

AN ORDINANCE OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, AMENDING ARTICLE II OF CHAPTER FOURTEEN OF THE CODE OF ORDINANCE AND THEREBY, TO REVISE THE RIVIERA BEACH MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES; PROVIDING FOR BUY-BACK OF PAST SERVICE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida, by Chapter 185, Florida Statutes, created minimum standards for the operation and funding of municipal police officers' retirement trust fund systems and plans;

WHEREAS, it is the desire of the City of Riviera Beach to put into full force and effect the minimum provisions of Chapter 185 in said municipality and make other changes in the operation of said retirement trust fund; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, FLORIDA, that Section 14, Article II of the Riviera Beach City Code shall be amended as follows:

ARTICLE II POLICE OFFICERS

Section 14-5. police pension fund-Created.

There is hereby created a special fund to be known as the Riviera Beach Police Pension Fund, for the municipal police department.

Section 14-6 Definitions [New]

As used in this Article, the following words and phrases shall have the following meanings, unless a different meaning is plainly required by the context:

- (1) "Average final compensation" means the average annual compensation of a police officer during the highest two (2) years of his or her last ten (10) years of contributing service prior to retirement, termination, or death, whichever occurs first.
- (2) (a) "Credited service," "creditable service" or "service" means the total number of years, and fractional parts of years, of service of any police officer omitting intervening years and fractional parts of years, when such police officer may not be employed by the municipality. Provided, however, that no police officer will receive

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credit for years or fractional parts of years of service for which he or she has withdrawn his or her contributions to the pension fund for those years or fractional parts of years of service. Further providing that a police officer may voluntarily leave his or her contributions in the pension fund for a period of five (5) years after leaving the employ of the police department, pending the possibility of his or her being rehired by the police department, without losing credit for the time he or she has participated actively as a police officer. Should he or she not be re-employed as a police officer, with the police department, within five (5) years, his or her contributions shall be returned to him or her with interest not to exceed four (4) percent per annum.

- (b) In determining the "aggregate number of years of service" of any police officer, the time spent in the military service of the United States or United States Merchant Marine by the police officer on leave of absence for such reason shall be added to the years of service, provided, however, that to receive credit for such service the police officer must have reentered the police department within one (1) year of date of release from service.
 - (c) If the police officer recovers from disability and re-enters the service of the City as a police officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which he or she received a disability retirement income payment and ending with the date the officer is re-employed as a police officer, will not be considered as credited service.
- (3) "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

- (4) "Pension fund" or "fund" means the Riviera Beach Police Pension Fund.
- (5) "Police officer" means any person who is elected, appointed, or employed full time by the City who is certified or required to be certified as a law enforcement officer in compliance with Section 943.14, Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in Section 943.10(5) and (7), Florida Statutes, respectively.
- (6) "Salary" or "compensation" means the total cash remuneration paid to a police officer for services rendered; and shall include those items as have been included as compensation in accordance with past practice.
- (7) "Total disability" means a police officer who, in the opinion of the board of trustees, is wholly prevented from rendering useful and efficient service as a police officer and is likely to remain so disabled continuously for the foreseeable future. Nothing in this definition shall prohibit the board of trustees from requiring periodic examinations by a duly qualified physician or surgeon pursuant to Section 185.18(4), Florida Statutes.

**Section 14-6.1 Compliance with and incorporation of
Chapter 185, Florida Statutes;
withdrawal from general fund.**

- (1) This Article is to be administered pursuant to the provisions of Chapter 185, Florida Statutes, and all of the minimum terms thereof are hereby incorporated into this Article by reference and made a part hereof.

- (2) The city finance director shall withdraw from the general fund of the municipality and shall deliver to the pension fund a sum which, together with the contributions from the police officers and the amount derived from the premium tax provided in Chapter 185, Florida Statutes, and other income sources as authorized by law, shall be sufficient to meet the normal cost of the pension fund and to fund the actuarial deficiency over a period of not longer than forty (40) years. These payments shall be made at least quarterly throughout the fiscal year of the city with the first payment due prior to December 31 each year.

Section 14-6.2 Sources of Revenue [New]

The financing of this pension fund shall consist of the following sources of revenue:

1. Taxes of insurance companies. The moneys returned to the City as provided by Chapter 185, Florida Statutes. The use of such moneys shall be determined pursuant to the provisions of Chapter 185, Florida Statutes. All such moneys shall be deposited into the pension fund no more than five (5) days after receipt by the City.
2. City contributions. The City shall contribute to the pension fund annually an amount which, together with the contributions from the police officers and the amount derived from the premium tax provided in Chapter 185, Florida Statutes, and other income sources as authorized by the law, shall be sufficient to meet the normal cost of the pension fund and to fund the actuarial deficiency over a period of not more than forty (40) years. The City contributions shall be made to the pension fund at least quarterly.
3. Employees' contributions. Employees shall contribute eight percent (8%) of salary to the pension fund at least monthly.
4. Gifts, etc. All gifts, bequests and devises when donated to the pension fund.
5. Interest from deposits. All accretions to the pension fund by way of interest on bank deposits or otherwise.

6. Other sources. All other sources of income now or hereafter authorized by law for the augmentation of the pension fund.

Section 14-6.3. Board of trustees; created, powers, duties.

- (1) There is hereby created a board of trustees of the Riviera Beach Police Pension Fund. The board of trustees shall consist of five members. Two of whom, unless otherwise prohibited by law, shall be legal residents of the City of Riviera Beach, who shall be appointed by the City Council. Two of whom shall be police officers, who shall be elected by a majority of the police officers who are members of this pension fund. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the City Council. Upon receipt of the fifth person's name, the City Council shall, as a ministerial duty, appoint such person to the board of trustees as its fifth member. The fifth member shall have the same rights as each of the other four members appointed or elected as herein provided and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of two (2) years, unless sooner replaced by the City Council at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of two (2) years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon the City Council shall choose his or her successor in the same manner as an original appointment. Each police officer may succeed himself or herself in office.
- (2) The board of trustees shall meet at least quarterly each year.
- (3) The board of trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature and description.

- (4) The trustees shall keep a complete minute book of the actions, proceedings, and hearings of the board.
- (5) The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by law.
- (6) The board of trustees shall, by majority vote, elect from its members a chairman and a secretary.
- (7) The board of trustees may:
 - (a) Invest and reinvest the assets of the pension fund as authorized by Chapter 185, Florida Statutes.
 - (b) Issue drafts upon the pension fund pursuant to Chapter 185, Florida Statutes, and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chairman and secretary, shall state upon their face the purposes for which the drafts are drawn. The city finance director or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the pension fund.
 - (c) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of Chapter 185, Florida Statutes.
 - (d) Convert into cash any securities of the pension fund.
 - (e) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.
- (8) Any and all acts and decisions shall be by at least three members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the pension fund, and no unfair discrimination shall be shown to any individual employee participating in the pension fund.
- (9) The sole and exclusive administration of, and the responsibilities for, the proper operation of the pension fund and for making effective the provisions of this Ordinance are vested in the board of trustees; however, nothing herein shall empower the board of trustees to amend the provisions of this Article without the approval of the municipality.

The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the pension fund and for checking the actual experience of the pension fund.

- (10) At least once every three (3) years, the board of trustees shall retain an independent consultant professionally qualified to evaluate the performance of professional money managers. The independent consultant shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least ten (10) days prior to the date of the hearing.
- (11) When the board of trustees purchases an annuity or life insurance contract to provide all or part of the benefits promised by this ordinance, the principles enunciated in Section 185.061, Florida Statutes, shall be observed.
- (12) The secretary of the board of trustees shall keep a record of all persons enjoying a pension under the provisions of this Article, in which shall be noted the time when the pension is allowed and when the same shall cease to be paid. And in this book the secretary shall keep a record of all police officers employed by the municipality and a record shall be kept in such manner as to show the name, address and time of employment of such police officer and when such police officer ceased to be employed by the municipality.

Section 14-7. Retirement monthly income.

Any police officer who completes ten (10) or more years of creditable service as a police officer and attains age fifty five (55), or completes twenty (20) years of creditable service as a police officer and attains age fifty (50), and for such period has been a member of the pension fund is eligible for normal retirement benefits. Normal retirement is retirement from the service of the city on or after the

normal retirement date. In such event, payment of retirement income shall be governed by the following provisions:

- (1) The normal retirement date of each police officer will be the first day of the month coincident with or next following the date on which he or she has completed ten (10) or more years of creditable service and attained age fifty five (55) or completed twenty (20) years of creditable service and attained age fifty (50).
- (2) The amount of the monthly retirement income payable to a police officer who retires on or after his or her normal retirement date shall be an amount equal to the number of his or her years of credited service multiplied by three percent (3%) of his or her average final compensation.
- (3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officer's normal retirement date, or on the first day of the month coincident with or next following his or her actual retirement, if later, and the last payment will be the payment due next preceding the police officer's death; except that, in the event the police officer dies after his or her retirement but before he or she has received retirement benefits for a period of ten (10) years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the police officer for the balance of such 10-year period, or, if no beneficiary is designated, to the surviving spouse, descendants, heirs at law, or estate of the police officer, as provided in Section 14-7.2. If a police officer continues in the service of the City beyond his or her normal retirement date and dies prior to his or her date of actual retirement, without an option made pursuant to Section 14-7.1 being in effect, monthly retirement benefit income payments will be made for a period of ten (10) years to a beneficiary (or beneficiaries) designated by the police officer as if the police officer had retired on the date on which his or her death occurred, or, if no beneficiary is

designated, to the surviving spouse, descendants, heirs at law, or estate of the police officer, as provided in Section 14-7.2.

(4) Early retirement is retirement from the service of the city, with the consent of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date of which he or she has both attained the age of fifty (50) years and completed ten (10) years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

(a) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the city under the provisions of this section prior to his or her normal retirement date.

(b) The monthly amount of retirement income payable to a police officer who retires prior to his or her normal retirement date under the provisions of this section shall be an amount computed as described in subsection (2), taking into account his or her credited service to his or her date of actual retirement and his or her final monthly compensation of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments. In no event shall the early retirement reduction exceed three percent (3%) for each year by which the member's age at retirement preceded the member's normal retirement age.

(c) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before he or she has received

retirement benefits for a period of ten (10) years, the same monthly benefit will be paid the beneficiary designated by the police officer for the balance of such 10-year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such 10-year period shall be payable as provided in Section 185.162, Florida Statutes.

Section 14-7.1 Optional Forms of Retirement Income [New]

- (1) (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in this article, a police officer, upon written request to the board of trustees and submission of evidence of good health (except that such evidence will not be required if such request is made at least three (3) years prior to the date of commencement of retirement income or if such request is made within six (6) months following the effective date of this Article, if later) and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:
1. A retirement income of larger monthly amount, payable to the police officer for his lifetime only.
 2. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint pensioner designated by the police officer, and following the death of either of them, fifty percent (50%), sixty-six and two-thirds percent (66 2/3%) or one hundred percent (100%) of such monthly amount payable to the survivor for the lifetime of the survivor.

3. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

- (b) The police officer upon electing any option of this section will designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable under this Article, and will have the power to change such designation from time to time but any such change shall be deemed a new election and will be subject to approval by the board of trustees. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change his or her designated joint pensioner or beneficiary but only if the board of trustees consents to such change and if the joint pensioner last previously designated by him or her is alive when he or she files with the board of trustees the request for such change. The consent of a police officer's joint petitioner or beneficiary to any such change shall not be required. The board of trustees may request such evidence of the good health of the joint pensioner that is being removed as it may require and the amount of the retirement income payable to the police officer upon the designation of a new joint pensioner shall be actuarially redetermined taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the police officer. Each such designation will be made in writing on a form prepared by the board of trustees, and on completion will be filed with the board of trustees. In the event that no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement, shall be paid as provided in Section 14-7.2.

