

CITY OF TAMARAC, FLORIDA

ORDINANCE NO. O-2012_____

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, AMENDING THE TAMARAC CODE OF ORDINANCES BY REPEALING IN ITS ENTIRETY CHAPTER 6 ENTITLED "FINANCE AND TAXATION," ARTICLE V, "PURCHASING PROCEDURES", AND ENACTING CHAPTER 6, "FINANCE AND TAXATION", ARTICLE V, TO BE ENTITLED THE "TAMARAC PROCUREMENT CODE"; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Charter Article VII "Financial Procedures", Section 7.11 "Requirements for public bidding" was amended by referendum in November, 2010, necessitating the updating of Chapter 6 "Finance and Taxation," Article V, "Purchasing Procedures" of the current City of Tamarac Code of Ordinances; and

WHEREAS, the City Commission of the City of Tamarac, Florida, deems it to be in the best interest of the City of Tamarac to further update the current code to provide for greater clarity and incorporate current best practices in the public procurement field by repealing Chapter 6, entitled "Finance and Taxation", Article V, "Purchasing Procedures" in its entirety, and replacing it with the "Tamarac Procurement Code" as more particularly set forth herein below..

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF TAMARAC, FLORIDA, THAT:

SECTION 1: The foregoing “WHEREAS” clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance.

SECTION 2: Chapter 6, entitled “Finance and Taxation” of the Tamarac City Code, Article V “Purchasing Procedures”, is hereby repealed in its entirety and Chapter 6 “Finance and Taxation”, Article V to be entitled “Tamarac Procurement Code” is hereby enacted as follows:

* * *

TAMARAC PROCUREMENT CODE

ARTICLE V. TAMARAC PROCUREMENT CODE

Sec. 6-141. Title.

The provisions of this article shall be known as the TAMARAC PROCUREMENT CODE.

Sec. 6-142. Purpose and Intent.

- (a) General. This Article applies to all purchases of supplies, services and construction by the City except as provided herein. In the event of a conflict between the provisions of this Article and any applicable state or federal law, the latter shall prevail.
- (b) The purpose and intent of this article shall be to generally prescribe the manner in which the City shall control the purchase of materials, supplies, equipment and certain contractual services. This Article shall be construed and applied to promote its underlying purposes. The underlying purposes are:
 - (1) to obtain the supplies, services and construction required by City departments in order for those departments in a cost effective and responsive manner to better serve the City’s residents and businesses;
 - (2) to uphold the highest standards and best practices through the adoption and adherence with the public procurement profession Values and Guiding Principles of accountability, ethics, impartiality, professionalism, service and transparency;
 - (3) to provide fair and equitable treatment of all persons who transact business with the City;
 - (4) to maximize the purchasing value of public funds in the procurement of goods and services;

(5) to provide safeguards for the quality and integrity of the City's maintenance of a procurement;

(6) to maintain a high ethical standard for all officers and employees of the City in connection therewith; and

(7) to require all parties involved in the negotiation, performance, or administration of City contracts to act in good faith.

(c) This Article applies only to contracts solicited or entered into after the effective date of this Article. Nothing in this Article shall be construed to prohibit the City from complying with the terms of a grant, gift, or cooperative agreement.

(d) Supplementary General Principles of Law Applicable.

Unless displaced by the particular provisions of this Code, the principles of law and equity, including the Uniform Commercial Code of the State of Florida shall supplement the provisions of this Article.

(e) Severability.

If any provision of this Code or any application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application of this Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable.

(f) Determinations.

Written determinations required by this Code shall be retained in the appropriate official contract file of the Purchasing and Contracts Manager or the using department.

(g) Public Access to Procurement Information.

Procurement information shall be a public record to the extent permitted by Florida statute as amended from time to time, and shall be available to the public as provided in such statute.

(h) Authorization for the Use of Electronic Transmissions.

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with State of Florida applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

(1) appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and

(2) accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Sec. 6-143 Definitions.

The words defined in this Section shall have the meanings set forth below whenever they appear in this Code, unless:

(a) the context in which they are used clearly requires a different meaning; or

(b) a different definition is prescribed for a particular Article or provision.

Addendum/Addenda means a formal written notification to prospective bidders or proponents which provides clarification of the requirements for a solicitation. Addenda

are also used to summarize clarifications made during a pre-bid or pre-solicitation conference. Whenever a potential bidder/proponent requests information or a clarification regarding information that is NOT clearly referenced in a solicitation document, it is necessary to provide all bidders and proponents with the information in writing, using the addendum document.

Administrative Policy means a formal written policy or procedural guideline which governs the operational process for carrying out various fiduciary functions of government on a city-wide basis. Administrative policies are approved and issued by the City Manager.

Advertisement means a formal announcement of an Invitation for a solicitation; usually placed in a newspaper of general circulation or on an Internet web-site.

Best and Final Offer (BAFO): In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, services and products to be delivered. Sometimes referred to as BAFO and utilized during the Request for Proposal method of procurement.

Best Value means the highest overall value to the City based on relevant factors that may include, but are not limited to, price, quality, design and workmanship.

Bid Bond means a bid security in the form of a bid surety, certified check, cashier's check, or cash that ensures that the bidder will be capable of entering into a contract and subsequently provide the required performance and payment bonds within a specified period of time.

Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

Business Day means a day, Monday through Friday, excluding any day that is a City observed holiday.

Calendar Day or "day" means a consecutive twenty-four hour period running from 12:01 a.m. to midnight.

CATEGORY THREE means the dollar threshold defined by F.S. 287.017(43), which may be amended by the State of Florida from time to time; which shall serve as the formal solicitation threshold for purchases made on behalf of the City of Tamarac. In the event that the State of Florida amends the CATEGORY THREE threshold, such change shall be reported to the City Commission and the City Commission shall be required to formally consent to such change prior to such new threshold becoming effective for the City.

Change Order means any written alteration or modification to a contract executed by the City in accordance with the terms of the contract, directing the contractor to make changes due to unanticipated conditions or developments, which do not substantially alter the character of the work contracted for, and which do not vary so substantially from the original specifications as to constitute a new undertaking.

Construction means the process of building, altering, repairing, improving, or demolishing any public facility, including any public improvements of any kind to real property, including roadways, utilities, infrastructure, and facility site work. Construction does not include the routine operation, routine repair, or routine maintenance of any existing public infrastructure facility, including structures, buildings or real property.

Construction Manager-at-Risk means a construction delivery process allowing the project owner to choose a construction manager who assumes the risk for construction.

rehabilitation, or repair of a public facility at the contracted price as a general contractor and provides consultation to the City regarding construction during and after the design.

Consultant's Competitive Negotiations Act (CCNA) means F.S. 287.055, as amended, governing the procurement of architectural, engineering, land surveyor and mapping or landscape architect services.

Contingent or Contingency Contract means an agreement whereby the contractor's revenue is generated from a commission, percentage or other fee that is conditional upon the success that a person has in securing a contract, or based on performance on a contract.

Continuing Services Agreement or Contract means a contract for professional services entered into in accordance with F.S. 287.055, as amended, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the ten current thresholds outlined in F.S. 287.055, or for work of a specified nature as outlined in the contract required by the city, with no time limitation except the contract must provide for a termination clause.

Contract means all types of City agreements, regardless of what they may be called, for the procurement or disposal of supplies, services, or construction between parties with binding legal and moral force, usually exchanging goods or services for money or other consideration.

