time identified as the Closing Date and at the location described in the IFB;

- b. Set a subsequent time and place for Bid opening, which time is at least two (2) working hours after the Closing Date; and
- c. Consider for contract award only those Bids for which the required disclosure has been submitted by the announced deadline on forms prescribed by LTD.

41.8.3 Bidder Instructions and Disclosure Form. For purposes of this rule, LTD in its procurement for competitive Bids shall:

- a. Prescribe the disclosure form that must be utilized, substantially in the form set forth in ORS 279C.370(2); and
- b. Provide instructions in a notice substantially similar to the following:

"Instructions for First-Tier Subcontractor Disclosure"

Bidders are required to disclose information about certain first-tier subcontractors when the Contract value for a Public Improvement is greater than \$100,000 (see ORS 279C.370). Specifically, when the Contract amount of a first-tier subcontractor furnishing labor or labor and materials would be greater than or equal to: (i) five percent (5%) of the project Bid, but at least \$15,000, or (ii) \$350,000 regardless of the percentage, the Bidder must disclose the following information about that subcontract either in its Bid submission or within two hours after Bid closing:

- (1) The subcontractor's name;
- (2) The category of work that the subcontractor would be performing; and
- (3) The dollar value of the subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to indicate "NONE" on the accompanying form.

LTD MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE. (See LTD Rules Section 41.8.3.)

41.8.4 Submission. A Bidder shall submit the disclosure form required by this Section 41.8 either in its Bid submission or within two working hours after the Closing Date in the manner specified by the IFB.

41.8.5 Responsiveness. Compliance with the disclosure and submittal requirements of ORS 279C.370 and this Section 41.8 is a matter of responsiveness. Bids which are submitted by the Closing Date, but for which the disclosure submittal has not been made by the specified deadline, are not responsive and shall not be considered for contract award.

41.8.6 LTD Role. LTD shall obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and this Section 41.8. LTD shall also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. LTD is not required to determine the accuracy or completeness of the information provided on the disclosure forms.

41.8.7 Substitution. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585. LTD shall accept written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, LTD does not have a statutory role or duty to review, approve, or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the CCB on improper substitution. However, LTD is not precluded from making related inquiries or investigating complaints in order to enforce contract provisions that require compliance generally with laws, rules, and regulations.

41.9 Prequalification. LTD may, in accordance with these Rules and ORS 279C.430, permit or require prospective Offerors to prequalify. If LTD permits or requires Offerors to prequalify, LTD shall provide the following:

41.9.1 The information required to be submitted by the prospective Offerors;

41.9.2 The form(s) and application(s) to be used by the prospective Offerors seeking prequalification;

41.9.3 The time for submitting an application for prequalification;

41.9.4 The period of time the prequalification will be valid; and

41.9.5 The type and nature of the Contract(s) that the prospective Offeror will be qualified to compete for.

The deadline for receipt of prequalification applications must be set long enough after the date the notice of prequalification is issued or advertised to allow prospective Offerors a reasonable opportunity to complete and submit the application materials. In no event may the deadline be set earlier than fifteen (15) days after the issue date of the notice of prequalification.

If an Offeror is currently prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Offeror shall be refutably presumed to be qualified to perform substantially similar Contracts for LTD.

LTD shall approve or deny each application in accordance with ORS 279C.430 and 279C.450 and this Section 41.

In determining whether to approve an application, LTD may only consider the applicable standards set forth in ORS 279C.375(3).

If LTD subsequently has reasonable cause to believe that there has been a substantial change in the condition of a prospective Offeror, heretofore prequalified, who is no longer qualified or is less qualified, LTD may revoke or revise or reissue the prequalification upon reasonable notice to the prospective Offeror. The notice shall state the reasons found under ORS 279C.375(3) for revocation or revision of the prequalification and shall inform the Offeror of its right to a hearing under ORS 279C.445 and 279C.450. A revocation or revision does not apply to any Contract for which advertisement of a Solicitation Document commenced prior to the date the notice of revocation or revision was received by the prequalified prospective Offeror.

Any information submitted by an Offeror or prospective Offeror in connection with an application for prequalification that the Offeror deems confidential and/or a trade secret shall clearly be labeled "confidential trade secret."

Any prospective Offeror who wishes to appeal a revocation or revision may do so in accordance with ORS 279C.445 and 279C.450.

41.10 Disqualification of Prospective Offerors.

41.10.1 LTD may disqualify prospective Offerors from consideration of the award of a Contract by LTD for the reasons set forth in ORS 279C.440(2) after providing notice and the opportunity for hearing as set forth in ORS 279C.445 and 279C.450.

41.10.2 In lieu of the disqualification process described in Section 41.10.1, LTD may petition the CCB to disqualify a person from consideration for award of LTD's Public Improvement Contracts for the reasons listed in this Section 41.10 and ORS 279C.440(2). The CCB shall provide the Person with notice and a reasonable opportunity to be heard.

41.10.3 If LTD seeks to disqualify a prospective Offeror under Section 41.10.1, LTD shall provide such notice required under ORS 279C.440, in writing, personally delivered or sent by registered or certified mail, to the prospective Offeror. The notice shall specify the following:

- a. That LTD intends to disqualify the prospective Offeror;
- b. The reasons for the disqualification;
- c. The period of disqualification, which period may not be longer than three (3) years; and
- d. A statement of the prospective Offeror's appeal rights and appeal deadlines.

41.10.4 If LTD disqualifies a prospective Offeror under Section 41.10.1, LTD shall notify the prospective Offeror, in writing, personally delivered or sent by registered or certified mail, of the debarment of the Offeror. The notice shall specify the following:

- a. The effective date and period of the disqualification;

- b. The reasons for the disqualification; and
- c. A statement of the disqualified Offeror's appeal rights and appeal deadlines.

41.10.5 Notwithstanding the limitation on the term for disqualification in ORS 279C.44(1)(c), LTD may determine that a previously disqualified Offeror is not responsible prior to award of a Contract.

41.10.6 LTD may attribute improper conduct of a Person or its affiliate or affiliates having a Contract with a prospective Offeror to the prospective Offeror for purposes of disqualification where the impropriety occurred in connection with the Person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective Offeror.

41.10.7 If a prospective Offeror wishes to appeal a disqualification by LTD, such prospective Offeror may do so in accordance with ORS 279C.445 and 279C.450.

41.10.8 If the procurement is funded by the Federal Transit Administration, the prequalification terms must be modified to meet the standards outlined in 4220.1f, as amended.

41.11 Protest and Judicial Review Procedures. The protest procedures set forth in Section 36 shall be applicable to the procurement and award of Public Improvement Contracts under this Section 41.

41.12 Alternative Contracting Methods. Alternate contracting methods allow for innovative procurement techniques for obtaining Public Improvement Contracts, utilizing processes other than the traditional method of "Design-Bid-Build" (with award based solely on price, in which a final design is issued with formal Bid documents, construction services are obtained by sealed Bid awarded to the lowest Responsive, Responsible Bidder, and the project is built in accordance with those documents). Two common alternate methods include Design-Build contracting, CM/GC forms of contracting.

41.12.1 Definitions.

- a. **Construction Manager/General Contractor (or "CM/GC")** means a form of procurement that results in a Public Improvement Contract for a Construction Manager/General Contractor to undertake project team involvement with design development; constructability reviews; value engineering, scheduling, estimating and subcontracting services; establish a guaranteed maximum price ("GMP") to complete the Contract; act as general contractor; hold all subcontracts, self-perform portions of the Work as may be allowed by LTD under the CM/GC Contract; coordinate and manage the building process; provide general contractor expertise; and act as a member of the project team along with LTD, architect/engineers and other consultants.

- b. **Design-Build** means a form of procurement that results in a Public Improvement Contract in which the construction contractor also provides or obtains specified design services, participates on the project team with LTD, and manages both design and construction. In this form of Contract, a single Person provides LTD with all of the services necessary to both design and construct the project.

41.12.2 Use of Alternative Contracting Methods. As provided above in Section 41.3 and ORS Chapter 279C Public Improvement Contracts should be competitively Bid unless a statutory exemption applies or LTD has exempted a individual or class of Contracts in accordance with ORS 279C.335 and Section 41.4. LTD may utilize an alternate contracting method and an alternative contracting method only if authorized in accordance with ORS 279C.335, 279C.400 to 279C.410, and Section 41.4.

41.12.3 Evaluation Factors. In addition to the evaluation factors for RFPs set forth in these Rules, LTD may also include the following evaluation factors if using an alternate contracting method:

- a. In CM/GC contracting, factors may include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, coordination of multiple disciplines, the time required to commence and complete the improvement, and related matters that affect cost or quality.
- b. In Design-Build contracting, in addition to Section 41.12.3, factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience, and related matters that affect cost or quality.

41.13 Post-Project Evaluation. ORS 279C.355 requires that LTD prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive Bidding process was not used. The purpose of this evaluation is to determine whether it was actually in LTD's best interest to use an alternative contracting method or RFP. The evaluation must be delivered to the LTD/CRB within thirty (30) days of the date LTD "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

- 41.13.1** Financial information, consisting of cost estimates, any guaranteed maximum price, changes, and actual costs;
- 41.13.2** A narrative description of successes and failures during design, engineering, and construction; and
- 41.13.3** An objective assessment of the use of the alternative contracting method or RFP as compared to the exemption Findings.

41.14 Design-Build Contracts.

41.14.1 General. The Design-Build form of contracting has technical complexities that are not readily apparent. In order to use the Design-Build process, LTD should be able to reasonably anticipate the following types of benefits:

- a. Obtaining, through a Design-Build team, engineering design, plan preparation, value engineering, construction engineering, construction, quality control, and required documentation as a fully integrated function with a single point of responsibility;
- b. Integrating value engineering suggestions into the design phase, as the construction contractor joins the project team early with design responsibilities under a team approach, with the potential of reducing Contract changes;
- c. Reducing the risk of design flaws, misunderstandings, and conflicts inherent in construction contractors building from designs in which they have had no opportunity for input, with the potential of reducing Contract claims;
- d. Shortening project time as construction activity (early submittals, mobilization, subcontracting, and advance Work) commences prior to completion of a "Biddable" design, or where a design solution is still required (as in complex or phased projects); or
- e. Obtaining innovative design solutions through the collaboration of the Contractor and design team, which would not otherwise be possible if the Contractor had not yet been selected.

41.14.2 Selection. Design-Build selection criteria may include those factors set forth above in Section 41.12.3.

41.14.3 Licensing. If a Design-Build Contractor is not an Oregon licensed design professional, LTD shall require that the Design-Build Contractor disclose in its written Offer that it is not an Oregon licensed design professional, and identify the Oregon licensed design professional(s) who will provide design services. See ORS 671.030(5) regarding the offer of architectural services and ORS 672.060(11) regarding the offer of engineering services that are appurtenant to construction services.

41.14.4 Performance Security. In addition to the performance security requirements in Section 39 above, ORS 279C.380(1)(a) provides that for Design-Build Contracts the surety's obligation on performance bonds, or the Bidder's obligation on cashier's or certified checks accepted in lieu thereof, includes the preparation and completion of design and related Personal Services specified in the Contract. This additional obligation, beyond performance of construction services, extends only to the provision of Personal Services and related design revisions, corrective work and associated costs prior to final completion of the Contract (or for such longer time as may be defined in the Contract). The obligation is not intended to be a substitute for professional liability insurance and does not include errors and omissions or latent defects coverage.

41.14.5 Contract Requirements. LTD shall include the following requirements in its Design-Build contracting practices:

- a. **Design Services.** The level or type of design services required must be clearly defined within the Procurement documents and Contract, along with a description of the level or type of design services previously performed for the project. The services to be performed shall be clearly delineated as either design Specifications or performance standards, and performance measurements must be identified.
- b. **Professional Liability.** The Contract shall clearly identify the liability of design professionals with respect to the Design-Build Contractor and LTD, as well as requirements for professional liability insurance.
- c. **Risk Allocation.** The Contract shall clearly identify the extent to which LTD requires an express indemnification from the Design-Build Contractor for any failure to perform, including professional errors and omissions, design warranties, construction operations, and faulty work claims.
- d. **Warranties.** The Contract shall clearly identify any express warranties made to LTD regarding characteristics or capabilities of the completed project (regardless of whether errors occur as the result of improper design, construction, or both), including any warranty that a design will be produced that meets the stated project performance and budget guidelines.
- e. **Incentives.** The Contract shall clearly identify any economic incentives and disincentives, the specific criteria that apply, and their relationship to other financial elements of the Contract.
- f. **Honoraria.** If allowed by the RFP, honoraria or stipends may be provided for early design submittals from qualified finalists during the solicitation process on the basis that LTD is benefited from such deliverables.
- g. **Brooks Act.** If the cost of design exceeds the construction cost, the Brooks Act will be used to select the Design Build Contractor.

41.15 Construction Manager/General Contractor (CM/GC).

41.15.1 General. The CM/GC form of contracting is a technically complex project delivery system. LTD should use this contracting method only with the assistance of knowledgeable staff or consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting, and project management. Unlike the Design-Build form of contracting, the CM/GC form of contracting does not contemplate a "single point of responsibility" under which the Contractor is responsible for successful completion of all work related to a performance specification. The CM/GC has defined contract obligations, including responsibilities as part of the project

team along with LTD and design professional, although in CM/GC there is a separate contract between LTD and design professional. In order to utilize the CM/GC method, LTD should be able to reasonably anticipate the following types of benefits:

- a. **Time Savings.** The Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. LTD may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;
- b. **Cost Savings.** Early Contractor input during the design process is expected to contribute to significant cost savings. LTD may consider value engineering, building systems analysis, life cycle costing analysis, and construction planning that lead to cost savings. LTD should specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or
- c. **Technical Complexity.** The Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between LTD, design professionals, and Contractor, in which the Contractor will assist in addressing specific project challenges through preconstruction services. LTD may consider the need for Contractor input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects, and projects requiring complex phasing or highly coordinated scheduling.

41.15.2 Selection. CM/GC selection criteria may include those factors set forth above in Section 41.12.3.

41.15.3 Basis for Payment. The CM/GC process adds specified construction manager services to traditional general contractor services, requiring full Contract performance within a negotiated guaranteed maximum price ("GMP"). The basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for work and services rendered, which together shall not exceed the GMP.

41.15.4 Performance Security. In addition to the performance security requirements in Section 39 above, ORS 279C.380(2) provides that for CM/GC contracts, in which a GMP may be established by an amendment authorizing construction period services following preconstruction period services, Contractor shall provide the performance security required by ORS 279C.380(1) and Section 39, upon execution of an amendment establishing the GMP. LTD shall also require Contractor to provide bonds equal to the value of construction services authorized by any early work amendment in advance of the GMP amendment. Such bonds must be provided before construction starts.

41.15.5 Contract Requirements. LTD shall include the following requirements in its CM/GC contracting practices:

- a. **Setting the GMP.** The GMP shall be set at an identified time consistent with industry practice, after supporting information reasonably considered necessary to its use has been developed, and the supporting information shall define with particularity both what is included and excluded from the GMP. A set of drawings and Specifications shall be produced establishing the GMP scope.
- b. **Adjustments to the GMP.** The Contract shall clearly identify the standards or factors under which changes or additional work will be considered outside of the work scope that warrants an increase in the GMP, as well as criteria for decreasing the GMP. The GMP shall not be increased without a concomitant increase to the scope defined at the establishment of the GMP or most recent GMP amendment.
- c. **Cost Savings.** The Contract shall clearly identify the disposition of any cost savings resulting from completion of the work below the GMP; that is, under what circumstances, if any, the CM/GC might share in those cost savings, or whether they accrue only to LTD's benefit.
- d. **Cost Reimbursement.** The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, including any category of "General Conditions" (a general grouping of direct costs that are not separately invoiced, subcontracted, or included within either overhead or fee), and may also incorporate a mutually-agreeable cost-reimbursement standard.
- e. **Audit.** Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated, and reasonable.
- f. **Fee.** Compensation for the CM/GC's services shall be paid on the basis of a fee that is inclusive of profit, overhead, and all other indirect or non-reimbursable costs. Costs determined to be included within the fee should be expressly defined wherever possible. The fee, first expressed as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount when the GMP is established.
- g. **Incentives.** The Contract shall clearly identify any economic incentives, the specific criteria that apply, and their relationship to other financial elements of the Contract (including the GMP).
- h. **Early Work.** The RFP shall clearly identify, whenever feasible, the circumstances under which any of the following activities may be authorized and undertaken for compensation prior to establishing the GMP:

- (1) Early Procurement of materials and supplies;
 - (2) Early release of Bid packages, such as for site development; and
 - (3) Other advance Work related to critical components of the Contract.
- i. **Subcontractor Selection.** The Contract shall clearly describe the methods by which the CM/GC shall publicly receive, open, and record Bids or price quotations, and competitively select subcontractors to perform the contract work based upon price, as well as the mechanisms by which LTD may waive those requirements. The documents shall also describe completely the methods by which the CM/GC and its affiliated or subsidiary entities may compete to perform the work.
 - j. **Subcontractor Approvals and Protests.** The Contract shall clearly establish whether LTD must approve subcontract awards, and to what extent, if any, LTD will resolve procurement protests of subcontractors and suppliers. In any event, LTD shall retain the right to monitor the subcontracting process in order to protect LTD's interests.
 - k. **CM/GC Self-Performance.** Whenever feasible, the Contract shall establish the elements of work the CM/GC may self-perform without competition, including, for example, the work of the job-site general conditions. In the alternative, the Contract shall include a process for LTD approval of CM/GC self-performance.
 - l. **Socio-Economic Programs.** The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and LTD.

41.16 Contract Suspension, Termination, and Cancellation Procedures.

41.16.1 Suspension of Work. In the event LTD suspends performance of work for any reason considered by LTD to be in the public interest other than a labor dispute, the Contractor shall be entitled to a reasonable extension of contract time, and to reasonable compensation for all costs, including a reasonable allowance for related overhead, incurred by the Contractor as a result of the suspension.

41.16.2 Termination by Mutual Agreement. LTD and the Contractor may terminate the Contract or a divisible portion thereof if:

- a. LTD suspends work under the contract for any reason considered to be in the public interest (other than a labor dispute, or any judicial proceeding relating to the work filed to resolve a labor dispute);

- b. Circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work; and
- c. When a contract, or any divisible portion thereof, is terminated pursuant to this Section 41.16, LTD shall pay the Contractor a reasonable amount of compensation for preparatory work completed, and for costs and expenses arising out of termination. LTD shall also pay for all work completed, based on the contract price. Unless the work completed is subject to unit or itemized pricing under the Contract, payment shall be calculated based on percent of contract completed. No claim for loss of anticipated profits will be allowed.

41.16.3 Public Interest Termination. LTD may include in its contracts terms detailing the circumstances under which the Contractor shall be entitled to compensation as a matter of right in the event LTD unilaterally terminates the Contract for any reason considered by LTD to be in the public interest.

41.16.4 Responsibility for Completed Work. Termination of the Contract or a divisible portion thereof shall not relieve the Contractor of responsibility for the work completed, nor shall it relieve the surety of its obligation for any just claims arising from the work performed.

41.16.5 Remedies Cumulative. LTD may, at its discretion, avail itself of any or all of rights or remedies set forth in these Rules, in the Contract or available at law or in equity.

41.17 Waiver of Delay Damages Against Public Policy. Any clause in a Public Improvement Contract purporting to waive, release, or extinguish the rights of a Contractor to damages resulting from LTD's unreasonable delay in performing the Contract is void and unenforceable, as against public policy. However, contract provisions requiring notice of delay, providing for alternative dispute resolution such as arbitration or mediation, providing other procedures for settling contract disputes, or providing for reasonable liquidated damages, are enforceable.

41.18 Advance Payments. The use of FTA funds for payments in advance of the incurrence of costs by the contractor is generally prohibited, without prior written approval from FTA. FTA does permit advance payments from FTA funds for those purchases where advance payment is customary in the commercial marketplace such as utility services, rents and subscriptions. FTA approval of such advance payments is required when the amount exceeds \$100,000. LTD should not make advance payments using other funds (including local match funds) except where (a) it is customary in the industry, or (b) there are sound business reasons (e.g., to enable a more cost-effective pricing structure) for doing so; in the latter case, the file shall be documented to fully justify the advance payment.

41.18 Progress Payments.

41.18.1 Request for Progress Payments. Progress payments are to be made only for costs incurred in the performance of the contract. When progress payments are used, LTD must obtain title to property or other adequate security for the amount of the progress payment. Progress payments for construction contracts may be made on a percentage of completion basis; this method may not be used for non-construction contracts.

LTD shall make a progress payment to the Contractor, which progress payment shall be equal to: (i) the value of completed work; (ii) less such amounts as may have been previously paid; (iii) less such other amounts as may be deductible or as may be owing and due to LTD for any cause; and (iv) less the appropriate amount of retainage.

41.18.2 Progress Payments Do Not Mean Acceptance of Work. Progress payments shall not be construed as an acceptance or approval of any part of the work, and they shall in no manner relieve the Contractor of responsibility for defective workmanship or material.

41.19 Retainage in Public Improvement Contracts.

41.19.1 Retainage of Five Percent. The amount to be retained from any given progress payment will be such that when added to the sum of amounts previously retained will equal not more than five percent (5%) of the estimated value of completed work. If Contractor has performed at least fifty percent (50%) of the work and the work is progressing satisfactorily, upon Contractor's submission of a written application containing the surety's written approval, LTD may, in its discretion, reduce or eliminate retainage on any remaining progress payments. LTD shall respond in writing to all such applications within a reasonable time. When the contract work is ninety-seven and a half percent (97.5%) completed, LTD may, in its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the uncompleted contract work. LTD may at any time reinstate retainage. Retainage shall be included in the final payment of the contract price.

41.19.2 Deposit in Interest-Bearing Accounts. Upon written request of the Contractor, LTD shall deposit any amounts withheld as retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association for the benefit of LTD. Earnings on such account shall accrue to the Contractor.

41.19.3 Recovery of Costs. LTD may recover from Contractor all costs incurred in the proper handling of cash retainage, by reductions of the final payment.

41.20 Interest.

41.20.1 Prompt Payment Policy. LTD shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.

41.20.2 Interest on Progress Payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of thirty (30) days after receipt of invoice or fifteen (15) days after LTD's approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of thirty percent (30%).

41.20.3 Interest on Final Payment. Final payment on the contract price, including retainage, shall be due and owing no later than thirty (30) days after contract completion and acceptance of the work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent (1.5%) per month until paid.

41.20.4 Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty (30) days after the Contractor submitted a claim for payment to LTD in writing or otherwise in accordance with the contract requirements.

41.21 Final Inspection.

41.21.2 Notification of Completion. When the Contractor determines that all work on the project has been completed, the Contractor shall so notify LTD in writing. LTD shall inspect the project and project records within fifteen (15) days of receiving Contractor's notice of completion. If, at such inspection, all work under the Contract is complete and satisfactory to LTD, and all certifications, bills, forms, and documents have been submitted properly, such inspection shall constitute the final inspection.

41.21.2 Instructions to Complete the Work. If, however, at any inspection, LTD finds any work, in whole or in part, unsatisfactory, or finds that all certifications, bills, forms, and documents have not been submitted properly, LTD shall within fifteen (15) days from receipt of notice of completion from the Contractor, provide instructions to the Contractor on outstanding requirements to complete the project. At such time as the Contractor determines full compliance with, and the execution of such instructions, the Contractor shall notify LTD in writing. LTD shall make another inspection within fifteen (15) days after such notice to determine if all required contract work has been completed satisfactorily. This process will continue until LTD finds that all work required under the Contract has been completed satisfactorily.

41.22 LTD Payment for Unpaid Labor or Supplies.

41.22.1 Contract Incomplete. If the Contract is still in force, LTD may, in accordance with ORS 279C.515(1), pay a valid claim to a Person furnishing the labor or services, and charge the amount against payments due or to become due to

the Contractor under the Contract. If LTD chooses to make such a payment as provided in ORS 279C.515(1), the Contractor and the Contractor's surety shall not be relieved from liability for unpaid claims.

41.22.2 Contract Completed. If the Contract has been completed and all funds disbursed to the prime Contractor, all claims shall be referred to the Contractor's surety for resolution. LTD shall not make payments to subcontractors or suppliers for work already paid for by LTD.

41.23 Liquidated Damages.

41.23.1 Risk Management . LTD shall determine whether to use or not to use a liquidated damages provision for a specific procurement as part of an overall risk management program.

41.23.2 Calculation. The amount of liquidated damages must be reasonably calculated to reflect anticipated damages LTD might suffer as the result of an inadequacy or delay in contract performance, and such damages would be difficult or impossible to determine.

41.23.3 Measurement. Liquidated damages may be imposed for an entire contract or for a readily identifiable milestone or deliverable, and the measurement period may be other than a day, where appropriate.

41.23.4 Solicitation Requirements. If it is determined that a liquidated damages provision will be included, the solicitation shall identify with specificity the circumstances in which the liquidated damages will be imposed and the rate to be charged. The file shall document the derivation of the rate of assessment and ensure it is reasonable, proper, and not arbitrary or punitive.

41.23.5 Recovery Credited to Project. All liquidated damages recovered under an FTA-funded contract will be credited to the project unless FTA agrees otherwise.

SECTION 42. Public Works Contracts.

42.1 Generally. ORS 279C.800 to 279C.870 regulates Public Works Contracts, as defined in ORS 279C.800(5), and requirements for payment of prevailing wage rates. Also see administrative rules of the Bureau of Labor and Industries (BOLI) at OAR Chapter 839.