- (2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:
- (a) If a police officer dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under Section 185.21, Florida Statutes.
 - (b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer's retirement under this Article, the option elected will be canceled automatically and a retirement income of the normal form and amount will be payable to the police officer upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the police officer prior to his or her retirement and within ninety (90) days after the death of the beneficiary.
 - (c) If both the retired police officer and the beneficiary (or beneficiaries) designated by him or her die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (1)(a)3, the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with Section 185.162, Florida Statutes.
 - (d) If a police officer continues beyond his or her normal retirement date pursuant to the provisions of Section 14-7 and dies prior to his or her actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or

amounts computed as if the police officer had retired under the option on the date on which his or her death occurred.

- (3) No police officer may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.
- (4) If the member selects a joint and survivor option or in the event this Article specifies the member's spouse is to receive the benefits which continue to be payable upon the death of the member, then in both of these cases after the benefits have commenced a retired member may change his or her designation of joint annuitant or beneficiary only twice. If said retired member desires to change his or her joint annuitant or beneficiary, he or she shall file with the board of trustees a notarized notice of such change either by registered letter or on a form as provided by the board of trustees. Upon receipt of a complete change of joint annuitant form or such other notice, the board of trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. Nothing herein shall preclude the pension fund from actuarially adjusting benefits or offering options based upon sex, age, early retirement or disability.

Section 14-7.2 Beneficiaries [New]

- (1) Each police officer may, on a form provided for that purpose, signed and filed with the board of trustees, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of his or her death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation of beneficiary form.
- (2) If a deceased police officer failed to name a beneficiary in the manner above prescribed, or if the beneficiary (or beneficiaries) named by a deceased police officer predeceases the

police officer, the death benefit, if any, which may be payable under this Article with respect to such deceased police officer may be paid, in the discretion of the board of trustees, either to:

- (a) Any one or more of the persons comprising the group consisting of the police officer's spouse, descendants, parents, or heirs at law, and the board of trustees may pay the entire benefit to any member of such group or apportion such benefit among any two or more of them in such shares as the board of trustees, in its sole discretion, shall determine, or
- (b) The estate of such deceased police officer, provided that in any of such cases the board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to the power and discretion conferred upon the board of trustees by the preceding sentence shall operate as a complete discharge of all obligations under this Article with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

Section 14-7.3 Disability retirement.

- (1) For disability retirement, all of the terms and conditions as set forth in Sections 185.18 and 185.34, Florida Statutes, including the calculation of benefits, which said Sections are a part of Chapter 14, Article II, of the Code of Ordinances of the City of Riviera Beach, Florida, shall apply with the following exceptions:

A police officer may retire from the service of the city under this Article if, prior to his or her normal retirement date, he or she becomes totally and permanently disabled by reason of any cause other than a cause set out in subsection (2). Such retirement shall herein be referred to as disability retirement. In order to be eligible for disability

retirement, the police officer shall meet either of the following requirements:

- (a) Is totally disabled while in the line of duty.
 - (b) Have ten (10) or more years of credited service and have contributed to the pension fund for ten (10) or more years and is totally disabled from any cause whatsoever.
- (2) A police officer will not be entitled to receive any disability retirement income if the disability is a result of:
- (a) Excessive and habitual use by the police officer of drugs, intoxicants or narcotics;
 - (b) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;
 - (c) Injury or disease sustained by the police officer while serving in any armed forces;
 - (d) Injury or disease sustained by the police officer after his or her employment has terminated;
 - (e) Injury or disease sustained by the police officer while working for anyone other than the City and arising out of such employment.
- (3) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section shall be examined periodically and by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.
- (4) (a) The monthly retirement income to which a police officer is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines

such entitlement, and any portion due for a partial month shall be paid together with the first payment.

(b) The last payment will be:

1. If the police officer recovers from the disability prior to his or her normal retirement date, the payment due next preceding the date of such recovery, or,
2. If the police officer dies without recovering from his or her disability or attains his or her normal retirement date while still disabled, the payment due next preceding his or her death or the 120th monthly payment, whichever is later.

(c) Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in Sections 185.162 and 185.21, Florida Statutes.

- (5) If the board of trustees finds that a police officer who is receiving a disability retirement income is at any time prior to his or her normal retirement date, no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the police officer to render useful and efficient service as a police officer.
- (6) Any condition or impairment of health of a police officer caused by tuberculosis, hypertension, heart disease or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line

of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition.

Section 14-7.4 Retirement disability benefits.

The benefit payable to a police officer who retires from the service of the city with a total and permanent disability as a result of a disability commencing prior to his or her normal retirement date is the monthly income payable for ten (10) years certain and life for which, if the police officer's disability occurred in the line of duty, his or her monthly benefit shall be the accrued retirement benefit, but shall not be less than fifty percent (50%) of his or her average monthly compensation as of his or her disability retirement date. If the disability is other than in the line of duty, the police officer's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than forty percent (40%) of his or her average monthly compensation as of his or her disability retirement date.

Section 14.7.5 Refund of contributions.

- (1) Should any police officer leave the service of the municipality as a police officer before accumulating aggregate time of ten (10) years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all of his or her contributions made to the pension fund, with interest not to exceed four percent (4%) per annum. The said rate of interest per annum and the method of calculating the interest shall be established from time to time by the board of trustees, but in no event shall the rate of interest exceed four percent (4%) per annum.
- (2) Should any police officer who has been in the service of the municipality for at least ten (10) years and has contributed to the pension fund for at least ten (10) years elect to leave his or her accrued contributions in the pension fund, such police officer upon attaining age fifty (50) years or

more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her.

**Section 14-7.6 Lump sum payment of
small retirement income. [New]**

Notwithstanding any provision of this Article to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than thirty dollars (\$30) or if the single-sum value of the accrued retirement income is less than seven hundred fifty dollars (\$750) as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

**Section 14-7.7 Death prior to retirement;
refunds of contributions or
payment of death benefits. [New]**

Should any police officer die before being eligible to retire under the provisions of this Article, the heirs, legatees, beneficiaries, or personal representative of such deceased police officer shall be entitled to a refund of one hundred percent (100%), with interest not to exceed four percent (4%) per annum, of the contributions made to the pension fund by such deceased police officer or, in the event an annuity or life insurance contract has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefits set forth in Section 185.061, Florida Statutes, whichever amount is greater. If any police officer dies prior to retirement but has at least ten (10) years of contributing service, his or her beneficiary is entitled to the benefits otherwise payable to the police officer at early or normal retirement age. In event the death benefit paid by a life insurance company exceeds the limit set forth in Section 185.061(6), Florida Statutes, the excess of the death benefit over the limit shall be paid to the pension fund. However, the benefits as provided in Sections 112.19 and 112.1904, Florida Statutes, shall not be included as death or retirement benefits under the provisions of this Article.

Section 14.7.8 Application of additional benefits.

The increased pension benefits as provided for by section 14-7 through 14-7.5, and any and all additional benefits that may accrue in the future, shall apply to all police officers now receiving retirement income payments; to all police officers who are now eligible to receive retirement income payments; to all police officers who may in the future be eligible to receive retirement income payments under Chapter 14, Article II, as amended, of the Code of Ordinances of the City of Riviera Beach, Palm Beach County, Florida.

**Section 14-7.9 Payment of member contributions;
past continuous service.**

Application may be made by any employee who has completed one or more years of continuous past service to purchase retirement credit for a part or all of the employee's continuous past service by paying into the pension fund an amount equal to the actual cost of the the contributions that the employee would otherwise have paid for such continuous past service, plus the interest earned by the pension fund during that time. Such amount shall be repaid to the pension fund either in a lump sum or by installment payments by way of payroll deduction, at the election of the employee. If the repayment is not made in a lump sum, the employee shall repay such amount by installment payments over a period not to exceed five (5) years from the date the employee's application is submitted, with a fixed simple interest rate being calucated based on the pension fund's actuarially assumed investment return in effect at the time the application is submitted. Any employee who desires to purchase retirement credit more than sixty (60) days after final adoption of this section must repay at least one-third (1/3) of the actual cost of the contributions in a lump sum. Continuous past service shall be credited to the employee each year on a pro-rata basis based on the amount repaid.

Section 14-8.1 Exemption from execution. [New]

The pensions, annuities, and any other benefits accrued or accruing to any person under the provisions of this Article and the accumulated contributions and the cash securities in the funds created under this Article are hereby exempted from any state, county or

municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

Section 14-8.2 Conflict with other ordinances and regulations. [New]

All ordinances or regulations of the city, insofar as they are in conflict or inconsistent with the provisions of this Article, be and the same are hereby repealed, provided, however, the minimum provisions of Chapter 185, Florida Statutes, to the contrary notwithstanding, shall prevail over this Article in such conflict or inconsistency.

Section 14-8.3 Effective Date. [New]

This ordinance shall take effect retroactively to October 1, 1986.

PASSED AND APPROVED on first reading this 21st day of December, 1988.

PASSED AND ADOPTED on second and final reading this 4th day of January, 1988.89

APPROVED:

Clara K. Williams
MAYOR

[Signature]
CHAIRMAN

Allen Fox
CHAIRMAN PRO TEM

[Signature]
[Signature]

COUNCIL MEMBERS

(MUNICIPAL SEAL)

[Signature]
CITY CLERK

1st Reading

2nd and Final Reading

Motioned By: A. Fox
Seconded By: J. Goode

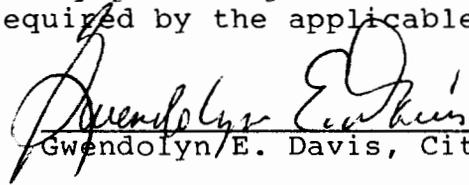
D. Orange
J. Goode

P. Owens aye
A. Fox aye
D. Orange aye
D. Pettway out
J. Goode aye

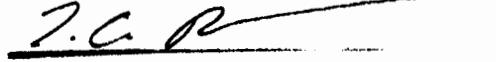
aye
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CERTIFICATE OF PUBLICATIONS

I hereby certify that notice of the proposed enactment of this ordinance was duly published in a newspaper of general circulation within the City of Riviera Beach as required by the applicable Florida Statutes.


Gwendolyn E. Davis, City Clerk

REVIEWED FOR LEGAL SUFFICIENCY



CITY ATTORNEY

CITY OF RIVIERA BEACH

DATE: 12-7-88



CITY OF RIVIERA BEACH

600 WEST BLUE HERON BLVD • RIVIERA BEACH FLORIDA 33404

OFFICE OF
CITY CLERK

PUBLICATION REQUEST FOR PALM BEACH POST TIMES

December 22, 1988

The below Bill described by title only will be placed on second and final reading at the Regular Meeting of the City Council of the City of Riviera Beach, Florida, to be held on January 4, 1989 at City Hall, 600 West Blue Heron Blvd., at 7:30 p.m. and from time to time thereafter as may be necessary for the purpose of enactment of the following Ordinance:

ORDINANCE NUMBER 2411

AN ORDINANCE OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, AMENDING ARTICLE II OF CHAPTER FOURTEEN OF THE CODE OF ORDINANCE AND THEREBY, TO REVISE THE RIVIERA BEACH MUNICIPAL POLICE OFFICERS' RETIREMENT TRUST FUND TO COMPLY WITH CHAPTER 185, FLORIDA STATUTES; PROVIDING FOR BUY-BACK OF PAST SERVICE; PROVIDING AN EFFECTIVE DATE.

SAID ORDINANCE MAY BE INSPECTED BY THE PUBLIC AT ANY TIME DURING WORKING HOURS IN THE CITY CLERK'S OFFICE.

PUBLISH: December 24, 1988

slh

Gwendolyn E. Davis, CMC
City Clerk
City of Riviera Beach, Florida

ORDINANCE NO. 2412

AN ORDINANCE OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA IMPLEMENTING A PROCUREMENT CODE OF THE CITY OF RIVIERA BEACH, FLORIDA.

BE IT ORDAINED BY THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION ONE.

ARTICLE I - GENERAL PROVISIONS

Part A - Purpose and Application

Sec. 1-101. Purpose.

The purpose of the Procurement Code of the City of Riviera Beach (hereinafter, "Ordinance") is to provide for the fair and equitable treatment of all persons involved in purchasing by the City, to encourage participation by and utilization of minority-owned businesses, to maximize the purchasing value of public funds, and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 1-102. Application.

