



Special Public Works Fund (SPWF)
Applicant's Handbook & Program Guidelines

Introduction

Business Oregon is pleased to provide the 2017 edition of the Special Public Works Fund (SPWF) Program Guidelines. The SPWF program is supported by Oregon State Lottery funds appropriated by the Legislature. It is valued at more than \$202 million. The fund can be utilized to assist communities with the development of a wide spectrum of infrastructure projects for improving economic and community development.

The purpose of these guidelines is to provide applicants and staff with a concise, easy to use reference for SPWF program information pertaining to project development, eligibility, the application process, and conditions for an award. The content is organized into two sections, Details and Process. The information included is as specific as possible, however it is difficult to foresee and address the variety of project circumstances that exist in communities. Your regional development officer will always be the best resource for determining a solution to your project needs. Locate contact information from our web site.

This program document is based on current legislative statutes, administrative rules, and department policy, and is subject to periodic revisions to meet evolving economic development needs or advance the priorities for program funding.

Suggestions and comments regarding the program guidelines are always welcome. Please direct suggestions to:

SPWF Program and Policy Coordinator
Business Oregon
775 Summer St. NE, Suite 200
Salem, OR 97301-1280

Table of Contents

Section	Page
Introduction	i
Program Information	
Purpose	1
Governing Rules and Statutes	1
Eligible Applicants	1
Eligible Activities	2
Ineligible Activities	3
Project Priority	4
Types of Financial Assistance Available	4
Loan Information, Rates and Terms	5
Grant Information	6
Process	
How to Get Started	7
Application Information	8
Application Review Criteria—Development Project	10
Application Review Criteria—Planning Project	11
Notice of Decision	12
Contract Administration	12
Other Program Information	14
Remedies	15
Exceptions and Appeals	15
Appendices	
SPWF Administrative Rule Definitions OAR 123-42-0020	Appendix A
Districts Defined (<i>eligible municipalities</i>) ORS 198.010	Appendix B

Program Information

Purpose

The Special Public Works Fund (SPWF) program was established by the Legislature in 1985 to provide funding for municipally-owned facilities that support economic and community development in Oregon. The program provides financing to local governments to construct, improve and repair public infrastructure and facilities that will support economic growth and create new jobs.

Governing Rules and Statutes

The *Applicant's Handbook and Program Guidelines* are published to give applicants guidance on project eligibility, project development, how to apply for funds, and how to administer projects financed by the program.

Current Oregon Revised Statutes (ORS) applicable to the SPWF program can be found in [ORS 285B.410 to 285B.482](#). Current Administrative Rules can be found in [OAR 123, Division 42](#).

The SPWF program is capitalized through 1) biennial appropriations from the Oregon Lottery Economic Development Fund by the Oregon Legislature, 2) bond sales for dedicated project funds, 3) loan repayments, and 4) interest earnings. The Special Public Works Fund is appropriated to and administered by the Oregon Business Development Department, commonly referred to as Business Oregon.

Program funding is used primarily to make loans and is managed so that the fund provides a continuing source of financing. Grants may be given only when loans are not feasible due to the financial need of a municipality, or under circumstances of a project as specified by administrative rule. The loan or grant funding amount, if any, will be determined by Business Oregon on a case-by-case basis.

The definitions for administration of the Special Public Works Fund Program are listed in Oregon Administrative Rules 123-42-0020 (see Appendix A).

Eligible Applicants

An eligible applicant is defined and referred to as a municipality. The following entities are defined in the ORS as a "Municipality" and are eligible to apply:

- Airport district organized under ORS 838
- Cities
- Counties
- County service districts organized under ORS 451
- District as defined in ORS 198.010 (see Appendix B for the specific list)
- Domestic water supply districts organized under ORS 264
- Ports incorporated under ORS 777.005 to 777.725 & 777.915 to 777.953 & 778.010
- Sanitary authority, water authority or joint water and sanitary authority organized under

ORS 450.600 to 450.989

- Sanitary districts organized under ORS 450.005 to 450.245
- Tribal Councils of Indian Tribes in Oregon

Eligible Projects and Activities

Eligible activities must **assist a municipality with economic and/or community development** and are classified by one of the three types of projects “development project, planning project, or emergency project.” Additionally, allowable project costs are identified following project types.