42.2 Required Contract Conditions. As detailed in the above statutes and rules, every Public Works Contract must contain the following provisions:

42.2.1 LTD's authority to pay certain unpaid claims and charge such amounts to Contractors, as set forth in ORS 279C.515(1).

42.2.2 Maximum hours of labor and overtime, as set forth in ORS 279C.520(1).

42.2.3 Employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2).

- 42.2.4** Contractor required payments for certain services related to sickness or injury, as set forth in ORS 279C.530.
- 42.2.5** Requirement for payment of prevailing rate of wage, as set forth in ORS 279C.830(1).
- 42.2.6** Requirement for payment of fee to BOLI, as set forth in ORS 279C.830(2) and administrative rule of the BOLI commissioner.
- 42.2.7** Requirement that the Contractor and every subcontractor must have a Public Works bond, as set forth in ORS 279C.830(3), filed with the CCB prior to commencing any work on the project, unless otherwise exempt as provided under ORS 279C.830.
- 42.2.8** Notwithstanding Section 41.7.13 and ORS 279C.555, if a Contractor is required to file certified payroll statements and fails to do so, then pursuant to ORS 279C.845(7), LTD shall retain twenty-five percent (25%) of any amounts earned by Contractor on a Public Works Contract until Contractor has filed such statements with LTD. LTD shall pay Contractor the amount retained under this section within fourteen (14) days after Contractor files all required certified statements, regardless of whether a subcontractor has failed to file certified statements as required under ORS 279C.845. LTD shall not be required to verify the truth of the contents of Contractor's certified statements.

42.3 Requirements for Specifications. The specifications for every Public Works Contract, consisting of the procurement package (such as the Project Manual, Bid or Proposal Booklets, Request for Quotes or similar procurement specifications), must contain the following provisions:

- 42.3.1** The prevailing rate of wage, as required by ORS 279C.830(1), physically contained within or attached to hard copies of procurement specifications, and by a downloadable direct link to the specific wage rates that apply to the project (either on LTD's Web site or the BOLI Web site) when procurement specifications are also made available in electronic format.
- 42.3.2** Reference to payment of fee to BOLI, as required by ORS 279C.830(2).
- 42.3.3** If applicable, the federal prevailing wage rate and information concerning whether the state or federal rate is higher in each trade or occupation in each locality, as determined by BOLI in a separate publication.

SECTION 43. Standards of Conduct.

The Rules in this Section 43 are applicable to all LTD officers, employees, board members, or agents engaged in the selection, award, and administration of third-party contracts supported by FTA funds. The Rules in this Section 43 are intended to supplement the State of Oregon Government Ethics law that is applicable to and governs the conduct of all public officers, employees, board members, or agents, and is contained in Chapter 244 of the Oregon Revised Statutes.

43.1 Conflict of Interest. No officers, employees, board members, or agents of LTD shall participate in the selection, award, or administration of a Contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- 43.1.1** The officer, employee, board member, or agent;
- 43.1.2** Any member of their immediate family;
- 43.1.3** His or her partner; or
- 43.1.4** An organization that employs, or is about to employ, any of the above, has a financial or any other interest in the firm selected for award.

Any conflict of interest, real or apparent, must be reported to the General Manager and, if an employee, their immediate supervisor, if applicable. After careful review of the situation, the representative may be disqualified from participating in selection, award, or administration of the Contract involved.

No officers, employees, board members, or agents of LTD shall in any way use their position or office to obtain financial gain for themselves or any member of their household, or any business with which the employee or a member of the employee's household is associated, other than an honorarium or an employee's official salary or reimbursement of expense.

Employees shall not take or divert the funds of LTD to private use of that employee or anyone else.

No officers, employees, board members, or agents of LTD shall seek or hold a substantial undisclosed financial interest in any organization doing business with LTD. It will be the responsibility of each officer, employee, board member, or agent of LTD to review his/her financial holdings and report to the General Manager the nature of any possible conflict, requesting the General Manager to appoint another person to dispose of the matter giving rise to the actual or possible conflict.

No LTD employee or business owned or operated by an LTD employee shall contract with LTD to supply any goods or services.

43.1.5 Organizational Conflict of Interest.

- a. An organizational conflict of interest exists where other activities, relationships, or contracts of a contractor inhibit, affect, or prevent the contractor from rendering impartial assistance or advice to LTD; a contractor's objectivity in performing the contract work is or might be otherwise impaired (e.g., a contractor assisting with a design might have a financial interest in a product or system that could be utilized in implementing that design); or a contractor has an unfair competitive advantage which might be gained through its involvement in writing, or reviewing the solicitation and contract documents, including the scope or specification except as part of a general industry review.

- b. A clause will be added to bidding/proposal documents identifying the potential for organizational conflicts of interest and potential exclusions from future procurement opportunities if applicable.
- c. Specifying only a “brand name” product, without specifying that equivalent products will be accepted and providing salient characteristics or other descriptive information sufficient to allow bidders to identify and propose such equivalent products.
- d. The use of specification requirements and evaluation criteria which unnecessarily favor an incumbent contractor.
- e. Any arbitrary action in the procurement process.

43.2 Gratuities. LTD’s officers, employees, board members, or agents will neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors, potential contractors, or parties to sub-agreements. This does not include unsolicited items of nominal intrinsic value, such as notepads or pens that can be used by all employees. Such items must be added to the supplies inventory for use by all.

Product or service discounts specific to LTD officers, employees, board members, or agents shall be prohibited from personal use by representatives if the discounts come from a vendor who transacts business with LTD. Discount opportunities that are offered to all public officers, employees, board members, or agents are acceptable.

Any LTD officers, employees, board members, or agents who received a gift, gratuity, or promotional merchandise, the acceptance of which would constitute violation of this policy, shall immediately return said gift or gratuity to the donor. Within five (5) working days, the officers, employees, board members, or agents shall report, in writing, to the General Manager the receipt and subsequent return of said gift or gratuity.

43.3 Complaints. Employees who have reason to believe a violation of ethical practices as stipulated herein has occurred are encouraged to pursue their concerns with appropriate supervisory and management staff of LTD.

The General Manager shall investigate any complaints or concerns of violations of this policy. The General Manager may decide not to act on a complaint if there is reason to believe that:

- 43.3.1** Other remedies or avenues for the complaint are available but have not been pursued;
- 43.3.2** The complaint concerns an issue beyond the authority of the General Manager;
- 43.3.3** The complaint is trivial, frivolous, or not made in good faith; or
- 43.3.4** The complaint has been too long delayed to justify examination of the relevant facts.

Upon completion of investigation, the General Manager will advise in writing the findings of the investigation, and any penalties recommended.

43.4 Disciplinary Action. The General Manager shall follow penalties guidelines imposed in ORS Chapter 244. In addition, employees may be subject to disciplinary action up to and including termination from employment. Such disciplinary action shall be consistent with administrative personnel policies and collective bargaining agreements. Contractors who are found to violate the Code of Ethics may have their Contracts terminated and may be banned from providing LTD with goods or services in the future.

SECTION 44. Contract Administration.

44.1 Contract Files. LTD must establish files containing the records of all procurement and contract actions. Contract files should be organized as to allow a file reviewer to reconstruct and understand the history of the procurement and Contract in the absence of the contract administrator. All personnel who deal with the Contractor should maintain records of contract activity, particularly those project personnel who are involved in monitoring the Contractor's performance. Maintenance of records will include notations of any problems or unusual occurrences, so that it is possible to recreate the circumstances surrounding any area of controversy or dispute that might arise.

Different staff will be involved in any particular procurement (maintenance, QA, engineers, inspectors, financial, DBE office, legal, etc.) and each may have their own individual files relating to the contract, reflecting their involvement with the administration of the contract, but it is important for the procurement office to maintain the "official" contract file. The "official" file would include all official correspondence relating to the administration of the contract so as to verify the contractor's adherence to the terms of the contract and demonstrate that the agency is following good administrative practice and sound business judgment in settling all contractual and administrative issues arising during contract performance.

44.2 Monitoring of Contracts. Inspection of goods and services shall be performed routinely during the life of the Contract to ensure conformance with the specifications of the Contract. The reviews and inspections shall be performed as often as is reasonably necessary during the life of the Contract to ensure conformance. Records of such inspections shall be part of the contract file. Inspections and tests shall not unduly delay the work.

For all contracts above the micro-purchase level, the Purchasing Manager will ensure that the contract administration file includes the following:

- The executed contract and notice of award;
- Performance and payment bonds, bond-related documentation, and correspondence with any sureties;
- Contract-required insurance documentation;
- Post-award (pre-performance) correspondence from or to the contractor or other Governmental agencies;
- Notice to proceed;
- Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- Modifications/changes to the contract including the rationale for the change, change orders issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;

- Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority (i.e., FTA, board of directors, executive director) of the settlement amount;
- Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- Documentation relating to contract close-out.
- For micro-purchases, the buyer will ensure that the file contains a receiving report with a signature of the person inspecting and accepting the items delivered. The signature will certify that the items ordered meet the purchase order requirements with respect to quantities ordered/delivered and are of satisfactory quality.

44.3 Contract Administration Functions.

Every type of contract will have different contract administration actions and the documentation required to support that administration will differ as well. Supply contracts have different specific administrative actions than construction contracts do, just as fixed-price contracts are administered differently than cost-reimbursement contracts.

The Purchasing Manager will normally delegate certain contract administration functions to the Project Manager (PM). The delegation must be in writing and must inform the PM what his/her duties are for that specific contract.

When applicable, a delegation of authority document will be executed.

44.4 Written Procurement History. A record shall be maintained detailing the history of a procurement. At a minimum, the records shall include:

- 44.3.1** The rationale for the method of procurement;
- 44.3.2** Selection of contract type;
- 44.3.3** Reasons for Contractor selection or rejections; and
- 44.3.4** The basis for the contract price.

SECTION 45. Lobbying Certification Administration.

All contracts over \$100,000 for which Contractors have filed certification shall be reviewed periodically to determine if Standard Form LLL has been filed. If Standard Form LLL has been filed, it shall be reported, per the instructions, to FTA and updated quarterly. Once Standard Form LLL has been filed with LTD, a copy of the form shall be kept in the contract file, and a tickler file set up to ensure receipt of any subsequent updates.

SECTION 46. Sustainable Purchasing Policy.

46.1 POLICY STATEMENT

Lane Transit District (LTD) recognizes that the products and services it purchases have inherent social, human health, environmental, and economic impacts. The Sustainable

Purchasing Policy will be consistent with the District's Sustainability Policy and meet all requirements of the District's Environmental and Sustainability Management System.

Sustainability considerations are integrated into the procurement process when possible so that procurement decisions can be made that support the overall LTD sustainability principles and goals.

46.2 OBJECTIVES

The objectives of the Sustainable Purchasing Policy are to support the sustainability goals of LTD by integrating environmental factors into LTD's buying decisions, such as the following:

- Replacing disposables with reusables or recyclables
- Supporting eco-labeling practices by buying products bearing such labels in preference to others, when they are available and provide value for money
- Taking into account life-cycle costs and benefits
- Evaluating, as appropriate, the environmental performance of vendors in providing products and services
- Creating a framework for achieving cost savings and efficiency in purchasing
- Managing responsible purchasing, reducing waste and cost of waste removal
- Use of green cleaning products and reduction of toxins to protect employee health

46.3 GUIDING PRINCIPLES

For sustainability to be successfully integrated into LTD purchasing, commitment to action is required at all levels. By making thoughtful decisions and taking necessary precautions at the local level, LTD also supports the future of our regional, national, and global community.

Recognizing that upfront cost remains a factor for LTD in the selection process, sustainable procurement is set within the context of achieving best overall value for money, which requires the consideration of economically feasible environmental, sustainability criteria into the procurement process.

46.4 SUSTAINABLE PROCUREMENT APPROACH

A. Planning Phase. There is the greatest opportunity to consider sustainability criteria at the planning phase of projects.

- 1) Once it has been determined there is an organizational requirement that needs to be met, the following steps toward determining the supplier source and integrating sustainability criteria into good purchasing practice should be taken:

- a) If the goods or services are to be competitively procured, select an appropriate procurement method according to procurement guidelines.
- b) Consider which procurement method will be the most appropriate to solicit best value, including sustainability criteria. Purchasing can advise you on the most appropriate tool to satisfy your requirement.

B. Acquisition Phase (competitive procurements). This phase includes the actual purchase as well as the preparation of solicitation documents, evaluations of proposals, and contract award.

C. Bids/Competitive Quotes for Goods. Within LTD, goods are typically purchased using a bid for small informal procurements or for intermediate procurements of goods up to \$100,000. The selection of vendors is based solely on price; therefore, sustainability considerations must be incorporated into the specifications. Items 1-3 below will apply to all bids; Items 4-5 may be applicable depending upon the goods being purchased and the circumstances:

- 1) Create clear product specifications, including sustainability requirements such as efficiency, recycled content, and third-party certification (e.g., Ecologo, Energy Star, EPEAT).
- 2) Include packaging and delivery requirements that are less damaging to the environment to the extent practicable.
- 3) Consider total cost of ownership and life-cycle costing in preparing product specifications, including the following:
 - Delivery, shipping, and transportation costs
 - Costs to switch from a current product or brand to another
 - Unit operating and support costs (e.g., manpower, energy, parts requirements, scheduled maintenance, and training)
 - Disposal costs
 - Salvage or residual value
 - Other relevant information including test and operational data
- 4) Give preference to goods manufactured with recycled content if the cost does not exceed by more than 5 percent the cost of a similar product with no recycled content or if the product is paper, if the cost of the recycled paper does not exceed the cost of non-recycled paper by more than 15 percent.
- 5) Give preference to goods produced in Oregon whenever offers are received that are identical in price, fitness, availability, and quality. This preference only applies to non-federally funded purchases.

D. Requests for Proposal (RFP). An RFP is typically used to purchase services. Sustainability considerations may be included in the evaluation criteria for these types of solicitations if it is a pertinent criteria to the type of service or product being procured.

If an RFP selection process is used, and if sustainability is a pertinent criteria to the procurement, the evaluation committee could reserve at least 10 percent of the evaluation points for sustainability criteria. The Purchasing Manager has the discretion to exempt procurements from this requirement when deemed appropriate. Where practical, include the sustainable practices of prospective proposers in the evaluation criteria. We must consider whether sustainability criteria will have the effect of limiting participation of qualified Disadvantaged Business Enterprises or Small Business Administration contractors in the solicitation process.

46.5 ROLES AND RESPONSIBILITIES

- A.** The **Purchasing Manager** shall be responsible for appointing a representative who will act as the Sustainable Purchasing Coordinator, to work with the Green Team and incorporate elements of the Sustainability Program into the Sustainable Procurement Program.
- B. Department Directors** shall be responsible for the following:
- Encouraging employee attendance at internal trainings related to sustainable purchasing
 - Encouraging the use of environmentally preferable/sustainable products and services through information dissemination, development of internal procedures, and leading by example
- C. Sustainability Program** shall be responsible for the following:
- Providing guidance with respect to LTD sustainability policies and initiatives and coordinating with Purchasing Manager to ensure that purchasing practices reflect those policies and initiatives
 - Serving as a LTD's internal consulting resource
- D.** The **Purchasing Manager** shall be responsible for the following:
- Coordinating with the Department Sustainable Purchasing Representatives for training
 - Updating purchasing documents, templates, sustainable purchasing Web pages, and other internal procedures so they reference this procedure and incorporate best practices for specifying products and services that meet the intent of this procedure
 - Developing and integrated sustainable purchasing boilerplate language into solicitation document templates
 - Developing and implementing a tracking and reporting mechanism

- Coordinating the development of sustainable purchasing resources including, but not limited to, best practices, standards, specifications, case studies, and other purchasing tools as needed
- Coordinating trainings on sustainable purchasing best practices that meet the intent of this procedure
- Coordinating the collection of information for the purposes of tracking, reporting, and evaluating LTD's sustainable purchasing activities

46.6 REPORTING

The Purchasing Manager will provide project updates through the annual report.

ATTACHMENT A

ALL OR PART OF THIS CONTRACT IS FEDERALLY FUNDED. Contractor shall comply with the following applicable federal regulations in addition to all other specifications, terms and conditions of this Invitation for Bid or Request for Proposal. As used in these regulations, "Contracting Officer" means the Purchasing Administrator employed by LTD.

The following provisions and references can be reviewed in Purchasing.

Contractor shall comply with the following provisions regardless of the contract amount:

<u>Drug and Alcohol Testing</u>	49 CFR Part 40 49 CFR PART 655 49 CFR PART 382
<u>Charter/School Bus Requirements</u>	49 U.S.C. §5323 (d&f) 49 CFR PART 604
<u>Cargo Preference</u>	46 U.S.C. 1241 46 CFR PART 381
<u>Fly America</u>	49 U.S.C. §40118 41 CFR Part 301-10
<u>Seismic Safety</u>	42 U.S.C. 7701 et seq 49 CFR PART 41
<u>Energy Conservation Requirements</u>	42 U.S.C. 6321 et seq 49 CFR PART 18
<u>Bus Testing</u>	49 U.S.C. 5318 (e) 49 CFR PART 665
<u>Pre-Award and Post-Delivery Audit Requirements</u>	49 U.S.C. 5323 (m); 49 CFR Part 663 as amended FTA regulations "Pre-Award and Post-Delivery Audits" 49 CFR PART 663
<u>Access to Records and Reports</u>	49 U.S.C. 5325 18 CFR 18.36 (i) 49 CFR 633.17
<u>Federal Changes</u>	49 CFR PART 18
<u>No Government Obligation to Third Parties</u>	
<u>Program Fraud</u>	31 U.S.C. 3801 49 CFR PART 31 18 U.S.C 1001 49 U.S.C. 5307
<u>ADA Access</u>	42 U.S.C. § 12101 et seq, 29 USC § 794; 49 USC § 5301 (d) Section 504 of the Rehabilitation Act of 1973 as amended FTA C 4702.1A as amended, 49 U.S.C. § 5332
<u>Civil Rights</u>	NUMEROUS, SEE MANUAL
<u>Patent Rights, Rights in Data</u>	37 CFR PART 401; 35 U.S.C. §§ 200 et seq.; 37 CFR Part 401 49 CFR PARTS 18 & 19
<u>Transit Employee Protective Agreements</u>	49 U.S.C. § 5310, § 5311, § 5333 (b) 29 CFR Part 215 as amended
<u>Disadvantaged Business Enterprises</u>	49 CFR PART 26; 49 CFR §18.36 (e); 49 CFR §19.44 (b)
<u>Prompt Payment Requirements</u>	49 CFR PART 26
<u>State and Local Law Requirements</u>	
<u>Incorporation of Federal Transit Administration (FTA)</u>	FTA CIRC 4220.1F, as amended

Contractor shall comply with the following provisions if this is a construction contract exceeding \$2,000:

<u>Davis-Bacon Act</u>	40 U.S.C. § 3141, et.seq. 49 U.S.C. § 5333 (a); 29 CFR 5
<u>Copeland Act</u>	40 U.S.C. § 3145 18 USC § 874

Contractor shall comply with the following provisions if this contract amount exceeds \$10,000:

<u>Recycled Products</u>	42 U.S.C. 6962
(Total purchased in current or previous FY)	40 CFR PART 247, EX. ORDER 12873
<u>Termination</u>	49 U.S.C. PART 18, FTA CIRC 4220.1F as amended

Contractor shall comply with the following provisions if this contract amount exceeds \$25,000:

<u>Government-wide Debarment and</u>	EXECUTIVE ORDERS 12549, 12689
<u>(Suspension Nonprocurement)</u>	31 U.S.C. § 6101; 2 CFR Part 1200

Contractor shall comply with the following provisions of the Federal Acquisition regulations (FAR) if this contract amount exceeds \$100,000:

<u>Buy America Requirements</u>	49 U.S.C. §5323 (j) 49 CFR PART 661
<u>Contract Work Hours and Safety Standards</u>	40 U.S.C. § 3701 et seq.; 40 U.S.C. § 3702 29 CFR Part 5, 29 CFR § 1926
<u>Clean Water</u>	33 U.S.C. 1251 through 1377
<u>Lobbying</u>	31 U.S.C. 1352 49 CFR PART 19 & 20
<u>Bonding Requirements</u>	FTA GRANT AGMT §15.o
<u>Clean Air</u>	42 U.S.C. 7401 et seq 40 CFR 15.61 49 CFR PART 18 49 CFR PART 20
<u>Breach of Contract and Dispute Resolution</u>	49 CFR PART 18, FTA CIRC 4220.1F as amended

CFR = Code of Federal Regulations U.S.C. = United States Code EO = Executive Order
For a full explanation of the clauses, please go to www.ltd.org. The clauses can be found under Business Center and then Purchasing.
Q:\PURCHASE\FORMS\Form - Fed Matrix\Federal Regulations Exhibit_updated 2014.docx

**LANE TRANSIT DISTRICT
RESOLUTION NO. 2014-015**

A Resolution Adopting the
Lane Transit District's Purchasing Policy and Rules

Pursuant to ORS 279.055, Lane Transit District ("LTD") Board of Directors adopted Ordinance No. 30 creating a local contract review board for LTD, which solely consists of the LTD Board of Directors (the "LTD/CRB").

LTD/CRB pursuant to Ordinance No. 30 has the power to adopt, by resolution, rules governing LTD's purchasing and public contracting policy.

LTD/CRB approved LTD's last purchasing and public contracting rules on December 13, 2010, which policy incorporated administrative changes in the Oregon Revised Statutes and the Federal Transit Administration requirements.

LTD has updated the purchasing and public contracting policy to reflect changes in the Oregon State Statutes and the Federal Transit Administration requirements, as well as adding a sustainability section and administrative changes.

LTD/CRB must adopt its amended purchasing and public contracting rules, by resolution, in accordance with LTD Ordinance 30, LTD Sixth Amended Ordinance No. 1, and all other applicable statutes and regulations.

The updated purchasing and public contracting rules are set forth in Exhibit A (the "Purchasing Policy and Rules").

NOW, THEREFORE, BE IT RESOLVED:

LTD/CRB hereby adopts the Purchasing Policy and Rules as set forth in Exhibit A, which is attached hereto and is incorporated herein by this reference; and

LTD/CRB hereby approves any findings and exceptions contained within the Purchasing Policy and Rules attached as Exhibit A.

Adopted by LTD/CRB on the 12th day of May, 2014.

May 12, 2014

Date

LTD/CRB Secretary

RESOLUTION NO. 2014-015

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: BOARD MEMBER REPORTS

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND:

Board members have been appointed to Board committees and to the Metropolitan Policy Committee (MPC), the Lane Council of Governments (LCOG) Board of Directors, and, on occasion, to other local, regional, or national committees. Board members also present testimony at public hearings on specific issues as the need arises. After meetings, public hearings, or other activities attended by individual Board members on behalf of LTD, time will be scheduled on the next Board meeting agenda for an oral report by the Board member. The following activities have occurred since the last Board meeting:

MEETINGS HELD:

Board members may take this opportunity to report briefly on any one-on-one meetings they have held with local officials or other meetings that they have attended on behalf of LTD.

1. **Main Street Projects Governance Committee:** This committee was formed to provide informed direction and collaborative decision making to support the Main-McVay Transit Study and four other concurrent projects along Main Street in Springfield. Board President Doris Towery and Board Member Michael Dubick are LTD's representatives on this committee, which is scheduled to meet on the fourth Thursday of the month. At the April 24 meeting, members finalized appointments of representatives to the Main Street-McVay Transit Study Stakeholder Advisory Committee.
2. **Lane Council of Governments (LCOG) Board of Directors:** LTD Board Member Carl Yeh represents LTD on the LCOG Board of Directors as a non-voting member. The LCOG Board generally meets every other month. At the April 24 meeting, information about member dues and potential increases was shared. The Board also directed the LCOG Board Bylaws Committee to create language that would allow LTD to become a voting member of the LCOG Board.
3. **Metropolitan Policy Committee (MPC):** Board President Doris Towery and Board Member Gary Wildish are LTD's MPC representatives, with Board Member Gary Gillespie serving as an alternate. MPC meetings are held on the first Thursday of each month. At the May 1 meeting, the Committee approved support for Transportation for America's federal transportation funding proposal. The Committee also received a presentation regarding proposed I-5/Beltline Project funding adjustments; and was provided with updates on the Oregon Department of Transportation's Health Policy and on the Scenario Planning project.