Contract Modification means written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

Contractor means any person or business having a contract with a governmental body or that contracts to perform work or services, or provides goods or supplies to the City.

Contractual services means without limitation, the purchase of insurance, printing, gas, electricity, fuel, cleaning services; the purchase, installation, rental repair and maintenance of equipment and machinery, and other personal property; lease or real property and office space, and all other contractual supplies, materials and equipment and services not specifically excluded from the requirements of this article.

Data means recorded information, regardless of form or characteristic.

Debarment means the disqualification of a person to receive solicitations or the award of contracts by the City for a specified period of time commensurate with the gravity of the offense or the failure or inadequacy of performance.

Design-bid-build means a construction project delivery method in which the City sequentially awards separate contracts, the first for architectural and engineering services to design the project and the second for construction of the project according to the design.

Design-Build means a construction project delivery method in which the City enters into a single contract for design and construction of an infrastructure facility as defined in F.S. 287.055, (CCNA) as amended.

Designee means a person who is chosen to represent or given the authority to act on behalf of another person of authority.

Electronic means electrical, digital, magnetic, optical, electromagnetic, or any other similar technology.

Employee means an individual drawing a salary from a governmental body, whether elected or not.

Excess Supplies (also see Surplus Property) means any tangible personal property having a remaining useful life but which is no longer required by the City department in possession of the supplies.

Governmental Body means any unit or association of units of federal, state or local government, any public authority which has the power to tax, any other public entity created by statute and any other entity which expends public funds for the procurement of supplies, services or construction.

Grant means a contribution, gift, or subsidy made for specific purposes, frequently made conditional upon specific performance by the grantee.

Gratuity means a gift, payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, presented or promised, unless consideration of substantially equal or greater value is received.

Invitation for Bid means a written solicitation for competitive sealed bids with the title, date and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for bids that are sought. Unless specifically authorized by this Code, no negotiation is permitted, and the contract award is granted to the lowest priced responsive and responsible bid, which conforms to the requirements set forth in the bid document.

Invitation to Negotiate means a written solicitation for competitive sealed replies to one (1) or more vendors with which to negotiate for the procurement of commodities or services.

Job Order Contracting means a construction delivery method in which the City awards a term contract agreement that provides for unit pricing for individual tasks of a project to provide construction services based on individual quotations prepared on a project-by-project basis. Unit pricing is normally predicated on the compilation of a task guide reflecting local construction market conditions where contractors bid a general discount or add-on factor.

Performance Bond means a contract of guarantee, executed subsequent to award by a successful bidder, to protect the City from loss due to the bidder's inability to complete the contract as agreed. The bond insures that the project will be able to be completed in the event that the bonded contractor defaults on their contract.

Person means any business, individual, union, committee, club, other organization, or group of individuals.

Procurement means buying, purchasing, renting, leasing, or otherwise acquiring any supplies, services or construction including, but not limited to all functions that pertain to the obtaining of any supply, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Procurement Officer means the Purchasing and Contracts Manager who serves as head of the Purchasing and Contracts Division, which is established as the central procurement office of the City of Tamarac.

Professional Services means services within the scope of a particular area of practice; such as the practice of architecture, landscape architecture, land surveying and professional engineering which are governed by F.S. 287.055, the Consultants'

Competitive Negotiation Act, as amended. Auditing services, which are governed by F.S. 218.391, and other professions including, but not limited to law, management consulting, medicine, real estate appraising, or other area of expertise.

Public Notice means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, posting on a bulletin board, electronic or paper mailing lists, and web site(s) designated by the City and maintained for that purpose. Purchase Request means a document whereby a City department requests that a contract be entered into for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by this Code.

Request for Proposal (or Competitive Sealed Proposals) means a written solicitation for competitive sealed proposals with the title, date and hour of deadline for submittal. The request for proposals is used when it is impractical for the agency to define a detailed scope of work. The request for proposal document is used to solicit proposals from potential providers for goods and services (Offerors). Requests for proposals are evaluated on various criteria, which may or may not include price. When used as an evaluation factor, price may not be the primary evaluation factor, but the proposal document shall state the relative importance of price as well as any other evaluation criteria. A request for proposal provides for the negotiation of all terms, including price, prior to contract award; and may include a provision for the negotiation of a BAFO. Requests for proposal may be a single step or a multi-step process.

Responsible Bidder or Offeror means a person, business or contractor who has the capability in all respects to fully perform the Contract requirements and the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a City project or purchase.

Responsive Bidder or Offeror means a person, business or contractor whose response to a bid or proposal substantially conforms in all material respects to the requirements and criteria set forth in the invitation or solicitation. This includes such aspects as following bid instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions and specification requirements as enumerated in the solicitation.

Reverse Auction means a procurement method wherein bidders, anonymous to each other, electronically submit real time bids on designated supplies or services.

Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

Signature means a manual or electronic identifier, or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same force and effect as a manual signature.

Single Source refers to a supply source for goods or services to which purchases are directed because of issues related to standardization, warranty, or other factors, even though other competitive sources may be available.

Sole Source refers to a situation created due to the inability to obtain competition. This situation may result because only one vendor or supplier possesses the unique ability or

capability to meet the particular requirements of the user, or situations where only one economically viable source is capable of providing the service or item that the City seeks to purchase. Sole sources may be characterized by a marketplace where there is only one vendor because items are patented or geographically franchised.

Specification means A precise description of the physical or functional characteristics of a product, good or construction item. A description of goods and/or services. A description of what the purchaser seeks to buy and what a bidder must be responsive to in order to be considered for award of a contract. Specifications generally fall under the following categories: design, performance, combination (design and performance), brand name or approved equal, qualified products list and samples. May also be known as a purchasing description.

Supplies means all tangible property, including but not limited to: equipment, materials, and commodities required for ongoing operational City requirements including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

Surplus Property means any tangible personal property or real property no longer having use to the City. Surplus property includes obsolete supplies, scrap materials, and non-expendable supplies that have completed their useful life cycle.

Term Contract or Agreement means a contract in which a source or sources of supply are established to provide for needs for a specified period of time for specified services or supplies at an agreed upon unit price(s).

Using Agency/Department means any Department, Division, Activity, Agency, Board, Commission, or other unit in City government that procures commodities, construction, or services which derive their support wholly or in part from city funds as provided in this article.

Written or In Writing means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 6-144 Purchasing & Contracts Division Established; Supervision.

There is hereby established a Purchasing and Contracts Division under the supervision of the Financial Services Director.

Sec. 6-145 Responsibilities and Authority.

(a) General.

Except as otherwise provided herein, the Purchasing and Contracts Manager shall have responsibility for the general supervision of the Purchasing and Contracts Division and shall perform all duties required and shall act as the principal public purchasing officer for the City, responsible for the procurement of supplies, services and construction in accordance with this article, as well as the disposal of excess equipment or supplies.

(b) Responsibilities and Authority.

- (1) All purchases of goods and services shall be processed through the Purchasing and Contracts Division. The Purchasing and Contracts Manager is hereby authorized to promulgate procedures for the requisitioning of supplies and services.

(2) For all purchases, the Financial Services Department shall verify that the purchase request has sufficient unencumbered funds to cover the purchase, or that a budget amendment or transfer is in process for approval by the City Manager or designee.

(3) The Purchasing and Contracts Manager shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments and contract renewals in the amount of \$25,000 or less.