1. **Development Project (construction):**
 - a. **Public transportation facilities** including public depots, public parking, public docks, public wharves, railroads, railroad spurs, or sidings when publicly owned, operated and maintained, and airport facilities;
 - b. **Roads** including streets, highways, throughways or alleys; road-related structures that are in the right-of-way such as tunnels, culverts or similar structures, and structures that provide for continuity of the right-of-way, such as bridges;
 - c. **Sewage treatment facilities** including all facilities necessary for collecting, pumping, treating, and disposing of sanitary or storm sewage;
 - d. Solid waste disposal sites as defined by ORS 459.005;
 - e. **Water supply systems** including all facilities necessary for tapping natural sources of domestic and industrial water, the transmission, treatment, storage, and distribution of system water to the point of sale to any public or private entity for domestic, municipal, and industrial water supply service.
2. **Planning project** (non-construction) is related to a potential development project or industrial site certification or development and may include the following eligible activities:
 - a. Preliminary, final or construction engineering;
 - b. A survey, site investigation, or environmental action;
 - c. A financial, technical or other feasibility report, study or plan;
 - d. An activity that Business Oregon determines to be necessary or useful for a potential development project.
3. **Emergency project** means a development project resulting from an emergency to which federal disaster relief has been committed. Funding up to the amount required for the local match for federal disaster relief assistance committed to a project is an eligible program activity.
4. **Levee project** means a planning project, development project, or other project that is directly related to and necessary for required inspections, levee certification, accreditation, or repairs.

5. Allowable Project Costs:

- a. **Acquisition** of real property directly related to or necessary for the proposed development project, including rights-of-way, easements, and facility sites;
- b. **Acquisition, reconstruction, rehabilitation, operation or maintenance** of an abandoned railroad line or railroad line that has been designated as subject to abandonment within a three-year period, pursuant to federal law and regulations;
- c. **Direct project management expenses** that are directly related to a project and incurred by the municipality solely to support or manage the eligible project;
- d. **Financing costs** including capitalized interest and construction contingencies, as approved by Business Oregon;
- e. **Necessary services** that support construction, including property acquisition, disposition and clearance, engineering plans and specifications, architectural plans, working drawings, and as-built drawings, mapping, and construction inspections;
- f. **Pre-awarded expenses:** Business Oregon may authorize reimbursement for certain pre-award expenses such as preliminary engineering and architectural work, surveying, soil testing, and similar costs. Costs must be necessary to allow the project to proceed and are limited to those incurred within 12 months of the award date to be eligible for reimbursement and should be requested at the "Project Intake Notification" step. Expenses must also meet all programmatic eligibility requirements, be requested in the application for funding, and be authorized by the Business Oregon. Pre-award expenses for Planning Project activities are not eligible for reimbursement. Additional IRS requirements may apply to funds derived from tax-exempt bonds;
- g. Preliminary and final engineering, surveying, architectural, and other support activities necessary for implementation of a development project defined in this section;
- h. **Public facilities** that are essential to support continuing and expanded economic development activity;
- i. **Purchase of off-site property** for purposes directly related to the project, such as **wetland mitigation**.

Ineligible Activities

- A. Assistance to facilities that are or will be privately owned;
- B. Assistance to projects that primarily focus on relocating businesses or economic activity from one part of the state to another, except in cases where the business or economic activity would otherwise locate outside of Oregon;
- C. Routine or ongoing expenses of the municipality;
- D. Purchase of general purpose motor vehicles and other equipment, not directly related to the development project;
- E. Project operating and maintenance expenses (except for eligible activities defined in subsection 4(4) (B)) for railroads;
- F. Pre-award expenses **not** authorized by Business Oregon (see Ineligible Activities f.).

Project Priority

- A. The intent of the Special Public Works Fund is to provide financial assistance necessary to enable municipalities to construct, improve and repair facilities essential for supporting continuing and expanded economic activity. Project proposals will be evaluated to ensure that priority for funding assistance is given to those projects that will stimulate industrial growth and commercial enterprise, and promote employment opportunities in Oregon. When determining a development project's overall eligibility, Business Oregon will consider the following criteria for prioritizing projects for funding, including but not limited to:
- 1) Projects that help create or retain permanent jobs;
 - 2) Projects for which a municipality has documented a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development;
 - 3) Projects for which a municipality has documented substantial local commitment to the project's success;
 - 4) Projects for which a municipality has documented how the benefits of the project will be preserved over the project life;
 - 5) Projects to develop or replace essential community facilities.

Types of Financial Assistance Available

- A. Program funding is used primarily to provide loans to municipalities for projects. The level of loan or grant funding, if any, will be determined by Business Oregon on a case-by-case basis. Business Oregon may offer an alternative mix or a lower amount of assistance than that requested. Business Oregon also may investigate or recommend other sources of funds for all or part of a proposed project. A financing package (see Loan Information, Rates, and Terms G.) may include direct loans, interim loans subject to permanent bond loan financing, and/or grants. Business Oregon's determination of the final amount of financing and the loan/grant/bond-loan mix will include consideration of:
- 1) Whether the project meets other minimum program criteria to be eligible for a grant;
 - a. Projects that help create or retain permanent jobs.
 - b. Projects for which a municipality has documented a strong likelihood of creating construction jobs or otherwise promoting or contributing to economic and community development.
 - c. Projects for which a municipality has documented substantial local commitment to the project's success.
 - d. Projects for which a municipality has documented how the benefits of the project will be preserved over the project life.
 - 2) The financial feasibility and reasonable cost estimate for the project;
 - 3) The individual credit strength of the applicant;
 - 4) The ability of the applicant to afford annual payments on loans from enterprise funds or other sources;
 - 5) Maximizing the use of available resources while maintaining the desired credit standards of the fund;

6) Future beneficiaries of the project; and, other applicable issues.