NO MEETINGS HELD:

1. **Lane Area Commission on Transportation (LaneACT):** In 2009 the Oregon State Legislature directed Lane County to develop an Area Commission on Transportation (ACT). Commission membership includes representatives from Lane County, cities within the county, Lane Council of Governments, and LTD. Board Member Michael Dubick serves as LTD's representative on this Commission, which meets on the second Wednesday of the month. The next meeting is scheduled to be held on May 14.
2. **Accessible Transportation Committee (ATC):** The 16-member ATC is composed of both consumers and providers who are interested in transportation services for people with disabilities, people with low incomes, and older adults. The Committee meets six to seven times per year on the third Tuesday of the month. Board Member Ed Necker was appointed to the ex officio position representing the LTD Board on this committee. The ATC did not meet in April. The next meeting is scheduled to be held on May 20.
3. **LTD Board Human Resources Committee:** The Board Human Resources Committee is composed of Chair Doris Towery and Board Members Michael Dubick and Gary Wildish, and generally meets on the second Tuesday of the month. The May 13 meeting is canceled. The next meeting is tentatively scheduled to be held on May 27.
4. **EmX Steering Committee:** The EmX Steering Committee generally meets quarterly and is composed of Chair Gary Gillespie, Board President Doris Towery, Board Member Carl Yeh, members of local units of government, and community representatives. The next meeting is scheduled to be held on June 3.
5. **LTD Pension Trusts:** LTD's two pension plans (one for ATU-represented employees and one for administrative employees) are each governed by a board of trustees. The Pension Trustees generally meet quarterly. LTD Board Member Gary Gillespie serves as a trustee for both plans. The next meeting is scheduled to be held on July 23.
6. **Eugene Transportation Community Resource Group (TCRG) for the Eugene Transportation System Plan (TSP):** The TCRG includes community members who have an interest in transportation issues in the City of Eugene. Board Member Ed Necker represents LTD on the TCRG. The next meeting has not been scheduled.
7. **LTD Board Service Committee:** The Board Service Committee is composed of Chair Ed Necker and Board Members Gary Gillespie and Michael Dubick. Meetings are scheduled on an as-needed basis. The next meeting has not been scheduled.
8. **LTD Board Finance Committee:** The Board Finance Committee is composed of Chair Michael Dubick and Board Members Ed Necker and Carl Yeh. Meetings are scheduled on an as-needed basis. The next meeting has not yet been scheduled.
9. **Governor's Oregon Passenger Rail Leadership Council:** Governor Kitzhaber created a leadership council of officials from the Willamette Valley to advise the governor and the Oregon Transportation Commission on a preferred alignment for inter-city passenger rail improvements. LTD Board Member Gary Gillespie represents LTD on the Leadership Council, with LTD General Manager Ron Kilcoyne serving as alternate. The next meeting has not yet been scheduled.

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: EmX STEERING COMMITTEE ENGAGEMENT

PREPARED BY: Tom Schwetz, Planning and Development Manager

ACTION REQUESTED: None. Information Only.

BACKGROUND:

The LTD Board of Directors first established the Bus Rapid Transit Steering Committee in early 1998. The first meeting of the Committee was held on May 14, 1998. The Committee's name was changed to "EmX Steering Committee" in April 2006.

The original charge of the Committee was as follows:

The Bus Rapid Transit (BRT) Steering Committee is charged with providing oversight on LTD's proposed BRT project. BRT is, in essence, using buses to emulate the positive characteristics of a rail system. Steering Committee members have two basic responsibilities:

- 1) Participate in the review and formulation of recommendations regarding the development of the BRT system
- 2) Provide two-way communication links with the group the member represents

As noted in a staff memo from June 5, 2001:

From a staff perspective, the BRT Steering Committee has achieved these goals. The Committee provided recommendations to the LTD Board, the cities, and the county on all key aspects of the Phase 1 Project. Discussions by the Steering Committee helped guide staff efforts on the project and appeared to have a significant influence on decisions by the LTD Board, as evidenced by the fact that every recommendation from the Steering Committee was approved by the Board. The two-way communication between Steering Committee members and the groups they represent was, in most cases, achieved.

That memo continued, recommending that the Steering Committee remain given the ongoing work with the Franklin corridor and the work beginning on the Pioneer Parkway (Gateway) corridor.

The Committee has continued to meet quarterly since 2006. Currently, agenda items for the Committee have focused largely on status updates. Some Committee members have indicated a desire for the Committee to be more engaged in the implementation of EmX. To that end, staff are considering the development of a survey of the Committee, asking them to provide input on ways in which the Committee may become more involved.

Prior to the development of the survey, staff would like the LTD Board of Directors to consider the following questions:

- 1) Is there a role or roles for an EmX steering committee at this time? If so, what roles would Board members describe for the committee?
- 2) Assuming there are roles for the steering committee to play (or continue to play), how might we more fully engage the community leaders we have on the committee?

Staff will use the Board's discussion of these questions at tonight's meeting as a basis for developing a survey of the existing members of the EmX Steering Committee.

ATTACHMENT: None.

PROPOSED MOTION: None.

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2013

ITEM TITLE: ECONOMIC ANALYSIS

PREPARED BY: Edward McGlone, Government Relations Manager

ACTION REQUESTED: None

BACKGROUND:

In November 2013 Lane Transit District (LTD) contracted with consulting firm ECONorthwest to conduct a study of economic conditions for determining the level of economic recovery in the area. The study was structured to provide sufficient information for the LTD Board of Directors as they determine if the region has reached a level of economic recovery that is compliant with the provisions of ORS 267.385. In addition, the Board instructed ECONorthwest to review several additional criteria to help better understand the condition of the region's economy.

At tonight's meeting, Senior ECONorthwest Economist Andrew Dyke will present the final results of the study and answer any questions from the Board.

ATTACHMENT: None

PROPOSED MOTION: None

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AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: APRIL FINANCIAL STATEMENTS

PREPARED BY: Todd Lipkin, Finance Manager

ACTION REQUESTED: None

BACKGROUND:

In order to allow staff more month-end processing time while continuing to provide financial information to the Board on a timely basis, monthly financial reports are separate from the Board packet. Since this meeting is a week prior to the scheduled financial report posting date, no financial report will be distributed prior to the May 12 Board meeting. Nevertheless, a verbal report will be given with what information is available. The April financial report will be posted on May 20 per the normal schedule.

ATTACHMENT: None

PROPOSED MOTION: None

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AGENDA ITEM SUMMARY

DATE: May 12, 2014

ITEM TITLE: APRIL 2014 GRANT REPORT

PREPARED BY: Todd Lipkin, Finance Manager

ACTION REQUESTED: None. Information Only.

BACKGROUND:

The Monthly Grant Report for activity through April 30, 2014, follows this summary. It contains financial data for all Federal Transit Administration (FTA) and Oregon Department of Transportation (ODOT) *ConnectOregon* grants that have a remaining balance or have had activity within the last six months. All grant totals are reported in total project dollars, so they include both the grant-funded amount and any applicable local match. Due to the timing of this report, not all of the invoices for the report month have been received. Any additional invoices charged to this report month will be reflected in the Grant Totals expenditure amounts next month.

Federal Transit Administration TEAM Grant Applications

Grant applications are being drafted, and they should be submitted to FTA Region X for consideration within the next few months. Surface Transportation Program (STP) funds for 2014 have been made available, and a transfer request from the Federal Highway Association to the FTA was submitted in December 2013. The FTA submitted the \$3,299,418 transfer request to ODOT on April 29, 2014, for the following:

- Point2point at Lane Transit District -- \$407,100
- Safe Routes to School -- \$121,513
- Bike Sharing Study -- \$100,000
- Pavilion Station Construction -- \$400,000
- Northwest Eugene-Lane Community College Transit Corridor Plan -- \$584,780
- Replacement Buses -- \$1,686,025

Federal Transit Administration Low or No Emission Vehicle Deployment Program (LoNo)

Lane Transit District (LTD) submitted a grant application on April 9, 2014, under the Low or No Emission Vehicle Deployment Program (LoNo) to recondition five LTD buses (that have exceeded their useful life) to like-new condition with zero-emissions propulsion systems (ZEPS). The all-battery, electric-powered drivetrain system is designed to save money, eliminate fuel, minimize operations, and maintenance costs, and drastically reduce greenhouse gas emissions. The cost per bus is estimated to be \$590,000. The grant request is for \$2,361,000, and the total project cost is \$3,148,000 (including match).

Oregon Department of Transportation (ODOT) 2015-2018 Enhance Applications

Lane Transit District submitted three applications to ODOT for funds under the new Enhance program for the 2015-2018 Statewide Transportation Improvement Program (STIP). The chair and co-chair of each Area Commission on Transportation (ACT) met as the SuperACT on September 12, 2013, and voted to recommend funding for the two LTD projects listed below. The River Road Station Development project was withdrawn from consideration earlier in the process. The Oregon Transportation Commission will take action for final approval at a future meeting.

- **Northwest Eugene-Lane Community College Corridor National Environmental Policy Act (NEPA):** This application requests \$2 million for the analysis of a future high-capacity transit project consistent with local and state transportation and land use plans. The Northwest Eugene-Lane Community College corridor would complete a major segment of the region's 61-mile system of bus rapid transit (BRT). The proposed project will provide the required first step, which is the NEPA review and analysis of the refined project, to allow for the project's federal funding.
- **SmartTrips Regional Residential Program:** This application requests \$372,845 for the SmartTrips Regional Program, which is a comprehensive individual household marketing aimed at increasing biking, walking, use of public transit, and ridesharing. The planned 2016-2018 project has three target areas within the Central Lane Metropolitan Planning Organization, all with high concentrations of transportation disadvantaged (youth, seniors, low-income, people with disabilities, minorities, limited English, and/or no car). Targeted areas have safety concerns and congested corridors. SmartTrips leverages public investments in existing travel programs and infrastructure by addressing household transportation needs regardless of age or ability. Moreover, by highlighting seniors, SmartTrips can offer greater access and use of available, low-cost transportation options and respond to growing demand within the aging population.

Oregon Department of Transportation (ODOT) ConnectOregon V Applications

Lane Transit District has submitted two applications under the *ConnectOregon V* Program. *ConnectOregon* is a lottery bond-based initiative for investment in air, rail, marine, transit, and bicycle/pedestrian infrastructure to ensure Oregon's transportation system is strong, diverse, and efficient. A minimum 20 percent cash match is required from the recipient for all grant-funded projects. Projects eligible for funding from state fuel tax revenues are not eligible for *ConnectOregon* funding.

The 2013 Oregon Legislature approved a fifth round of *ConnectOregon* funding in the amount of \$42 million (past rounds of *ConnectOregon* funding have been in the amount of \$100 million). Additionally, for the first time, bicycle and pedestrian projects have been added to the modes eligible for funding.

Lane Transit District's applications are as follows:

- **West 11th Bicycle/Pedestrian Bridge Connections:** This application requests \$3.1 million for the construction of three multiuse connectors to the Amazon and Fern Ridge paths parallel to the West 11th EmX corridor. LTD and the City of Eugene are partners on this application. LTD is building multiuse connector bridges at Buck Street and Wallis Street south of West 11th Avenue as part of the West Eugene EmX Extension (WEEE) project. The match for these connectors will be federal funding associated with the WEEE project. The City of Eugene is constructing a multiuse connection at Commerce Street north of West 11th Avenue near the Target store. The City will be providing the match for this connector.

- **Franklin Boulevard - Phase 1 Transit Station:** This application requests \$400,000 for the construction of inbound and outbound EmX stations at the Franklin Boulevard and McVay Highway intersection that will function with the City of Springfield’s planned roundabout roadway. LTD and the City of Springfield are partners on this grant.

The *ConnectOregon* V Modal Committees (air, bicycle/pedestrian, marine, rail, and transit) have completed their ranking of the projects. The West 11th Bicycle/Pedestrian Bridge Connections project was ranked 1 out of 28 applications by the bicycle/pedestrian committee. The Franklin Boulevard – Phase 1 Transit Station project was ranked 2 out of 13 applications by the transit committee.

The Lane Area Commission on Transportation, serving as Lane County’s regional review committee, ranked the West 11th Avenue project first and the Franklin Boulevard project second at its April 9, 2014, meeting.

A final review committee, composed of representatives of the modal and regional committees, is scheduled to meet on June 11-12, 2014. The committee will make a final recommendation of prioritized projects to forward to the Oregon Transportation Committee (OTC) for consideration.

ODOT anticipates final project selection by the OTC in August 2014.

ATTACHMENT: Monthly Grant Report

PROPOSED MOTION: None

Q:\Reference\Board Packet\2014\3\March 19 Reg Mtg\Grant report summary Mar 14.docx



OR-03-0122 - FTA 5309 Small Starts	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
13.13.06 EmX Vehicles	-	1,555,073.75	1,555,073.75	-
14.01.10 Guideway	-	4,300,805.32	3,398,470.97	902,334.35
14.02.20 Stations & Stops	-	743,703.39	855,285.99	(111,582.60)
14.04.40 Sitework & Special Conditions	-	11,241,013.34	10,894,235.61	346,777.73
14.05.50 Systems	-	2,229,930.78	1,909,072.09	320,858.69
14.06.60 ROW, Land, Existing Improvements	-	1,929,027.42	1,503,670.42	425,357.00
14.08.80 Professional Services	206.00	7,721,200.00	8,455,505.48	(734,305.48)
14.09.90 Unallocated Contingency	-	1,088,113.00	-	1,088,113.00
	206.00	30,808,867.00	28,571,314.31	2,237,552.69

OR-04-0030 - FTA 5309 Bus and Bus Facilities	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.12.04 Paratransit replacement vehicles	-	700,000.00	700,000.00	-
11.13.04 Paratransit expansion vehicles	-	140,000.00	140,000.00	-
11.32.20 Misc Passenger Boarding Improvements	10,505.00	410,000.00	149,671.69	260,328.31
	10,505.00	1,250,000.00	989,671.69	260,328.31

OR-04-0041 - FTA 5309 VTCLI	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.42.08 Call Center Software	522.00	1,062,000.00	39,845.48	1,022,154.52
11.62.02 Call Center Telephone System	-	298,000.00	275.93	297,724.07
	522.00	1,360,000.00	40,121.41	1,319,878.59

OR-37-X016 - FTA 5316 Job Access/Reverse Commute	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.7L.00 Mobility Management'	-	425,803.00	-	425,803.00
11.7L.00 Mobility Management-Assessments	-	504,570.00	511,774.49	(7,204.49)
11.80.00 Program Administration	-	18,090.00	18,090.00	-
30.09.01 Employment Transportation Options	-	363,232.00	363,231.70	0.30
	-	1,311,695.00	893,096.19	418,598.81

OR-39-0007 - FTA 5339 Alternatives Analysis Program	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
44.23.02 Main St/McVay Planning Study	1,414.00	937,500.00	98,437.22	839,062.78

OR-57-X012 - FTA 5317 New Freedom	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.7L.00 Transportation Assessments	-	96,528.00	-	96,528.00
11.7L.00 Mobility Management	-	97,026.00	-	97,026.00
	-	193,554.00	-	



OR-90-X152 - FTA 5307 Urbanized Area Formula Funds	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.12.01 40' Gillig Low Floor Bus	-	2,787,360.00	2,787,360.00	-
11.12.01 Finance & Int. Costs Gillig Bus Purch	-	186,499.00	186,498.55	0.45
11.13.01 40' Gillig Low Floor Bus	-	1,000,850.00	1,000,849.78	0.22
11.23.01 Extend EmX Lanes	-	201,520.00	201,520.52	(0.52)
11.32.02 River Road Station Land	-	2,261,504.00	2,261,504.46	(0.46)
11.32.06 Franklin EmX Fare Machines	-	350,000.00	350,000.00	-
11.42.07 Hardware	25,980.00	1,460,900.00	1,320,718.34	140,181.66
11.42.08 Software	-	480,000.00	480,000.00	-
11.42.09 Bus Security Cameras	-	60,224.00	60,224.59	(0.59)
11.42.09 Security Improvements	-	300,000.00	300,000.00	-
11.42.20 Miscellaneous equipment	-	175,000.00	175,000.00	-
11.43.03 Improvements	-	400,000.00	400,000.00	-
11.43.03 Maintenance Facility Remodel	-	1,475,289.00	1,475,288.81	0.19
11.62.20 Communications Equipment	-	50,000.00	43,575.46	6,424.54
11.71.12 Vanpools	-	163,400.00	166,302.00	(2,902.00)
11.7A.00 FY 12 Preventive Maintenance	-	1,281,250.00	1,281,250.00	-
11.7A.00 Preventive Maintenance	-	5,718,750.00	5,718,750.00	-
11.92.08 Bus Stop Signage	-	122,411.00	-	122,411.00
11.93.02 Shelters	-	56,080.00	56,080.00	-
	25,980.00	18,531,037.00	18,264,922.51	266,114.49

OR-90-X161 - FTA 5307 Urbanized Area Formula Funds	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.42.08 Software	10,173.00	500,000.00	350,127.94	149,872.06
11.42.09 (01) Security Improvements	-	150,000.00	110,244.38	39,755.62
11.42.09 Security Improvements	-	91,250.00	91,250.00	-
11.42.11 Support Vehicles	-	60,000.00	60,000.00	-
11.42.20 Miscellaneous equipment	-	100,000.00	21,443.80	78,556.20
11.43.03 Improvements	3,078.00	600,000.00	590,809.16	9,190.84
11.71.12 Vanpools	-	102,125.00	102,125.00	-
11.7A.00 Prevent_Maint_2	13,230.00	4,626,638.00	4,223,272.82	403,365.18
11.7A.00 Preventive Maintenance	-	7,500,000.00	7,500,000.00	-
	26,481.00	13,730,013.00	13,049,273.10	680,739.90

OR-95-X030 - Federal Surface Transportation Program	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.33.02 U of O Station Construction	90.00	2,340,354.00	2,007,070.13	333,283.87
11.7F.00 Gateway SmartTrips	-	100,301.00	100,301.00	-
	90.00	2,440,655.00	2,107,371.13	333,283.87

OR-95-X035 - Federal Surface Transportation Program	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.72.11 Rideshare	-	354,787.18	358,633.71	(3,846.53)
11.72.11 Safe Routes to School	689.00	83,584.00	26,289.64	57,294.36
11.72.11_Rideshare_Bike_Sharing	-	6,000.00	3,596.95	2,403.05
11.72.11_Rideshare_Carpool	-	2,000.00	922.03	1,077.97
11.72.11_Rideshare_CMP	-	600.00	905.57	(305.57)
11.72.11_Rideshare_ETC	-	6,000.00	5,956.88	43.12
11.72.11_Rideshare_Group Pass	-	35,212.82	35,212.82	-
11.72.11_Rideshare_Park and Ride	-	2,500.00	1,872.04	627.96
11.7A.00 Preventive Maintenance	-	557,227.00	557,227.00	-
	689.00	1,047,911.00	990,616.64	57,294.36



OR-95-X055 - Federal Surface Transportation Program	Current Month Expenditures	Grant Totals (Including Match)		
		Budget	Expenditures	Balance
11.7A.00 Preventive Maintenance	-	557,227.00	557,227.00	-
11.7L.00 Rideshare	-	441,436.00	441,436.00	-
11.7L.00 Safe Routes-School Districts	-	129,834.00	100,888.20	28,945.80
11.7L.00 SmartTrips 2	9,900.00	384,487.00	227,741.08	156,745.92
44.23.02 Bike Parking Study	-	100,301.00	99,940.50	360.50
	<u>9,900.00</u>	<u>1,613,285.00</u>	<u>1,427,232.78</u>	<u>186,052.22</u>

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: DEPARTMENT REPORTS

PREPARED BY: Ron Kilcoyne, General Manager

ACTION REQUESTED: None

BACKGROUND:

Monthly reports on activities within departments and throughout the District are provided for the Board's information.

ATTACHMENT: Monthly Department Reports, May 2014

Q:\Reference\Board Packet\2014\5\May 12 Special Mtg\Dept Report AIS.docx



MONTHLY DEPARTMENT REPORTS

May 12, 2014

Government Relations

Edward McGlone, Government Relations Manager

In the last week of April, Transportation Secretary Anthony Foxx released his version of a federal transportation reauthorization bill. While few expect the secretary's bill to go far in either chamber, there are several notable inclusions. Specifically, Secretary Foxx recommends restoring competitive discretionary grant programs for bus and bus facilities while maintaining formula grants for these programs. Overall, the secretary recommends \$1.9 billion for bus and bus facilities programs (\$1.4 billion formula; \$500 million discretionary). In total, Secretary Foxx's bill would increase Federal Transit Administration funding by more than \$5 billion over current funding levels.

Customer Services and Planning

Andy Vobora, Director of Customer Services and Planning

MARKETING AND COMMUNICATIONS

Russ Arnold, Marketing Manager

- Marketing began a robust advertising campaign to kick off its inaugural partnership with Willamalane Park & Recreation District and the introduction of the **1 Pass**. This pass provides youth, ages 18 and under, with the ability to ride LTD; access to Willamalane facilities, including Lively Park Splash! and Camp Putt Adventure Gold Park; and free or limited access to Skate World, Timber Bowl, and Eugene Emeralds games. The **1 Pass** will be sold for \$50 and replaces the Summer Freedom Pass. Not only will the Pass give youth access to safe, reliable transit options, it also provides healthy, fun summer activities.
- A Request For Proposals for Translations Services was awarded to Centro Latino Americano to provide ongoing translation services for all marketing and communications materials.

ACCESSIBLE AND CUSTOMER SERVICES

Cosette Rees, Accessible and Customer Services Manager

RideSource Call Center Software

LTD has signed a contract with the Trapeze Group to purchase and implement their Novus for Demand Response product. This software will replace most functions of the Call Center, providing

updated functionality and increased efficiency. Staff expect development and implementation to take about 12 months.

Coordinated Care Organization (CCO) Update

On May 5 staff at LTD and RideSource met with the CCO to review the results of the site review that took place six weeks ago. As LTD's provision for the non-emergency medical transportation (NEMT) services are provided through the CCO, staff are now required to increase the level of compliance and oversight around Health Insurance Portability and Accountability Act (HIPAA). Trillium is working with staff to prioritize and address compliance requirements.

Oakridge Service Review

LTD staff met with Oakridge's mayor, city manager, and one of the city's councilors to review ideas about performing a follow-up survey of the community. The survey will determine the level of satisfaction with the current service and identify areas of possible improvement. Of special interest is linking the Oakridge Diamond Express to Amtrak and Greyhound in Eugene and establishing a true Dial-a-Ride service in the community. LTD Accessible Services Program Coordinator Susan Hekimoglu is working with a class at University of Oregon to accomplish much of the outreach. Included in the outreach will be a community-wide mailed survey, a random phone sample survey, and an on-board ridership survey. The students will then make recommendations to improve connections and accessibility.

FACILITIES

Joe McCormack, Facilities Manager

Pavilion Station

Construction has gone smoothly with little disruption to daily activities on the RiverBend medical campus. The new pedestrian-activated crosswalk beacons are operational and open for use. The remaining work relates mainly to the shelter structures and electrical systems. The new station is on schedule to be open to passengers on or before May 29. A ribbon-cutting ceremony also will be held on May 29.

Customer Service Center Remodel

Some long-awaited changes are coming to the Customer Service counter and the transit guide program. Improvements will be constructed to help better facilitate the work that both of these groups perform. A new glass barrier will be installed along the Customer Service counter, which will provide better personal safety for staff and securement of the area behind the counter. This change also allows for the entire lobby to be accessible when the counter is closed. Other revisions at the counter include relocating the photo booth area and expanding the Accessible Services window.

The transit guide program, which is currently housed on the second floor of the Customer Service building, will be moved to the first floor adjacent to the Customer Service counter. A new office space on the ground floor will provide easier access for both transit host staff and customers. This work is scheduled to begin in May.

New Shelter for Capstone Student Residents

Two new shelters have been installed for student resident use adjacent to the recently constructed Capstone apartment complex on Willamette Street at 12th Avenue. Buses will begin serving this new location after the City repaves portions of Willamette Street. This service could begin in May.

PLANNING AND DEVELOPMENT

Tom Schwetz, Planning and Development Manager

West Eugene EmX Extension

John Evans, Senior Project Manager

Water Utility Relocation

In early May Eugene Water and Electric Board (EWEB) will begin work to relocate water services outside the EmX project footprint along West 6th and 7th avenues between Charnelton and Garfield streets. Most of this work will occur overnight from 7:00 p.m. to 5:30 a.m. to minimize disruptions to businesses and traffic. Motorists can expect limited portions of single-traffic lanes to be restricted at the work sites. Businesses will be able to continue their normal operating hours and will be accessible during the relocation activities. The work is expected to continue for two to three months. Relocation of electrical utilities along these streets is slated to follow the water services effort. EWEB customers will be notified in advance if their services are expected to be interrupted for longer than one hour. This utility work and all forthcoming construction affecting traffic will be included and regularly updated by LTD staff on the region's traffic alert website, KeepUsMoving.info.

Surveying

Also in May surveyors plan to begin marking project lines where road widening or EmX station placement will require the acquisition of narrow strips of private property. This work is not expected to affect traffic lanes.

Business Workshops

LTD and the Lane Community College Small Business Development Center (Lane SBDC) have teamed up to provide free business development workshops designed to help businesses remain successful before, during, and after the EmX project construction. Businesses must directly face the route to be eligible to attend the workshops for free, and LTD has mailed invitations to the eligible businesses. Lane SBDC workshops will be offered each quarter if interest continues and businesses are interested and participate. Interest from businesses has so far been very good.

Main Street-McVay Transit Study

In collaboration with City of Springfield staff, LTD staff have established the project's management structure to guide decision making and alternative selection and have initiated project activity towards review and recommendation of potential transit options for the project study area. A tiered management structure has been established to allow project direction provided by the project's governance team. The team is composed of LTD Board President Doris Towery, LTD Board Secretary Michael Dubick, Springfield Mayor Christine Lundberg, and Springfield City Councilor Marilee Woodrow. Under the direction of the governance team, staff have established a stakeholder advisory committee and initiated a 12-month process for the committee to develop and recommend the project purpose and need, the evaluation criteria, and the most promising

alternatives to be advanced to the project governance team, the LTD Board of Directors, and the Springfield City Council.

Northwest Eugene – Lane Community College Corridor Study

The project team met to begin framing the scope and approach for the corridor study. It is anticipated that the study will be kicked off in September. Between now and September, the project team will work on creating a project charter and developing a clear project management framework.

Eugene Bike Share Feasibility Study

The Board of Directors received an invitation to attend a presentation on the findings and recommendations from the feasibility study. The consultants hired to perform the study, Toole Design Group, will walk through their recommendations and answer questions. The final report should be available in early June.

ConnectOregon Update

At last month's Lane Area Commission on Transportation (LaneACT) meeting, the Commission prioritized the nine grants submitted within Lane County. LTD's applications were prioritized first (the West 11th Bicycle-Pedestrian Bridge Connectors) and second (Franklin Phase 1 EmX Stations) out of the nine applications submitted. On May 7 the SuperACT, which is made up of all of the ACTs in Region 2, will prioritize the Region 2 projects.