(4) The City Manager or designee shall have the authority to approve and execute all procurement-related purchase orders, contracts, contract amendments and contract renewals up to and equal to the amount of the threshold for Purchasing CATEGORY THREE, as defined in the F.S. 287.017 or less.

(5) The Mayor shall have the authority to execute all procurement-related , contracts, contract amendments and contract renewals in excess of the threshold for Purchasing CATEGORY THREE, as defined in the F.S. 287.017(3) after City Commission approval. Such execution shall be attested to by the City Manager. Execution of Short term leases and other procurement-related purchase orders, contract amendments and contract renewals in excess of the threshold for Purchasing CATEGORY THREE shall be instruments delegated to the City Manager or designee for execution.

Sec. 6-146 Methods of Source Selection.

(a) General.

Except as otherwise provided by law, this article or by Charter; all contracts of the city involving dollar amounts in excess of the threshold for Purchasing CATEGORY THREE, as defined in F.S. 287.017, as amended, shall be awarded through the use of a formal competitive process identified within this section.

(1) Competitive Sealed Bidding.

(a) Invitation for Bid. An Invitation for Bid may be issued and shall include specifications and all contractual terms and conditions applicable to the procurement.

(b) Public Notice. Adequate public notice of the Invitation for Bid shall be given a reasonable time, not less than ten (10) calendar days prior to the date set forth therein for the opening of bids, in accordance with procedures as may be promulgated by the Purchasing and Contracts Manager. The Purchasing and Contracts Manager shall designate a means of distribution or determination of information to interested parties using methods that are reasonably available. Such methods may include, but are not limited to, publication in newspapers of general circulation, web-sites designated and maintained for such notification or on a dedicated area on a web-site maintained by the City, or through the use of vendor list which may be maintained by the Purchasing and Contracts Division on an ongoing basis. Publications in newspapers of general circulation must be at least one time, with the notice published in the "Legal Notices" section of the newspaper at least ten (10) days prior to the bid opening date. Notices published on web-sites must be posted immediately upon release of the Invitation for Bid, and remain available to the public until the scheduled bid opening date and time. Said notice

shall state the place, date and time of the bid opening. When the projected cost of a city construction project exceeds the bid threshold set forth in F.S. 255.0525(2), as amended, bids for that project shall be advertised in accordance with procedures outlined in said statute.

(c) *Bid Bonds.* When deemed necessary by the Purchasing and Contracts Manager, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Purchasing and Contracts Manager has requested surety. A successful bidder shall forfeit any surety required by the Purchasing and Contracts Manager upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.

(d) *Addenda.* After an Invitation for Bid is issued and before the submission deadline, the Purchasing and Contracts Division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The Purchasing and Contracts Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

(e) *Bid Opening.* The following procedures shall apply to all bid openings:

(1) *Sealed.* Bids shall be submitted sealed to the purchasing office and shall be clearly identified in accordance with the terms of the Invitation for bid, as bids on the exterior of the envelope or other casing or wrapping sealing the contents of the bid from view.

(2) *Copies.* The appropriate number of copies of the bid as required by the Invitation for Bid shall be required to be submitted prior to bid opening.

(3) *Opening.* Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as the Purchasing and Contracts Manager deems appropriate, together with the name of each bidder shall be recorded;

(4) *Tabulation.* A tabulation of all bids, and each bid shall be open to public inspection in accordance with the Florida Public Records law.

(5) *Late receipt.* No late bids shall be accepted or opened; if received after the date and time called for in the bid notice, late bids shall be returned unopened to the bidder.

(f) *Bid Acceptance.* Bids shall be unconditionally accepted without alteration or correction except as authorized in this Code.

(g) *Correction or Withdrawal of Bids; Cancellation of Awards.* Correction or withdrawal of inadvertently erroneous bids shall be permitted up to the time of bid opening. Mistakes discovered before bid opening may be withdrawn by written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. Any modification prior to the bid opening must be submitted in a sealed envelope prior to the scheduled opening of the bid.

After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake may be permitted to withdraw its bid if:

(1) The mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident, or

(2) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids after bid opening, based on bid mistakes, shall be supported by a written determination made by the Purchasing and Contracts Manager.

(h) *Bid Evaluation.* Bids shall be evaluated based on the requirements set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The Invitation for Bids shall set forth the evaluation criteria to be used, including past performance. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids.

(i) *Award.* The contract shall be awarded with reasonable promptness to the lowest, fully responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bid. In the event all the low responsive and responsible bid for a project exceeds available funds, the Purchasing and Contracts Manager is authorized, when time of economic considerations preclude re-solicitation to negotiate a reduced scope of work and an appropriate adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. In determining the lowest responsive and responsible bidder, in addition to price, city officials may consider other factors that relate directly to the bidder's level of responsibility pursuant to the requirements of 6-146 (a) (1h) of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Bid Evaluation").

(j) *Award to Other than Low Bidder.* When award of a solicitation is not granted to the lowest priced, a statement of the reason for award to the next lowest responsive and responsible bidder shall be prepared and made a part of the record file.

(k) *Tie Bids*

(1) If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded based on the following criteria to be considered in the following order of priority:

(a) A local bidder with a primary business location within the City of Tamarac

(b) A local bidder with a primary business location within Broward, Miami Dade or Palm Beach Counties.

(c) A bidder with a primary business location within the State of Florida.

(2) The City may split the award of a contract when it is to the City's advantage.

(3) Where Section 6-146 (a) (1) (k) (1a) through (1c) of this article is not in effect, and all other potential remedies have been exhausted, the tie bid may be resolved by lottery. Such lottery shall be conducted by the City Manager or designee, and shall be open to the public.

(l) *No bids received.* If no bids for goods or services are received, the Purchasing and Contracts Manager shall have the authority to negotiate terms and pricing with firms which provide the goods or services sought.

(2) Electronic Auctions / Reverse Auctions.

(a) The City may award contracts for supplies and nonprofessional services by electronic auctions, otherwise known as reverse auction, a procurement method where bidders, anonymous to each other, electronically submit real time bids. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established by the solicitation. Award shall be made to the lowest responsive and responsible bid.

(b) *Public Notice.* Adequate public notice of the Electronic Auction / Reverse Auction shall be given in the same manner as provided in Section 6-146(a)(1b) of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").

c) *Bid Bonds.* When deemed necessary by the Purchasing and Contracts Manager, bid bonds or deposits may be prescribed in the public notice inviting bids. Unsuccessful bidders shall be entitled to return of surety where the Purchasing and Contracts Manager has requested surety. A successful bidder shall forfeit any surety required by the Purchasing and Contracts Manager upon failure on the part of the bidder to enter into a contract within ten (10) days after the award.

(d) *Addenda.* After an Invitation for Bid is issued and before the actual occurrence of the electronic auction/ reverse auction, the Purchasing and Contracts Division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the bid. The Purchasing and Contracts Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

(e) *Bid Submission.* Bid pricing shall be submitted by electronic means in a manner prescribed procedures as prescribed by the Purchasing and Contracts Manager.

(f) *Acceptance, Evaluation and Award.* Bids shall be accepted, evaluated and awarded consistent with the requirements of Section 6-146(a) (1f, 1h, 1i, 1j and 1l) of this Code. ("Methods of Source Selection, Competitive Sealed Bidding).

(3) Competitive Sealed Proposals (Request for Proposals)

(a) When the Purchasing and Contracts Manager determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City, a contract may be entered into by the use of the competitive sealed proposal method.

(b) *Public Notice.* Adequate public notice of the Request for Proposals (RFP) shall be given in the same manner as provided in Section 6-146(a)(1b) of this Code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice").