B. Loans may be funded directly from available program resources or through the sale of revenue bonds. Additionally, the Oregon Bond Bank has been established to leverage loan funds through the sale of state of Oregon revenue bonds. The bond proceeds will be loaned to the applicant. Revenue bond financing can offer applicants low interest rates and financing terms consistent with the nature of the project.

Loan Information, Rates and Terms

- A. The maximum loan amount is \$10,000,000 but does not include funding from other sources. Business Oregon will consider waivers for needs that exceed this amount (see section 18). Awards for loan funding of \$3,000,000 and above must be approved by the Infrastructure Finance Authority Board (IFA Board or board). The maximum loan amount for a project will be based primarily on the board's financial and credit analysis of the municipality's capacity to repay. Though there is not an aggregate limit if an applicant is pursuing multiple loans, such initiatives should be pursued to Business Oregon. Projects that Business Oregon determine are not financially feasible or loans that cannot be adequately secured, will not be funded.
- B. The loan will be a full faith and credit obligation, which is payable from any taxes that the municipality may levy within the limitations of Article XI, Sections 11 and 11b, of the Oregon Constitution and all legally available funds of the municipality.
- C. Specific revenues of the municipality may be required to be pledged as security, including revenues of the project, special assessment revenues, and other collateral.
- D. If repayment of a loan substantially depends on revenues the municipality will receive from a lessee or payments from a benefiting business, Business Oregon will assess the financial capacity of the payer, the adequacy of the security, the financial instrument(s) requiring such payments to the municipality, and any liens, pledge(s), or assignments of collateral from the payer to the municipality. Business Oregon may require an assignment of such revenue and collateral from the municipality. When using **tax increment financing**, secured financing may limit the maximum indebtedness and the term by the project period identified in the urban renewal plan and report.
- E. If repayment of the loan substantially depends on a pledge of tax increment revenues from an urban renewal agency to the borrowing municipality, Business Oregon's financial analysis will extend to the financial feasibility of the projected revenues and the financial and legal adequacy of the proposed pledge of tax increment revenue.
- F. Interim or temporary project financing maybe offered for Oregon Bond Bank loans. When Business Oregon makes an "interim" loan to finance temporary project financing, all of the following apply:
- 1) The Municipality must receive an award from Business Oregon before construction begins;
 - 2) The award will consist of a loan only, and will not exceed the cost of the project;
 - 3) The repayment terms of the loan can include deferred repayment of principal and/or interest for the term of the loan.

- G. A “development project” may receive loan funding as follows:
- 1) The term of a loan is limited to the usable life of the contracted project, or 30 years from the year of project completion, whichever is less. The typical contract’s term is for 25 years. Exceptions consistent with statutory restrictions may be considered;
 - 2) The interest rate for direct loans is set by Business Oregon. Interest rates are determined on a quarterly basis based on market conditions for bonds with similar terms and credit characteristics. Rates are also reviewed each month for a potential decline. The interest rate extended to the borrower will be either the quarterly rate or the rate determined on a monthly basis, whichever is lower at the time of an award;
 - 3) The interest rate on a state revenue bond loan will be equal to the coupon rates on the bonds. Until the state revenue bonds are sold, the municipality will pay interest on the outstanding principal balance of the loan at the rate established by Business Oregon.
- H. A “planning project,” may be eligible for loan assistance as a stand-alone project.
- I. A “levee” project allow for the following provisions: the maximum loan amount cannot exceed \$2,500,000; a principal only, zero percent (0%) interest rate loan of up to \$1,000,000 may be awarded for each levee certification project area. A zero percent loan cannot exceed 50 percent (50%) of the total loan amount from the Special Public Works Fund.

Grant Information

Business Oregon will determine the amount of grant for an eligible project on a case-by-case basis in accordance with the standards in the administrative rules and adopted policy. No more than 85% of the total project cost will be financed by a SPWF grant. (Grants may be 100% of the 25% local match for an Emergency Project but not to exceed \$500,000.) The standards may include the award of grants as a financial incentive to accomplish the goals of the Special Public Works Fund. The following criteria are used to determine overall project eligibility:

- A. A “development project” that qualifies as a “Firm Business Commitment” project may be eligible to receive a grant. The amount of grant will be based on the number of eligible commercial and industrial jobs proposed to be created or retained with the potential of up to \$5,000 for each job created or retained. **Business Oregon will use available tool/s to determine the value of each job in order to determine the amount of grant funds.** The maximum grant amount allowed by administrative rule for a development project is \$500,000 per project or 85% of allowable project costs, whichever is less. The maximum grant will be awarded only in special circumstances described in Business Oregon’s policy. In addition to the criteria and process contained in policies on grant and loan funding, Business Oregon will apply the following minimum criteria:
- 1) Municipality’s financial analysis determines that the borrowing capacity is sufficient to support the amount of the loan requested for the project;
 - 2) The eligible jobs created or retained as a result of the project are those created and retained by businesses selling goods or services in markets for which national or international competition exists; confirmation required;

Traded Sector jobs must be worked for 1 year (4 calendar quarters). See Job Creation & Retention Policy for calculating and tracking details.