SERVICE PLANNING

Tom Schwetz, Planning and Development Manager

2013 Annual Route Review

The Service Planning team finished the 2013 Annual Route Review (ARR) process, and with the Board's action to approve proposed service changes, is now working to fully develop all of the changes to make sure that fall implementation is a success. Staff also developed a follow-up survey to help determine what went well and where staff can improve next year.

Strengthening the Team

At the end of May, TriMet and LTD planning teams will meet at TriMet in Portland to further strengthen our collaborative partnership and learn from each other's experiences and knowledge. Issues to be discussed include Title VI compliance, on-time performance analysis, long-range development planning and policy practices, and more.

On the Horizon

In order to improve quality service delivery, staff have plans to evaluate the current Service Policy. Staff will look at the content, design, and format of the document and consider how it may be enhanced so that it better serves as a tool to help evaluate service issues and decisions. This project also will make the document easier to read and use.

POINT2POINT

Theresa Brand, Transportation Options Manager

- Point2point will be doing some additional outreach in the region in order to highlight the KeepUsMoving.info (KUMI) website. The website is useful during construction season as it

assists the region's drivers and bicyclists navigate through closures and detours. The website lists all significant projects underway during each year's construction season and allows individuals to sign up for weekly project updates. The KUMI site was developed in partnership with Lane Council of Governments and with support from all local jurisdictions.

- Staff attended the Oregon Active Transportation Summit recently held in Portland to learn about exciting trends in active transportation throughout the state.
- Point2point and the Health for Life Committee have sponsored LTD's annual Bicycle Tune-up Days. Kerri's Neighborhood Bike Shop was on-site for two days conducting tune-ups and safety checks for LTD employees.

Drive Less Connect

	January 2014	February 2014	March 2014	April 2014
New Registrants	23	8	24	21
Non-SOV Miles Reported	31,885	29,922	23,652	38,808
Trips Reported (one-way)	2,530	2,618	1,962	2,737
CO ₂ Reduction (pounds)	21,940	19,152	16,193	25,959
Gasoline Saved (gallons)	1,114	979	817	1,320

Vanpool Program

- A new Springfield-to-Corvallis vanpool began in April. This vanpool stages at the Springfield Fred Meyer Park & Ride lot and serves Hewlett Packard and Oregon State University.
- Rideshare Program Specialist Tracy Ellis attended three vanpool formation meetings for the new Eugene-to-Salem vanpools that are anticipated to begin operation in May.

	January 2014	February 2014	March 2014
Vanpools	14	14	14
Number of Riders (Average Full-time)	92.8	98.18	90.68
Vehicle Miles Reduced	153,289	137,795	133,373.92
CO ₂ Reduced (lbs.)	122,631	110,236	106,699

Vanpool statistics lag by 30 days.

Employer Programs

- On April 22 (Earth Day), Point2point staffed a table at the Amazon Station for the LCC Bike and Walk to Main Campus for Earth Day event. Forty individuals participated.
- Point2point staffed a table at the Thermo Fisher Earth Day event, and enrolled employees in the Emergency Ride Home program and the Business Commute Challenge.

Business Commute Challenge

- Employer Program Specialist Marcia Maffei gave an updated presentation on the Business Commute Challenge (BCC) to the Springfield Bicycle Pedestrian Advisory Committee.

- As of April 28, there were 127 teams and 780 individuals registered for the BCC. Staff delivered more than 80 team captain kits via bus, bicycle, walking, and trip chaining. (Trip chaining is the incorporation of multiple stops in one trip instead of several individual trips, thus reducing fuel consumption.)
- The Business Commute Challenge Organization Team held a kickoff event at LTD's Next Stop Center on May 1, from 6:30 a.m. until 1:30 p.m. More than 150 individuals attended.
- The second BCC event, which was sponsored by the City of Eugene's Campbell Center, was held on the south Willamette River bicycle path at the Campbell Center on May 6, at 7:00 a.m. to 9:30 a.m. The event was well attended.
- The BCC trip reporting for registered participants went live on May 10.
- BCC fairs were held at Thermo Fisher Scientific, Oregon Social Learning, Symantec, and Royal Caribbean Cruises.

School Services

- On April 19 Point2point staff, Safe Routes to School coordinators, and Eugene River House (a branch of the City of Eugene Parks and Recreation that provides bicycle and pedestrian education classes) employees staffed a Safe Routes to School table at the EWEB Earth Day event. Despite the weather, bike helmets were distributed to kids who did not already have them and others were helped to decorate their helmets with reflective stickers and tape for increased visibility.
- May is National Bike Month. Springfield, Bethel, and Eugene 4J school districts are coordinating events throughout the month to encourage kids to walk and bike. Twenty-two schools already are registered to participate.
- Bicycle safety education classes for middle school students are finishing up next month with community rides. The rides are the last lesson in the Bicycle Safety Education classes and allow students to practice their skills outdoors. Adult volunteers are currently being recruited to help supervise the rides.
- Bethel School District is recruiting for a new part-time Safe Routes to School coordinator, and interviews are scheduled for the end of this week.
- Walking route maps for 11 Springfield schools are being finalized and will be included in back-to-school packets.

SmartTrips

- Staff are continuing to prepare for the forthcoming *SmartTrips* Main Street program.
- Staff conducted the pre-program travel survey and have finished data entry. Staff received a total of 335 surveys; 331 surveys were in English and 4 surveys were in Spanish.
- The *SmartTrips* Main Street program launched on May 1, 2014. The first mailer was sent out on April 28 to 1,180 households.

Transit Operations

Mark Johnson, Director of Transit Operations

There is no Transit Operations Department Report this month.

Maintenance

George Trauger, Director of Maintenance

There is no Maintenance Department Report this month.

Administrative Services

Mary Adams, Director of Administrative Services

HUMAN RESOURCES

Health Management Team

- In March four members of the Health Management Team visited JELD-WEN in Klamath Falls to view their health and wellness programs. Of specific interest was how they manage their mental health benefits. The visit also included discussion about how LTD might work with the same vendor to create a more comprehensive mental health benefit.
- The Team met on April 28 to receive the annual full claims data report from PacificSource staff. The data is used every year to guide the work and focus of the Health Management Team and LTD's wellness efforts.

TransitStat

The first official TransitStat Executive Panel meeting was held on April 21. The Stand Time Action Team reported its progress to the panel and discussed the next steps in the Team's efforts to reduce stand time by 200 hours per month. Team members consist of Operations Supervisors Amanda McGill, Ralph Dinnel, Javier Rodriguez, and Jake McCallum.

Training

Ms. Adams participated in an American Public Transportation Association webinar on protected leave and modified duty. The webinar was viewed at more than 40 sites around the United States. In addition, Ms. Adams conducted a workshop for supervisors on generational differences in the workplace.

Bus Operator Survey

Full survey results and recommendations were received in late April. Amalgamated Transit Union Representative Carl Faddis and Director of Transit Operations Mark Johnson have jointly sponsored a volunteer sign-up sheet for focus groups on the bus operator complaint process and the bus operator rewards and recognition program. The focus groups will meet in early June for a facilitated discussion on ways to address operator concerns about these two processes. Consultant Meri Justis will be the facilitator.

Recruitment and Personnel

David Collier, Human Resources Manager

- The Finance Department welcomes Mary Talentinow as the new purchasing manager. Ms. Talentinow started in the office on May 5. She had spent the previous year-and-a-half in TriMet's Purchasing Department. Prior to working for TriMet, Mary worked for several school districts in California. She has a Bachelor of Science degree in Business Management from Western Governors University. She will be attending the May 12 Board Meeting to be introduced to the Board.
- The Operations Department has conducted interviews for the security manager position and is close to making an offer to a candidate.
- Information Technology staff have completed phone interviews for the applications analyst and business analyst positions.

FINANCE

Todd Lipkin, Finance Manager/Chief Financial Officer

A detailed Financial Report is included separately in the Board meeting packet.

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: MONTHLY PERFORMANCE REPORTS

PREPARED BY: Ron Kilcoyne, General Manager

ACTION REQUESTED: None

BACKGROUND:

In response to a request by the Board for regular reporting on the District's performance in several areas, monthly performance reports are provided for the Board's information.

ATTACHMENTS:

- 1) March 2014 RideSource Activity and Productivity Report
- 2) *(The link to the April 2014 Performance Reports will be sent out electronically with the financial reports on or before May 20.)*

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Special Mobility Services: RideSource Activity and Productivity Information

March-14	Current Month	Prior Year's Month	% Change	Current YTD	Previous YTD	% Change	Current 12 Month	Prior 12 Month	% Change
RideSource Ridership	16,258	15,587	4.3%	139,135	140,917	-1.3%	188,112	190,757	-1.4%
RideSource(All Modes)	13,913	13,295	4.6%	119,723	119,553	0.1%	161,539	161,250	0.2%
Shopper	539	548	-1.6%	4,857	4,775	1.7%	6,525	6,336	3.0%
Escort Volunteers-Metro	1,205	901	33.7%	8,650	7,941	8.9%	11,574	10,976	5.4%
Escort Volunteers-Rural	601	843	-28.7%	5,905	8,648	-31.7%	8,474	12,195	-30.5%
RideSource Cost per Ride	\$ 24.13	\$ 23.51	2.6%	\$ 24.43	\$ 23.87	2.3%	\$ 24.28	\$ 23.47	3.5%
RideSource(All Modes)	\$ 27.16	\$ 26.45	2.7%	\$ 27.28	\$ 26.97	1.1%	\$ 27.17	\$ 26.60	2.1%
RideSource Shopper	\$ 14.03	\$ 13.03	7.7%	\$ 14.09	\$ 14.03	0.4%	\$ 14.02	\$ 13.99	0.3%
RideSource Escort	\$ 3.82	\$ 4.40	-13.1%	\$ 4.41	\$ 4.35	1.2%	\$ 4.36	\$ 4.28	1.9%
Ride Reservations	15,554	14,649	6.2%	133,645	130,104	2.7%	178,492	174,337	2.4%
Cancelled Number	1,448	1,232	17.5%	14,251	11,259	26.6%	17,822	14,878	19.8%
Cancelled % of Total	9.31%	8.41%		10.66%	8.65%		9.98%	8.53%	
No-Show Number	129	156	-17.3%	1,119	1,511	-25.9%	1,554	2,012	-22.8%
No-Show % of Total	0.83%	1.06%		0.84%	1.16%		0.87%	1.15%	
Ride Refusals Number	0	1	-100.0%	2	2	0.0%	2	4	-50.0%
Ride Refusals % of Total	0.00%	0.01%		0.00%	0.00%		0.00%	0.00%	
Service Hours	8,276	7,809	6.0%	71,974	70,548	2.0%	95,999	94,389	1.7%
Agency Staff	8,148	7,649	6.5%	70,799	68,990	2.6%	94,338	92,194	2.3%
Agency SMS Volunteer	128	160	-20.0%	1,175	1,558	-24.6%	1,661	2,195	-24.3%
Avg. Trips/Service Hr.	1.75	1.77	-1.1%	1.73	1.76	-1.7%	1.75	1.78	-1.7%
RideSource System Miles	103,535	98,265	5.4%	887,533	886,921	0.1%	1,189,175	1,186,126	0.3%
Avg. Miles/Trip	7.16	7.10	0.9%	7.12	7.13	-0.1%	7.08	7.08	0.0%
Miles/Vehicle Hour	12.51	12.58	-0.6%	12.33	12.57	-1.9%	12.39	12.57	-1.4%
On-Time Performance %	89.1%	89.0%	0.1%	88.8%	88.6%	0.2%	88.7%	88.7%	0.0%
Sample	12,615	11,941		106,679	107,287		143,891	144,191	
On-Time	11,238	10,630		94,709	95,095		127,581	127,884	

Special Mobility Services: RideSource Activity and Productivity Information

<u>March-14</u>	<u>Current Month</u>	<u>Prior Year's Month</u>	<u>% Change</u>	<u>Current YTD</u>	<u>Previous YTD</u>	<u>% Change</u>	<u>Current 12 Month</u>	<u>Prior 12 Month</u>	<u>% Change</u>
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- RideSource (All Modes) includes all rides except Shopper, Escort, & Taxi
- Escort Volunteers-Metro includes in-district volunteer rides and SMS volunteer escort rides.
- Escort Volunteers-Rural is out of district volunteer rides.

- RideSource System Miles includes miles by volunteers in agency vehicles.

- On-Time Performance reflects a 100% sample of all rides with scheduled pickup times, plus will-call rides. The standard is +/- 10 minutes for scheduled pickups and within 30 minutes of will-call request.

AGENDA ITEM SUMMARY

DATE OF MEETING: May 12, 2014

ITEM TITLE: ITEMS FOR ACTION/INFORMATION AT A FUTURE MEETING

PREPARED BY: Jeanne Schapper, Administrative Services Manager/Clerk of the Board

ACTION REQUESTED: None

BACKGROUND:

Listed below are Action or Information items that will be included on the agenda for future Board meetings.

- A. **Budget Committee Meetings:** The LTD Board Budget Committee is scheduled to meet on May 21, and again on May 22, if needed.
- B. **Labor Negotiations:** In preparation for the expiration of the current contract on June 30, 2014, an executive session will be held at the June 9 special meeting or the June 18 regular Board meeting to brief Board members on the process and to discuss strategy.
- C. **Fiscal Year 2013-14 Supplemental Budget:** The Board will be asked to approve a supplemental budget for the current fiscal year at the June 18 Board meeting.
- D. **Fiscal Year 2014-15 Budget Adoption:** In May the LTD Board Budget Committee will discuss the proposed Fiscal Year 2014-15 budget. The budget approved by the Budget Committee will be on the agenda for adoption by the LTD Board of Directors at the June 18 Board meeting. The budget must be adopted before the end of fiscal year on June 30.
- E. **Election of Board Officers:** At the June 18 Board meeting, the Board will elect from its members a president, vice president, secretary, and treasurer to fill two-year terms beginning July 1, 2014.
- F. **Board Member Committee Assignments:** A list of current LTD Board committee assignments has been sent to Board members for review and the opportunity to request reassignment to the same or different committees. Committee assignments will be finalized at the June 18 Board meeting.
- G. **Safe Routes to School Report:** At the June 18 meeting, highlights and key milestones of the program will be reviewed with the Board.
- H. **Business Commute Challenge Report:** At the June 18 meeting, highlights of the 2014 Business Commute Challenge activities also will be reviewed with the Board.

- I. **Web Project Design**: Presentation of the new web site design, explanation of the functionality, and the timeline for the system to become operational will be shared with the Board at its June 18 meeting.
- J. **Regional Transportation Options Plan (RTOP)**: Board adoption of this plan is planned for late spring or early summer.
- K. **Pension Funding Policy**: The Governmental Accounting Standards Board suggests that a written pension funding policy be approved by the LTD's governing body. At its June 18 meeting, the Board will be asked to approve the pension funding policies and objectives of the LTD Salaried Employees' Retirement Plan and the LTD/ATU Local No. 747 Pension Trust.
- L. **Annual Performance Report**: Staff will provide a FY 2013-14 Performance Report to the Board at a future meeting.
- M. **Bicycle Parking Study**: An overview of the Draft Regional Bicycle Parking Study will be presented to the Board at a future meeting.
- N. **High-capacity Transit Corridor Projects**: Periodic updates on these projects will be presented to the Board throughout the various stages of the projects.

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Measuring the Economic Recovery in Lane County

Prepared for
Lane Transit District Board of Directors

by
Dr. Andrew Dyke
May 12, 2014

Outline

- **Purpose of the research**
- **Briefly: Review indicators and data sources**
- **Findings**

Purpose of the Research

- Provide LTD Board with the data and analysis necessary to determine whether the conditions of ORS 267.385(8) have been met:

“The district board may not adopt an ordinance increasing a tax...unless the board makes a finding that the economy in the district has recovered to an extent sufficient to warrant the increase in tax. In making the finding, the board shall consider regional employment and income growth.”

Purpose of the Research (cont'd)

- Data and analysis presented in the final report **supports the Board's decision-making.**
- The analysis and reporting **do not:**
 - Make the determination of whether ORS 267.385(8) criteria have been satisfied
 - Forecast future economic conditions
 - Estimate the potential impacts of a tax increase

Required Indicators: Employment and Personal Income

- Total employment
- Employment by industry
- Personal income (total and selected components)

Supporting Indicators:

- Unemployment rate
- Labor force participation
- Residential and industrial construction permits
- Business establishments

Data Sources

Data series	Source
Personal income	U.S. Bureau of Economic Analysis
Employment	U.S. Bureau of Labor Statistics (BLS)
Unemployment, total employment, and labor force	BLS
Residential construction permits	U.S. Census Bureau
Industrial and commercial construction permits	City of Eugene, Planning and Development Dept
Business establishments	BLS

Review of Methodology

- We considered current levels, year-over-year growth rates, and the long-term trend for each indicator.

For each indicator, we addressed two questions:

1. *To what extent has the indicator recovered relative to the pre-recession peak and the subsequent trough?*
2. *What do recent trends suggest about current economic conditions?*

Summary of Findings

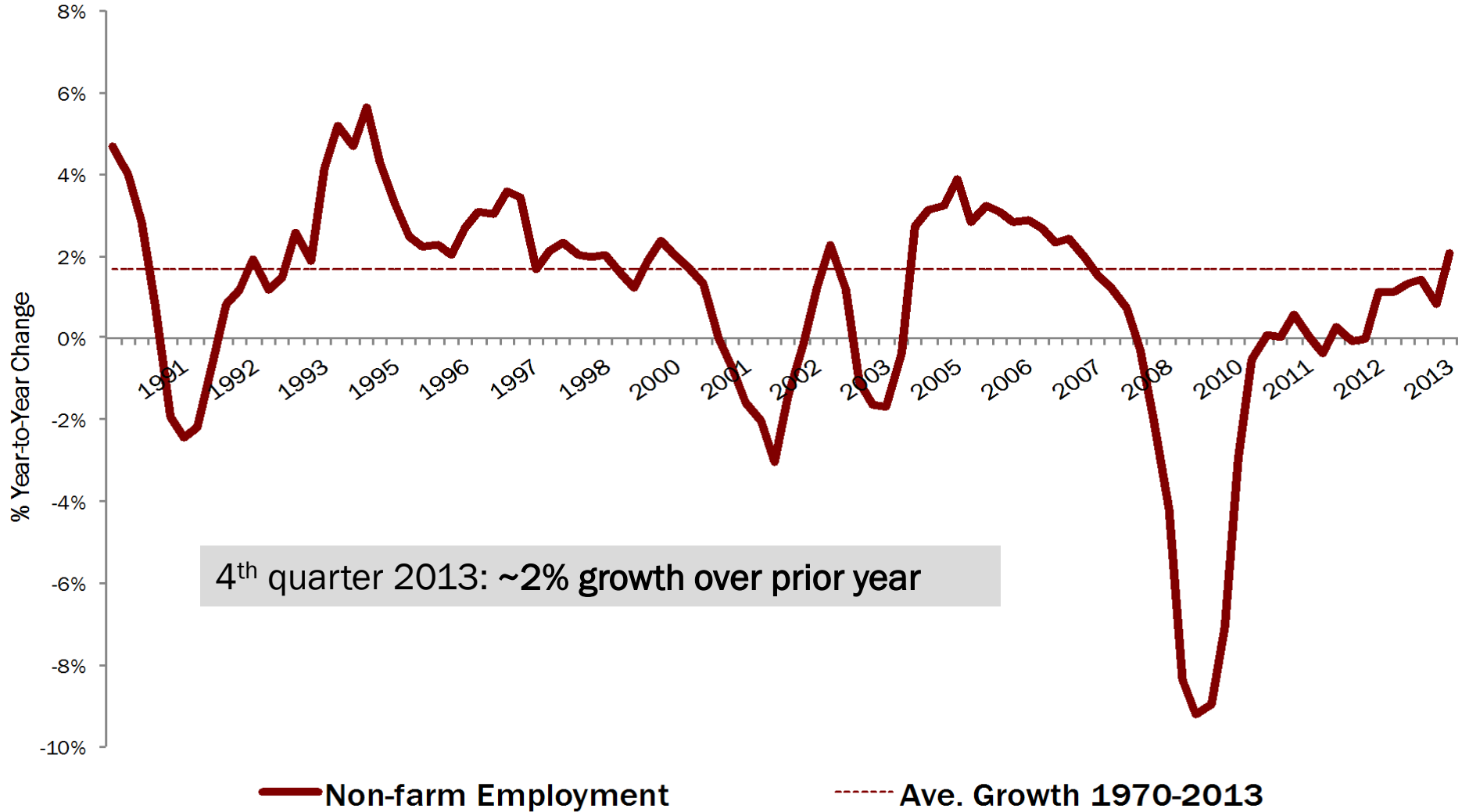
- **Broad-based measures of local economic conditions suggest continued improvement.**

Indicator	Recent Trend	Relative to Pre-recession Levels	Relative to Long Term Trends
Total Employment	Up	Regained ~30% of jobs lost since peak	Above average growth
Emp. by industry	Generally up	Mixed; some industries are nearing pre-recession levels	Generally above average growth
Unemployment	Down	Close to average; above pre-recession lows	Above average
Labor Force	Down	Generally declining since 2009	Below average growth
Per capita personal Income	Total: Up	Regained ~50% in real terms	Above average growth
	Earnings: Down	Continued decline through 2012	Below average growth
	Wage & Salary: Up	Regained ~4% in real terms	Above average growth
Building Permits	Proprietors' Inc.: Up	Regained ~50% in real terms	Above average growth
	Residential: Up	Roughly half pre-recession levels.	Below
Business Establishments	Industrial*: Up	Above -pre-recession levels	Above
	Up	Close to pre-recession levels	Equal

Employment

- Still fewer jobs than prior to the last recession
- Overall employment growth in recent months was close to the long-term trend
- Somewhat above trend growth in most highlighted industries

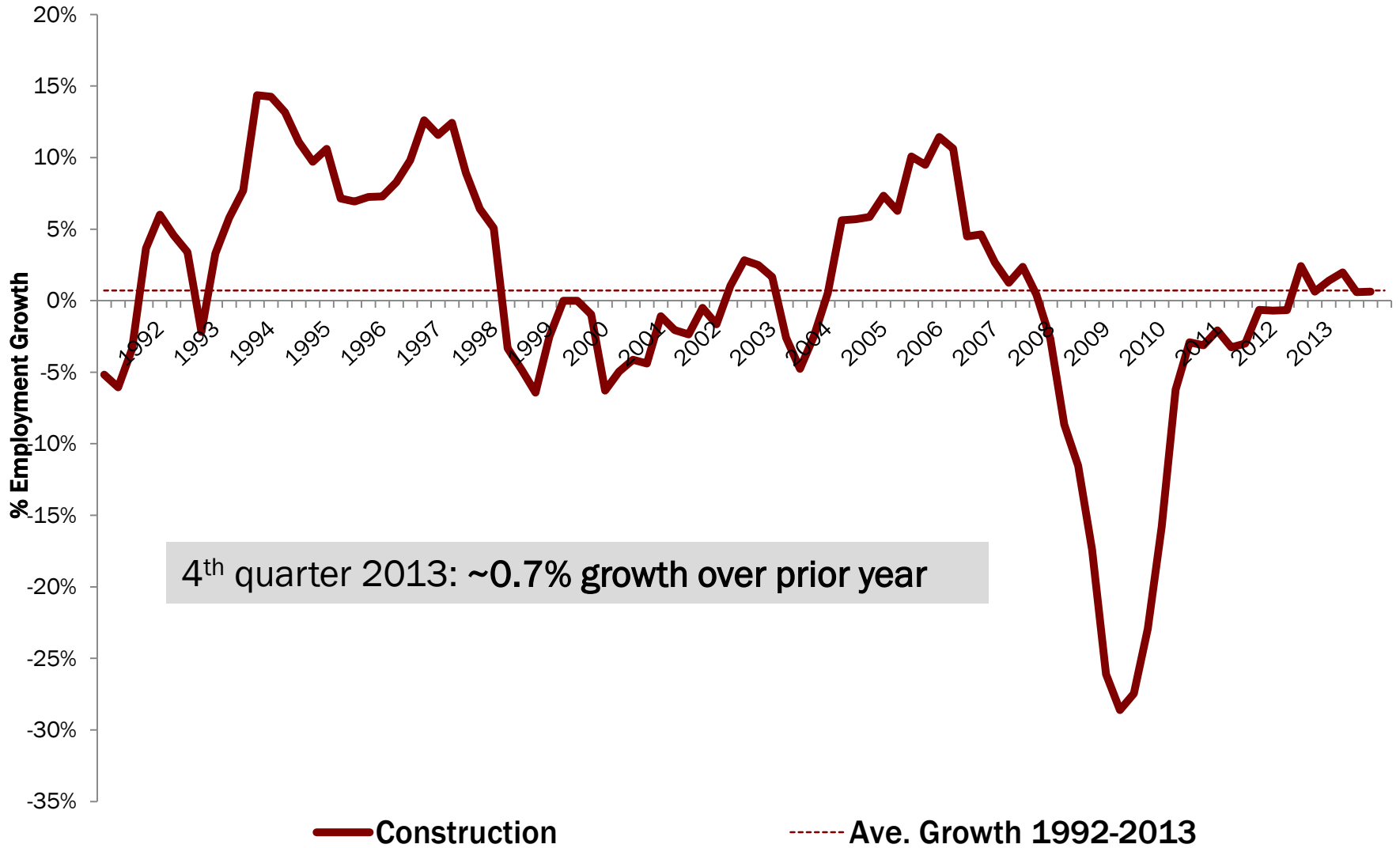
Non-farm employment growth in the Eugene-Springfield MSA, 1990Q1-2013Q4