(c) *Addenda.* After a Request for Proposals is issued and before the submission deadline, the Purchasing and Contracts Division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the RFP. The Purchasing and Contracts Manager or designee may establish a deadline

for written questions concerning the bid, after which time, no additional questions will be accepted.

(d) *Receipt of Proposals.* Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A Register of Proposals shall be prepared in accordance with regulations, and shall be open for public inspection in accordance with Chapter 119, Florida Public Records Law, Florida Statutes, as amended.

(e) *Evaluation Factors.* The Request for Proposals shall state the criteria to be used in the evaluation of the proposals which shall include their relative importance.

(f) *Evaluation Committee.* The City Manager shall appoint an Evaluation Committee to evaluate and make a recommendation based on the criteria set forth in the Request for Proposals. The Purchasing and Contracts Manager shall recommend to the City Manager, prospective members for the Committee who may include but shall not be limited to, representatives of the end user agency, including any assigned project manager, or individuals who may possess a level of skill or expertise related to the scope of work. All meetings of an Evaluation Committee shall be open to the public in accordance with the Florida Sunshine law, as amended, and public notice shall be conspicuously posted by the City.

(g) *Discussion with Responsible Offerors and Revisions to Proposals.* As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining BAFOs. In conducting such discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. In the event of receipt of an adequate number of proposals, which in the opinion of the Evaluation Committee require no clarification and/or supplementary information, such proposals may be evaluated without discussion or need for presentations.

(h) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the City taking into consideration price and the evaluation factors set forth in the Request for Proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis upon which the award is made. The City reserves the right to waive any and all formalities of the proposal procedure and to award the proposal in the best interest of the City.

(i) *Continuing Services contracts.* Continuing Services contracts are defined as contracts for professional services entered into in accordance with F.S. 287.055, whereby a firm provides professional services for projects in which construction costs, and costs for a study activity do not exceed the then current thresholds outlined in F.S. 287.055., or for work of a specified nature as outlined in the contract required by the city, with no time limitation except the contract must provide a termination clause. Continuing Services contracts shall be awarded using a qualifications based selection procedure in accordance with F.S. 287.055.

(4) Invitation to Negotiate.

(a) *Determination of Use.* When the Purchasing and Contracts Manager determines that a procurement request is not suitable for an Invitation for Bid or Request for Proposals, and that concurrent negotiation with one (1) or more vendors may be necessary for the City to receive the best value, the Purchasing and Contracts Manager may procure commodities and contractual services by competitive sealed replies solicited through an Invitation to Negotiate. This source selection method does not apply to procurements subject to the Consultants' Competitive Negotiation Act, F.S. 287.055, unless expressly permitted by statute.

(b) *Public Notice.* Adequate public notice of the Invitation to Negotiate shall be given in the same manner as provided in Section 6-146(a) (1b) of this code, ("Methods of Source Selection, Competitive Sealed Bidding, Public Notice")

(c) *Addenda.* After an Invitation to Negotiate is issued and before the submission deadline, the Purchasing and Contracts Division may issue one (1) or more written addenda for the purpose of clarifying specifications or other matters relating to the Invitation to Negotiate. The Purchasing and Contracts Manager or designee may establish a deadline for written questions concerning the bid, after which time, no additional questions will be accepted.

(d) *Receipt of Competitive Sealed Replies by Invitation to Negotiate.* Responses shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. Submittals shall be open for public inspection in accordance with Florida's Public Records Law, as amended.

(e) *Evaluation Criteria.* Responsive replies shall be evaluated and ranked against all evaluation criteria as set forth in the Invitation to Negotiate, and shall select, based on the ranking, one (1) or more respondents with which to commence negotiations.

(f) *Evaluation Committee.* The City Manager shall appoint an Evaluation Committee to evaluate and make a recommendation based on the criteria set forth in the Invitation to Negotiate. The Purchasing and Contracts Manager shall recommend to the City Manager, prospective members for the Committee who may include but shall not be limited to, representatives of the end user agency, or individuals who may possess a level of skill or expertise related to the scope of work.

(g) *Negotiations with Respondents.* Negotiations may be conducted with respondents. The City may utilize either sequential or concurrent negotiation methods.

(1) *Sequential Negotiations:* The City may consider the respondent's statements of qualifications without consideration to price, and may select the most qualified respondents as finalists. The City may conduct interviews with all finalists, and rank the responses without regard to price. Exclusive negotiations as to the scope of work, terms and price may be conducted with the respondent providing the proposal ranked as most advantageous to the City. If an agreement is not reached, the City may commence negotiations with the successive ranked respondents until an agreement is attained.

(2) *Concurrent Negotiations:* The City may consider the respondent's statement of qualification and price; however, both are subject to future negotiations. The City may select a group of the most qualified respondents as finalists and commence simultaneous negotiations with each regarding the scope of work and price. Final BAFOs may be requested of the finalists. In determining the

best value, the negotiation team may re-rank the respondents. Award of a contract is made to the respondent representing the best value to the City.

(h) Award. Contract award shall be made to the respondent whose negotiated agreement is determined to be the best value to the City considering final negotiated pricing and other criteria as specified in the Invitation to Negotiate. The contract file shall contain the basis upon which the award was made.

(b) Selection Advisory Committee.

There is hereby established a Selection Advisory Committee (SAC) for the purpose of evaluating firms who express interest in contracting with the city for professional services for projects subject to the requirements of the Consultants' Competitive Negotiations Act, F.S. 287.055, as may be amended from time to time.

(1) The SAC shall be comprised of the Purchasing and Contracts Manager, who shall facilitate the committee process, and have voting privileges, the Director of Public Works, the Director of Financial Services, the Director of Community Development, the Director of Utilities, the City Engineer, the Assistant City Manager, and the City Manager, or their designees who shall be voting members of the committee.

(2) All meetings of the SAC shall be subject to and held in conformity with the requirements of the Florida Sunshine law, as may be amended.

(3) All minutes of the meetings of the SAC shall be promptly recorded and the records shall be open to public inspection in accordance with the provisions of Florida's Public Records laws, as may be amended.

(4) Selection procedure.

(a) The SAC shall evaluate the statements of qualifications submitted by all proposers, shall conduct discussions with, and may require presentations by no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services; however, if less than three proposals are received, the SAC may interview those firms submitting responses. All expenses, including travel expenses for interview, incurred in the preparation of the proposal shall be borne by the proposer. After presentations and interviews have been completed, the SAC shall rank all responses and determine the response that is most advantageous to the City.

(b) The ranking of firms shall be based on the SAC's ability to differentiate qualifications applicable to the scope and nature of the request for proposals. Such determination shall be based on, but not necessarily be limited to:

(1) The proposer's demonstrated understanding of the City's requirements and plans for meeting those requirements;

(2) The professional qualifications, related experience and adequacy of the personnel assigned to the project;

(3) The prior experience and references of the proposer;

(4) The prior experience, if any, that the proposer has had with the City of Tamarac.

(5) All other statutory requirements of the Consultants' Competitive Negotiation Act as applicable to the specific procurement, including whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act of 1985.

(c) Upon reaching consensus on the recommendation by the SAC, the City shall negotiate with the number one ranked firm, and upon completion of negotiations, shall make a recommendation to the City Commission for contract award. If negotiations are not successful with the number one ranked firm, the City shall negotiate with the next highest ranked firm.