- 3) For retained jobs, confirmation via a firm business commitment that the jobs will be lost, if the municipality does not receive a grant for the project.
- B. A “planning project” conducted for the purpose of developing industrial lands, including industrial site certification, is eligible for a grant of up to \$60,000 per site, per biennium, or 85% of the allowable planning project cost, whichever is less;
- C. An “emergency project” may be eligible for a grant not to exceed \$500,000 per development project, or the amount of the federally required local match, whichever is less.
- D. A “levee project” may be eligible for one grant not to exceed \$50,000.

Process

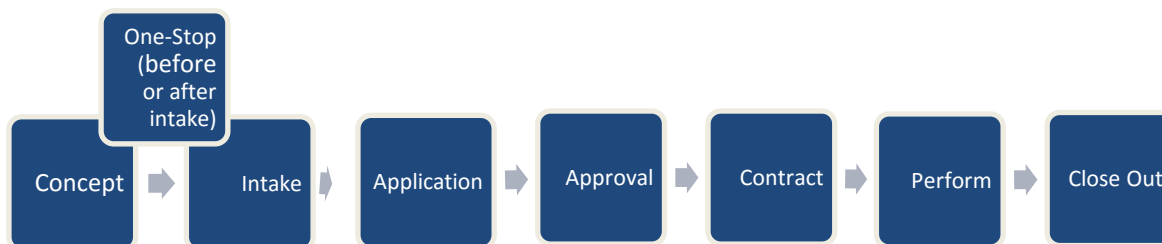
How to Get Started

Business Oregon has regional development officers to assist you with developing your project. Regional development officers are assigned to the different geographic areas of the state. Please do not hesitate to [contact your regional development officer for help](#) with project development activities. They can assist you with activities such as:

- A. Discussing a project concept to clarify eligibility criteria, identifying potential funding resources, and avoiding any potential pitfalls in a proposal;
- B. Gathering information needed for preparation of a Project Notification and Intake Form;
- C. Setting up on-site meetings between applicants, the project engineer, and other agency representatives;
- D. Scheduling of a “One-Stop” meeting to review **potential** financing scenarios for your proposed project with multiple funding agencies.

It is important to involve funding agencies in the project planning process as early as possible.

High-level Application Process



The Project Notification and Intake Form (Intake) is used Business Oregon staff to help determine the most appropriate funding program(s) for each proposed project. Your regional development officer will assist with the preparation of the Intake and will work in close collaboration with you to obtain the information necessary to do so. Completed Intakes are then circulated to appropriate staff for project review advice or questions about the proposal.

Once staff finds that the Intake provides sufficient information to determine that the potential project is eligible and ready-to-proceed, the regional development officer will invite the prospective applicant to submit a complete application.

Project applicants are strongly encouraged to hold at least one public hearing on each proposal or funding request being considered as early in their project development process as practical. The results of a public meeting that show strong community and governing body support are important criteria in the SPWF project selection process. The hearing may be held in conjunction with a regularly scheduled meeting of the governing body, but must provide opportunity for public input. Notice of the hearing should briefly describe the purpose of the proposed project and the hearing, and be published or posted in accordance with local practice for notice of public hearings.

We offer a “One-Stop” meeting to optimize discussion at one time and place with federal and state financial assistance partners. This meeting will provide broad funding perspective and multiple program eligibility considerations and may include several federal and state agencies. Large or multi-phase projects that require funding from multiple sources are best suited for “One-Stop” meetings. Meetings are generally held after the project proponent has completed a master plan or facilities plan and/or has estimated costs for final design and construction of the desired improvements. **Potential** funding scenarios utilizing the most suitable programs will be developed for review with project representatives for the community. Meetings may be held in Salem or at the potential applicant’s location of choice, and last about 1-1/2 hours for each project. Typically, the Salem meetings are the second Tuesday of the month. Please contact your regional development officers that serves your region to schedule a “One-Stop.”

Construction projects should be ready to proceed and be able to be completed within 36 months of receiving an executed financing contract. The municipality must document that an Oregon registered professional engineer has certified in an engineering report or engineering plan that the proposed project is feasible, is the most cost-effective solution, and adequately serves the applicable land uses in both the short and long term. Project cost estimates must also be prepared by a qualified architect or engineer and should be projected to the amounts that are anticipated at the bid opening with the same start of construction date/s.

Planning projects should be completed within 24 months of receiving an executed financing contract.

Interested applicants should [contact their regional development officer](#) for consultation and preparation of a project intake.