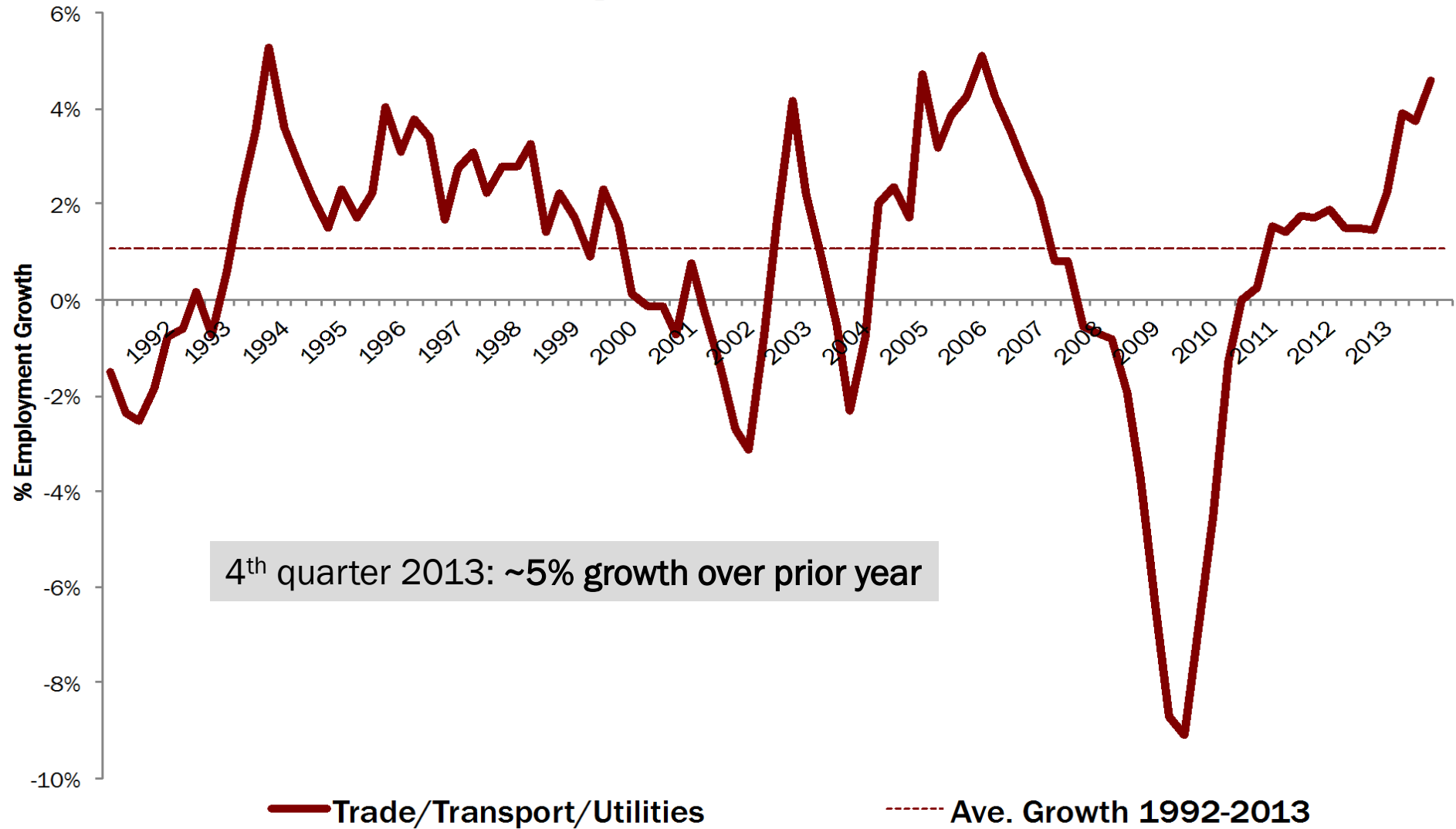
Manufacturing employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4



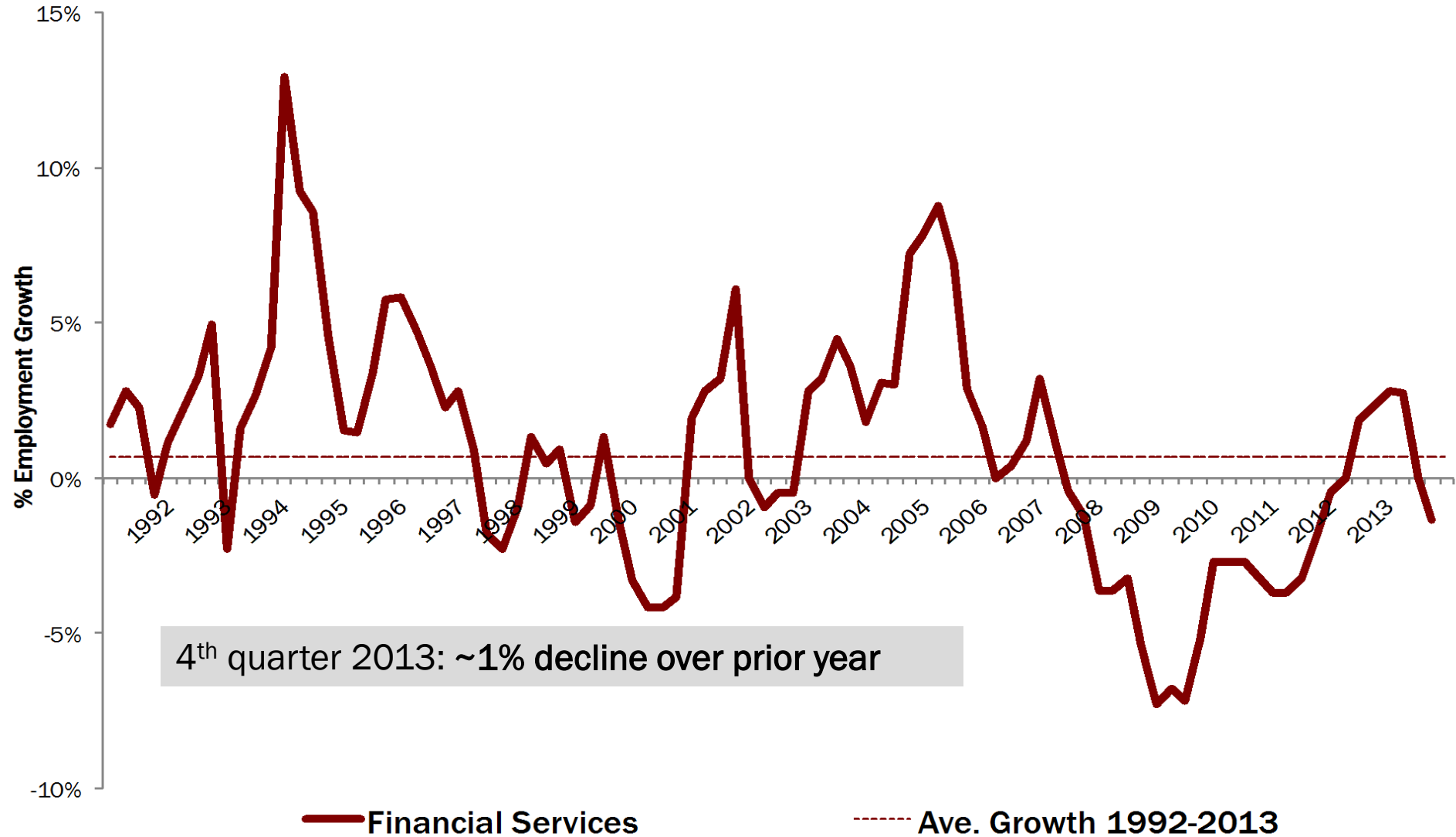
Construction employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4



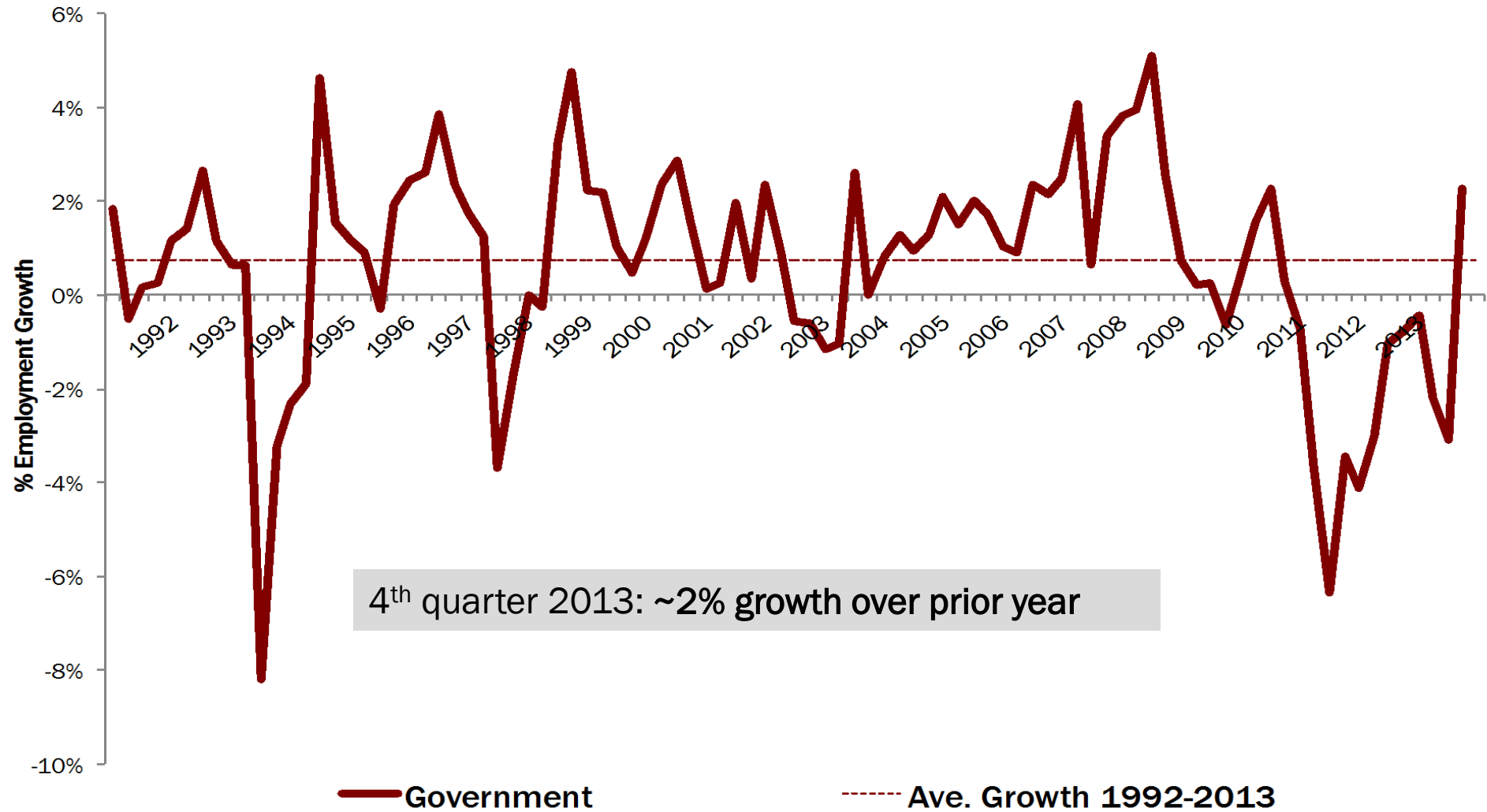
Trade/transportation/utilities employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4



Financial services employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4



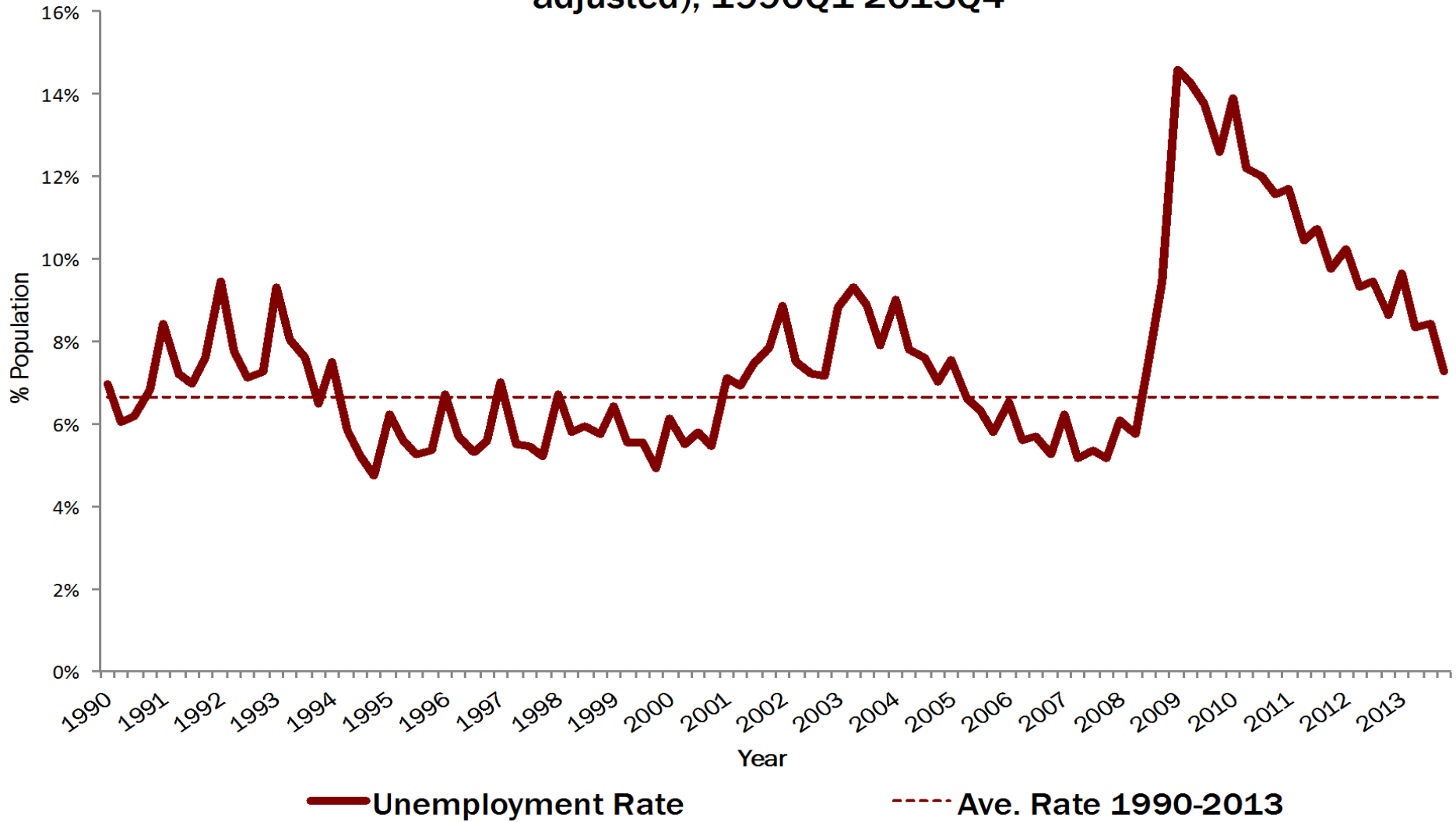
Government employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4



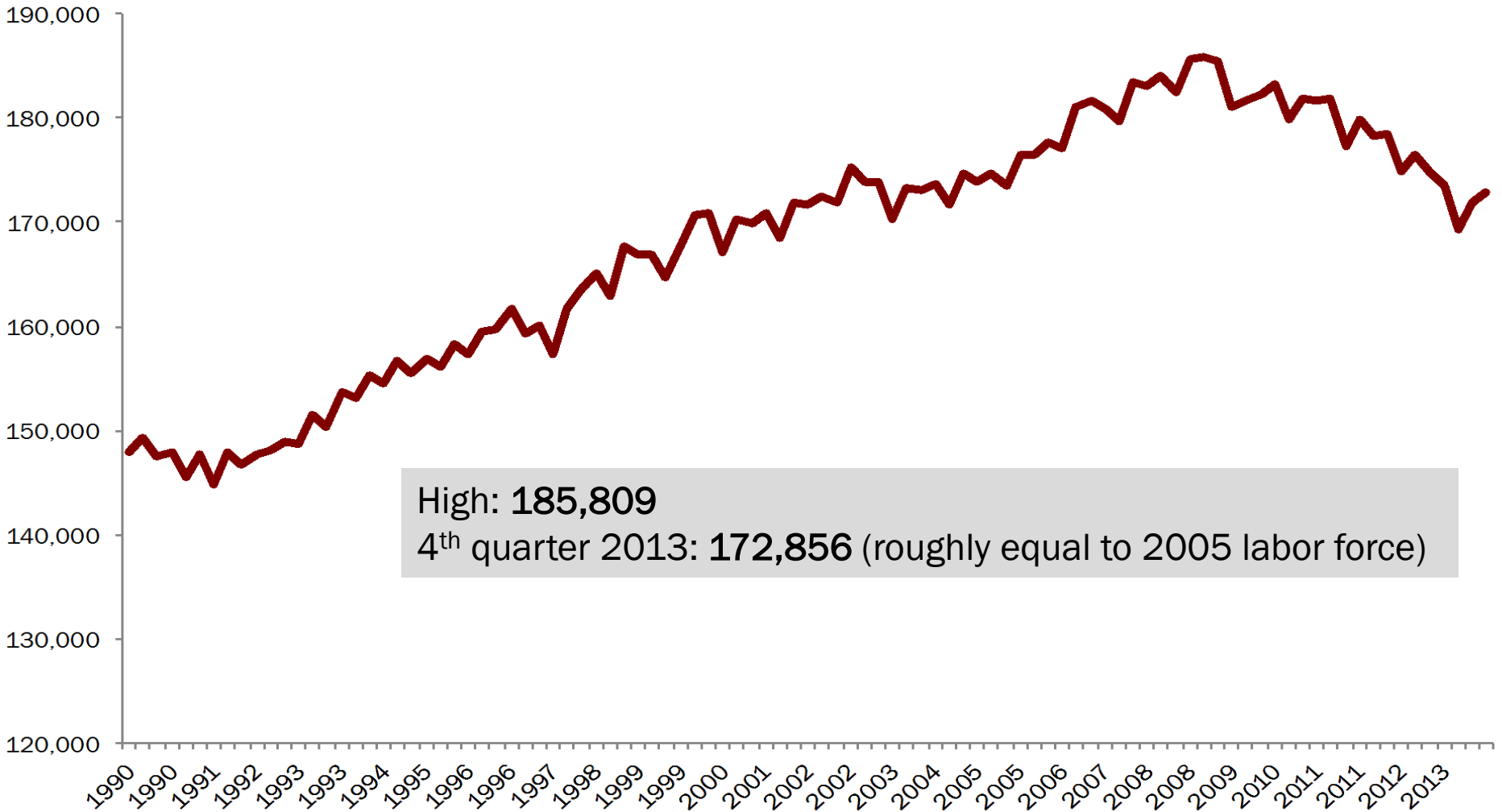
Unemployment and Labor Force.

- Current unemployment rate: **7.7%**
- Recessionary peak: **~15%**
- Average unemployment rate over the past two decades: **6.6%.**
- *Masks continued decline in labor force participation.*

Unemployment rate for the Eugene-Springfield MSA (not seasonally adjusted), 1990Q1-2013Q4



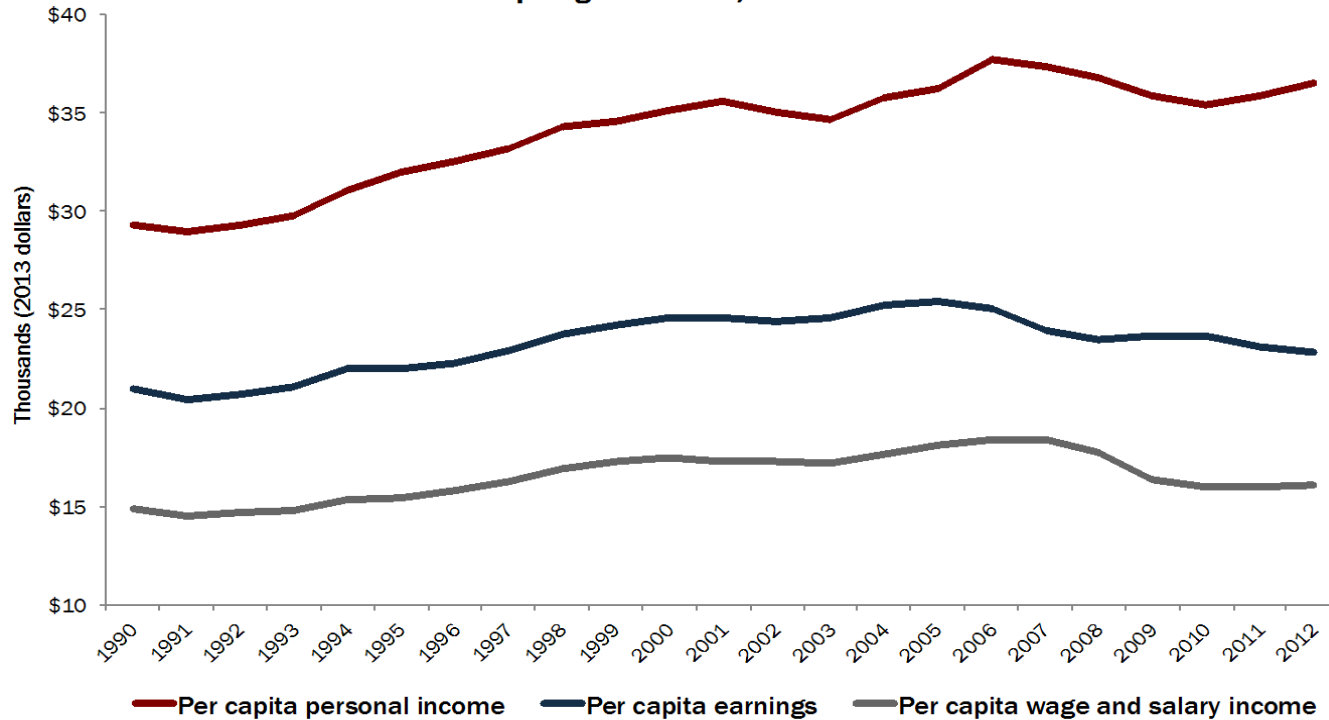
Size of Eugene-Springfield MSA labor force (not seasonally adjusted), 1990Q1-2013Q4



Personal Income

- Real per capita place-of-residence personal income **recovered 46% of the decline observed during the recession**
- Real per capita place-of-work earnings **continued to fall from the prerecession peak**
- Real per capita wage and salary income **had recovered only 4% of recessionary losses.**

Selected components of real per capita personal income in the Eugene-Springfield MSA, 1990-2012

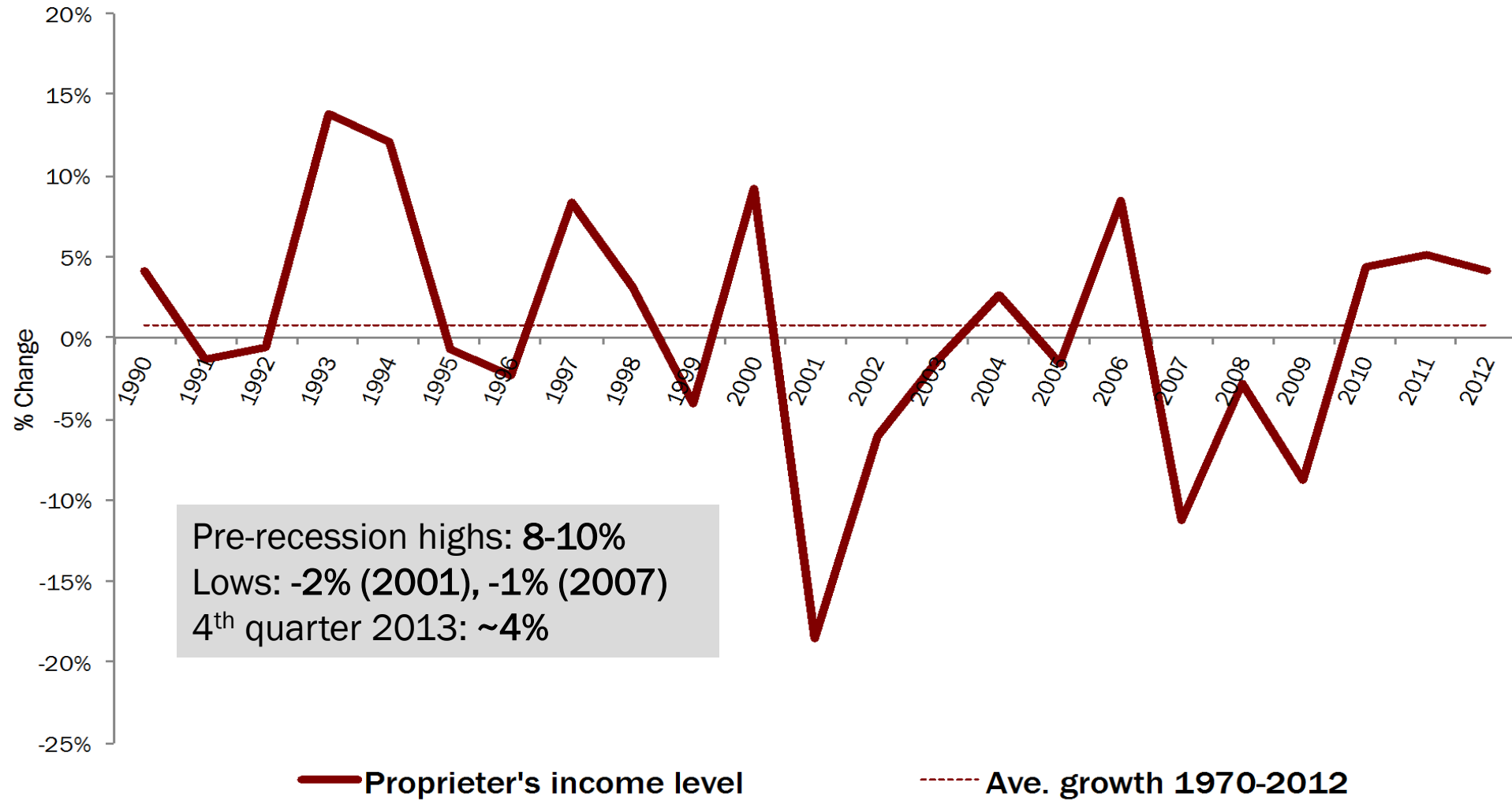


	Personal income (POR)		Earnings (POW)		Wage and salary	
	Aggregate (1,000s of \$)	Per capita	Aggregate (1,000s of \$)	Per capita	Aggregate (1,000s of \$)	Per capita
2007	\$12,864,526	\$37,305	\$8,265,037	\$23,967	\$6,353,232	\$18,423
2012	\$12,929,384	\$36,468	\$8,100,848	\$22,849	\$5,696,141	\$16,066
% change 2007 to 2012	0.50%	-2.24%	-1.99%	-4.67%	-10.34%	-12.80%
% change 2011 to 2012	2.01%	1.71%	-0.81%	-1.11%	0.96%	0.66%