Sec. 6-147 Small Purchase Procedures.

(a) *General.* Any procurement not required to be conducted pursuant to the terms and conditions of Section 6-146 of this Code, ("Methods of Source Selection"), shall be made in accordance with the operational procedures and thresholds for informal small purchases.

(b) *Delegation of Authority.* The Purchasing and Contracts Manager may establish operational procedures delegating authority for City departments to obtain written or oral quotations and issue small dollar procurements directly to vendors for purchases below the Purchasing CATEGORY THREE threshold as defined in the most current version of F.S. 287.017, as amended.

(c) *Electrical work in excess of the threshold provided pursuant to F.S. Section 255.20(1), as amended, shall be competitively bid.*

(d) *Requirements for Quotations.* The Purchasing and Contracts Manager, or designee, or by a department or division, as delegated by the Purchasing and Contracts Manager, may solicit informal quotations by any one (1) or more of the following methods:

- (1) By direct mail or requests to prospective vendors;
- (2) By telephone, facsimile or e-mail;
- (3) By public notice posting on a city-maintained public electronic bulletin board or bulletin board at City Hall;
- (4) By use of a third party internet hosting site;
- (5) By reverse auction.

(e) *Quotation Threshold.* The following dollar thresholds shall apply to the requirement for quotations for small market purchases made by the City. The Purchasing and Contracts Division shall develop procedures for processing quotations within the guidelines established.

<u> \$0.00 -- \$2,499.99</u>	<u> Minimum of 1 quotation required.</u>
<u> \$2,500.00 -- \$4,999.99</u>	<u> Minimum of Three verbal quotations required.</u>
<u> \$5,000.00 -- \$29,999.99</u>	<u> Minimum of Three written quotations required.</u>
<u> \$30,000.00 – Formal Threshold</u>	<u> Formal written quotations required.</u>

In the event that fewer than three (3) quotations are received, the City may consider those quotations received; however, the Purchasing and Contracts Manager or designee reserves the right to validate the availability of suppliers for an item or service.

- (f) Recording. The Purchasing and Contracts Manager shall maintain a record of all small purchases and the quotations submitted in competition thereon, and such records shall also be open to public inspection.
- (g) Procurement Cards. The Purchasing and Contracts Manager shall have the authority to issue City Procurement Cards to employees at the request of the Department Director. The Purchasing and Contracts Manager shall develop operational policies and procedures for the use of the procurement cards, which shall be adopted as an Administrative Policy.
- (h) Petty cash. The Financial Services Director may promulgate rules and regulations governing petty cash purchases as appropriate.
- (i) Unauthorized Purchasing Practices. An unauthorized purchase occurs when any employee of the City orders, contracts for or buys any materials or supplies outside the purview of the City Charter and/or this Code. Any individual making an unauthorized purchase may be subject to disciplinary actions as appropriate, which may include termination and/or prosecution. The following are unauthorized purchasing practices:
 - (1) Artificially dividing purchases into multiple segments in an attempt to issue single orders below the dollar threshold requirements as established herein (also known as "stringing" or "splitting purchase orders") is prohibited.
 - (2) Purchasing any supplies or services above the thresholds delineated herein directly from a vendor, bypassing the Purchasing and Contracts Division.
 - (3) Committing to a purchase without issuance of an authorized purchase order, when one is required.
 - (4) Obtaining items available on an existing City term contract from a supplier that does not hold the contract.
 - (5) Providing false information such as false quotations (without actually contacting and obtaining a quotation, bid or proposal from a vendor).
 - (6) Adding unauthorized purchases to previously approved Purchase Orders without approval of the appropriate approval authority and subsequent modification of the purchase order.
- (j) Change Orders. The City Manager or designee is authorized to approve and initiate change orders determined in the judgment of the City Manager or designee to be in the public interest as follows:
 - (1) All change orders decreasing the cost of the contract to the City; providing, however, such decrease does not materially alter the character of the work contemplated by the contract;

(2) All change orders increasing the cost of the contract to the City, up to the formal competitive Purchasing CATEGORY THREE threshold as defined in the most current version of F.S. 287.017(3), as amended, and approved by the City Commission, provided that sufficient budgeted funds are available.

(3) All other change orders must be formally approved by the City Commission before work may be authorized to begin; and no claim against the City for extra work in furtherance of such change order shall be allowed unless prior written authorization has been provided, notwithstanding any other provision, contractual or otherwise.

(4) Change orders shall not artificially be distributed or divided so as to bring the amount within the approval level of the City Manager, and any such proposed change order shall include within it all logically connected work required to be done at the time of the proposal.

(5) Work defined by the scope of a change order may not be commenced until obtaining final approval of the change order, except where such work is of an emergency nature as defined in Section 6-148 (b) "Emergency Procurements" of this Code.

Sec. 6-148 Exclusions and Exceptions to Bid and Proposal Requirements.

(a) **Exclusions.** This Article shall not apply to:

(1) The procurement of dues and memberships in trade or professional organizations; registration fees for trade and career fairs, subscriptions for periodicals and newspapers; advertisements; postage; expert witness; legal and mediation services; lobbying services; abstracts of title for real property; title searches and certificates; title insurance for real property; real estate appraisal services; water, sewer, telecommunications and electric utility services; copyrighted materials or patented materials including, but not limited to, technical pamphlets, published books, maps, testing or instructional materials; fees and costs of job-related seminars and training;

(2) Goods purchased with petty cash or city procurement cards in accordance with the City's petty cash and procurement card procedures;

(3) Items purchased for resale to the general public; for example, supplies for a city-owned concession area.

(4) Purchase of groceries;

(5) Artistic services or works of art;

(6) Travel expenses, hotel accommodations and hotel services;

(7) City-sponsored events held at venues not owned by the City;

(8) Entertainment and entertainment-related services for City-sponsored events;

(9) Purchase of motor vehicle license plates from a governmental agency;

(10) Persons or entities retained as "expert consultants" to assist the City in litigation, or in threatened or anticipated litigation;

(11) Educational or academic programs;

(12) Health services involving examination, diagnosis, treatment, prevention, medical consultation, or administration;

(13) Auditing services that are not subject to the requirements of F.S. Chapter 218, Part III;

(14) The purchase of items critical to the security of City facilities; and

(15) Any services identified in F.S. § 287.057, as may be amended from time to time, as being exempt from competitive bid/request for proposal requirements.

(b) Sole and Single Source Procurements.

(1) A contract may be awarded for a supply, service, or construction item without competition when the Purchasing and Contracts Manager or a designee determines in writing that there is only one economically feasible source for the required supply, service, or construction item, or when requirements for standardization, warranty, geographic and territorial restrictions, or other factors create a situation where competition is either not feasible or practicable.

(2) The Purchasing and Contracts Manager or designee shall conduct negotiations, as appropriate, regarding price, delivery and terms. The City Department requesting a single, or sole source procurement must submit a written request to the Purchasing and Contracts Manager for approval, which must be accompanied by a written justification signed by the department head. The justification must document the purpose of the purchase,, the reason(s) for the single or sole source purchase, and a summary of attempts to obtain competition.

(3) Sole Source purchase requests in excess of the Purchasing CATEGORY THREE threshold as defined in F.S. 287.017, as amended, may be approved by the City Commission. A record of sole source purchases shall be maintained by the City and shall list each vendor's name, the amount and type of each contract and a listing of the item(s) procured under each contract.

(c) Emergency Procurements.