Application Information

This Handbook describes Business Oregon’s application procedures to assist an applicant’s understanding of the development project and planning project application processes. Intakes are completed by the regional development officer for circulation within Business Oregon to help staff determine the most appropriate funding program(s) for each proposed project. An application will not be accepted until Business Oregon has made a preliminary determination of eligibility and authorized its submission.

A General Application form, Application Supplement, and Tax Compliance Verification must be completed for all project proposals. Separate supplements have been developed for use with the two distinct project types—Development and Planning projects. The regional development officer will inform the applicant and provide the appropriate supplement to use at the time an application is invited. An application must include the general application, appropriate supplement, and all applicable attachments specified in the supplement at the time it is submitted or else it will be considered incomplete.

Applications for projects with overlapping municipal boundaries must be accompanied by an intergovernmental cooperation agreement setting out the duties and obligations of each entity.

Applications may be invited and subsequently accepted at any time.

An application must be signed by the municipality's highest elected official or a properly authorized official. Documentation that verifies the official's authorization to sign on behalf of the applicant such as a resolution, ordinance, order, governing body meeting minutes, or charter must be submitted with the application.

A development project/construction application must contain all the following information:

- A. A brief description of the purpose of the proposed project, including the problem or opportunity the applicant is facing that creates need for the project;
- B. A brief description of the proposed solution or response to the problem/opportunity, including major alternatives that were considered by the applicant;
- C. A detailed project description that clearly describes all proposed project work to be accomplished;
- D. A detailed project budget listing the individual project budget line items with the requested amounts by Business Oregon funding sources and non-Business Oregon sources, including the status of availability of all non-Business Oregon sources that are needed to complete the project;
- E. The project work plan, listing the significant project activity milestones by estimated start and completion dates;
- F. Detailed maps showing the location of the project, including tax lots/parcels, zoning designations, road widths, etc;
- G. The study conducted to determine the feasibility of the project, or any preliminary architectural/engineering/planning work that has been completed for the proposed facility/improvements. The study must include discussion of the most cost-effective solution, an estimate of project costs, a construction schedule, and plan for paying operation, maintenance, and replacement costs. Feasibility documents must be stamped and signed by a professional architect/engineer who is registered or licensed in the state of Oregon for their specialty;
- H. Plans and specifications for the project if available;
- I. Documentation from the city or county planning agency that indicates the project is consistent with the acknowledged local comprehensive plan and land use regulations. This information must include, where applicable, identification of any land use related requirements that will affect the project's readiness to proceed immediately upon award of funding assistance and execution of an award contract.

If the applicant will own the facility and another entity will operate the facility, attach an executed copy of the operating agreement between the parties;

For **Firm Business Commitment** projects: A “Job Creation/Retention and Average Wages” form (Attachment L of the application) for each of the businesses that are committed to creating or retaining jobs if the development project occurs. A letter from each business with a description of factors such as the nature of the business, significance of the project to economic growth, baseline employment levels, employee benefits provided, and the need for and timing of the new jobs is recommended to assist in the determination of the potential grant eligibility in a funding award for the project;

A copy of the municipality’s adopted budget for the current fiscal year, and the projected fiscal year when applicable;

A list of the ten largest tax payers in the applicant’s jurisdiction, their type of business, total taxes, and current assessed value (Attachment F of the application);

A schedule of pro forma revenues and expenditures for the applicable fund(s) that will be pledged to repay the loan for each of the next five years and any underlying assumptions used (Attachment G of the application);

Business Oregon’s review of individual project applications will include, whenever possible, a site visit to verify application information and to gain a thorough understanding of the project.

Development Project Application Review Criteria

- A. Business Oregon must find that the amount of Special Public Works Fund assistance needed for the project is the minimum amount necessary to enable the project to proceed and be completed, based on the financial need of the applicant and special circumstances of the project.
- B. Applications are evaluated on overall project and engineering feasibility, and financial strength of the applicant. Business Oregon will assess an applicant’s ability to service debt given its current financial condition and debt structure, the economic diversity and stability of the local economy, and the management capacity of the applicant.
- C. To award SPWF assistance, Business Oregon must:
 - 1) Determine that the proposed project is feasible and other funds needed to complete the project are available and committed to the project. If a portion of the non-SPWF funds needed to complete the project is not available at the time an award is made, the award will be conditional on securing the other needed funds;
 - 2) Assess the credit quality of the applicant and determine if there are sufficient resources to repay the loan. The applicant must also certify to this effect. For revenue-backed projects, project feasibility must include an evaluation of potential earnings or revenue to be generated by the project and debt service coverage. If a project involves the general obligation guarantee of an applicant, the analysis must include an evaluation of the general fund and taxing powers of the jurisdiction;
 - 3) Determine that the existing infrastructure is inadequate to support the projected

demand (future capacity) or now prevents industrial and/or commercial development from occurring. The proposed project must be of sound design, the most cost-effective solution;

- 4) Award financing within the limits specified in OAR Section 123-042-0026 to maximize the use of available resources and maintain the credit standards of the SPWF program. In doing so, Business Oregon will use reasonable and prudent standards for evaluating applications that first consider the use of bond financing and second, a direct loan. If a financial analysis determines the municipality's borrowing capacity is insufficient to support the amount of loan requested for the project, Business Oregon may consider awarding a grant. If the project is not eligible for a grant, loans that cannot be adequately secured will not be funded;

- 5) Determine that the project complies with statewide planning goals and is compatible with applicable acknowledged city and county comprehensive plans and land use regulations;

How many of Oregon's Statewide Planning Goals do you know?