Personal Income (cont'd)

- Proprietors' income had recovered **57% of recessionary losses.**
- Proprietors' income growth currently at **~4.2%, well above the 1970-2012 average of 0.7%.**

Annual growth in proprietors' income in the Eugene-Springfield MSA, 1990-2012

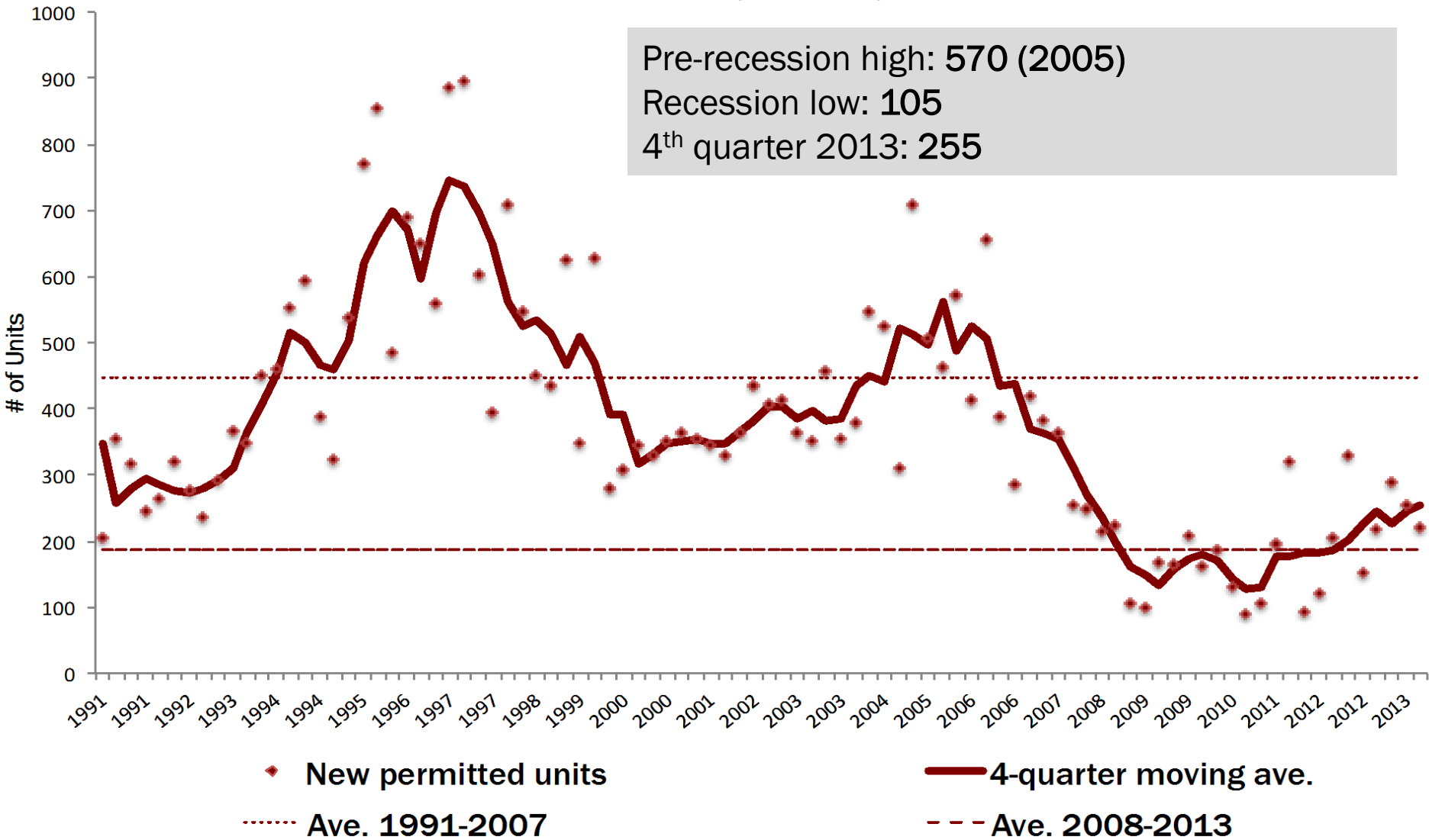


Building Permits

- Residential construction has recovered considerably from recessionary lows, but permit activity remains far below prerecession averages.
- The value of recently permitted industrial construction exceeds the longer-term annual averages.

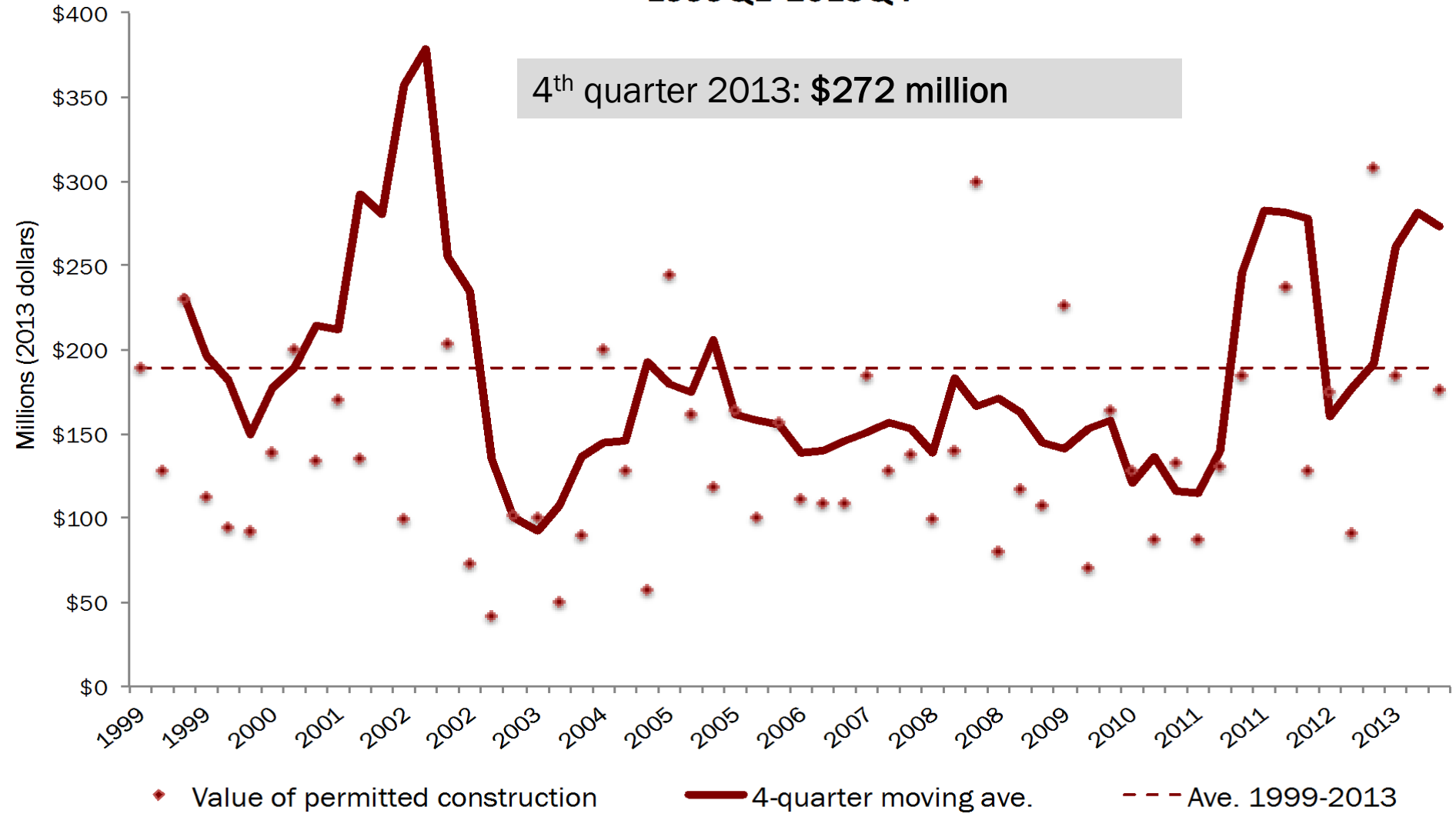
New residential units permitted in the Eugene-Springfield MSA, 1991Q1-2013Q4

Pre-recession high: 570 (2005)
Recession low: 105
4th quarter 2013: 255



Value of new permitted industrial construction, City of Eugene, 1999Q1-2013Q4

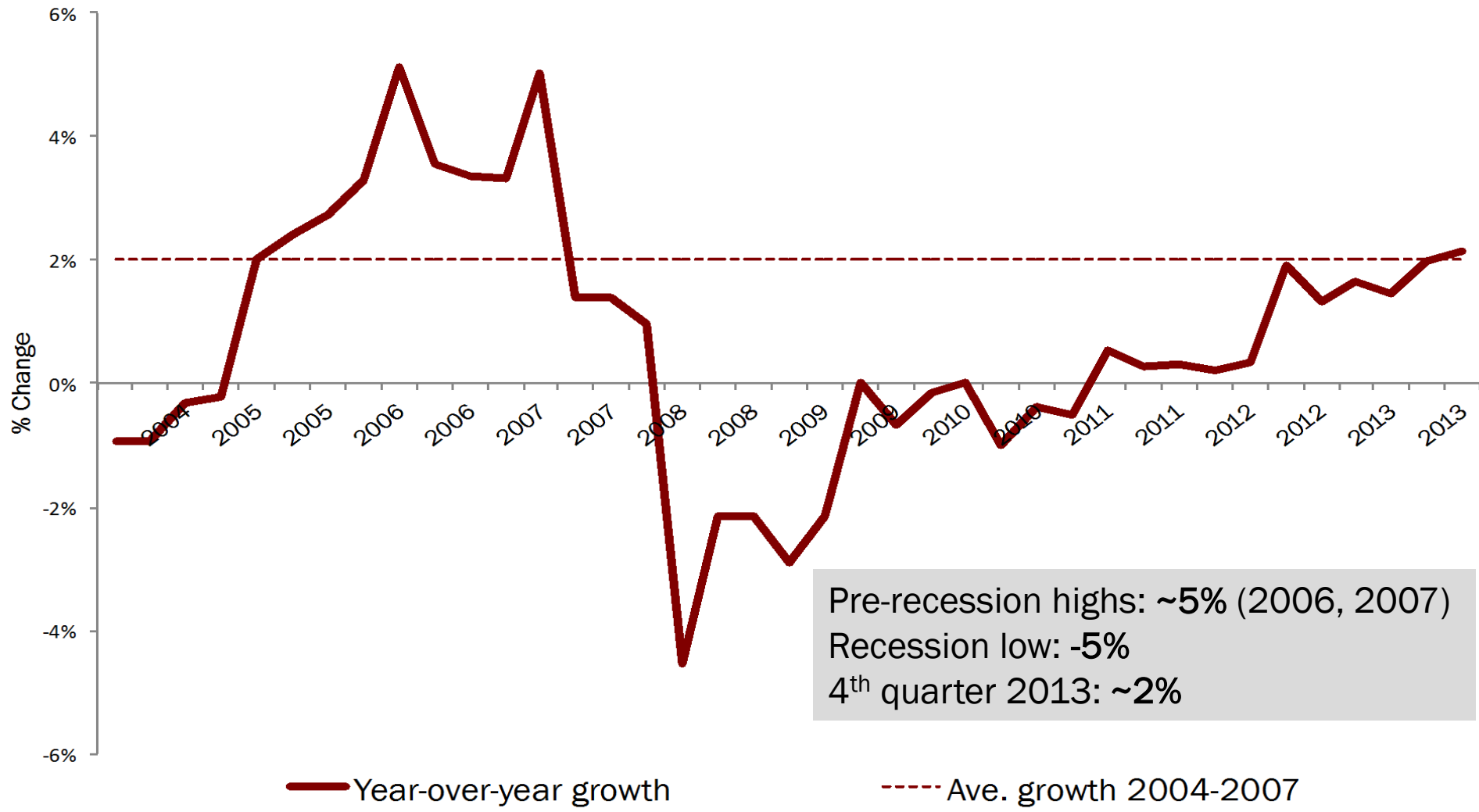
4th quarter 2013: \$272 million



Business Establishments

- 1.8% below the 2007 peak and 5.3% higher than the low in 2010.
- In recent quarters, year-over-year growth has hovered close to the 2% average growth rate from 2004-2007

Year-over-year growth in business establishments in the Eugene-Springfield MSA, 2004Q1-2013Q3



Summary of Findings

Indicator	Recent Trend	Relative to Pre-recession Levels	Relative to Long Term Trends
Total Employment	Up	Regained ~30% of jobs lost since peak	Above average growth
Emp. by industry	Generally up	Mixed; some industries are nearing pre-recession levels	Generally above average growth
Unemployment	Down	Close to average; above pre-recession lows	Above average
Labor Force	Down	Generally declining since 2009	Below average growth
Per capita personal Income	Total: Up	Regained ~50% in real terms	Above average growth
	Earnings: Down	Continued decline through 2012	Below average growth
	Wage & Salary: Up	Regained ~4% in real terms	Above average growth
	Proprietors' Inc.: Up	Regained ~50% in real terms	Above average growth
Building Permits	Residential: Up	Roughly half pre-recession levels.	Below
	Industrial*: Up	Above -pre-recession levels	Above
Business Establishments	Up	Close to pre-recession levels	Equal

Dr. Andrew Dyke
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DATE: April 28, 2014
TO: Board of Directors, Lane Transit District
FROM: Andrew Dyke, Senior Economist
SUBJECT: RECENT ECONOMIC PERFORMANCE OF THE EUGENE-SPRINGFIELD METROPOLITAN STATISTICAL AREA (MSA)

Introduction

Lane Transit District (LTD) contracted with ECONorthwest to support LTD's Board of Directors in determining whether local economic conditions support an increase in the payroll and self-employment taxes levied by LTD, consistent with provisions contained in Oregon Revised Statutes (ORS) 267.385 and 267.387.

As established in statute (ORS 267.385 and 267.287), regional employment and income growth constitute the factors to be considered in determining "that the economy in the district has recovered to an extent sufficient to warrant the increase in tax." Below, we present analysis of historical data regarding these and other economic variables that the Board should consider in making its determination.

Below, we briefly describe our data sources and methods and summarize our findings. This memorandum concludes with a detailed presentation of the data.

Data sources and methods

We analyzed data related to the following economic indicators:

- Total employment (statutory requirement)
- Employment in selected industries: manufacturing, construction, trade, government, and financial services/FIRE (finance, insurance, and real estate)
- Unemployment rate and size of the labor force
- Personal income by place of residence and by place of work (statutory requirement)
- Selected components of personal income (wage and salary income; proprietors' income)
- Residential and commercial construction permits
- Number of business establishments

Except where noted, we provide data and analysis specific to the Eugene-Springfield MSA (i.e., Lane County, "the region"). Table 1 identifies the source for the indicator data.

Table 1: Primary data sources

Data series	Source
Personal income	U.S. Bureau of Economic Analysis
Employment	U.S. Bureau of Labor Statistics, Current Employment Statistics
Unemployment, total employment, and labor force	U.S. Bureau of Labor Statistics, Local Area Unemployment Statistics
Residential construction permits	U.S. Census Bureau
Industrial and commercial construction permits (City of Eugene only) ¹	City of Eugene, Planning and Development Department
Business establishments	U.S. Bureau of Labor Statistics, Quarterly Census of Employment and Wages

LTD staff also suggested collecting data on new business licenses. The Secretary of State makes available statewide data but requires a fee and filing of a special request for more disaggregated data. The data would provide information about new businesses opening in the Eugene-Springfield MSA but not necessarily existing businesses opening a new location in the Eugene-Springfield MSA. If LTD remains interested in these data, we could request the disaggregated license data and supplement this report, contingent on timely receipt of the data.

In preparing this report, we also considered the Oregon Economic Forum regional economic indexes, reports prepared by Oregon Employment Department staff, and economic forecasts prepared by Oregon’s Office of Economic Analysis. We note that the indicators discussed below do not include every economically important indicator, and individual indicators do not necessarily deserve equal weight in informing the Board’s decision. However, the included indicators do provide information sufficient to summarize current economic conditions in the region.

Summary of findings

- **Broad-based measures of local economic conditions suggest continued improvement.** Oregon Economic Forum’s regional index for the Eugene-Springfield area has demonstrated continued improvement, supported by average or above-average growth in most index components in recent months, consistent with the detailed findings presented below. In general, trends in the selected indicators suggest accelerating improvement in economic conditions.
- **Employment.** Although the economy still provides many fewer jobs than just prior to the last recession, overall employment growth in recent months was close to the long-

¹ These data are not collected centrally by MSA. City of Springfield did not have readily accessible data, and we did not query other jurisdictions.

term trend and somewhat above trend in key industries highlighted below. Lackluster growth in the financial services industries provides the evidence of weakness from among the sectors considered.

- **Unemployment and labor force.** The region's unemployment rate, 7.2% at the end of 2013, has fallen significantly from the recessionary peak of close to 15%, but remains above the average rate over the past two decades of 6.6%. The encouraging trend in unemployment masks continued decline in labor force participation, which has shrunk since 2010 and is now close to levels last observed during the early 2000s.
- **Personal income.** By 2012, real per capita place-of-residence personal income had recovered 46% of the decline observed during the recession; real per capita place-of-work earnings continued to fall from the prerecession peak; and real per capita wage and salary income had recovered 4% of recessionary losses. In 2012, growth in both place-of-residence personal income and wage and salary income exceeded the annual average for 1970-2012. The generally positive economy in recent months suggests stronger growth in personal income. By 2012, proprietors' income had recovered 57% of recessionary losses. In 2012, proprietors' income grew in real terms by 4.2%, well above the 1970-2012 average of 0.7%.
- **Building permits.** Residential construction has recovered considerably from recessionary lows, but permit activity remains far below prerecession averages. In 2013, 983 units were permitted. Prior to the recession, annual totals averaged about 1,800. However, we also find that the value of recently permitted industrial construction exceeds the longer-term annual averages by a wide margin.
- **Business establishments.** As of the most recent, preliminary, data from the third quarter of 2013, the region had 10,975 business establishments, 1.8% below the 2007 peak and 5.3% higher than the low in 2010. In recent quarters, year-over-year growth has hovered close to the 2% average growth rate from 2004 and 2007.

Detailed findings

Below, we present detailed findings from our analysis for each of the indicators.

Total employment

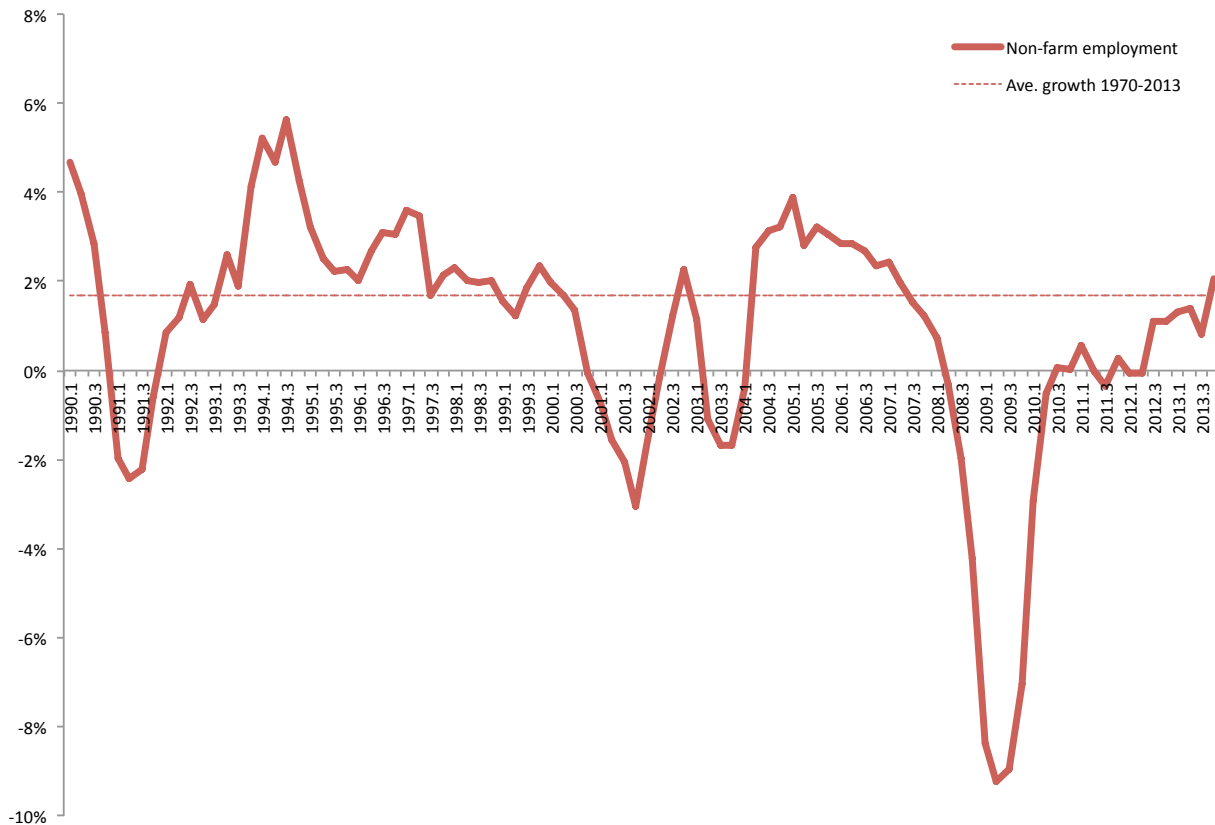
As of February 2014, local non-farm employment stood at 144,100, a gain of 1.2% (1,800 jobs) from a year earlier and up about 4% (5,800 jobs) from the recessionary trough of 138,300. In all, the region has regained about 30% of the jobs lost during the recession.²

² Based on seasonally adjusted data.

While recovery of jobs has lagged behind that of the Portland metropolitan area, which produced most of the state’s job growth early in the recession, employment growth locally has accelerated in recent months.

Since 1970, employment has grown at an average of 1.7% annually, nearly identical to the year-over-year growth observed during the first two months of 2014 and below the 2.1% growth during the last quarter of 2013. In other words, recent employment growth aligns with the region’s long-term trend.³ Figure 1 displays year-over-year employment growth in the region from 1990 through the end of 2013.

Figure 1: Year-over-year non-farm employment growth in the Eugene-Springfield MSA, 1990Q1-2013Q4



Source data: U.S. Bureau of Labor Statistics

Employment by sector

In this section, we present employment data for manufacturing, construction, trade/transportation/utilities, financial services, and government. For the most part, recent

³ Average annual growth from the end of the early 1990s’ recession through the present has been somewhat lower (0.9%). Average growth from the end of the 1990s’ recession through the peak, prior to the recent recession, was slightly higher (1.8%).