This Ordinance applies to contracts for the procurement of supplies, services, and construction entered into by the City after the effective date of this Ordinance, unless the parties agree to its application to contracts entered into prior to the effective date. It shall apply to every expenditure of public funds by the City for public purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state law and regulations. Nothing in this Ordinance shall prevent the City from complying with the terms and conditions of any grant, gift, or bequest that is otherwise consistent with law.

Part B - Definitions

Sec. 1-201. Definitions.

(1) Actual costs. All direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs only.

(2) Affirmative Actions. Means a positive program to eliminate discrimination and non-compliance and to ensure non-discriminatory practices and compliance in the future, and to involve minority business enterprises fully in contracts and programs funded by the City.

(3) Architect, Engineer and Land Surveying Services. Those professional services within the scope of the practice of architecture, professional engineering, or land surveying, as defined by the laws of the State of Florida.

(4) Blind Trust. An independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.

(5) Brand Name or Equal Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet City requirements, and which provides for the submission of equivalent products.

(6) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalogue numbers.

(7) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

(8) Change Order. A written purchase order signed and

issued by the Purchasing Agent or designee, directing the contractor to make changes which the "Changes" clause of the contract authorized the Purchasing Agent to order without the consent of the contractor.

(9) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of the City and is not a matter of public knowledge or available to the public on request.

(10) Construction. The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The item does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(11) Contract. Any agreement, regardless of style or form, for the procurement of supplies, services, or construction.

(12) Contract Modification. Any written alteration in specifications, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

(13) Contractor. Any person having a contract with the City.

(14) Cooperative Purchasing. Procurement conducted by, or on behalf of, more than one Public Procurement Unit, or by a Public Procurement Unit with an External Procurement Activity.

(15) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(16) Cost Data. Factual information concerning the cost of labor, material, overhead, and other cost elements

which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(17) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and applicable in accordance with the contract terms and the provisions of this Ordinance, and a fee or profit, if any.

(18) Direct or Indirect Participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or acting in any other advisory capacity.

(19) Disadvantages Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(20) Discrimination. Means that act or failure to act, intentional or unintentional, the effect of which is that a person, because of race, color, sex, or national origin, has been otherwise subjected to unequal treatment under any activity to be assisted under Federal, State, County or City activity.

(21) Employee. An individual drawing a salary or wages from the City, whether elected or not; any noncompensated individual performing personal services for the City or for any department, agency, commission, council, board, or for any other entity established by the executive or legislative branch of the City; and any noncompensated individual serving as an elected official of the City.

(22) Established Catalogue Price. The price included in a catalogue, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(23) Excess Supplies. Any nonexpendable supplies having a remaining useful life but which are no longer required by the Using Department in possession of the supplies.

(24) Expendable Supplies. All tangible supplies having an original acquisition cost of \$100 or less per unit and a probable useful life of one year or less.

(25) External Procurement Agency. Any buying organization not located in this State which, if located in this State, would qualify as a Public Procurement Unit. An agency of the United States is an External Procurement Activity.

(26) Financial Interest.

- (a) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than \$100 per year, or its equivalent;
- (b) Ownership of 5% or more of any property or business; or
- (c) Holding a position in a business such as officer, director, trustee, partner, employee, or the like, or holding any position of management.

(27) Governmental Body. Any department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of any government in the United States of America.

(28) Grant. The furnishing by a governmental body of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or construction; a contract resulting from such an award is not a grant but a procurement contract.

(29) Gratuity. A payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

(30) Immediate Family. A spouse, children, parents, brothers, and sisters.

(31) Invitation for Bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

(32) Local Public Procurement Unit. Any county, municipality, school board, and any other subdivision of the State or agency of any such subdivision; any public authority, educational, health, or other public institution; and to the extent provided by law, any other entity which expends public funds for the procurement of supplies, services, and construction.

(33) Minority Business Enterprise. Minority business enterprise is a business that is owned and controlled by minority persons. (See Article 10 herein).

(34) Minority Persons. Minority persons are Blacks not

of Hispanic origin, Hispanics, American Indians, Alaska Natives, Pacific Islanders, Women, and physically and mentally disabled persons, as set forth in the State procurement statute at Section 287.012(8), Florida Statutes.

(35) May. Denotes the permissive.

(36) Nonexpendable Supplies. All tangible supplies having an original acquisition cost of over \$100 per unit and a probable useful life of more than one year.

(37) Person. Any natural or artificial person, business, union, committee, club, other organization, or group of individuals.

(38) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(39) Pricing Data. Information concerning prices for items substantially similar to those being procured, including offered or proposed selling prices, historical selling prices and current selling prices. The term refers to data relevant to both prime and subcontract prices.

(40) Prime Contractor. Any person who has a contract with the City to build, alter, repair, improve, or demolish any public structure or building, or perform other improvements of any kind to any public real property.

(41) Procurement. The buying, purchasing, renting, leasing, or otherwise acquiring of any supplies, services, or construction, including all functions that pertain thereto such as the description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(42) Public Agency of the City. A public entity subject to or created by the City.

(43) Public Procurement Unit. Either a Local Public Procurement Unit or a State Public Procurement Unit.

(44) Purchasing Agency. Any governmental body which is authorized to enter into contracts.

(45) Purchasing Agent. Any person duly authorized to enter into and administer contracts and make written determinations with respect thereto. The term also includes the position of "Director of Purchasing."

(46) Qualified Products List. An approved list of supplies, services, or construction items described by model or catalogue numbers which, prior to competitive solicitation, the City has determined will meet the applicable specification requirements.

(47) Regulation. A governmental body's statement, having general or particular applicability and future effect, designed to implement, interpret, or prescribe law or policy, or describing organization, procedure, or practice requirements, which has been lawfully promulgated.

(48) Request for Proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals. Also referred to as "RFP".

(49) Responsible Bidder or Offeror. A person who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

(50) Responsive Bidder. A person who has submitted a bid which conforms in all material respects to the requirements set forth in the invitation for bids.

(51) Services. 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. This terms shall not include services provided pursuant to employment agreements or collective bargaining agreements.

(52) Shall. Denotes the imperative.

(53) Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(54) Specification. Any description of the physical or functional characteristics or of the nature of a supply, service, or construction item. The terms may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.

(55) State Chief Procurement Officer. The person holding the position as the head of the central procurement office of the State of Florida.

(56) State Public Procurement Unit. The Office of the Chief Procurement Officer and any other Purchasing Agency of the State of Florida.

(57) Supplies. All property, including but not limited to equipment, materials, printing, insurance, and leases of real property, excluding land or a permanent interest in land.

(58) Surplus Supplies. Any nonexpendable supplies no longer having any use to the City, including obsolete supplies, scrap materials, and nonexpendable supplies that have completed their useful life cycle.

(59) Using Agency. Any department, commission, board, or other agency of the City requiring supplies, services, or construction procured pursuant to this Ordinance.

Part C - Public Access to Procurement Information

Sec. 1-301. Public Access to Procurement Information.

Procurement information shall be a public record to the extent provided in Chapter 119, Florida Statutes, and shall be available to the public as provided in such statute.

ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

Sec. 2-101. Establishment, Appointment, and Tenure.

(1) Appointment. The Director of Purchasing shall be

appointed as purchasing agent by the City Manager pursuant to Section 2-118 of the City Code. Qualifications for the Purchasing Agent are contained in the Job Classification System descriptions.

(2) Tenure. The Purchasing Agent shall be appointed to serve an indefinite terms and may be removed under procedures outlined in the General Codes of the City.

Sec. 2-102. Authority and Duties.

(1) Principal Public Purchasing Official. Except as otherwise provided herein, the Director of Purchasing shall serve as the principal public purchasing official for the City, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Ordinance, as well as the management and disposal of supplies. The Director of Purchasing shall have the authority to execute all purchases or dues for purchases which are approved by the City Council in the appropriations ordinance or resolution.

(2) Duties. In accordance with this Ordinance, and subject to the supervision of the City Manager, the Director of Purchasing shall:

- (a) Procure or supervise the procurement of all supplies, services, and construction needed by the City;
- (b) May exercise direct supervision over the City's central stores and general supervision over all other inventories of supplies;
- (c) Sell, trade, or otherwise dispose of surplus supplies; and
- (d) Establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the supplies, services, and construction.

(3) Regulations and Operational Procedures.

Consistent with this Ordinance, and with the approval of the City Manager, the Purchasing Agent:

(a) Shall have the authority and responsibility to promulgate regulations governing the procurement, management, control and disposal of any and all supplies, services and construction.

(b) May adopt operational procedures relating to the execution of the duties of the Purchasing Agent. These may be set forth in a manual or handbook.

Sec. 2-103. Delegations to Other City Officials.

The Director of Purchasing may not delegate authority to purchase certain supplies, services, or construction items to other City officials, unless specifically authorized by the City Manager.

Sec. 2-104. Unauthorized Purchases.

Except as herein provided in this Ordinance, or otherwise provided in the City's General Codes, it shall be a violation of this ordinance for any city officer, employee, or other person, to order the purchase of, or make any contract for, materials, supplies or services within the purview of this Ordinance, in the name of or on behalf of the City other than through the Director of Purchasing or a designee of the Director of Purchasing, and the City shall not be bound by an purchase order or contract made contrary to any of the provisions herein.

ARTICLE 3 - SOURCE SELECTION AND CONTRACT FORMATION

Part A - Methods of Source Selection

Sec. 3-101. Competitive Sealed Bidding.

(1) Conditions for Use. All contracts of the City exceeding Ten thousand dollars (\$10,000.00) shall be awarded by competitive sealed bidding except as otherwise provided in Section 3-102 (Competitive Sealed Proposals), 3-103

(Contracting for Designated Professional Services), 3-104 (Small Purchases), 3-105 (Sole Source Procurement), 3-106 (Emergency Procurements), 5-401 (Public Announcement and Selection Process) of this Ordinance, or as otherwise approved in public session by City Council.

(2) Invitation for Bids. An invitation for bids shall be issued and shall include specifications, all contractual terms and conditions applicable to the procurement.

(3) Public Notice. Public notice of the invitation for bids shall be given not less than 14 calendar days prior to the date set forth in the notice for the opening of bids. Such notice may be given by publication in a subscription newspaper of general circulation in the City. The notice shall state the place, date, and time of bid opening.

(4) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the public notice of the invitation for bids. The amount of each bid and such other relevant information as the Director of Purchasing deems appropriate, together with the name of each bidder, shall be recorded.

(5) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this Ordinance. 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 generally set forth the evaluation criteria to be used.

(6) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before the bid opening may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids prior to time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

(a) the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or

(b) the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Director of Purchasing.

(7) Award. The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event the low responsive and responsible bid for a project exceeds available funds, and such bid does not exceed such funds by more than 15 percent, the Director of

Purchasing is authorized, when time or economic considerations preclude solicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds. Any such negotiated adjustment shall be based only upon eliminating independent deductive items specified in the invitation for bids. The City retains the right to reject all bids should negotiations fail.

(8) Pre-Qualification of Bidders. When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

Sec. 3-102. Competitive Sealed Proposals.

(1) Conditions for Use. When the Director of Purchasing 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 use of the competitive sealed proposals method.

(2) Request for Proposals. Proposals shall be solicited through a request for proposals.

(3) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3-101(3) (Competitive Sealed Bidding, Public Notice).

(4) Receipt of Proposals. No proposals shall be opened until the time designated in the public notice of the request for proposals. A register of proposals shall be prepared containing the name of each offeror, the number of modifications received, if any, and a description sufficient

to identify the item offered.

(5) Evaluation Factors. The request for proposals shall state the relative importance of price, if appropriate, and other evaluation factors.

(6) 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 capable of being selected for award for the purpose of clarification to assure full understanding of, and conformance 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 best and final offers.

(7) Award. Award shall be made to the responsible offeror whose proposal 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. The contract file shall contain the basis on which the award is made.

Sec. 3-103. Contracting for Designated Professional Services.

(1) General Authority. Procurement of professional services of accountants, dentists, physicians, psychologists, and veterinarians, licensed to practice in Florida, shall be by the use of the competitive sealed proposals method set forth in Section 3-102 (Competitive Sealed Proposals), except as authorized by Section 3-105 (Sole Source Procurement) or Section 3-106 (Emergency Procurement), or except when the fee for professional services is limited \$10,000 or less per fiscal year of the City. Procurement of professional services may be

authorized by Section 3-104 (Small Purchases).