[Check them out here.](#)

- 6) Determine that a high probability exists for industrial or eligible commercial development of the properties served by the project;
- 7) Determine that SPWF funding is or will be available for the project;
- 8) Determine that the applicant is willing and able to enter into a contract with Business Oregon for repayment, and either has sufficient administrative ability to undertake and complete the project or is able to obtain those administrative services.

- D. Business Oregon will require security pledges for all approved loan financing. The form and amount of security will be consistent with the nature of the project and the credit strength of the applicant. The security may include pledges of utility revenues or other revenue funds, or payments from benefitted properties.
- E. If Business Oregon determines that the applicant and/or the proposed project do not meet the requirements of this section, Business Oregon will require further documentation from the applicant or may reject the application.

Planning Project Application Review Criteria

To award Special Public Works Fund planning assistance as either loans and/or grants, the planning project must be related to a potential development project.

- A. For planning loans Business Oregon must find that:
- 1) The applicant has sufficient resources to repay the loan;
 - 2) The project addresses one or more of the priority criteria listed in Section 8 of these guidelines;
 - 3) The applicant has certified that the proposed project is feasible and the most cost-effective solution;
 - 4) The applicant has ensured that additional resources needed to complete the project are available or will be made available. If the additional resources are not available at the time of award, then the award will be made conditional upon securing the

- additional resources;
- 5) The applicant has, or has demonstrated the ability to secure, the administrative capacity to undertake and complete the project;
 - 6) The applicant has certified that it will comply with all state laws, regulations and requirements applicable to the planning project and this program;
 - 7) The project is ready to proceed upon the award of SPWF funding and the execution of an award contract between the state and the applicant.
- B. A planning project conducted for the purpose of developing industrial lands, including planning for industrial site certification, is eligible for a grant. Urban Growth Boundary expansions are not eligible grant planning project activities. In addition to the determinations listed in items 2 through 7 above, this type of planning project must meet the following criteria:
- 1) The project site is zoned “industrial;”
 - 2) The project site meets marketability standards adopted by Business Oregon, which indicate a high probability exists for industrial or commercial development, or both, for properties served by the planning project. The application should describe what site and community advantages are present, and describe recent inquiries and private interest in developing the land served by the project;
 - 3) There is a local marketing effort or capability among persons in the local area to market the community and the project benefit area;
 - 4) The amount of SPWF funds needed for the planning project is the minimum amount necessary to enable the project to proceed and be completed.

Notice of Decision

Business Oregon will notify applicants of the decision regarding individual applications. Our goal is to notify applicants of complete applications within 10 working days unless the project requires the Infrastructure Finance Authority Board’s approval.

Contract Administration

- A. The SPWF award will be contingent on Business Oregon’s receipt of the following:
- 1) Adequate documentation to evidence that the debt of the municipality and the security pledged by the municipality is valid and binding, including an SPWF contract signed by the highest elected or appointed official of the municipality;
 - 2) Documentation that all other funds necessary to undertake and complete the project have been committed and are available prior to issuance of the funding contract;
- B. Business Oregon will award funds by entering into a SPWF contract with the municipality. The contract will include, but will not be limited to, provisions regarding the following requirements:
- 1) An agreement that the municipality will proceed expeditiously to complete the project as approved by Business Oregon. The required completion will typically be within three years from the date of execution of the contract for a development project, and within two years from the date of execution of the contract for a planning project. The contract for a loan or grant shall be authorized by an ordinance, order or resolution

adopted by the governing body of the municipality in accordance with the municipality's requirements for public notice and authorizing debt;