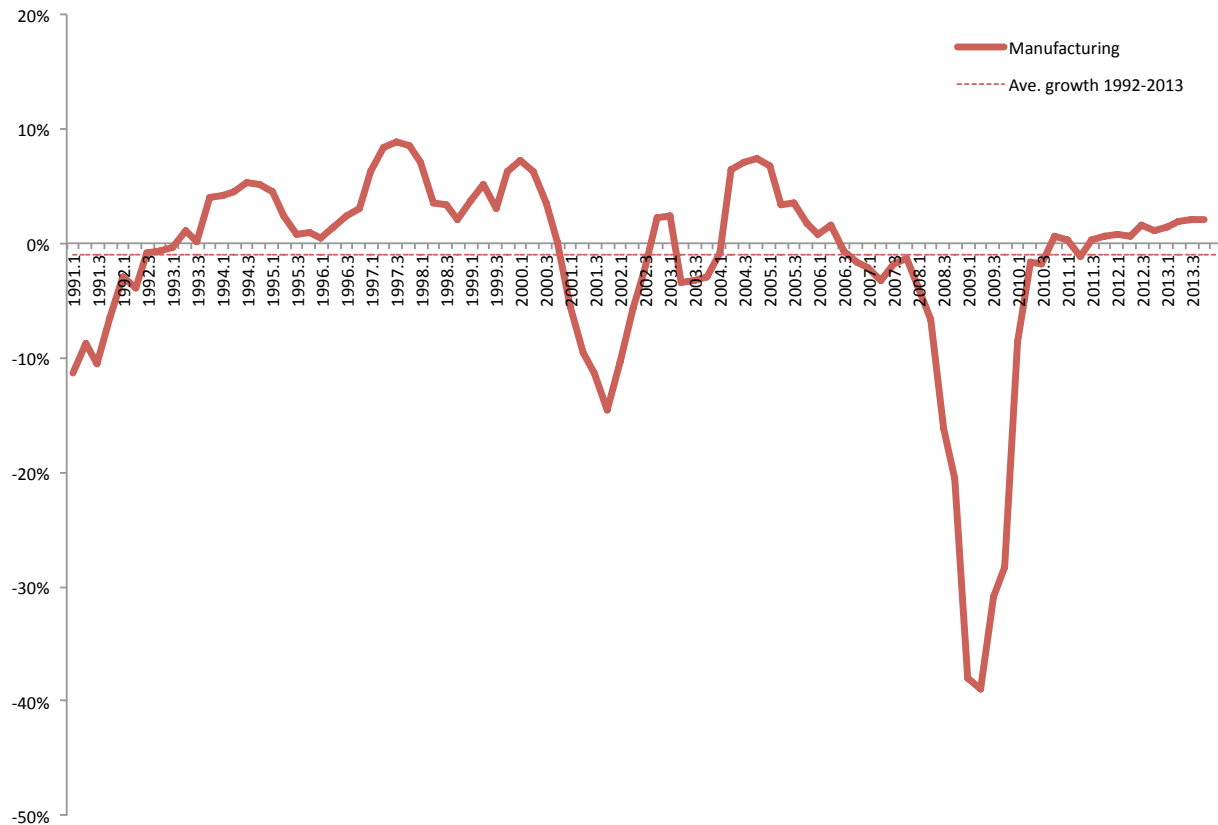
trends qualitatively resemble those observed for total employment, although the timing and magnitude of recent improvements varies considerably across sectors. Note that the vertical scale of the data display varies across sectors depending on the volatility of employment each industry.

Manufacturing

Manufacturing remains an important driver of local economic activity. The industry provided 12,600 jobs in the region as of February 2014, significantly below the pre-recessionary peak of about 20,000 in 2007. Long-term declines in manufacturing employment locally, mirroring declines at the state and national levels, have pushed the industry’s share of employment to about 9% of total non-farm jobs, down from about 15% circa 2000.

Since 1992, with annual manufacturing employment growth has averaged -0.1%. Excluding the last recession, the average was slightly above zero, at 0.1%. Although the industry has recovered only 700 jobs since the recessionary low of 11,900 in late 2010, since mid-2012 the industry has grown more quickly than the long-term trend (see Figure 2).

Figure 2: Year-over-year manufacturing employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4

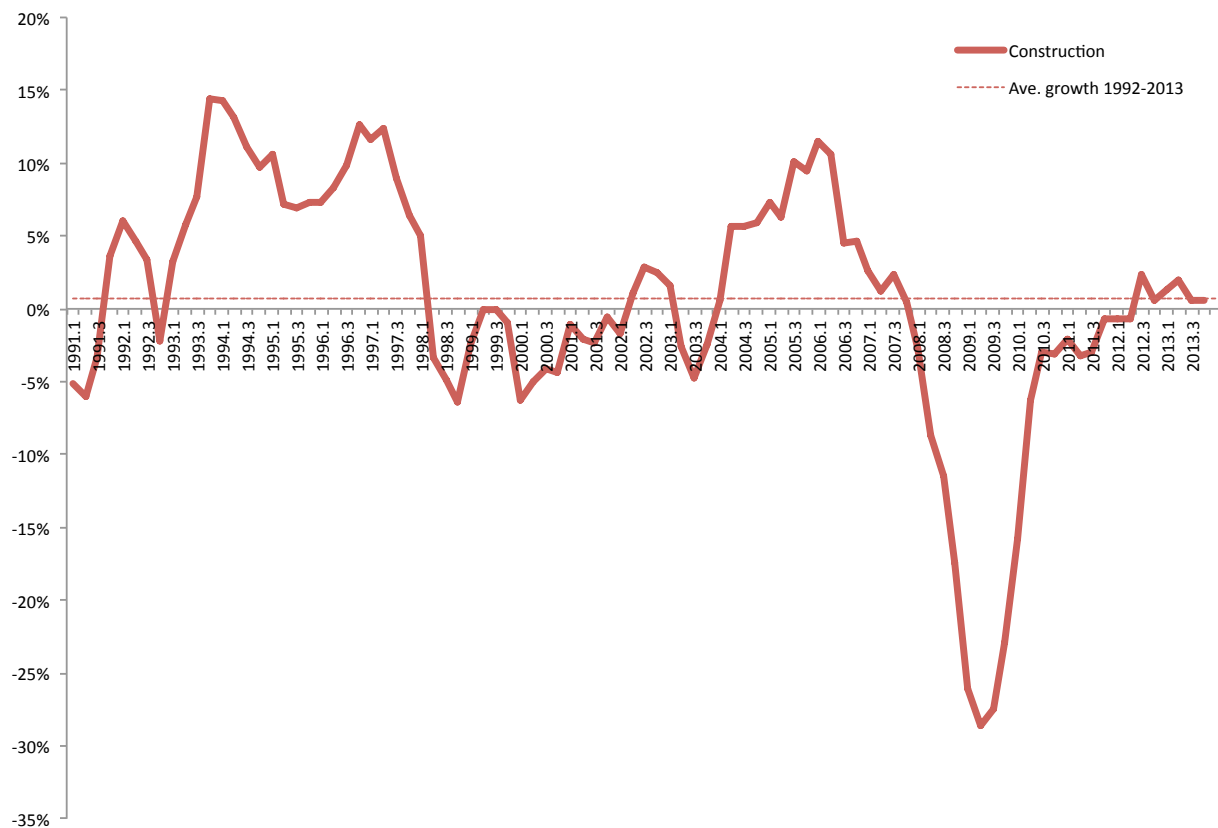


Source data: U.S. Bureau of Labor Statistics

Construction

The construction industry provides a relatively small share of the region's jobs (4,700 as of February 2014), typically less than 5% and currently about 3.5%, of all non-farm employment. But construction activity and employment serve as useful leading indicators for subsequent economic activity. Since 1992, the industry has had average annual employment growth of 0.7% and currently provides about 5,000 jobs, with significant seasonal variation over the calendar year. Since the beginning of the recession, the industry first exceeded this long-term growth trend in the third quarter of 2012, demonstrating similar or slightly stronger growth through the end of 2013 (see Figure 3).

Figure 3: Year-over-year construction employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4

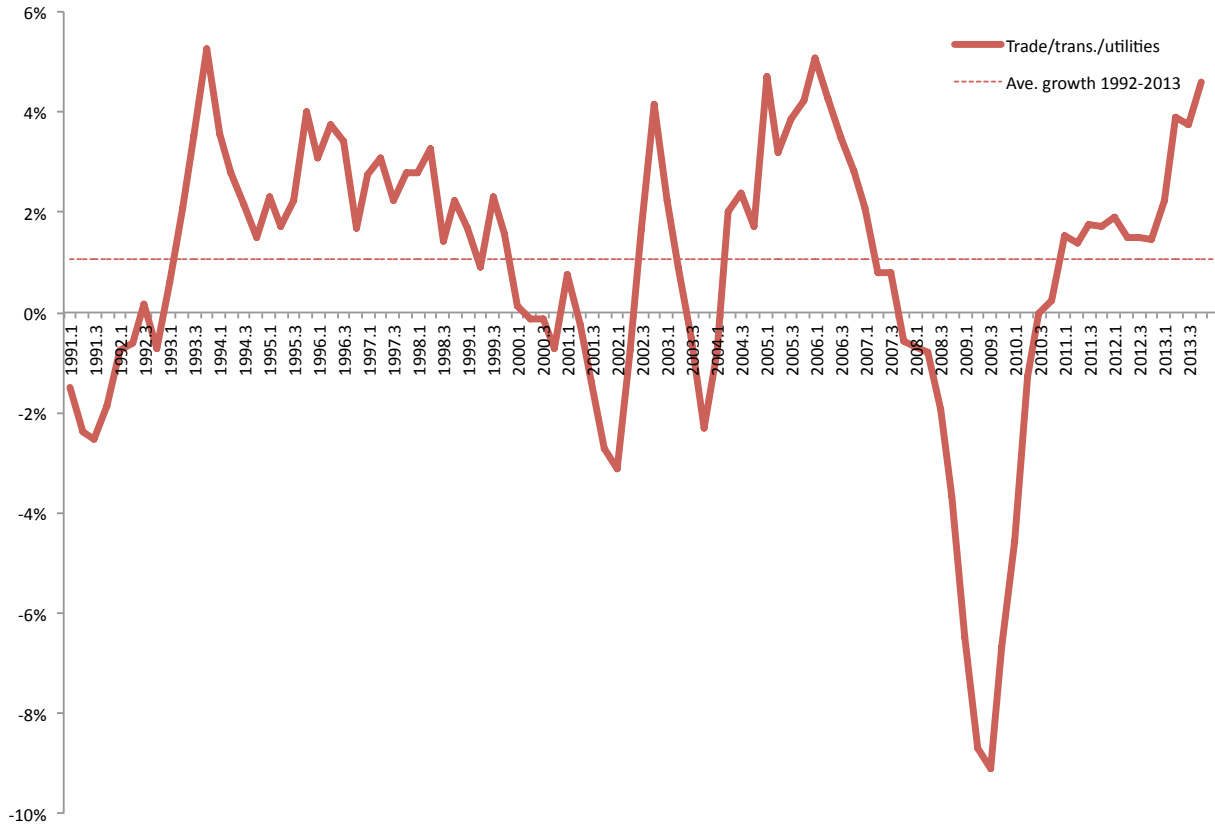


Source data: U.S. Bureau of Labor Statistics

Trade, transportation, and utilities

Together, the trade, transportation, and utilities industries provide nearly 20% of the region's jobs. As of February 2014, this sector provided 28,000 jobs, up nearly 3% (800 jobs) from a year earlier and 9% (2,400 jobs) from the low observed in 2010. Historically, the sector has an average annual growth rate of 1.1%. The sector reached this benchmark in the first quarter of 2011, with year-over-year growth accelerating to about 4% in recent quarters (see Figure 4).

Figure 4: Year-over-year trade/transportation/utilities employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4

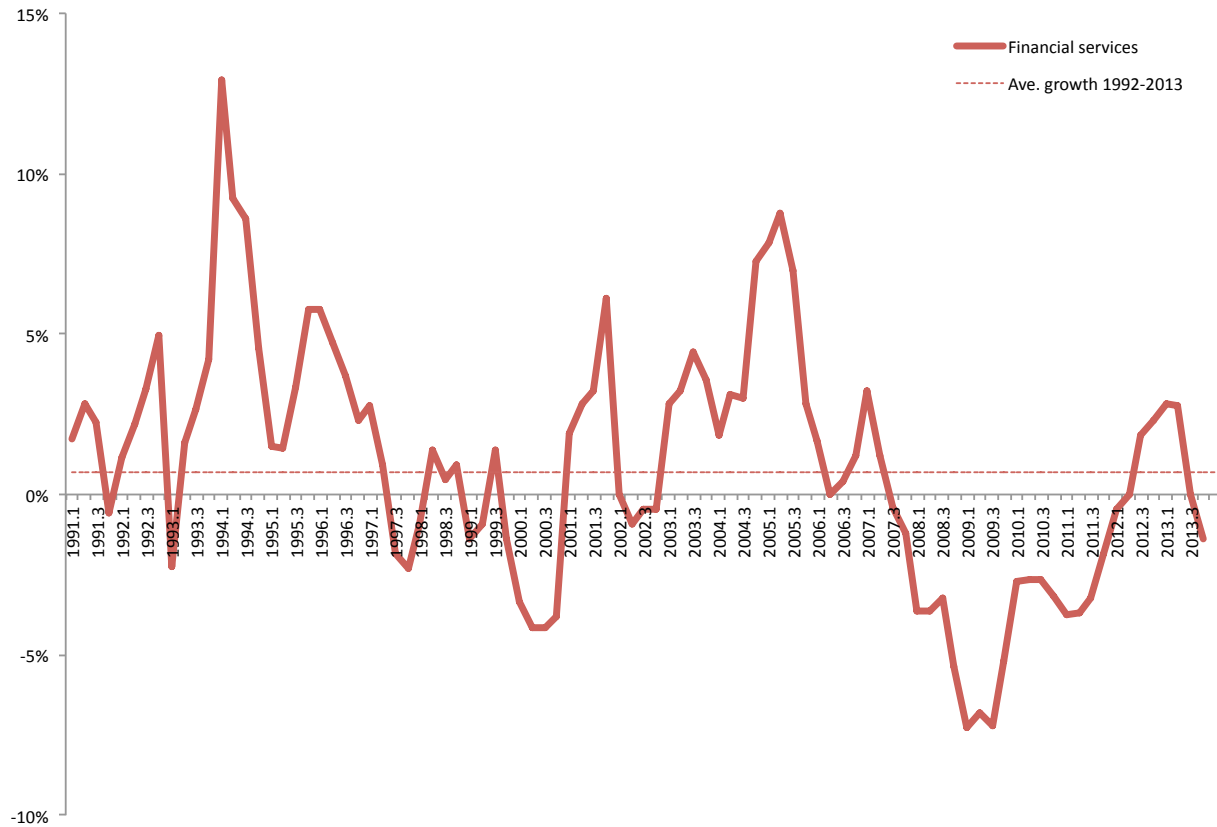


Source data: U.S. Bureau of Labor Statistics

Financial services

The financial services industry provides about 5% of jobs in the region (7,100 as of February 2014). One of the few signs of economic weakness we find in the employment indicators considered, employment in the industry has recovered few of the jobs lost during the recession and, despite exceeding the long-term growth trend of 0.7% per year during 2012 and 2013, growth stalled towards the end of 2013 and turned negative during the fourth quarter. Employment in this sector was very close to the recessionary low as of February 2014.

Figure 5: Year-over-year financial services employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4

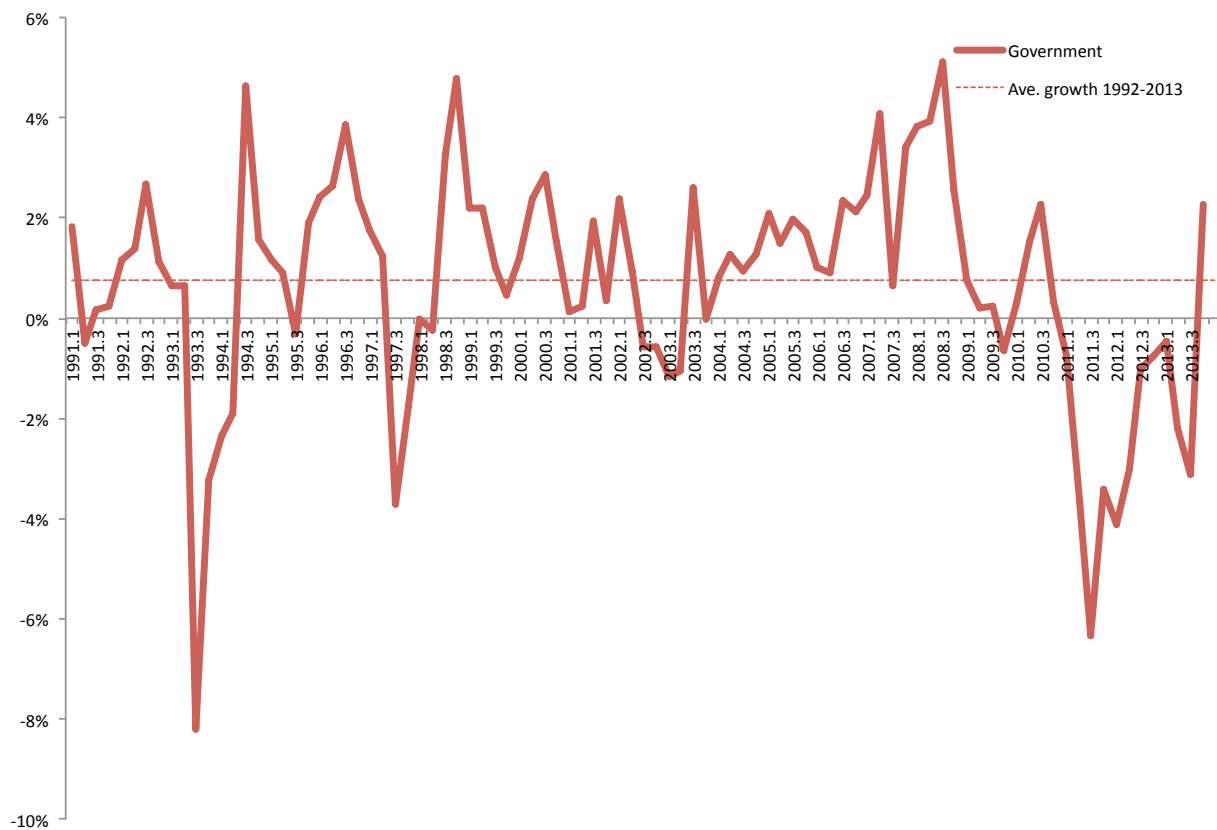


Source data: U.S. Bureau of Labor Statistics

Government

Government employment accounts for about 20% of the region's jobs, typically slightly more than the aggregate trade, transportation, and utilities sector. In February 2014, the sector provided 31,000 jobs in the region, an increase of 2.6% from one year earlier. Due to the nature of public finance and the goals of government spending, the relationship between government employment and the business cycle differs considerably from those observed in the private sector. As illustrated in Figure 6, government employment started falling almost two years after total employment started to fall during the recession, and recent employment levels fall close to prerecessionary levels.

Figure 6: Year-over-year government employment growth in the Eugene-Springfield MSA, 1991Q1-2013Q4

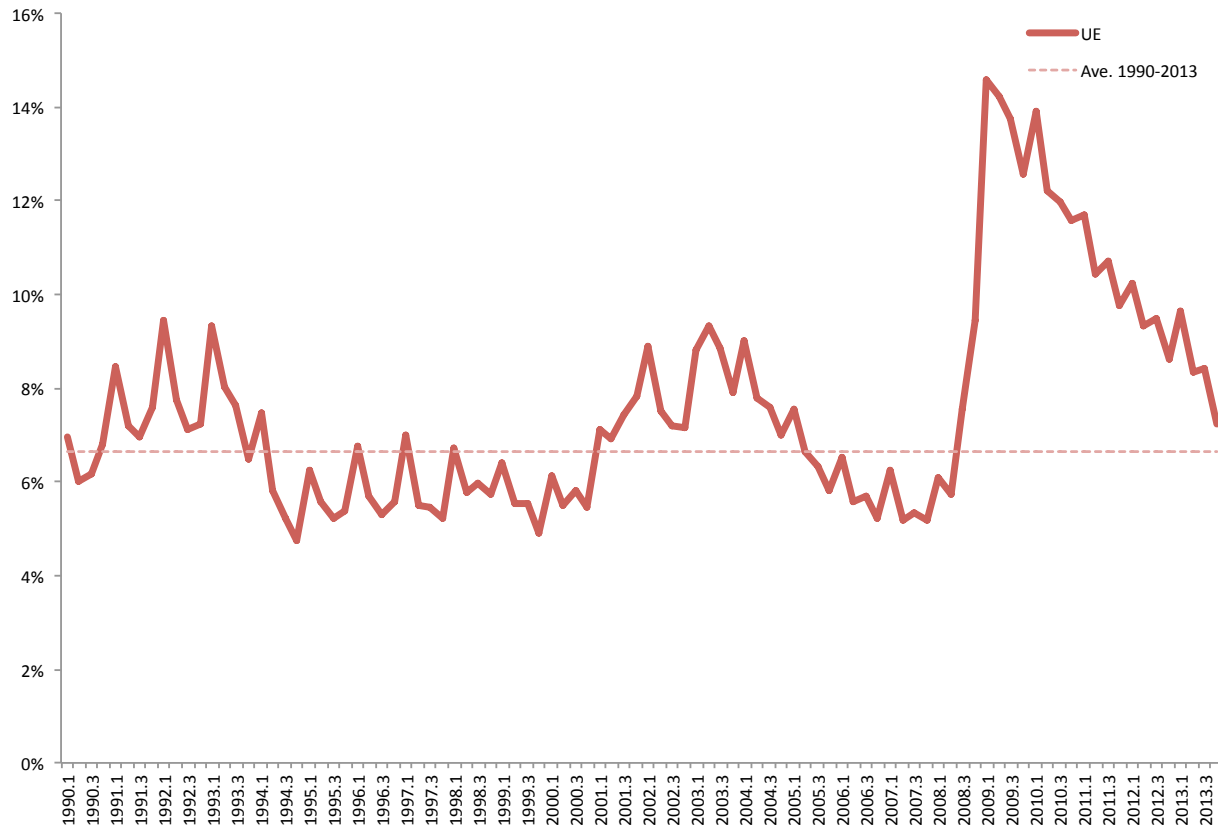


Source data: U.S. Bureau of Labor Statistics

Unemployment and labor force

The region's unemployment rate has fallen significantly from the recessionary peak of close to 15%, to 7.2% in the final quarter of 2013. This level remains above the region's average during the past two decades (6.6%) but also now falls well below peaks from the two prior recessions (see Figure 7).

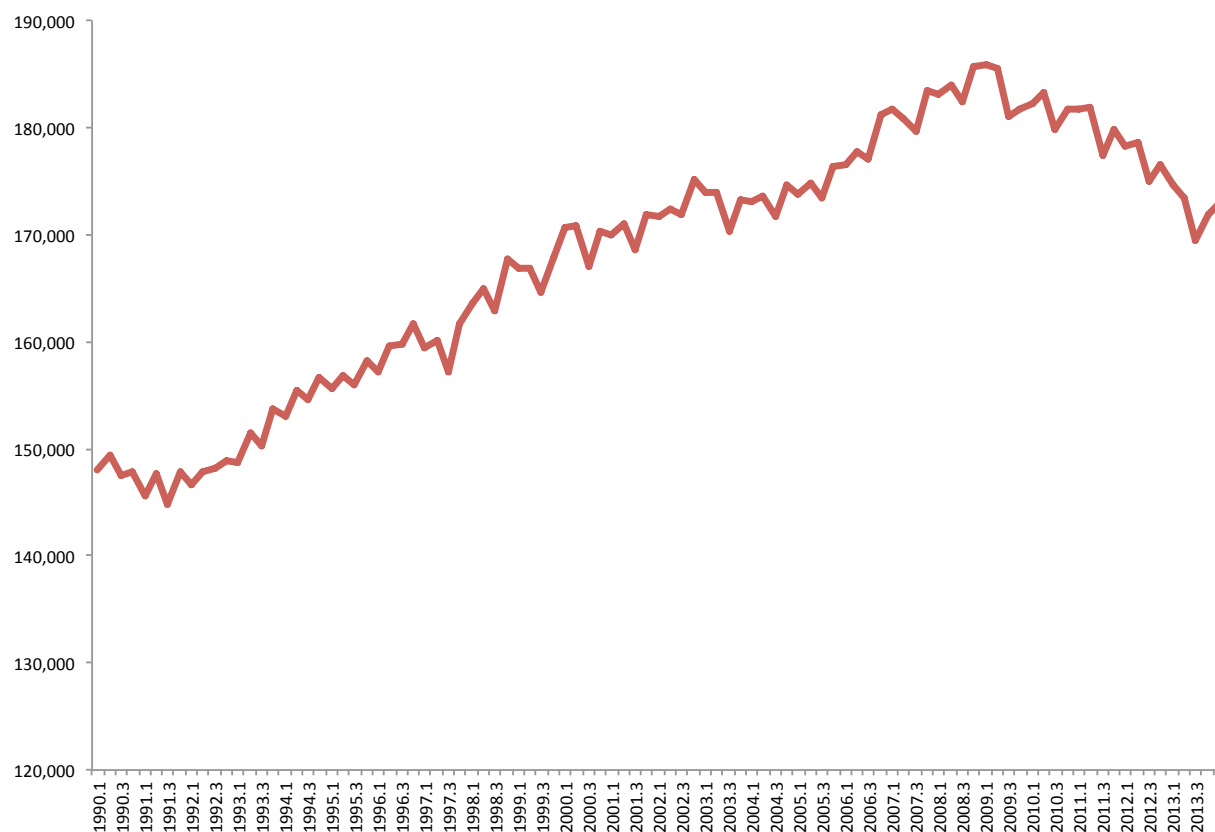
Figure 7: Unemployment rate for the Eugene-Springfield MSA (not seasonally adjusted), 1990Q1-2013Q4



Source data: U.S. Bureau of Labor Statistics

The encouraging trend in unemployment masks continued decline in labor force participation. Compared to a year earlier, the region's labor force shrank by 2.7% through the end of 2013, has declined by 1% or more annually since 2010, and is now close to levels last observed during the early 2000s (see Figure 8). Numerous economic and demographic factors (e.g., increased post-secondary enrollment by adults during the recession; retirement of the baby-boom generation and delayed entry into the labor force among the young) have contributed to the declining labor force, but they continually serve as an important counterpoint to the positive employment trends. However, quantifying the relative magnitude of these factors is difficult at the local level, and debate continues regarding the specific drivers of falling labor force participation even at the national level. In general, increasing labor force participation would suggest increasing confidence about employment prospects among potential job seekers.