(2) Contracts for Legal Services. Notwithstanding the foregoing, the City Council may authorize the procurement of legal services by negotiating with a lawyer or lawyers selected or recommended by the City Attorney on the basis of experience and skill.

(3) Contracts for Medical Services. Notwithstanding the foregoing, the City Council may authorize the procurement of medical services by negotiating with a medical doctor or doctors selected or recommended by the City Manager or his designee on the basis of experience and skill.

(4) Contracts for Other Services. Notwithstanding the foregoing, the City Council may authorize the procurement of other services, such as social services, by negotiating with organizations selected or recommended by the City Manager or his designee on the basis of experience and skill.

Sec. 3-104. Small Purchases.

(1) General. Any contract not exceeding \$10,000 may be made in accordance with the small purchase procedures authorized in this Section. Contracts shall not be divided for the purpose of avoiding the application of these purchasing requirements.

(2) Small Purchases over \$2,500. Insofar as it is practical for small purchases in excess of \$2,500, no less than three businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded and maintained as a public record.

(3) Small Purchases of \$2,500 or Less. The Director Purchasing shall adopt operational procedures for making small purchases of \$2,500 or less. Such operational procedures shall provide for obtaining adequate and

reasonable competition for the supply, service, or construction being purchased. Further, such operational procedures shall require the preparation and maintenance of written records adequate to document the competition obtained, properly account for the funds expended, and facilitate and audit of the small purchase made.

Sec. 3-105. Sole Source Procurement.

A contract may be awarded without competition when the Director of Purchasing determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Director of Purchasing shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a public record and shall list each contractor's name, the amount and type of each contract, a listing of the item(s) procured under each contract, and the identification number of each contract file.

Sec. 3-106. Emergency Procurements.

Notwithstanding any other provisions of this Ordinance, the City Manager or designee may make or authorize others to make emergency procurements of supplies, services, or contraction items when there exists a threat to public health, welfare, or safety; 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 included in the contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, a listing of the item(s) procured under the contract, and the identification number of the contract file.

Sec. 3-107. Cancellation of Invitations for Bids or Request for Proposals.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the City. The reasons therefore shall be made part of the contract file. Each solicitation issued by the City shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the City. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of the same or similar items.

Sec. 3-108. Nonbudgeted Items.

(1) Inventory items: Items which are kept on hand as stock inventory may be purchased by the Director of Purchasing provided orders of ten thousand dollars (\$10,000.00) or more but less than twenty-five thousand dollars (\$25,000.00) shall first be approved by the City Manager. Orders of twenty-five thousand dollars (\$25,000.00) or more shall be approved by the City Council.

(2) Operating Expenditures: Nonbudgeted operating items may be purchased by the Director of Purchasing provided the cost does not exceed ten thousand dollars (\$10,000.00). All such items over ten thousand dollars (\$10,000.00) must be approved by the City Manager.

(3) Special-purpose purchases: Items from renewal and replacement funds and from trust funds may be purchased by the Director of Purchasing provided the requesting department has first received approval from the City Manager.

(4) Capital expenditures: Nonbudgeted capital items must be approved by the City Council.

Part B - Qualifications and Duties

Sec. 3-201. Responsibility of Bidders and Offerors.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Director of Purchasing. Grounds for a determination of nonresponsibility may include, but are not limited to, the unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the contract file and be made a public record.

Sec. 3-202. Cost or Pricing Data.

(1) Required Submissions Relating to the Award of Contracts. A prospective contractor shall submit cost or pricing data when the contract is expected to exceed \$100,000 and is to be awarded by competitive sealed proposals (Section 3-102), or by sole source procurement authority (Section 3-105).

(2) Exceptions. The submission of cost or pricing data relating to the award of a contract is not required when:

(a) the contract price is based on adequate price competition;

(b) the contract price is based on established catalogue prices or market prices;

(c) the contract price is set by law or regulation; or

(d) it is determined in writing by the Director of Purchasing that the requirements of Section

3-202(1) above may be waived, and the determination states the reasons for such waiver.

(3) Required Submissions Relating to Change Orders or Contract Modifications. A contractor shall submit cost or pricing data prior to the pricing or any change order or contract modification, including adjustments to contracts awarded by competitive sealed bidding, whether or not cost or pricing data was required in connection with the initial pricing of the contract, when the change or modification involves aggregate increases or aggregate decreases in costs plus applicable profits that are expected to exceed 10% of the initial contract.

(4) Exceptions. The submission of cost or pricing data relating to the pricing of a change order or contract modification is not required when:

(a) unrelated and separately priced adjustments for which cost or pricing data would not be required are consolidated for administrative convenience; or

(b) it is determined in writing by the Director of Purchasing that the requirements of Section 3-202(3) above may be waived, and the determination states the reasons for such waiver.

(5) Certification Required. A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted is accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(6) Price Adjustment Provision Required. Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are

required shall contain a provision stating that the price to the City, including profit or fee, shall be adjusted to exclude any significant sums by which the City finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current.

Sec. 3-203. Cost or Price Analysis.

A cost analysis or a price analysis, as appropriate, shall be conducted prior to award of the contract other than one awarded under Section 3-101 (Competitive Sealed Bidding). A written record of such cost analysis or price analysis shall be made a part of the contract file.

Sec. 3-204. Bid, Performance and Payment Bonds on Supply or Service Contract.

Bid, performance and payment bonds or other security may be requested for supply contracts or service contracts as the Purchasing Agent or head of a using agency deems advisable to protect the City's interests. Any such bonding requirements shall be set forth in the solicitation. Bid, performance or payment bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility.

Part C - Types of Contracts
and Contract Administration

Sec. 3-301. Types of Contracts.

(1) General Authority. Subject to the limitations of this Section, any type of contract which is appropriate to the procurement and 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 impractical to obtain the supply, service, or construction item required except under such a contract.

- (2) Multi-Term Contracts.
- (a) Specified Period. Unless otherwise provided by law, a contract for supplies or services maybe 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 or 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 therefore in the budget of the City, as determined by the City Council.
- (b) Determination Prior to Use. Prior to the utilization of a multi-term contract, it shall be determined in writing:
 - (i) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and
 - (ii) that multi-year contracts for continuing services for engineering, architectural, and landscape architectural services, shall contain a non-exclusivity clause that permits the City to utilize, at its option, either the services of the person, business, or organization holding a multi-year continuing service contract or to solicit requests for proposals on a project basis.
- (c) Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise available to support continuation of performance in a subsequent fiscal

period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for such purposes.

(3) Multiple Source Contracting.

(a) General. A multiple source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror. The obligation to order the City's actual requirements is limited by the Uniform Commercial Code, Section 2-306(1), Florida Statutes.

(b) Limitations on use. A multiple source award may be made when award to two or more bidders or offerors for similar products is necessary for adequate delivery, service, or product compatibility. Any multiple source award shall be made in accordance with the provisions of Section 3-101 (Competitive Sealed Proposals), Section 3-104 (Small Purchases), or Section 3-106 (Emergency Procurements), as applicable. Multiple source awards shall not be made when a single award will meet the City's needs without sacrifice of economy or service, unless minority business conditions are involved. Awards shall not be made for the purpose of dividing the business, making available product or supplier selection to allow for user preference unrelated to utility or economy, or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements.

(c) Contract and Solicitation Provisions. All eligible users of the contract shall be named in the solicitation, and the actual requirements of such users that can be met under the contract shall be obtained in accordance with the contract, provided that:

(i) the City shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and

(ii) the City shall reserve the right to take bids separately if the Director of Purchasing approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the City.

(d) Intent to Use. If a multiple source award is anticipated prior to issuing a solicitation, the City shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.

(e) Determination Required. The Director of Purchasing shall make a written determination setting forth the reasons for a multiple source award, which shall be made a part of the procurement file.

Sec. 3-302. Contract Clauses and Their Administration.

(1) Contract Clauses. All City contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The City Manager or designee, after consultation with the City Attorney, may

include clauses appropriate for supply, service, or construction contracts regarding:

- (a) the unilateral right of the City to order, in writing, changes in the work within the scope of the contract;
- (b) the unilateral right of the City to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (c) variations occurring between estimated quantities of work in contract and actual quantities;
- (d) defective pricing;
- (e) time of performance and liquidated damages;
- (f) specified excuses for delay or nonperformance;
- (g) termination of the contract for default;
- (h) termination of the contract in whole or in part for the convenience of the City;
- (i) suspension of work on a construction project ordered by the City;
- (j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:
 - (i) when the contract is negotiated;
 - (ii) when the contractor provides the site or design; or
 - (iii) when the parties have otherwise agreed with respect to the risk of differing site conditions;
- (k) anti-discrimination assurance from the contractor.

(2) Price Adjustments.

- (a) Adjustments in price resulting from the use of contract clauses required by Subsection (1) of this Section shall be computed in one or more of the following ways:

- (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (ii) by the unit prices specified in the contract or subsequently agreed upon;
- (iii) by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (iv) in such other manner as the contracting parties may mutually agree; or
- (v) in the absence of agreement by the parties, by a unilateral determination by the City of the costs attributable to the events or situations under such clauses with adjustment of profit or fee as computed by the City, as accounted for in accordance with City cost accounting principles regulations, or lacking applicable City regulations in accordance with generally accepted cost accounting principles, and subject to the provisions of Article 9 (Appeals and Remedies).

(b) A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 3-202 (Cost or Pricing Data).

(3) Standard Clauses and Their Modification. The City Manager or designee, after consultation with the City Attorney, may establish standard contract clauses for use in City contracts.

Sec. 3-303. Contract Administration.

A contract administration system designed to insure

that a contract is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, should be maintained. For every contract a City contact person will be designated.

Sec. 3-304. Cost Reimbursement Provisions.

If a contract is being funded in whole or in part by assistance from a federal agency, then reimbursement to contractors for incurred costs or cost estimates included in negotiated prices may be subject to federal cost principles. Individual federal agencies may have requirements applicable to their particular assistance programs. Lacking applicable federal regulations, individual federal agency regulations, or City regulations, cost reimbursement shall be in accordance with generally accepted cost accounting principles.

Sec. 3-305. Approval of Accounting System.

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the Director of Purchasing that:

- (a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specified contract type contemplated; and
- (b) the proposed contractor's account system is adequate to allocate costs in accordance with generally accepted cost accounting principles.

Sec. 3-306. Right to Inspect Plant.

The City may, at reasonable times, inspect any part of the plant, place of business, or worksite of a contractor or subcontractor which is pertinent to the performance of any contract awarded or to be awarded by the City.

Sec. 3-307. Right to Audit Records.

(1) Audit of Cost or Pricing Data. The City may, at reasonable times and places, audit the books and records of

any contractor who has submitted cost or pricing data pursuant to Section 3-202 (Cost or Pricing Data) to the extent that such books, documents, papers, and records are pertinent to such cost or pricing data. Any person who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books, documents, papers, and records that are pertinent to such cost or pricing data for three years from the date of the final payment under the contract.

(2) Contract Audit. The City shall be entitled to audit the books and records of a contractor, or a subcontractor at any tier, under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books, documents, papers, and records are pertinent to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three years from the date of final payment under the prime contract and by the subcontractor for a period of three years from the date of final payment under the subcontract.

(3) Contractor Records. If a contract is being funded in whole or in part by assistance from a federal agency, then the contract shall include provisions:

- (a) requiring the contractor, and subcontractors at any tier, to maintain for three years from the date of final payment under the contract all books, documents, papers, and records pertinent to the contract; and
- (b) requiring the contractor, and subcontractor at any tier, to provide to the City, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to such books, documents, papers, and records for the purposes of examining, auditing, and copying them.

Sec. 3-308. Reporting of Anticompetitive Practices.

When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted by the complainant to the State Attorney in Palm Beach County and the City Attorney.

Sec. 3-309. City Procurement Records.

All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the City in a contract file by the Director of Purchasing, and shall be retained and disposed of in accordance with records retention guidelines and schedules as required by Florida Statutes.