- 2) Municipality must certify that a registered professional engineer will be responsible for design and construction of the project. Municipality will ensure that any professional service providers retained for their professional expertise are certified, licensed, or registered as appropriate, in the state of Oregon for their specialty;
- 3) A plan for repayment that is evidenced by pledged resources, including assessments, user fees, fund revenues, or the general fund of the municipality. The municipality will make loan payments promptly when due, subject to any remedies set out in the contract;
- 4) If any portion of the assistance is in the form of a loan or the purchase of a bond of a municipality, a provision granting Business Oregon a lien on, or a security interest in, collateral as determined by Business Oregon to be necessary to secure repayment of the loan or bond;
- 5) For a development project, the contracted project must remain in municipal ownership for the life of the loan. If this condition is not met, A) repay any outstanding amount on the loan and B) any grant must be immediately repaid, unless otherwise allowed by Business Oregon in writing;
- 6) For a planning project that includes industrial zoned land, the land involved in the project must remain zoned as industrial and not be converted to another use for at least five years after completion of the project. If this condition is not met, the grant must be immediately repaid, unless otherwise allowed by Business Oregon in;
- 7) For firm business commitment projects: All jobs associated with the project must be created or retained within two years following completion of the project. The jobs must be maintained for a minimum of four consecutive calendar quarters within the two-year period. The job creation/retention calculations and verification will be documented with either: a) reporting from the Oregon Employment Department of quarterly hours worked by employees of the associated business or b) if unavailable from the Employment Department, the benefitted business will certify hours worked with accompanying payroll information. This form of documentation will be used by Business Oregon to establish the number of existing full-time equivalent jobs at the time of the funding application ("Base FTE"), and again at the end of the job maintenance period. If jobs are not maintained, municipality must repay a pro rata portion of the grant or (at the municipality's options) may be added to the balance of the loan);
- 8) Businesses that provide a firm business commitment for job (defined as eligible commercial jobs project) creation identified in the funding application or SPWF contract must execute a First Source Hiring Agreement for new job hires with a local job provider or the Oregon Employment Department. Business Oregon must receive

a copy of the appropriate agreement from the municipality before grant funds will be dispersed;

- 9) SPWF funds awarded to a project will be disbursed on an expense reimbursement basis as needed to pay for eligible project costs. The time between drawdown by the municipality and payment of funds to their contractors must be as brief as is administratively feasible. SPWF grant funds included in a firm business commitment award are typically (although we reserve the right to determine which comes first) drawn down before SPWF loan funds, as they are an incentive for job creation/retention;
- 10) The municipality shall maintain accounts and records for all activities associated with a funded project. Business Oregon shall be entitled to monitor the municipality's records to verify compliance with the SPWF contract;
- 11) For a construction project, post a sign, provided by Business Oregon, at the project site or, if more than one site is included in the project, at a site visible to the general public stating that the project is being funded by lottery proceeds;
- 12) A provision that for a period of up to six (6) years after project completion, Business Oregon may request that the municipality, at its own expense, submit data on the economic development benefits of the project, including but not limited to, information on new or retained jobs resulting from the project, and other information necessary to evaluate the success and economic impact of the project.

Other Program Information

- A. Funding decisions will be based on applicable rules in place at the time of the award.
- B. Municipalities may apply for projects located inside their jurisdiction that are also within the jurisdiction of another municipality (e.g., a county application for a project within a city's boundaries) provided that an intergovernmental cooperation agreement is signed by both municipalities and a copy accompanies the application.
- C. Municipalities of SPWF awards must comply with all applicable state laws, regulations and requirements, such as Oregon Prevailing Wage Rates, municipal audit law, and procurement regulations. Municipalities shall follow standard construction practices, such as bonding of engineers and contractors, requiring errors and omissions insurance, inspection during construction, testing, and obtaining as-built drawings.
- D. Each applicant for a construction project must certify that they have adopted or will adopt, during the project period, a program for ongoing operation, maintenance and repair of the facility or system, which is acceptable to Business Oregon.
- E. If applicable, the municipality must install meters on all new water service connections from any distribution lines included in the funded project.
- F. Municipalities must be timely in keeping their regional development officer well informed of the progress of activities and any significant changes to a project. Amendments to the funding contract may be required when there are changes to the project's cost, budget,

scope-of-work, location, purpose, or time frame for completion. The state's Bond Bank Trustee must also approve amendments for bond related projects. Failure to gain prior approval for amendments could result in ineligible expenses, a delay in reimbursement, or other appropriate levels of remedy.

Remedies

SPWF financing is documented by a Financial Assistance Contract executed by the applicant and Business Oregon. This contract details the terms and conditions under which financial assistance is provided. In the event an applicant fails to comply with these terms and conditions, Business Oregon may seek appropriate legal remedies.

Exceptions and Appeals

Applications that do not conform in every respect to these Program Guidelines are typically not considered. Applicants will be notified of this status and will be given reasonable time and opportunity to provide supplemental information or correct the application as necessary to bring it into conformance. The Executive Director of Business Oregon may waive non-statutory requirements of the program if it is demonstrated such a waiver would serve to further the goals and objectives of the program.

The Executive Director of Business Oregon will consider appeals of Business Oregon's funding decisions. Only the municipality may appeal. An appeal must be submitted in writing to the Executive Director within 30 days of the event or action that is being appealed. A project that would have been funded but because of a technical error in Business Oregon's review was not, will be funded as soon as sufficient funds become available, provided the project is still viable. The Executive Director's decision is final.