Figure 8: Eugene-Springfield MSA labor force (not seasonally adjusted), 1990Q1-2013Q4



Source data: U.S. Bureau of Labor Statistics

Personal income

We assess trends in local personal income by place of residence (POR) and earnings by place of work (POW). The former identifies the income of the region’s residents, while the latter identifies income earned in the region. On net, about 1 percent of the earnings of area residents is earned outside of the region. We also consider wage and salary earnings and proprietors’ income separately. Proprietors’ income serves as a proxy for income earned by small businesses, income separately. Particularly for smaller regions, all personal income measures should be evaluated with caution because of ambiguities inherent in income reporting (e.g., for reporting purposes individuals and businesses can control when they realize some components of income). All income data are expressed in real terms using 2013 dollars.

Personal income by place of residence, by place of work, and wage and salary income

Compared to prerecession peaks, in real terms, per capita total personal income by POR fell by 5.0%, per capita earnings by POW by 4.7%,⁴ and per capita wage and salary by 13.4% to reach recessionary lows in 2008 and 2009, respectively. These measures had recovered somewhat

⁴ We calculate POW per capita earnings as the ratio of total POW earnings to the resident population used to calculate per capita POR personal income.

through 2012, as summarized in Table 2, below. The table compares 2012 to 2007 to provide a consistent baseline for reporting change. As noted above, the timing of the prerecession peak varies by metric, as noted above.

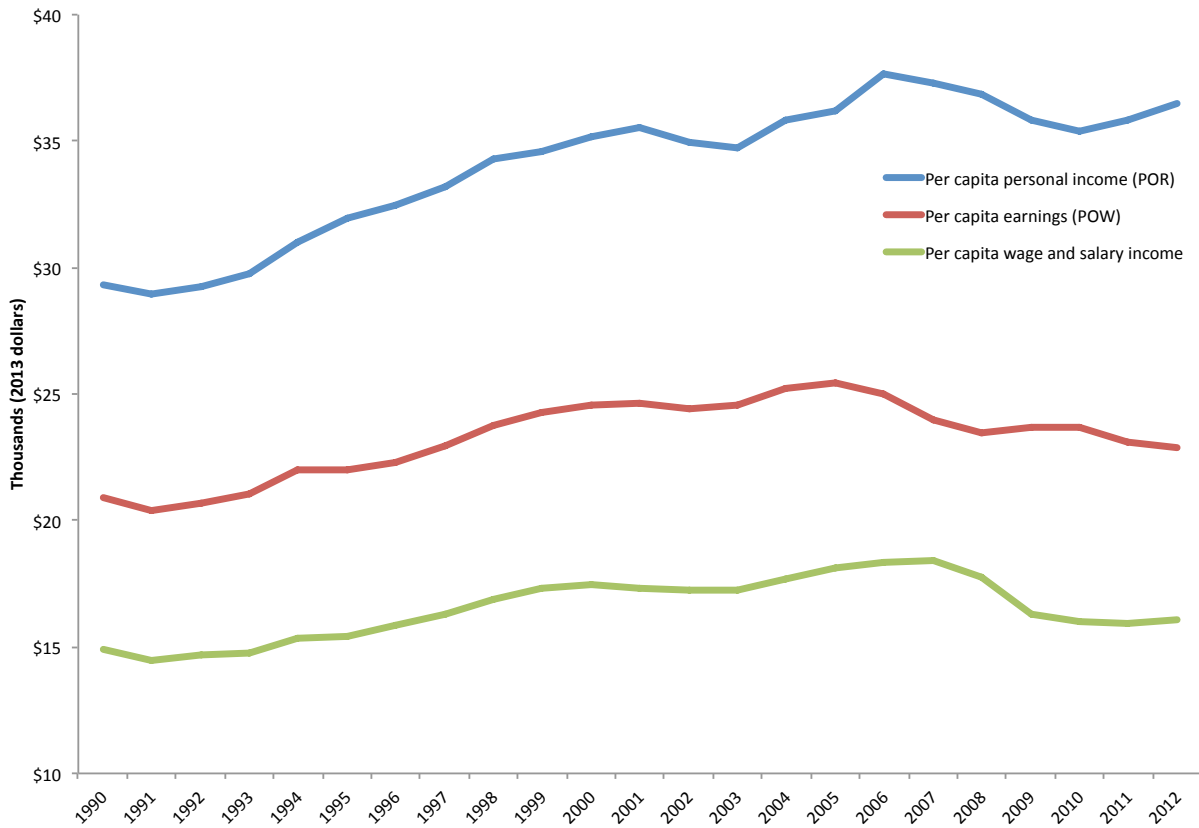
Table 2: Summary of recent trends in real personal income

	Personal income (POR)		Earnings (POW)		Wage and salary	
	Aggregate (1,000s of \$)	Per capita	Aggregate (1,000s of \$)	Per capita	Aggregate (1,000s of \$)	Per capita
2007	\$12,864,526	\$37,305	\$8,265,037	\$23,967	\$6,353,232	\$18,423
2012	\$12,929,384	\$36,468	\$8,100,848	\$22,849	\$5,696,141	\$16,066
% change 2007 to 2012	0.50%	-2.24%	-1.99%	-4.67%	-10.34%	-12.80%
% change 2011 to 2012	2.01%	1.71%	-0.81%	-1.11%	0.96%	0.66%

Source data: U.S. Bureau of Economic Analysis

Figure 9 displays the per capita personal income over time. As suggested in the figure, by 2012, per capita POR personal income had recovered 46% of the decline observed during the recession; per capita POW earnings continued to fall; and per capita wage and salary income had recovered 4.4% of recessionary losses.

Figure 9: Selected components of real per capita personal income in the Eugene-Springfield MSA, 1990-2012

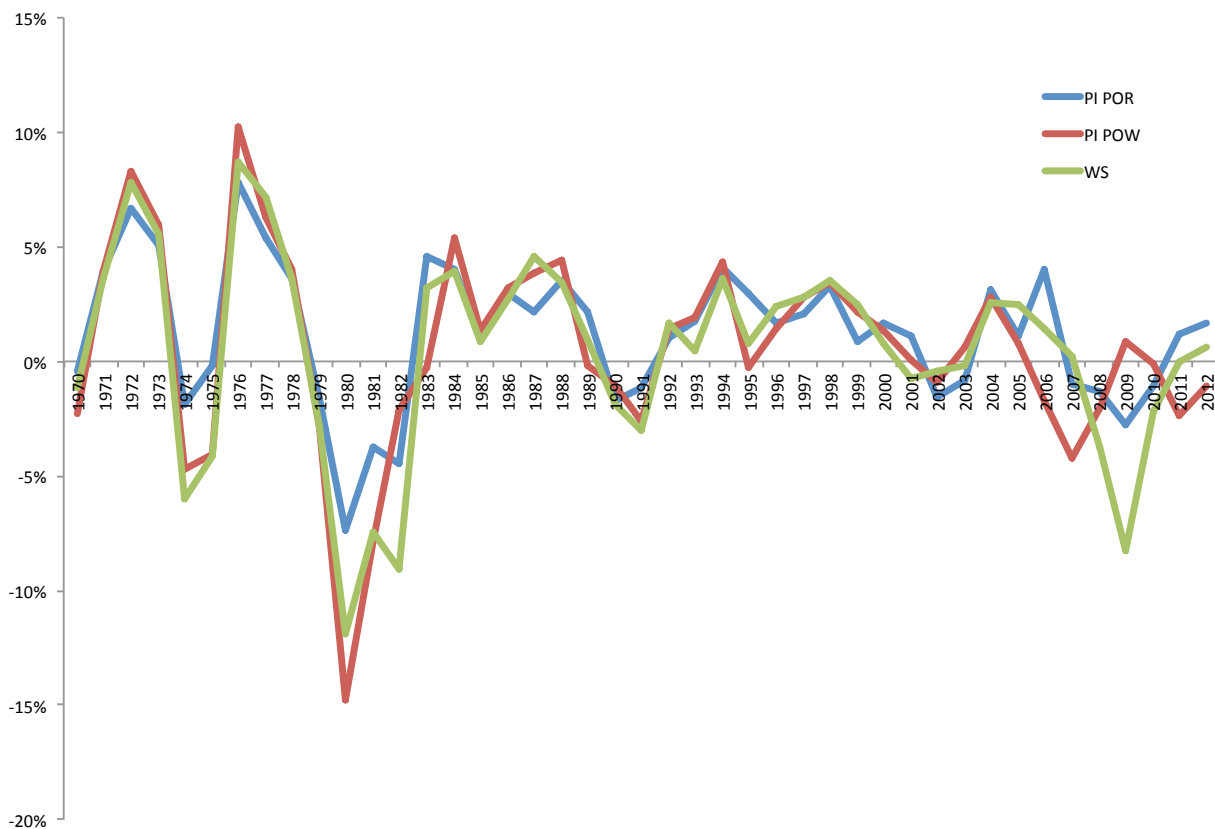


Source data: U.S. Bureau of Economic Analysis

Figure 10 shows growth rates for the per capita income measures identified in Figure 9. In 2012, growth in both POR personal income and wage and salary income exceeded the annual average for 1970-2012. Per capita POR personal income grew by 1.7% (to \$36,468), compared to the long-term average of 1.2%, while per capita wage and salary income grew by 0.7% (to \$16,066), slightly above the long-term annual average of 0.4%. POW earnings fell by 1.1% (to \$22,849), compared to the long-term average of 0.6% per year.

The generally positive economic data from 2013 and early 2014 suggest stronger growth in personal income. As employment growth increases, the personal income measures also tend on average to show increased growth.⁵

Figure 10: Growth rates for selected components of real per capita personal income in the Eugene-Springfield MSA, 1990-2012



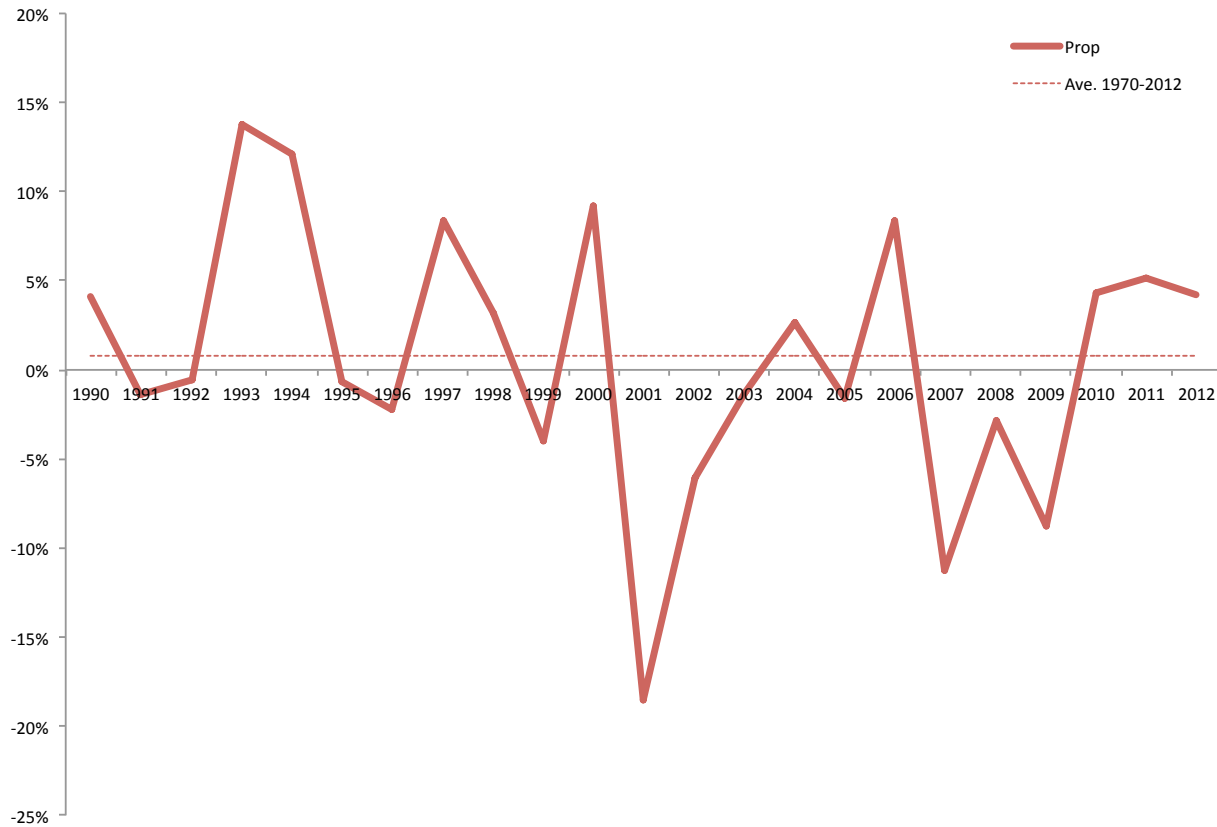
Source data: U.S. Bureau of Economic Analysis

⁵ Specifically, the correlation between annual employment growth and growth in the three per capita measures of personal income are 0.76 (POR personal income), 0.62 (POW earnings), and 0.84 (wage and salary income). Each correlation measures the strength of the relationship between two variables. A value of 1.0 would mean that the two variables always move in the same direction and always by the same relative magnitude; a value of 0.0 means that the variables are unrelated; a value of -1.0 means that the variables always move in opposite directions by the same relative magnitude

Proprietors' income

Proprietors' income in the Eugene-Springfield MSA totaled \$828 million (2013 dollars) and had recovered 57% of the loss between the prerecession peak of \$909 million (2013 dollars) in 2006 and the low of \$723 million in 2009 (2013 dollars). Between 2011 and 2012 proprietors' income grew in real terms by 4.2%, well above the 1970-2012 average of 0.7% for this relatively volatile indicator. Figure 11 displays historical growth rates in proprietors' income for the region.

Figure 11: Annual growth in proprietors' income in the Eugene-Springfield MSA, 1990-2012

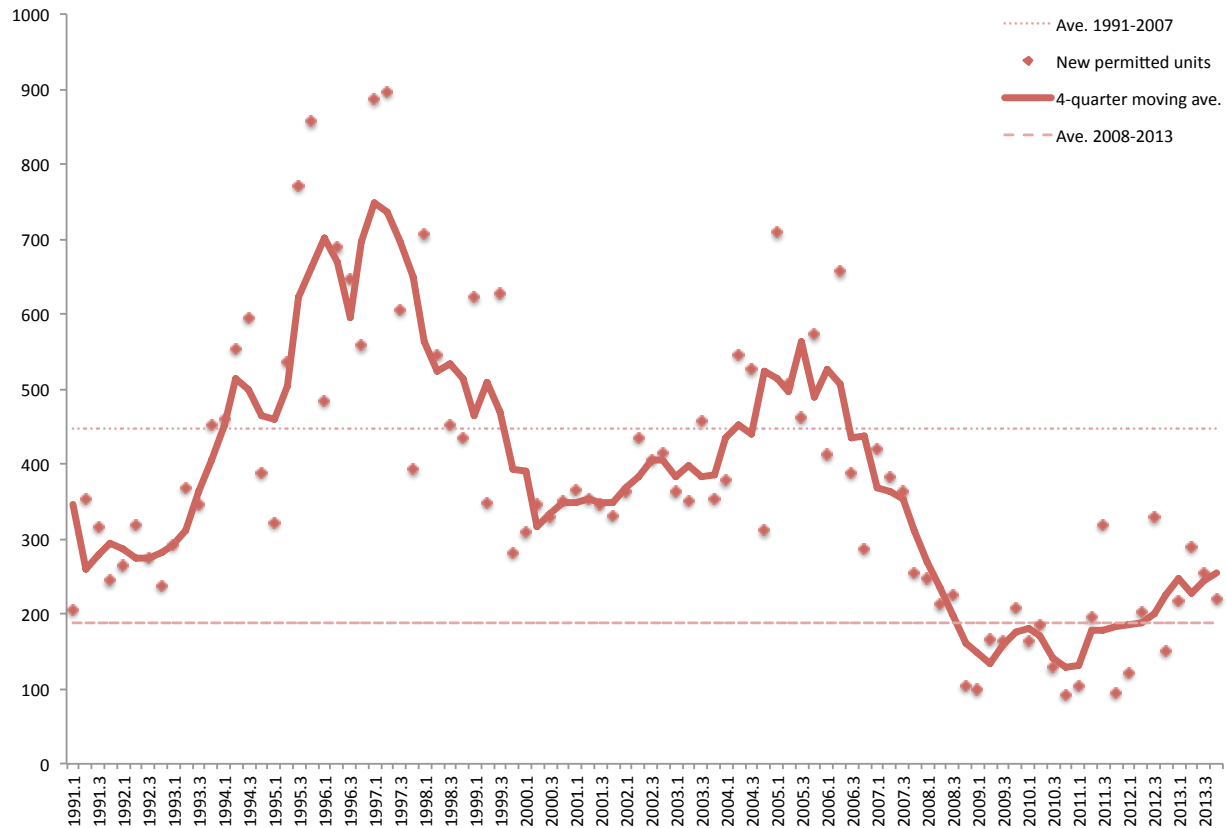


Source data: U.S. Bureau of Economic Analysis

Residential housing permits

Residential construction, as measured by the number of new permitted housing units, has recovered considerably from recessionary lows, but permit activity remains far below prerecession averages. In 2013, permits for 983 units were issued, compared to 569 in 2010, the lowest level since at least 1988. Prior to the recession, annual totals averaged about 1,800, or about 450 per quarter. Since 2008, annual permit totals fell below 800 until 2012. Figure 12 displays these data on a quarterly basis, which underscores recent upward trends.

Figure 12: New residential units permitted in the Eugene-Springfield MSA, 1991Q1-2013Q4

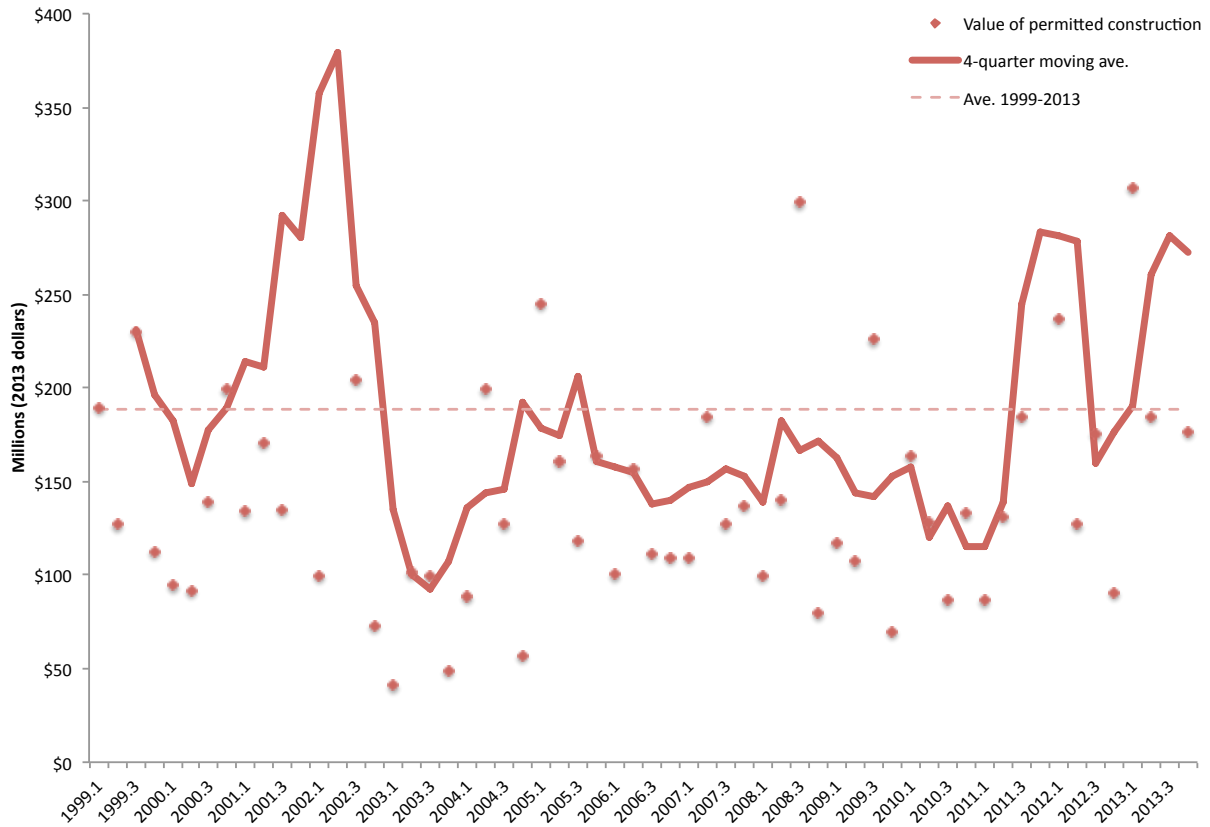


Source data: U.S. Census Bureau

Industrial construction

Industrial permit activity demonstrates significantly more volatility than residential construction, driven in part by the presence or absence of large projects permitted during any given period. For this report, we had data only for the City of Eugene (see Table 1 footnote). For Eugene, we find that the value of recently permitted industrial construction exceeds the longer-term average by a wide margin, as illustrated in Figure 13. We note that value per permitted site has also risen (data not shown). The total number of permitted projects in 2013 (1,991) was just below the annual average observed between 1999 and 2013 (2,030).

Figure 13: Value of new permitted industrial construction, City of Eugene, 1999Q1-2013Q4

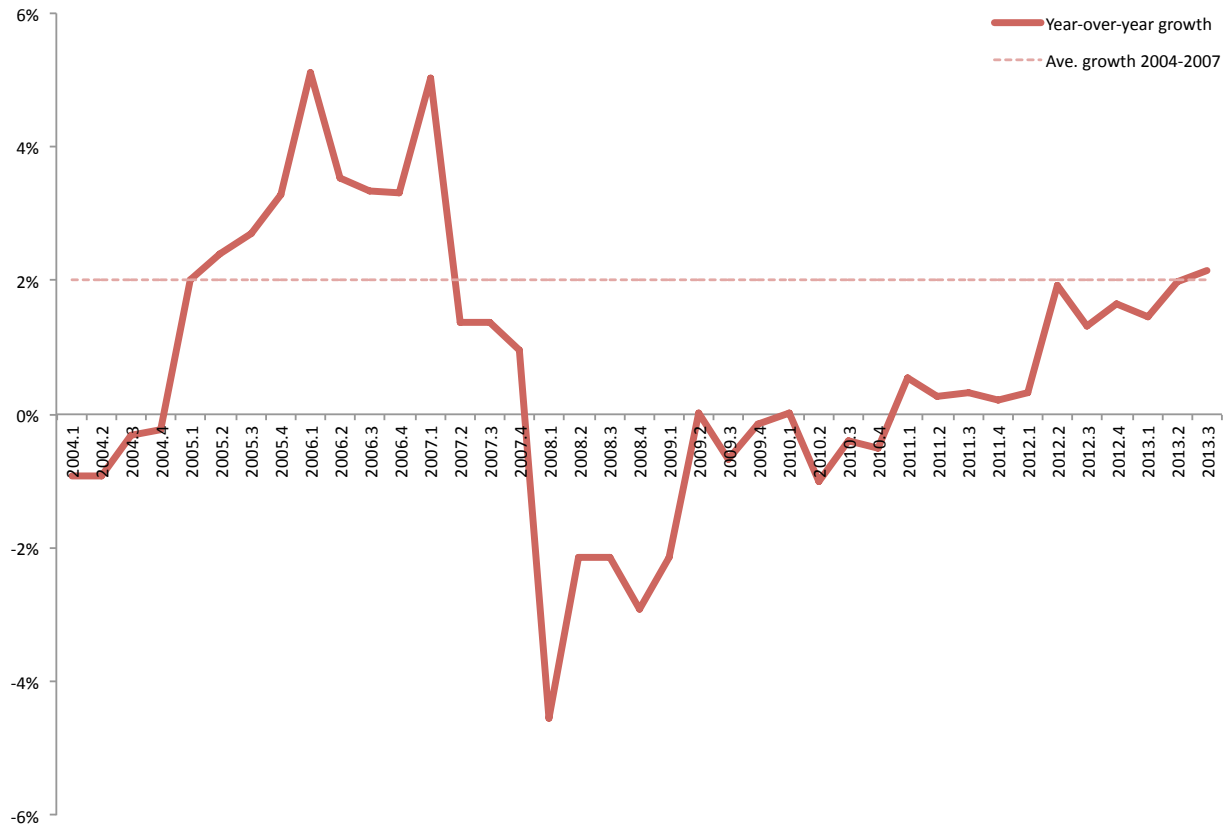


Source data: City of Eugene

Business establishments

The Bureau of Labor Statistics provides quarterly counts of business establishments. These counts provide another useful indication of the state of the economy. As of the most recent, preliminary data from the third quarter of 2013, the region had 10,975 business establishments, 1.8% below the peak of 11,178 observed at the beginning of 2007 and 5.3% higher than the low point of 10,419 observed in 2010. In recent quarters, year-over-year growth has hovered close to the 2% average growth rate observed between 2004 and 2007 (see Figure 14).

Figure 14: Year-over-year growth in business establishments in the Eugene-Springfield MSA, 2004Q1-2013Q3



Source data: U.S. Bureau of Labor Statistics