Sec. 3-310. Patents.

If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from another governmental agency, then the contract shall include provisions:

- (a) giving notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract; and
- (b) requiring the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

Sec. 3-311. Notice of Federal Public Policy Requirements.

If the contract is being funded in whole or in part by assistance from another governmental agency, and the contract is subject to one or more federal public policy

requirements, such as, for example, equal employment opportunity, fair labor standards, energy conservation, environmental protection, or other similar socioeconomic programs, then the Director of Purchasing should include contract provisions giving the contractor notice of these requirements and, where appropriate, including in those contract provisions the requirement that the contractor give a similar notice to all of its subcontractors, materialmen, e t c .

ARTICLE 4 - SPECIFICATIONS

Sec. 4-101. Maximum Practicable Competition.

All specifications shall be drafted so as to promote overall economy for the purposes intended and encourage competition in satisfying the City's needs, and shall not be unduly restrictive. The policy enunciated in this Section applies to all specifications, including but not limited to those prepared for the City by architects, engineers, designers and draftsmen.

Sec. 4-102. Qualified Products List.

(1) Use. A qualified products list may be developed by the Director of Purchasing when testing or examination of the supplies or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the City's requirements.

(2) Comments. Prior to final approval of the proposed specifications for a qualified products list item, the Director of Purchasing shall provide the using department, and a reasonable number of manufacturers or suppliers as the Director of Purchasing deems appropriate, an opportunity to comment on the draft of the proposed specifications.

(3) Solicitation. When developing a qualified products list, a representative group of potential suppliers should be solicited in writing to submit products for testing and examination to determine acceptability for

inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(4) Testing. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

(5) Final Approval, Revisions and Cancellation. The final approval of, revisions to and cancellation of qualified products lists shall be made only upon approval of the Director of Purchasing or designee.

Sec. 4-103. Brand Name Specification.

(1) use. Brand name or equal specifications may be used when the purchasing agent determines in writing that:

- (a) no other design or performance specification or qualified products list is available;
- (b) time does not permit the preparation of another form of purchase description;
- (c) the nature of the product or the City's requirements makes use of a brand name or equal specification suitable for the procurement; or
- (d) use of a brand name or equal specification is in the City's best interests.

(2) Designation of Several Brand Names. Brand name or equal specifications shall seek to designate three, or as many different brands as are practicable, as "or equal" references and shall further state that substantially equivalent products to those designated will be considered for award.

(3) Required Characteristics. Unless the Director of Purchasing determines in writing that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(4) Nonrestrictive Use of Brand Name of Equal Specifications. Where a brand name or equal specification is used in solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

Sec. 4-104. Brand Name Specification.

(1) Use. Because the use of a brand name specification is restrictive of product competition, it may be used only when the Director of Purchasing makes a written determination that only the identified brand name item or items will satisfy the City's needs.

(2) Competition. The Director of Purchasing shall seek to identify sources from which the designated brand name items or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement shall be made under Section 3-105 (Sole Source Procurement).

Sec. 4-105. Energy Conservation.

If a contract is being funded in whole or in part by assistance from another governmental agency, then the City's solicitation shall seek to promote energy conservation and shall comply with any mandatory standards and policies which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

ARTICLE 5 - PROCUREMENT OF CONSTRUCTION,
ARCHITECT-ENGINEER AND LAND SURVEYING SERVICES

Part A - Management of Construction Contracting

Sec. 5-101. Responsibility for Selection of Methods of Construction Contracting Management

The City Manager or his designee shall have discretion

to select the appropriate method of construction contracting management for a particular project. In determining which method to use, the Director of Purchasing shall consider the City's requirements, its resources, and the potential contractor's capabilities. The Director of Purchasing shall execute and include in the contract file a written statement setting forth the facts which led to the selection of a particular method of construction contracting management for each project.

Part B - Bid Security and Performance Bonds

Sec. 5-201. Bid Security.

(1) Requirement for Bid Security. Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the Director of Purchasing to exceed \$50,000. Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in case, or otherwise supplied in a form satisfactory to the City. Nothing herein shall prevent the requirement of such bonds on construction contracts under \$50,000 when the circumstances warrant in the opinion of the City Manager.

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

(3) Rejection of Bids for Noncompliance with Bid Security Requirements. When the invitation for bids requires bid security, a bid shall be rejected in the event of non-compliance unless it is determined that the bid fails to comply only in a nonsubstantial manner with the security requirement.

(4) Withdrawal of Bids. If a bidder is permitted to withdraw its bid before award as provided in Section 3-101(6) (Competitive Sealed Bidding; Correction or Withdrawal of Bids; Cancellation of Awards), no action shall be taken against the bidder or the bid security.

Sec. 5-202. Contract Performance and Payment Bonds.

(1) When Require - Amounts. When a construction contract is awarded in excess of \$50,000, the following bonds or security shall be delivered to the City and shall become binding on the parties upon the execution of the contract:

(a) a performance bond satisfactory to the City, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor perform the contract in the time and manner prescribed in the contract; and

(b) a payment bond satisfactory to the City, executed by a surety insurer authorized to do business in the State as a surety, in an amount equal to 100% of the price specified in the contract, conditioned that the contractor promptly make payments to all persons supplying labor, materials or supplies used directly or indirectly in the performance of the work provided for in the contract, and who are claimants as defined in Section 255.05(1), Florida Statutes.

(2) Reduction of Bond Amounts. The City Manager is authorized to reduce the amount of performance and payment bonds to 50% of the contract price for each bond when a written determination is made that it is in the best interests of the City to do so.

(3) Authority to Requirement Additional Bonds. Nothing in this Section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds, or in circumstances other than specified in Subsection (1) of this Section 5-202.

Sec. 5-203. Copies of Bond Forms.

Any person may request and obtain from the City a certified copy of a bond upon payment of the cost of reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie evident of the contents, execution, and delivery of the original.

Part C - Fiscal Responsibility

Sec. 5-301. Fiscal Responsibility

Every contract modification, change order, or contract price adjustment in excess of \$3,000 under a construction contract with the City shall be subject to prior approval by the City Council after receiving a report as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget. Contract modifications, change orders, or contract price adjustments totaling less than \$3,000 cumulatively may be processed subject to the approval of the City Manager without prior approval of City Council; however, each successive cumulative \$3,000 increment shall be subject to the approval of City Council, prior to the next successive cumulative \$3,000 increment being approved by the City Manager.

Part D - Professional Architectural, Engineering,
Landscape Architectural and Land Surveying
Services (Sec. 287.055, F.S.)

Sec. 5-401. Public Announcement, Competitive Selection
and Negotiation.

(1) Public Announcement. It is the policy of the City to publicly announce all requirements for professional architectural, engineering, landscape architectural, and land surveying services and to negotiate such contracts on

the basis of demonstrated competence and qualifications at fair and reasonable prices. In the procurement of such services, the Director of Purchasing may require firms to submit a statement of qualifications, performance data and a quotation of their proposed fees for the performance of professional services.

(a) Scope of Project Requirements. No less than 14 days prior to the anticipated mailing date and advertising date of the public announcement for professional services, the using department or agency for which the professional services are requested shall submit to the Director of Purchasing written project requirements indicating the nature and scope of the professional services needed by the using department or agency including but not limited to the following:

- (i) the general purpose of the service study;
- (ii) the objectives of the study or service;
- (iii) estimated period of time needed for the service of the study;
- (iv) the estimated cost of the service or study;
- (v) whether the proposed study or service would or would not duplicate any prior or existing study or service;
- (vi) list of current contracts or prior services or studies which are related to the proposed study or service; and
- (vii) the desired qualifications, listed in order of importance, of the person or firm applicable to the scope and nature of the services requested.

(b) Review of Project Requirements. The City Manager or designee shall review the scope of project requirements and, if revisions of project

requirements may be warranted to best meet the needs of the City, copies of the project requirements shall be submitted to the User Department and the Director of Purchasing for their consideration of revision prior to public distribution of the project requirements.

(c) Distribution of Project Requirements. The Director of Purchasing shall distribute the written project requirements to all persons on the mailing list, if one exists, who have indicated an interest in being considered for the performance of such professional services and to any other additional persons as the Director of Purchasing or using agency deems desirable. The project requirements shall be accompanied by an invitation to such persons to submit an indication of interest in performing the required services, and by notification of a reasonable period of time within which such indications of interest will be accepted, which period shall not be less than fourteen days from the date of distribution. The Director of Purchasing shall also publish once in at least one newspaper of general circulation in the City and Palm Beach County, at least 14 days prior to the closing date for the acceptance of indications of interest, a general notice of the project requirements and an invitation to submit indications of interest.

(d) Resolicitation. If the City receives indications of interest from less than three persons, it may resolicit indications of interest from all persons previously solicited and from such additional persons as it may deem advisable. Thereafter, it may proceed to consider those persons responding to the solicitation or resolicitation.

(e) Modifications Prohibited. After the publicized submission time and date, indications of interest shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed prior to the selection of those best qualified to be formally interviewed.

(f) Reuse of Existing Plans. There shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the City is able to reuse existing plans from a prior project. However, public notice of any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

(g) Exemptions. This section shall not apply to a professional service contract for a project whose basic construction cost is estimated to be below the threshold established in Sections 287.055(3)(d) and 287.017, Florida Statutes, or for a planning or study activity when the fee for professional services is below the applicable threshold, or in the cases of valid public emergency so certified by the City Manager. This section shall not apply to any requirement for professional services if a continuing contract to provide such services is in effect and a determination is made to utilize the continuing contract to obtain such services.

(2) Selection. Depending on the expected complexity and expense of the professional services to be contracted, the City Manager or designee shall determine whether a selection committee will best serve the needs of the City.

(3) Evaluation procedures.

(a) Membership. Prior to the award of a contract for the performance of professional services, the City Manager may appoint an Evaluation Committee. The Committee shall consist of one representative from the Finance Department and two representatives from the using department for which the professional services will be performed.

(b) Approval and Distribution of Project Requirements.

(1) The using department shall submit to the City Manager written project requirements indicating the nature and scope of the professional services needed by the using department and shall also submit a certification of information required by the Committee, including the following:

- (i) the general purpose of the service or study.
- (ii) the objectives of the study or service.
- iii) the estimated period of time needed for the service or the study.
- (iv) the estimated cost of the service or study.
- (v) whether the proposed study or service would or would not duplicate a prior or existing study or service.
- (vi) list of current contracts or prior services or studies which are related to the proposed study or service.

Upon receipt of the scope and the certification, the City Manger shall immediately send copies to the Evaluation Committee. The Evaluation Committee shall then review the scope and approve or disapprove the scope of services.

(2) The Evaluation Committee or City Manager's designee shall have the prepared written project requirements indicating the nature and scope of

the professional services needed by a using department distributed by the Purchasing Department to the persons on the mailing list, if one exists, who have indicated an interest in being considered for the performance of the professional services for using agencies and to other additional persons as the Evaluation Committee or designee deems desirable. The project requirements shall be accompanied by an invitation to the persons to submit an indication of interest in performing the required services and by notification of a reasonable period of time within which the indications of interest will be accepted, which period shall not be less than ten days from the date of distribution. The Purchasing Department shall also publish once in a newspaper of general circulation in the City (at least ten days prior to the closing date for the acceptance of indications of interest) a general notice of the project requirements and an invitation to submit indications of interest.

- (c) Work Description. If the Evaluation Committee or designee determines that it is unable to define with reasonable precision the nature and scope of the professional services needed by the using agency, it shall also require interested persons to submit a detailed description of the work to be performed in order to meet the general project requirements.
- (d) Certain prior contractees disqualified. A person who has contracted with a City department for the performance of professional services for the purpose of defining with reasonable precision the

nature and scope of other professional services needed by the department may, in the discretion of the Evaluation Committee, be disqualified from the award of a contract to perform the other professional services which the person or entity was previously contracted by the city to define.

(e) Quotation of fees. The Evaluation Committee or designee shall also require interested persons to submit a quotation of their proposed fees for the performance of the professional services, unless the interested persons are prohibited by law from doing so.