(1) Notwithstanding any other provision of this Code, the City Manager or designee may make or authorize others to make emergency procurements when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be provided by the City Manager to the City Commission and included in the contract file.

(2) The City Manager is authorized to determine if an emergency exists for purposes of emergency purchases and procurements. If an emergency does exist, the City Manager shall authorize emergency expenditures for the procurement or temporary acquisition of supplies, equipment and services necessary to meet the

City's needs as a result of the emergency, and may delegate authority for a department head or other designee to secure emergency proposals. The City Manager, the Purchasing and Contracts Manager, or the designee shall endeavor to secure proposals from at least two (2) separate sources.

(3) Any emergency procurement exceeding the award authority of the Purchasing and Contracts Manager or the City Manager shall be reported to the City Commission in writing or at a City Commission meeting, no later than ten (10) working days after the determination that the emergency situation has been stabilized and that no further emergency expenditures are required. The City Manager shall make a full disclosure of all emergency expenditures made pursuant to this section to the City Commission at the next regular meeting of the City Commission.

(d) Cooperative Purchasing.

When deemed to be in the best interests of the City, the Purchasing and Contracts Manager may participate in, sponsor, conduct or administer contracts under a cooperative purchasing program with one (1) or more governmental units for the procurement of any supplies, services, or construction. Such cooperative purchasing programs may include, but not be limited to, joint or multiparty contracts between public procurement units and open ended public procurement term contracts that are made available to other governmental units.

(e) Purchases from other Governmental Entities.

Purchases of goods or services from the federal government, any state or political subdivision thereof, or any municipality are exempt from the requirements of this section.

(f) Purchases of goods or services from contracts awarded by other governmental or not-for-profit entities by a formal competitive selection process.

The purchase of goods or services under a contract awarded by the United States Government or another governmental or not-for-profit entity by a formal competitive process is authorized provided the Purchasing and Contracts Manager makes a determination that time, expense and marketplace factors make it financially advantageous for the city to do so.

(g) Professional Services.

Contracts for the service of professionals, including but not limited to the practice of law, management consulting, medicine, real estate appraisal, or other area of expertise as determined by the City Manager or designee to be in the best interest of the City, and not otherwise subject to the requirements of F.S. 287.055, as amended, may be entered into without competitive bidding, however, qualifications, work history and other relevant data shall be reviewed before entering into such contracts. Professional Services contracts that exceed the threshold established in Section 6-146(a) of this Code, ("Methods of Source Selection"), will require approval by the City Commission.

(h) Owner Direct Purchase.

A contract may be awarded for supplies or materials without competition where such supplies or materials are being procured by the City as an owner direct purchase for

incorporation into a public works project, the contract for which was previously awarded by the City, which prior award included the cost of such supplies and materials. In such event, the City shall procure the supplies or materials in accordance with Florida Statutes and regulations related to owner direct purchases by governmental entities.

(i) Waiver of procurement procedures.

The City Commission may authorize the waiver of procurement procedures upon the recommendation of the City Manager that it is in the city's best interest to do so to obtain goods and services which cannot be acquired through the normal purchasing process due to insufficient time, the nature of the goods or services, or other factors. Purchases authorized by the waiver process shall be acquired with such competition as is practicable under the circumstances and only after a good faith review of all available sources and negotiation as to price, delivery and terms. There shall be no waiver of procurement procedures for procurements that are subject to the provisions of F.S. 287.055 or 255.20, as amended.

Sec. 6-149 Bonds and Security Requirements.

(a) Bid Security.

(1) The Purchasing and Contracts Manager may require the submission of a bid security to guarantee full and faithful performance of a solicitation. In determining the amount and type of bid security required, the Purchasing and Contracts Manager or designee shall consider the nature of the solicitation and performance required to protect the City during the term of the contract. Bid security shall be a bond provided by a surety company licensed to do business in the State of Florida or the equivalent in cash or otherwise supplied in a form satisfactory to City and approved by the Purchasing and Contracts Manager.

(2) *Amount of Security.* Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid.

(3) *Rejection of Bids for Noncompliance with Bid Security Requirements.* When the Invitation for Bids requires security, noncompliance requires that the bid be rejected unless, pursuant to regulations, it is determined that the bid fails to comply in a non-substantial manner with the security requirements.

(4) If a bidder is permitted to withdraw its bid before award as provided in Section 6-146 (a)(1) (g), of this Code, ("Methods of Source Selection, "Correction or Withdrawal of Bids; Cancellation of Awards"), no action shall be taken against the bidder or the bid security.

(b) Performance and Payment Bonds.

(1) When a construction contract is awarded in excess of \$200,000, the following bonds as security shall be delivered to the City and shall become binding on the parties upon execution of the contract as required in F.S. 255.05 and F.S. 713.01, as either statute may be amended.

(a) Performance Bond: Required to ensure the completion of a project in the event of contract breach or forfeiture by the Contractor.

(b) Payment Bond: Required to ensure the payment of sub-contractors and suppliers to a contractor, for work completed in the event of contract breach or forfeiture by the Contractor.

(2) When Required.

(a) The Purchasing and Contracts Manager shall require performance and payment bonds for all contracts for the construction of a public building or public work, or for repairs upon a public building or a public work whose estimated construction cost exceeds the thresholds established by Sec. 6-149 (b)(1) of this Code.

(b) Performance and Payment bonds may also be required, at the discretion of the Purchasing and Contracts Manager, for construction work estimated to cost less than the thresholds established by F.S. 255.05, as amended. Performance and Payment bonds shall be executed by a surety company authorized to do business in the State of Florida in an amount equal to 100% of the contract price or otherwise secured in a manner satisfactory to the City. The bonds shall be recorded in the public records of Broward County, Florida.

(3) Reduction of Bond Amounts. The Purchasing and Contracts Manager shall be authorized to reduce the amount of performance and payment bonds when conditions warrant, and when there is no statutory requirement for performance and payment bonds.

(4) In lieu of a performance and payment bond, the City may accept cash, money order, certified check, cashier's check, or irrevocable letter of credit in the amount of 100% of the contract price. Such alternate form of security shall be for the same purpose and shall be subject to the same conditions as a performance and payment bond.

(c) Guidelines and Standards for Surety Companies.

The Purchasing and Contracts Manager in consultation with the City's Risk and Safety Manager may establish minimum guidelines and standards for surety companies providing performance and payment bonds to the City on behalf of a contractor.

(d) Use of City Forms.

The City reserves the right to require that all bid sureties, performance and payment bonds be submitted on forms prescribed by the City. The Purchasing and Contracts Manager or designee shall include copies of any prescribed bond forms as a part of the solicitation document provided to bidders and proposers.

Sec. 6-150 Insurance Requirements.

The Purchasing and Contracts Manager with the concurrence of the Risk and Safety Manager may establish guidelines for determining the type and minimum limits of liability, workers' compensation and other forms of insurance coverage that may be required for each type of contract. The City of Tamarac shall be named as an additional insured for any required general liability coverage. From time to time, the City may require a contractor or consultant to provide the City with professional liability errors and omissions coverage. Firms unable to comply with the requirements of this section may be considered to be non-responsive vendors and precluded from doing business with the City.

Sec. 6-151 Types of Contracts and Contract Administration.

(a) General.

Firm fixed price contracting is the preferred method; however, any type of contract which will promote the best interests of the City may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(b) Multi-Year Contracts.

(1) Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the City provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds for such contract.