Appendix A

Special Public Works Fund Definitions

Oregon Administrative Rules (OAR) 123-042-0020, Definitions

For the purposes of these rules additional definitions may be found in Procedural Rules, OAR 123-001. As used in this OAR 123 division 42 the following terms have the meanings set forth below, unless the context clearly indicates otherwise.

- (1) “Authority” means the Infrastructure Finance Authority within the Oregon Business Development Department.
- (2) “Award” means the Authority’s determination that the project is eligible for funding and that the Authority has identified the specified funding type and amount for the activities described in the staff recommendation.
- (3) “Award date” means the date of the final Authority management signature approving the award.
- (4) “Board” means the Oregon Infrastructure Finance Authority Board.
- (5) “Commission” means the Oregon Business Development Commission.
- (6) “Development project” means a project for the acquisition, improvement, construction, demolition, or redevelopment of municipally owned utilities, buildings, land, transportation facilities, or other facilities that assist the economic and community development of the municipality, including but not limited to the following type of projects:
 - (a) Transportation projects.
 - (b) Utility system projects.
 - (c) Buildings, lands or other facility projects including planning project activities that are necessary or useful as determined by the Authority.
- (7) “Direct project management costs” means expenses directly related to a project that are incurred by a municipality solely to support or manage a project eligible for assistance under ORS 285B.410 to 285B.482. Direct project management costs do not include routine or ongoing expenses of the municipality.
- (8) “Eligible commercial jobs” means jobs that are created or retained by businesses selling goods or services into markets for which national or international competition exists.
- (9) “Emergency project” means a development project resulting from an emergency as defined in ORS 401.025.
- (10) “Essential Community Facilities” means municipally owned or operated facilities that provide or support services vital to public health and safety, including, but not limited to police and fire protection, medical treatment, public utilities, transportation, and auxiliary shelter facilities.
- (11) “Executive Director” means the administrator of the Infrastructure Finance Authority.
- (12) “Firm business commitment project” means a project in response to a specific business development, expansion or retention proposal where assistance is necessary to enable the proposal to proceed and where permanent, full-time equivalent jobs will be created or retained. The project must support industrial development or eligible commercial jobs and be consistent with local comprehensive plans and implementing ordinances.
- (13) “Fund” means the Special Public Works Fund created by ORS 285B.455.
- (14) “Levee project” means a planning project, development project, or other project that is directly related to and necessary for required inspections, levee certification, accreditation or repairs.
- (15) “Marine facility” has the meaning given that term in ORS 285B.410(7).

(16) "Municipality" means an Oregon city, or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS Chapter 451, a district as defined in 198.010, a tribal council of a federally recognized Indian tribe in this state, or an airport district organized under ORS 838, but does not include an ORS 190 entity.

(17) "Planning project" means:

(a) A project related to a potential development project for preliminary, final, or construction engineering;

(b) A survey, site investigation or environmental action related to a potential development project;

(c) A financial, technical or other feasibility report, study or plan related to a potential development project; or

(d) An activity that the Authority determines to be necessary or useful in planning for a potential development project.

(18) "Project" means a development, planning or emergency project.

(19) "State revenue bond loan" means a loan funded in whole or part through the sale of state revenue bonds issued by the state of Oregon at the request of the department that are payable from specific revenue sources pledged by a municipality and are not a pledge of the full-faith and credit of the state of Oregon.

Appendix B

SPWF's Definition of Municipality and Districts Defined in ORS 198.010 include the following:

- Cemetery maintenance district organized under ORS chapter 265.
- Domestic water supply district organized under ORS chapter 264.
- Drainage district organized under ORS chapter 547.
- Geothermal heating district organized under ORS chapter 523.
- Health district organized under ORS 440.305 to 440.410.
- Heritage district organized under ORS 358.442 to 358.474.
- Highway lighting district organized under ORS chapter 372.
- Irrigation district organized under ORS chapter 545.
- Library district organized under ORS 357.216 to 357.286.
- Mass transit district organized under ORS 267.010 to 267.390.
- Metropolitan service district organized under ORS chapter 268.
- Park and recreation district organized under ORS chapter 266.
- People's utility district organized under ORS chapter 261.
- Port organized under ORS 777.005 to 777.725 and 777.915 to 777.953.
- Radio and data district organized under ORS 403.500 to 403.542.
- Road assessment district organized under ORS 371.405 to 371.535.
- Rural fire protection district organized under ORS chapter 478.
- Sanitary authority, water authority or joint water and sanitary authority organized under ORS 450.600 to 450.989.
- Sanitary district organized under ORS 450.005 to 450.245.
- Special road district organized under ORS 371.305 to 371.360.
- Transportation district organized under ORS 267.510 to 267.650.
- Vector control district organized under ORS 452.020 to 452.170.
- Water control district organized under ORS chapter 553.
- Water improvement district organized under ORS chapter 552.
- Weather modification district organized under ORS 558.200 to 558.440.
- 9-1-1 communications district organized under ORS 403.300 to 403.380.