(f) Resolicitation. If the Evaluation Committee or designee receives indications of interest from less than three persons, it may resolicit indications of interest from persons previously solicited and from the additional persons as it may deem advisable. Thereafter, it may proceed to consider those persons responding to the solicitation or resolicitation.

(g) Modifications prohibited. Once written indications or interest have been accepted by the Evaluation Committee or designee, they shall not be modified or allowed to be modified subsequently in any manner whatsoever except for correction of clerical errors or other similar minor irregularities as may be allowed by the Evaluation Committee or designee prior to making its recommendations as to interest, availability and qualifications to an awarding authority.

(4) Selection of persons qualified, interested and available.

(a) From among those persons evidencing an interest in performing the services, the Evaluation Committee or designee shall:

- (i) prepare an alphabetical of those persons determined to be qualified, interested and available, and
 - (ii) designate three persons on the alphabetical list considered by the Evaluation Committee or designee to be best qualified to perform the work required.
- (b) The best qualified selection shall be based upon the Evaluation Committee's or designee's ability to differentiate qualifications applicable to the scope and nature of the services to be performed.
- (c) The Evaluation Committee or designee shall determine qualifications, interest and availability by reviewing the written responses received that express an interest in performing the services. When required by Section 287.055 thresholds, an Evaluation Committee shall conduct formal interviews of selected respondents that are determined to be best qualified based upon the evaluation of written responses. The determinations shall be based upon the following considerations:
- (i) competence, including technical education and training, experience in the kind of project to be undertaken, availability of adequate personnel, equipment and facilities, the extent of repeat business of the persons and, where applicable, the relationship of construction cost estimates by the person to actual costs on previous projects.
 - (ii) current work load.
 - (iii) financial responsibility

- (iv) ability to observe and advise whether plans and specifications are being complied with, where applicable.
 - (v) past record of professional accomplishments.
 - (vi) proximity to the project involved.
 - (vii) past record of performance for using agencies.
 - (viii) ability to design and approach and work plan to meet the project requirements, where applicable.
 - (ix) quotation of rates, fees or charges and other detailed cost-proposal or cost-breakdown information.
 - (x) the volume of current and prior work performed for using agencies shall be considered a minus factor.
- (d) The absence of professional experience in a specialized area shall not inhibit proper consideration of otherwise qualified, competent persons.
- (e) In determining the best qualified persons, the Evaluation Committee shall give preference to persons having local places of business where not other differentiation in qualifications can be made.
- (f) In determining the best qualified persons, the Evaluation Committee shall give preference to persons that are minority business enterprises under §287.042, Florida Statutes, and as per city codes applicable thereto.
- (g) Minutes. The Evaluation Committee shall keep official minutes of its meetings, which shall be

maintained on file in the respective using department as a permanent public record. The minutes may take the form of verbatim tape recording or other verbatim electronic recordings of the Evaluation Committee's proceedings.

(h) Public notice of meetings. The Evaluation Committee shall cause a written notice of time, place and purpose of each of its meetings to be filed as a public record with the City Clerk's offices at least 24 hours in advance of the meeting.

(5) Award of contract; independent agencies. In cases where an independent agency is directed by law to award its respective contracts, the Evaluation Committee shall forward to the independent agency the alphabetical list of persons qualified, interested and available and its recommendation regarding the three persons considered best qualified. After receipt of the list and recommendation, the independent department shall select three persons in order of preference based on most qualified to perform the services and shall engage in negotiation according to this order, beginning with the first best qualified person until successful negotiation is reached, or upon terminating unsuccessful negotiation with the first best qualified, proceeding to commence negotiation with the second best qualified person or, failing accord with the second most qualified and terminating the negotiation, proceeding to undertake the negotiation with the third best qualified person. Thereafter, the selection and negotiation procedure shall be continued with additional selected persons in order of best qualified until a mutual agreement is reached. No independent agency which is required by law to utilize the

services of the Purchasing Department shall award a contract for professional services until after receipt of the recommendations of the Evaluation Committee.

(6) Other cases. In those cases to which Section 287 Florida Statutes does not apply, the Evaluation Committee or designee shall forward to the alphabetical list of persons qualified, interested and available and its recommendation regarding the three persons considered best qualified in order of first, second and third best qualified. The City Manager shall approve or disapprove the recommendation of the Evaluation Committee. Upon approval, the Evaluation Committee or designee shall negotiate with the first most qualified person and recommend to the City Manager, for approval, mutually satisfactory terms of employment, including the professional fee to be charged. If no mutual agreement is approved by the City Manger, the City Manager shall terminate negotiations with the person by written notice and negotiation shall commence with the second most qualified person. Upon failing accord and terminating negotiation with the second most qualified person, negotiations shall be commenced with the third most qualified person. This selection and negotiation procedure shall be continued with additional selected persons in order of best qualified until a mutual agreement is approved by the City Manager. The City Council may then award a contract for the performance of the required professional services to the person with whom a mutual agreement is reached. If the City Manager disapproves the recommendation of the Evaluation Committee or designee as to the ranking of the three best qualified, then the selection process may continue as to additional firms in the order of their competence and qualifications until an agreement is reached or its is determined that no agreement will be reached.

(7) Truth-in-negotiation certificate required for contracts in excess of \$50,000. For all lump sum or cost-plus-a-fixed-fee professional service contracts over \$50,000 the person receiving the award shall execute a truth-in-negotiation certificates stating that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. A professional service contract under which a certificate is required shall contain a provision that the contract price shall be adjusted to exclude any significant sums where the agency determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. Contract adjustments shall be made within one year following the end of the contract.

(8) Contingent fees prohibited. Each contract entered into for professional services shall contain a prohibition against contingent fees as follows:

The architect, registered land surveyor, professional engineer or other person providing professional services (as applicable) warrants that he has not employed or retained a company or person, other than a bona fide employee working solely for the architect, registered land surveyor, professional engineer or other person providing professional services for any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this agreement.

For the breach or violation of this provision, the City of independent department shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover the full amount of the fee, commission, percentage, gift or consideration.

(9) Continuing Contracts. Nothing in this section shall be construed to prohibit continuing contracts for professional services between a firm and the City.

(10) Exemptions. The provisions of this Part D shall not apply to the awarding of a contract:

(a) for the performance of professional services for a professional fee, exclusive of reimbursed expenses, of less than the thresholds specified now or hereafter in Chapter 287, Florida Statutes.

(b) with another local, State or federal governmental agency for the performance of professional services.

ARTICLE 6 - DEBARMENT OR SUSPENSION

Sec. 6-101. Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the Director of Purchasing, after consulting with the City Attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than three (3) years. After consultation with the City Attorney, the Director of Purchasing is authorized to suspend a person from consideration for award of contract if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall be for a period not to exceed three months. The causes for debarment include:

(a) conviction for 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 subcontractor;

- (b) 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 City contractor;
- (c) conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (d) violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify debarment action:
 - (i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - (ii) a record of failure to perform or of unsatisfactory performance in accordance with terms of one 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;
- (e) violation of the ethical standards set forth in Article 11 (Ethics in Public Contracting); and
- (f) any other cause the Director of Purchasing determines to be so serious and compelling as to effect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this Ordinance.

Sec. 6-102. Decision to Debar or Suspend.

The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Sec. 6-103. Finality of Decision.

The Director of Purchasing shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of its rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Sec. 6-103. Finality of Decision.

A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision files a written notice of appeal to the City Council, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Council.

ARTICLE 7 - SUPPLY MANAGEMENT

Sec. 7-101. General Supervision.

The Director of Purchasing or designee shall have general supervision of the management of supplies during their entire life cycle. The objective of supply management include preventing waste, continuing utilization of supplies, and obtaining a fair return of value upon disposal of supplies. In order to achieve these objectives, sound inspection, testing, warehousing, and inventory practices are called for, and effective means of transferring and disposing or property shall be utilized.

Sec. 7-102. Quality Assurance, Inspection, and Testing.

The Director of Purchasing or designee shall take such steps as are deemed desirable to ascertain or verify that supplies, services, or construction items procured by the City conform to specifications. In performing this duty, the Purchasing Agent may establish inspection and testing facilities, enter into arrangements for the joint or cooperative use of laboratories and inspection and testing facilities, and contract with others for inspection or testing facilities, and contract with others for inspection or testing work as needed. The Purchasing Agent may delegate authority for inspection and testing to using departments.

Sec. 7-103. Inventory Management.

The Director of Purchasing or designee shall have general supervision of all inventories of tangible personal property, whether warehoused or in use, belonging to the City or any of its departments. This responsibility shall not, however, relieve any department of accountability for tangible personal property and other supplies under its control. All warehouses and similar storage areas shall be inventoried at least annually. The Director of Purchasing or designee shall have general supervision of the determination of appropriate stock levels and economic order quantities for all inventories belonging to the City.

Sec. 7-104. Warehousing and Storage.

The Director of Purchasing or designee shall exercise general supervision of any receiving, storage, and distribution facilities and services maintained and operated by the City or any of its agencies.

Sec. 7-105. Authorization to Dispose of Supplies.

No Using Department shall transfer, sell, trade-in, or otherwise dispose of supplies owned by the City without

written authorization of the Director of Purchasing or designee.

Sec. 7-106. Report of Supplies.

Using departments shall notify the Director of Purchasing or designee, on such forms and at such times as the Director of Purchasing may prescribe, of all excess supplies. In so doing, a Using department may suggest a dollar value per item or per lot that it desires to receive from any transfer or disposition of such excess supplies, but the suggestion shall not constitute the minimum sale or transfer amount.

Sec. 7-107. Transfer of Excess and Surplus Supplies.

Insofar as is feasible and practical, the Director of Purchasing shall transfer excess supplies to other City departments. The price of the supply transferred shall be the fair market price based, where possible, on previous sales of similar products in the open market, or on an appraised value, and shall be one mutually agreed upon between the owning agency and the recipient, and approved by the Director of Purchasing. If agreement cannot be reached, the Director of Purchasing shall establish the price.

Sec. 7-108. Disposition of Surplus Supplies.

Surplus supplies shall be offered through competitive sealed bids, public auction, or posted prices. It is recognized, however, that some types and classes of items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sales to be restricted or controlled, the Director of Purchasing may employ such other means, including appraisal, provided such officer makes a written determination that such procedure is advantageous to the City.

Sec. 7-109. Auctions.

When authorized by the Director of Purchasing, City employees or an experienced professional auctioneer may be used to cry the sale and assist in the preparation of the sale.

Sec. 7-110. Posted Prices.

Surplus supplies may be sold at posted prices as determined by the Director of Purchasing when such prices are based on fair market value and the sale is conducted pursuant to written procedures established by the Purchasing Agent.

Sec. 7-111. Trade-In.

Surplus supplies may be traded-in only when the Director of Purchasing determines the trade-in value is expected to exceed the value estimated to be obtained through the sale or other disposition of such supplies.

ARTICLE 8 - APPEALS AND REMEDIES

Sec. 8-101. Bid Protests.

(1) Right to Protest. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of contract may protest to the City Council. Protestors shall seek resolution of their complaints initially with the Director of Purchasing, and secondly with the City Manager prior to protesting to City Council. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not have been reasonably expected to know of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within six calendar days after such

aggrieved person knows or could have reasonably been expected to know of the facts giving rise thereto.

(2) Stay of Procurements During Protests. In the event of a timely protest under Subsection (1) of this Section, the Director of Purchasing shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the City Manager makes a written determination that the award of a contract without delay is necessary to protect substantial interests of the City.

Sec. 8-102. Contract Claims.

(1) Decision of the City Manager. All claims by a contractor against the City relating to a contract, except bid protests, shall be submitted in writing to the City Manager or designee for a decision. The contractor may request a conference on the 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.

(2) Notice to the Contractor of the City Manager's Decision. The decision of the City Manager or designee shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal rights under this Section.

(3) Finality of City Manager's Decision; Contractor's Right to Appeal. The City Manager's decision shall be final and conclusive unless, within ten (10) calendar days from the date of receipt of the decision, the contractor files a written notice of appeal with the City Council, in which event the decision shall be deemed final and conclusive if and when the decision is affirmed by the City Council.