(2) Use. A multi-year contract is authorized where:

- (a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and
- (b) such a contract will serve the best interests of the City by encouraging effective competition or otherwise promoting efficiencies in City procurement.

(3) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be paid for any work, supplies or services already delivered under the contract.

(c) Contract Administration.

The Purchasing and Contracts Manager Officer shall establish operational procedures to maintain a contract administration system designed to ensure that a contractor is performing in accordance with the solicitation requirements for which the contract was awarded and the terms and conditions of the contract.

(d) Contingent Contracts.

The use of Contingent Contracts is prohibited.

Sec. 6-152 Specifications.

(a) Maximum Practicable Competition.

All specifications and statements of work used for formal competitive solicitations shall be drafted to promote overall economy for the purposes intended, to encourage competition in satisfying the city's needs, and shall not be unduly restrictive. This requirement shall apply to all specifications including, but not limited to, those prepared for the city by outside sources.

(b) Required Characteristics.

All specifications should include required characteristics for performance and design. To the extent practicable, and unless otherwise permitted by this Code, all specifications shall describe the City's requirements in a manner that does not unnecessarily exclude a material, service or construction item. All specifications and statements of work used for competitive solicitations are subject to the final approval of the Purchasing and Contracts Manager or designee.

(c) Relationship with User Departments.

The Purchasing and Contracts Manager shall obtain expert advice and assistance from personnel of User Departments in the development of specifications and may delegate to a User Department the authority to prepare and utilize its own specifications.

Sec. 6-153 Procurement of Construction and Professional Design Services

(a) Procurement of Construction Delivery Methods.

Contracts for construction services shall be procured in accordance with Florida Statutes and with established procurement procedures and delivery methods approved by the Purchasing and Contracts Manager or designee. Construction delivery methods may include, but are not limited to, design-bid-build, design/build, construction manager-at-risk, task order-contracting, fixed price, or other approved methods.

(b) Bonds and Insurance Requirements for Construction Projects.

The City shall require bonds and insurance from contractors for construction projects as prescribed in Sections 6-149, "Bonds and Security Requirements" and 6-150, "Insurance" of this Code.

(c) Professional Design Services.

Contracts for professional design services, including architectural, professional engineering, landscape architecture or registered surveying or mapping services must be procured in accordance with the Consultants' Competitive Negotiations Act F.S. 287.055, as amended, in accordance with the requirements of Section 6-146 (a) (2) of this Code, ("Methods of Source Selection; Competitive Sealed Proposals") utilizing a

qualifications based procurement process which shall not permit the use of price as an evaluation factor.

Sec. 6-154 Appeals and Remedies

(a) *Applicability.* This section shall apply to protests by bidders and proposers regarding claims made by contractors holding a City contract, and shall only apply to protests by bidders or offerors when the City Manager recommends a purchase in excess of the City's formal competitive threshold as established in Section 6-146 (a) "Methods of Source Selection", "General" of this Code.

(1) *Protests; Right to Protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Purchasing and Contracts Manager. The protest shall be submitted in writing within five (5) business days after such aggrieved person knows or should have known of the facts giving rise thereto.

(2) *Contract Claims.* All claims by a contractor against the City relating to a contract shall be submitted in writing to the Purchasing and Contracts Manager. The contractor may request a conference with the Purchasing and Contracts Manager on a submitted claim. Claims include, without limitation, disputes arising under a contract and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

(3) *Service of a Protest.* Service of a protest by mail or courier shall not expand the time frame period allowed for delivery of a protest.

(b) *Authority to Resolve Protests And Contract Claims.*

(1) *Protests.* The Purchasing and Contracts Manager, after consulting with the City Attorney, shall have the authority consistent with this Code to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract.

(2) *Contract Claims.* The Purchasing and Contracts Manager, after consulting with the City Attorney, shall have the authority to resolve contract claims, subject to the approval of the City Manager or City Commission, as applicable, regarding any settlement that will result in a change order or contract modification .

(c) *Decision.* If a protest brought pursuant to subsection 6-154 (a) of this Section is not resolved by mutual agreement, the Purchasing and Contracts Manager shall promptly issue a decision in writing to the protesting party upholding or denying the protest or staying the award process for further investigation. A copy of the decision shall be mailed or otherwise furnished to the protestant or claimant and any other party intervening. The decision shall state the reasons for the action taken.

(d) *Finality of Decision.* A decision under subsection 6-154 (c) of this Section shall be final unless within three (3) business days from the date of receipt of the decision, the protestant or claimant files a written appeal with the City Manager.

(e) (e) Authority of the City Manager. The City Manager shall have the jurisdiction to review and determine any appeal by an aggrieved party from a determination by the Purchasing and Contracts Manager regarding a protest or contract claim. Such decision shall be final and conclusive.

(f) (f) Protest Limitations. A written protest may not challenge the relative weight of evaluation criteria or a formula for assigning points.

(g) Protest Bond Required. Upon the filing of a formal written protest the contractor or vendor shall post a bond, payable to the City of Tamarac, in an amount equal to five percent (5%) of the total bid or estimated contract amount, or \$5,000, whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the protesting contractor or vendor in the event the protest is resolved adversely to the protester. An irrevocable letter of credit or other form of approved security, payable to the city, will be accepted. Failure to submit a bond simultaneously with the formal written protest shall invalidate the protest and the city may proceed to award the contract as if the protest had never been filed.

(h) Consideration of Timely Protests. The City's consideration of a timely written protest shall not necessarily stay the award process, as may be in the best interest of the City. The Purchasing and Contracts Manager, through the City Manager, may recommend to the City Commission to render moot any written protest that is overtaken by events, in which case the City Commission may abate or dismiss such protest.

(i) Timely Submittal of Protest or Appeal Required. Failure of a party to submit timely a written protest to the Purchasing and Contracts Manager within the time provided in this Section shall constitute a waiver of such party's right to protest pursuant to this Section.

(j) Costs. Any and all costs incurred by a protesting party in connection with a protest pursuant to this Section shall be the sole responsibility of the protesting party.

Sec. 6-155 Authority to Debar or Suspend.

(a) Authority. The City Manager or designee, after reasonable notice to the person involved and reasonable opportunity for that person or firm to be heard, is authorized to debar a vendor or bidder for cause from consideration for award of contracts. Debarment shall not be for a period of more than three (3) years.

(b) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(1) conviction for the commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;

(3) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals or contracts.

(4) violation of contract provisions, as set forth below, of a character which is regarded by the City Manager or designee to be so serious as to justify debarment action:

- (a) deliberate failure without good cause to perform in accordance with the contract documents or within the time limit provided in the contract; or
- (b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (c) refusal to perform a contract after a contract is accepted by the City and awarded to the vendor.
- (d) any other cause the Purchasing and Contracts Manager determines to be so serious and compelling as to affect the responsibility as a contractor, including, but not limited to, debarment by another governmental entity for any cause listed in regulations; and
- (e) violation of the ethical standards set forth in Section 6-156 (Ethics in Public Contracting).

(c) *Decision.* The Purchasing and Contracts Manager shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) *Notice of Decision.* A copy of the decision under Section 6-154 (c) shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

(e) *Appeal.* A decision under Section 6-154 (c) shall be final unless within ten (10) calendar days from the date of receipt of the decision, the protestant or claimant files a written appeal with the City Manager.

(f) *Authority of the City Manager.* The City Manager shall have the jurisdiction to review the Purchasing and Contract Manager's decision regarding suspension or debarment and decide whether, or the extent to which, the debarment or suspension was in accordance with this Section, was in the best interest of the City, and was fair. Such decision by the City Manager shall be final and conclusive.