(4) Failure to Render Timely Decision. If the City Manager does not issue a written decision regarding any contract controversy within fifteen (15) work days after receipt of a written request for a final decision, or within such longer period as may be agreed upon between the parties, then the aggrieved party may proceed as if an adverse decision has been issued.

Sec. 8-103. Authority of the Director of Purchasing to Settle Bid Protests and Contract Claims.

The Director of Purchasing may be authorized to settle any protest regarding the solicitation or award of a City contract, or any claim arising out of the performance of a City contract, prior to an appeal to the City Manager, City Council or the commencement of an action in a court of competent jurisdiction, but may not settle any such protest or claim for consideration exceeding \$5,000 in value without the prior approval of the City Council.

Sec. 8-104. Remedies for Solicitations or Awards in Violation of Law.

(1) Prior to Bid Opening or Closing Date for Receipt of Proposals.

If prior to the bid opening or the closing date for receipt of proposals, the Director of Purchasing, after consultation with the City Attorney, determines that a solicitation is in violation of federal, state, or municipal law or ordinance, then the solicitation shall be cancelled or revised to comply with applicable law.

(2) Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Director of Purchasing, after consultation with the City Attorney, determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, or ordinance, then the solicitation or proposed award shall be cancelled.

(3) After Award. If, after an award, the Director of Purchasing, after consultation with the City Attorney, determines that solicitation or award of a contract was in violation of applicable law or ordinance, then:

(a) if the person awarded the contract has not acted fraudulently or in bad faith:

(i) the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the City; or

(ii) the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, but excluding attorney's fees, prior to the termination; or

(b) if the person awarded the contract has acted fraudulently or in bad faith the contract may be declared null and void, if such action is in the best interests of the City.

ARTICLE 9 - INTERGOVERNMENTAL RELATIONS

Sec. 9-101. Cooperative Purchasing Authorized.

The City's Purchasing Department may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more Public procurement Units or External Procurement Activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multi-party contracts between Public Procurement Units and open-ended State Public Procurement Unit contracts which are made available to Local Public Procurement Units.

Sec. 9-102. Sale, Acquisition, or Use of Supplies by a Public Procurement Unit.

The City's Purchasing Department may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit or External Procurement Activity independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 7 (Supply Management) of this Ordinance.

Sec. 9-103. Cooperative Use of Supplies or Services.

The City's Purchasing Department may enter into an agreement, independent of the requirements of Article 3 (Source Selection and Contract Formation) and Article 7 (Supply Management) of this code, with any other Public Procurement Unit or External Procurement Activity for the cooperative use of supplies or services under the terms agreed upon between the parties.

Sec. 9-104. Joint Use of Facilities.

The City's Purchasing Department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit or an External Procurement Activity under the terms agreed upon between the parties.

Sec. 9-105. Supply of Personnel, Information, and Technical Services.

(1) Supply of Personnel. The City's Purchasing Department is authorized, at its discretion, upon written request from another Public Procurement Unit or External Procurement Activity, to provide personnel to the requesting Public Procurement Unit or External Procurement Activity. The Public Procurement Unit or External Procurement Activity making the request may pay the Public Procurement Unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

Sec. 9-106. Public Procurement Units in Compliance with Code Requirements.

Where the Public Procurement Unit or External Procurement Activity administering a cooperative purchase complies with the requirements of this Code, any Public Procurement Unit participating in such a purchase shall be deemed to have complied with this Code. Public Procurement Units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Code.

Sec. 9-107. Contract Prices Established by Other Governmental Units.

The City may purchase any item or service except as otherwise prohibited by State or Federal law, at the same contract price as established by another governmental unit if the Purchasing Department or other City Using Department determines that the price is such that following Article 3 herein (Source Selection and Contract Formation) is not warranted. Such contracts, by way of example, are a contract price by another Florida municipality established by competitive bidding or source selection similar to Article 3, herein; a price established by a so-called State contract or a price established by a department or division of the United States Government, such as the General Services Administration.

ARTICLE 10 - MINORITY BUSINESS ENTERPRISE PROGRAM

WHEREAS, minority owned businesses have not been able to participate in an equitable manner in the receipt of city contracts due to the continuing effects of past discrimination within the City of Riviera Beach; and

WHEREAS, these past practices have resulted in the underrepresentation and underutilization of minority owned business in the receipt of city contract; and

WHEREAS, nondiscrimination alone in the awarding of city contracts is not sufficient to remedy the continuing effects of these past practices, the need exists for affirmative steps to be taken to ensure that minority owned businesses are utilized by the City to a more substantial and equitable extent.

NOW THEREFORE, the City declares and finds that based on the existence of historical and existing discrimination against minority owned businesses, this Article is necessary to ameliorate the continuing negative impact of such discrimination in order to ensure the full participation of minority owned businesses as competitive vendors in the City's contractual process. This Article is therefore declared to be in the public interest. This Article is enacted pursuant to §287.093, and §288.702, Florida Statutes.

Sec. 10-101. Definitions.

(a) Certification. The process of an entity being certified by the Florida Department of General Services pursuant to Chapter 287, Florida Statutes.

(b) Certified minority business enterprise. A business which has been certified by the Department of General Services to be a minority business enterprise.

(c) City. The City of Riviera Beach.

(d) City Agencies and Departments. Those agencies and departments under the supervision of the City Manager or persons appointed by him.

(e) Contract. A legally enforceable agreement for the provision of supplies, labor, materials, services, construction, franchises, concessions, or leases granted by or on behalf of the City.

(f) Contract Dollars. The total amount appropriated for the award of contracts by city departments in each fiscal year, excepting those contracts in which the City has

no discretion in choosing its contractor or those contracts in which the City has discretion in choosing its contractor but there are at that time no minority businesses that can provide the specific service or services.

(g) Goal. Means a quantitatively expressed objective which the City makes good faith effort to achieve.

(h) Minority business enterprise. Means any small business concern as defined herein which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51% owned by minority persons and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession.

(i) Minority person. Means a lawful permanent resident of Florida who is:

- (1) A Black American; a person having origins in any of the black racial groups of Africa.
- (2) A Hispanic American, a person of Spanish or Portuguese culture with origins in Mexico, South America, Central America, or the Caribbean, regardless of race.
- (3) An Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands.
- (4) A native American, a person who is a member of, or is eligible to be a member of, a federally recognized Indian tribe. A "federally recognized Indian tribe," means an Indian tribe, band, nation, rancheria, pueblo, colony, or other organized group or

community, including any Alaska native village, which is recognized by the Secretary of the Interior on October 1, 1985, as having special rights and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians, and any tribe that has a pending application for federal recognition on October 1, 1985.

(5) A native Hawaiian; a person any of whose ancestors were native of the area which consists of the Hawaiian Islands, prior to 1778.

(6) An American woman.

(7) A physically disabled person; a person who has a physical impairment, defect, disease, ailment, or disability of a permanent nature which in any way limits the type of employment for which the person would otherwise be qualified.

(j) Owned. Means a business which is at least fifty-one percent 51% owned by one or more minority persons or women.

(1) In the case of a corporation, at least fifty-one percent 51% of all classes of voting stock and/or interests of such corporation must be owned by one or more minority persons.

(2) In the case of a partnership, at least fifty-one percent (51%) of such partnership interest must be owned by one or more minority persons.

(3) In the case of a limited partnership, the

minority persons must act as general partners and own at least fifty-one percent (51%) of the general partnership interest of such entity.

(4) In the case of a joint venture, at least fifty-one percent (51%) of the controlling interest of such joint venture must be owned by one or more minority persons.

(5) In the case of a sole proprietorship, the minority person must own and control the business. In any other form of business organization, one or more minority persons must own at least fifty-one percent (51%) of the business.

(6) An ownership interest held by one or more minority persons shall not qualify as being an interest held by said persons if an agreement, option, scheme, security interest, or document would, if exercised, result in less than fifty-one percent (51%) ownership of the business and/or dominant control of the business by one or more minority persons.

(k) Department of General Services. A department of the State Department of Commerce responsible for developing programs to assist the inclusion of minorities owned businesses in state and local purchasing construction, and services contracting.

Sec. 10-102. Policy and Standards.

(a) Policy. It is the policy of the City of Riviera Beach to encourage, assist and provide substantial opportunity for minority owned businesses to participate in the receipt of city contracts, particularly in regards to Black Americans, where the greatest disparity exists.

(b) Standards as to Contracts. Upon implementation of this ordinance, a goal (not a quota) of a minimum of fifteen percent (15%) in the procurement of all goods and services, construction contracts and construction related contracts should be supplied by certified Minority Business Enterprises (MBEs), out the contract dollars awarded by the City during each fiscal year, if possible. The City shall continuously make a good faith effort to meet this goal and this goal should be met unless outside factors beyond the control of the City make this goal's realization impossible.

Sec. 10-103. Policy Implementation.

Copies of this ordinance shall be disseminated to all City staff charged directly or indirectly with the procurement process. All necessary training and orientation shall be provided to supplement staff understanding of these goals. All directors of city departments and agencies shall ensure the fullest cooperation in carrying out the systems and procedures which ensure implementation and enforcement of this ordinance. The City Manager is authorized to assign staff as is necessary to fully implement this ordinance.

Sec. 10-104. Objectives.

The objectives are to assure equal access in the competitive process of supplying goods and services to the City shall be as follows:

- (a) to assure fair and equitable treatment to all businesses;
- (b) to provide the necessary assistance to all businesses to assure maximum participation;
- (c) to identify MBE/WBEs and to establish contact in the community to encourage their participation in the competitive bidding process;

- (d) to use good faith efforts to expand the participation of MBE/WBEs;
- (e) to encourage contractors to maximize MBE/WBEs participation through subcontracts and/or joint ventures;
- (f) to provide procedures to fulfill applicable requirements of the federal and state government in contracting and procurement;
- (g) to monitor the progress made in MBE/WBE participation;
- (h) to receive and, where necessary, analyze information concerning the presence of discrimination in the bidding and contracting process and to recommend further steps to alleviate such discrimination.

Sec. 10-105. Compliance and Enforcement.

A. All city departments shall make every effort to comply with this Ordinance. To the extent deemed necessary to achieve the legitimate objectives of this Ordinance, and where legally permissible, initiatives may include:

- (1) Promoting joint ventures between MBE and non-MBEs where a MBE partner is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management responsibilities and profits of the joint venture;
- (2) Requiring prime contractors to subcontract a minimum amount of work on projects to MBEs;
- (3) Dividing large contracts into smaller units to afford opportunities for MBEs;
- (4) Making good faith efforts to insure that MBEs are informed of the opportunity to submit proposals, bids, expressions of interests, etc., on city contracts;

- (5) Quotes for small purchases will be solicited from local businesses, when the required goods and/or services can be obtained economically from local sources;
- (6) List of local minority and female-owned businesses will be maintained for use in soliciting quotes and bids. Other directories of minority and female-owned businesses will be utilized in seeking bids when local competition is inadequate;
- (7) Requests for bids and proposals for services or goods will be advertised locally, although it may also be necessary to advertise some projects over a broader geographic area in order to obtain adequate competition;
- (8) Where applicable, Federal Section 3 and Affirmative Action language will be included in contracts and requests for bids;
- (9) Contractors will be informed of the City's Affirmative Action policy;
- (10) Use of services and assistance provided by the Small Business Administration and other agencies in locating available MBE/WBEs and encouraging the development of such businesses;
- (11) Promotion of the City's MBE/WBE program(s) both internally and externally, through the use of publicity;
- (12) Appointment of City employee(s) with the necessary authority and responsibility to implement effective MBE/WBE program(s) within the County;
- (13) Maintenance of a computerized listing of MBE/WBEs within the City;

B. The City Manager shall be responsible for monitoring and enforcing this ordinance.

- (1) The City Manager shall monitor this ordinance by the following methods:

- (a) establishing periodic reporting procedures;
 - (b) requiring explanatory narratives if the goal envisioned of this ordinance are not met; and
 - (c) any other legally permissible action deemed appropriate
- (2) In the event that a city department cannot attain the goal percentages because of the department's failure to follow the steps outlined in this ordinance, the City Manager may do any or all of the following:
- (a) require the non-complying department to submit, for subsequent bids, and analysis of the bid process to the City Manager or his designee; and
 - (b) require the non-complying department to obtain the signature of the City Manager or his designee before awarding a contract; and
 - (c) any other action deemed appropriate, excluding encumbering a portion of a city department's contract dollars for MBEs.
- (3) Businesses contracting with the City shall fulfill the MBE participation commitments submitted with their bid proposals and maintain records required or reasonably necessary for monitoring their compliance. In the event of such noncompliance by businesses contracting with the City, remedies may include subsequent disqualification of the business from eligibility to receive contracts from the City for a specified period of time or requiring assurances of future compliance by any such contractor before awarding another contract.
- (4) With respect to statutorily independent agencies, effort will be made to secure adoption and

compliance with this Article by negotiation between the city and said agencies, wherein said agencies shall agree to make good faith efforts to comply herewith.