Sec. 6-156 Ethics In Public Contracting

(a) Standards of Ethical Conduct.

(1) *Ethical Standards for Employees.* Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the City employee's or elected official's duties is a breach of a public trust.

(2) *Ethical Standards for Non-Employees.* Any effort to influence any public employee to breach the standards of ethical conduct set forth in this Section is also a violation of this article.

(b) Standards of Conduct for Employees, Public Officials and Suppliers

(1) *Failure to follow proper procurement procedures.* It shall be a violation of this section for any employee to order, contract for or purchase any materials, supplies or services except in strict compliance with all procurement procedures as provided herein or as established by Administrative Policy of the City.

(2) Solicitation or acceptance of gifts.

(a) No City official or employee shall solicit or accept anything of value from any vendor or bidder, including a gift, loan, reward, promise of future employment, favor or service, based upon any understanding that the actions of that official or employee would be influenced thereby.

(b) No bidder, supplier, vendor or contractor shall solicit or provide anything of value to any City official or employee.

(3) Doing business with the City. No City officer, agent, employee nor any elected public official acting in his or her official capacity shall directly or indirectly purchase, rent or lease any realty, goods or services for the City from any business entity of which the officer or employee or the officer's or employee's spouse or child is an officer, partner, director or proprietor or in which the official or employee or the officer's or employee's spouse or child, or any combination of them, has a material interest. No City official or employee, acting in a private capacity, shall rent, lease or sell any realty, goods or services to the City.

(4) Unauthorized compensation. No City officer, agent or employee or his or her spouse or child shall, at any time, accept any compensation, payment or thing of value when that person knows, or with the exercise of reasonable care, should know, that it was given to influence action in which the official or employee was expected to participate in his or her official capacity.

(5) Conflicting employment or contractual relationship. No City officer, agent or employee through outside employment or contractual relationship shall have any financial interests in the profits of any contract, service or other work performed by the City; nor personally profit directly or indirectly from any contract, purchase, sale or service between the City and any person or company through a relationship with any business entity which is doing business with the City. This section, however, shall not be construed to prevent any officer, agent or employee from accepting other employment or following any pursuit which does not interfere with the full and faithful discharge of the officer or employee's duties in his or her employment with the City.

(6) Contingent fees. No City official or employee shall be retained, or shall retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

(7) Confidential information. No City official or employee shall disclose or use any information not available to members of the general public and gained by reason of his official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.

(8) Prohibition Against Lobbying.

(a) During the solicitation of any bid or proposal, any firm and its agents, officers or employees who intend to submit, or who have submitted, bids or proposals shall not lobby, either individually or collectively, any City Commission members, candidates for City Commission or any employee of the City. Contact should only be made through regularly scheduled Commission meetings, or meetings scheduled through the Purchasing and

Contracts Division for purposes of obtaining additional or clarifying information. Any action, including meals, invitations, gifts or gratuities by a submitting firm, its officers, agents, or employees shall be within the purview of this prohibition and shall result in the immediate disqualification of that firm from further consideration.

(b) During a formal solicitation process, contact with personnel of the City of Tamarac other than the Purchasing and Contracts Manager or designated representative regarding any such solicitation may be grounds for elimination from the selection process.

Sec. 6-157 Surplus Tangible Property

(a) Determination that property is surplus.

At least once annually, each department shall review City inventory and make a determination of City property that should be classified as surplus; however, at any time during the fiscal year a department may identify property as being surplus.

(b) Disposition of Surplus Property.

The Purchasing and Contracts Manager shall have the responsibility to dispose of any City tangible property that exists on the official municipal inventory, that is obsolete, worn out, excess, scrapped, or not cost effective to repair.

(1) Using departments shall submit to the Purchasing and Contracts Manager or designee, at such time and on such forms that may be prescribed, reports showing stock of all supplies which are no longer used or which have become obsolete, worn out, excess, scrapped or that are not cost effective to repair. The using department may suggest a dollar value per item or per lot of items; however, such suggestion shall not constitute the minimum sale amount.

(2) The Purchasing and Contracts Manager shall have the authority to dispose of surplus property by the method or methods deemed to be most advantageous, convenient and economical to the City. Methods of disposal of surplus stock may include, but not be limited to the use of competitive sealed bids, public auction, including internet auctions, established markets, sales at posted prices, or trade-in for new equipment as may be prescribed for the individual situation.

(3) Property that has been declared surplus that has a book value of greater than \$5,000.00 shall be disposed of by authorization of the City Commission.

(4) Property which has been declared surplus may be donated to an outside agency at the discretion of the City Manager or designee. The City Manager or designee shall report any donations with a book value of greater than \$5,000.00 to the City Commission at its next regularly scheduled meeting.

(5) Property which is in a wrecked, inoperative or partially dismantled condition, or which has deteriorated to the point that it has no apparent monetary value, or may pose a potential risk to the City if disposed of through a sale, may be discarded as trash in an environmentally acceptable method, upon receipt of written approval by the Purchasing and Contracts Manager.

(6) In the event that either the competitive sealed bid or public auction methods for disposal are used, notice of a proposed sale of property shall be publicly noticed by advertisement in a newspaper of general circulation within the City, or by electronic notice published on the Internet at least one (1) week prior to the scheduled sealed bid or auction. The property shall be available to prospective buyers for inspection in advance of the bid opening or auction.

(7) Competitive sales of surplus property shall be made to the highest responsive and responsible bidder.

(c) Surplus Proceeds.

The proceeds from any sale of City property, less selling expenses if applicable, shall be deposited in to the fund which purchased the property.

Sec. 6-158 Surplus Real Property

(a) General

Upon the City Commission's determination that continued ownership of any parcel of real estate is no longer necessary, appropriate, required for the use of, profitable to, or for the best interests of the City, the Commission shall authorize by resolution or ordinance the sale or other disposition of such real estate. No sale or conveyance shall be deemed authorized except as provided in the authorizing resolution or ordinance.

(b) Appraisal Required.

Prior to the sale or other disposition of any city-owned real property, an appraisal shall be obtained unless the City Commission finds that, due to exigent or other circumstances, an appraisal would not be in the best interest of the City. For platted, undeveloped residential property, a recent appraisal of comparable property located in the same vicinity of the subject property may be utilized to satisfy the appraisal requirement. For purposes of this section, a "recent" appraisal shall mean one that was prepared not more than 12 months prior to the proposed date of sale or other disposition.

Sec. 6-159 Acceptance of Donations

Donations other than sponsorships of City events, with an estimated value exceeding \$1,000, shall be approved by the City Commission prior to acceptance.

* * *

SECTION 3: It is the intention of the City Commission and it is hereby ordained that the provisions of this Ordinance shall become and be made

a part of the Code of Ordinances of the City of Tamarac, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and word "Ordinance" may be changed to "Section" , "Article" or such other word or phrase in order to accomplish such intention.

SECTION 4: All Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 5: If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 6: The provisions of this Ordinance shall become effective immediately upon its passage and adoption.

PASSED, FIRST READING this _____ day of _____, 2011.

PASSED, SECOND READING this _____ day of _____, 2011.

PAMELA BUSHNELL, MAYOR

ATTEST:

PETER M.J. RICHARDSON, CRM, CMC
CITY CLERK

Approved as to legal form.

SAMUEL S. GOREN
CITY ATTORNEY