Sec. 10-106. Minority Business Enterprise Council.

(1) To help implement, monitor and enforce the goals of this Article there shall be created the Minority Business Enterprise Council ("MBEC"). The City Council shall appoint all members of the MBEC, whose terms of office shall be four (4) years from appointment, and which shall be composed as follows:

- (a) Three (3) members each of which shall be the Chief Executive Officer of a bona fide Minority Owned Business.
- (b) One (1) member who shall be the Chief Executive Officer of a Female-Owned Business;
- (c) Five (5) members selected at the discretion of the City Council.
- (d) One City Council member and one staff member shall be ex-officio members for indefinite terms.

(2) MBEC's authority and responsibility shall be to:

- (a) Devise a certification procedure to assure that businesses taking advantage of this Article are legitimate Minority or Female-Owned Businesses.
- (b) Ascertain, within ninety (90) days of the completion of staffing the total number of Minority and Female-Owned Businesses in the Riviera Beach Metropolitan Statistical Area. The MBEC shall maintain a listing of all such businesses for referral by all agencies.

- (c) Survey such businesses ascertained in subsection (a) to establish past and current, participation levels.
- (d) Establish annual reporting requirements for all agencies to document the percentage of contracts which have been let to Minority and Female-Owned Businesses.
- (e) Devise, within ninety (90) days from the completion of staffing appropriate policies, regulations and procedures for including the participation of Minority and Female-Owned Businesses in prime contracts with the City. The affirmative programs to be reviewed by the MBEC in this regard shall include, but shall not be limited to the following:
 - (i) including qualified Minority and Female-Owned Businesses on solicitation lists;
 - (ii) assuring that Minority and Female-Owned Businesses are solicited whenever they are potential sources;
 - (iii) structuring contract requirements, when economically feasible, to permit maximum participation of Minority and Female-Owned Businesses;
 - (iv) investigating the potential of blanket bonding programs implementing a bonding for participants under this Procurement Ordinance for construction jobs; and
 - (v) investigating and recommending implementing the use of other legally permissible means of fostering the award

of prime contracts to Minority and Female-Owned Businesses, such as joint ventures.

- (f) Recommend contractual language which provides that compliance with Minority and Female-Owned Business participation requirements is material to the City contract and provide for remedies, including but not limited to, termination of the contract in the event of noncompliance.

Sec. 10-107. Exemptions and Waivers.

(1) Individual Contract Exemptions.

The MBEC, on its own initiative or at the request of the affected agency or department may recommend that an individual contract or contract "package" (i.e., related contracts being bid or awarded simultaneously for the same project or improvement) be made wholly or partially exempt from Minority and Female-Owned Business City contracting goals prior to the advertisement for bids or solicitation of proposals, whenever there has been a determination shall be reduced to writing and based on the best information available at the time of the determination, that there exist an insufficient number of Minority and Female-Owned businesses within Riviera Beach Standard Metropolitan Statistical area to ensure adequate competition and an expectation of reasonable prices on bids or proposals solicited for the individual contract or contract "package" in question.

(2) Class Exemptions.

- (a) Creation of exempt classes of contracts.

The MBEC, on its own initiative or at the request of the affected department or agency, may recommend that an entire class of contracts be made exempt from Minority and Female-Owned Business contracting goals, whenever there has been a determination reduced to writing and based on the best information available at the time of the determination, that there then exists an insufficient number of qualified Minority or Female-Owned Businesses in the Riviera Beach Standard Metropolitan Statistical Area to ensure adequate competition and an expectation of reasonable prices on bids or proposals within that class.

(b) Limitation on class exemption.

Any such class exemption shall not be created for a period of more than one year at a time.

(3) Waivers.

Where a particular contract requires a contractor to meet a goal established pursuant to this Article, the contractor shall have the right to request a waiver from such requirement where the contractor demonstrates that there has been made a good faith effort to comply with the goals for Minority or Female-Owned Business participation.

ARTICLE 11 - ETHICS IN PUBLIC CONTRACTING

Sec. 11-101. Criminal Penalties.

To the extent that violations of the ethical standards of conduct set forth in this Article constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this Part.

Sec. 11-102. Employee Conflict of Interest.

It shall be unethical for any City employee to participate directly or indirectly in a procurement contract when the City employee knows that:

- (a) the City employee or any member of the City employee's immediate family has a financial interest in the procurement contract; or
- (b) any other person, business, or organization with whom the City employee or any member of a City employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

A City employee or any member of a City employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matter pertaining to that financial interest.

Sec. 11-103. Gratuities and Kickbacks.

(1) Gratuities. It shall be unethical for any person to offer, give, or agree to give any City employee or former City employee, or for any City employee or former City employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

(2) Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or offer.

(3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

Sec. 11-104. Prohibition Against Contingent Fees.

It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a City contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Sec. 11-105. Employment of former City employees by any person, business, or organization contracting with the City regulated.

It shall be a violation for any person, business or organization contracting with the City to employ in any capacity, any former City employee or member of the City employee's immediate family within one year of that employee's separation from employment with the City, unless the employer or the former City employee files with the City Clerk a disclosure statement on a form to be provided for that purpose, stating the date of employment of the former City employee by the employer. The penalty for a violation of this Section shall be a fine of not less than \$100.00 for a first offense, or not less than \$250.00 for a second or subsequent offenses.

Sec. 11-106. Waivers from Conflicts of Interests.

The City Council may grant a waiver from the employee conflict of interest provision (Section 11-102) upon making a written determination that:

- (a) the financial interest of the City employee has been publicly disclosed;

- (b) the City employee will be able to perform its procurement functions without actual or apparent bias or favoritism; and
- (c) the award will be in the best interests of the City.

Sec 11-107. Use of Confidential Information.

It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(1) Employees. The City Manager may impose any one or more of the following sanctions on a City employee for violations of the ethical standards in this Article:

- (a) oral or written warnings or reprimands;
- (b) suspension with or without pay for specified periods of time; or
- (c) termination of employment.

(2) Nonemployees. The City Council may impose any one or more of the following sanctions on a nonemployee for violations of the ethical standards;

- (a) written warnings or reprimands;
- (b) termination of contracts; or
- (c) debarment or suspension as provided in Section 6-101 (Authority to Debar or Suspend).

Sec. 11-108. Recovery of Value Transferred or Received in Breach of Ethical Standards.

(1) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Ordinance by a City employee or a nonemployee may be recovered from the City employee or the nonemployee, or both.

SECTION TWO.

That Sections 33 and 34 of Article I of the City Charter are HEREBY REPEALED.

SECTION THREE.

Effective date. This Ordinance shall be effective immediately upon final passage by the City Council.

SECTION FOUR.

This Ordinance shall not be codified.

PASSED and APPROVED on first reading this 21st day of December, 19 88.

PASSED and ADOPTED on second and final reading this 4th day of January, 19 89.

APPROVED:

Edna K. Williams
MAYOR

[Signature]
CHAIRMAN

Allen Fox
CHAIRMAN PRO TEM

[MUNICIPAL SEAL]

Attest:

Wendell E. Davis
CITY CLERK

[Signature]
Donald Pettway
COUNCILMEMBERS

1st Reading

2nd & Final Reading

Motioned by: D. Orange
Seconded by: J. Goode

D. Orange
D. Pettway

P. Owens aye
A. Fox aye
D. Pettway out
D. Orange aye
J. Goode aye

aye
aye
aye
aye
aye

TCP/dm
12-16-88

74. [Signature]
12-18-88

AN ORDINANCE OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 3, OF SECTION 2-100 OF THE CODE OF ORDINANCES OF RIVIERA BEACH, FLORIDA, RELATING TO RATES OF PAY AND SALARY SCHEDULE BY REGRADING OF UNCLASSIFIED POSITION OF DIRECTOR OF PURCHASING UNDER CLASS TITLE PURCHASING; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA as follows:

SECTION 1. That Section 2-100 of Chapter 2, Article VI, Division 3, of the Code of Ordinances of Riviera Beach, relating to rates of pay and salary schedule be amended by regrading the unclassified position of Director of Purchasing as follows:

<u>CLASS TITLE</u>	<u>CLASSIFICATION</u>	<u>PAY GRADE</u>		<u>SALARY</u>	
		From	To	From	To
PURCHASING	DIRECTOR OF PURCHASING	ADM. E		\$27,627-35,916	
			ADM. F	\$31,770-41,301	

SECTION 2. This Ordinance shall take effect upon its final passage and adoption by the City Council and shall not be codified.

PASSED AND APPROVED on first reading the 18th day of January, 1989.

PASSED AND ADOPTED second and final reading this 1st day of February, 1989.

APPROVED:

Clara K. Williams _____
[Signature] _____
[Signature] _____
[Signature] _____

ATTEST:

[Signature]
 City Clerk

1st Reading
 Motioned By: D. Pettway
 Seconded By: D. Orange
 P. Owens aye
 A. Fox: aye
 D. Orange: aye
 D. Pettway: aye
 J. GoodE aye

2nd Reading
D. Orange
A. Fox
aye
aye
aye
absent
aye

J.C.P.
1-9-89

AN ORDINANCE OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER, 2, ARTICLE VI, DIVISION 3, OF SECTION 2-100 OF THE CODE OF ORDINANCES OF RIVIERA BEACH, FLORIDA RELATING TO RATES OF PAY AND SALARY SCHEDULE BY REMOVING THE PURCHASING DIVISION FROM UNDER FINANCE DEPARTMENT AND CREATING THE DEPARTMENT OF PURCHASING; BY DELETING CLASS TITLE "PURCHASING AND STORES" AND CREATING CLASS TITLE "PURCHASING" TO INCLUDE CLASSIFICATION OF DIRECTOR OF PURCHASING AND BUYER; AND TRANSFER CLASSIFICATIONS OF "STORE CLERK" AND "STOREKEEPER" TO CLASS TITLE "PUBLIC WORKS SERVICE;" PROVIDING AND EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, as follows:

SECTION 1. That Section 2-100, of Chapter 2, Article VI, Division 3, of the Code of Ordinances of Riviera Beach, relating to rates of pay and salary schedule be amended by removing the Purchasing Division from under Finance Department.

SECTION 2. That the Department of Purchasing is hereby created.

SECTION 3. That the Class Title "Purchasing and Stores" is hereby deleted from the classification plan.

SECTION 4. That Class Title "Purchasing" is hereby created and includes the two classifications of "Director of Purchasing" and "Buyer."

SECTION 5. That the positions of "Store Clerk" and "Storekeeper" are hereby transferred to Class Title, "Public Works Service."

SECTION 6. This Ordinance shall take effect upon its final passage and adoption by City Council and shall not be codified.

PASSED AND APPROVED on first reading this 18th day of January, 1989.

PASSED AND ADOPTED on second and final reading this 1st day of February, 1989.

Signatures on next page.....

APPROVED:

Clara K. Williams
Mayor

[Signature]
Chairperson

ATTEST:

[Signature]
City Clerk

Allen Tap
Vice Chairperson
[Signature]

Council Members

1st Reading

2nd Reading

Motioned by: D. Orange

A. Fox

Seconded by: D. Pettway

J. Goode

P. Owens aye
A. Fox aye
D. Orange aye
D. Pettway aye
J. Goode aye

aye
aye
aye
absent
aye [Signature]

[Signature]
1-10-89