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CITY ATTORNEY'S OFFICE

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OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 2.04, PURCHASING SYSTEM: 1) INCREASING CITY ADMINISTRATOR PURCHASING AUTHORITY FOR SUPPLIES AND SERVICES, INCLUDING PROFESSIONAL SERVICES, FROM \$100,000 TO \$250,000; 2) ELIMINATING ALL LOWER PURCHASING LIMITS FOR CERTAIN PURCHASES; 3) RAISING THE DOLLAR AMOUNT TO CONDUCT "FORMAL" REQUESTS FOR PROPOSALS/QUALIFICATIONS (RFP/Q) TO \$50,000; 4) ESTABLISHING CITY ADMINISTRATOR AUTHORITY TO WAIVE RFP/Q REQUIREMENTS FOR PROFESSIONAL SERVICES PURCHASES UP TO FIFTY THOUSAND DOLLARS (\$50,000); 5) ADDING A COMPETITIVE PROCESS SPECIFIC TO PURCHASE OF COMBINED PRODUCTS AND SERVICES FOR INFORMATION TECHNOLOGY SYSTEMS; AND 6) CLARIFYING CERTAIN DEFINITIONS AND OTHER CLEAN UP

WHEREAS, During the reporting period of 10 months in 2013, 12 months in 2014 and 2015 and 6 months of 2016, or a total of 28 months of contract data divided by those contracts above and contracts below one hundred thousand dollars (\$100,000) the City Administrator reviewed and signed off under her authority, eight hundred and twenty eight (828) contracts and Oakland City Council reviewed and authorized 763 contracts; and

WHEREAS, During the reporting period of 10 months in 2013, 12 months in 2014 and 2015 and 6 months of 2016, or a total of 28 months of contract data divided by those contracts above and contracts below one two hundred and fifty thousand dollars (\$250,000) the Oakland City Council reviewed and authorized 476 contracts; and

WHEREAS, increasing the City Administrator's contract authority back to \$250,000, four to six (4-6) weeks will be saved for more than 30% of the contracting activity; and

WHEREAS, increasing the informal limit from twenty-five thousand (\$25,000) to fifty thousand dollars (\$50,000), four to six (4-6) weeks will be saved for more than 25% of the informal contracting activity and reduce the need to request waivers of the Request for Proposal process for approximately 10% of informal contracts; and

WHEREAS, the City Administrator must have the capacity to make critical time sensitive contracting decisions pertinent to operational integrity in the best interest of the City and in consideration of the safety, health and welfare of Oakland residents; and

WHEREAS, the City Council has adopted Ordinance No. 7937 C.M.S., as amended, known as the City of Oakland "Purchasing Ordinance" and set forth at Oakland Municipal Code Title 2, Chapter 2.04, which establishes the procedures for procurement and contracting and establishes contract approval processes and authority of the City Administrator to bind the City by written contract or purchase order; and

WHEREAS, the City Council has adopted Ordinance No. 12976 C.M.S., as amended, known as the City of Oakland "Purchasing Ordinance" and set forth at Oakland Municipal Code Title 2, Chapter 2.04, Purchasing System, Article I, Bidding, Contracting and Purchasing, To Decrease Amounts For Certain Purchases Requiring City Council Approval and Decrease the City Administrator's Authority For Certain Purchases and

WHEREAS, the City Administrator seeks to amend current purchasing practices in order to achieve greater efficiencies in current contracting practices thereby ensuring that the City derives the maximum benefit for the expenditure of City funds, and

WHEREAS, the City spends millions of dollars on outside contracts each year, and it is critical the City Council carefully examines all City expenditures in order to balance the budget; and

WHEREAS, the City spends millions of dollars on technology systems, the City seeks to add a competitive process specific to the purchase of combined products and services for information technology systems;

WHEREAS, the City Council wishes to increase City Administrator's purchasing authority for supplies, services and/or combination thereof and professional services, and commensurately increase the amounts for such purchases that require City Council approval;

NOW, THEREFORE, the Council of the City of Oakland does ordain as follows:

Section 1. The Purchasing Ordinance, codified at Oakland Municipal Code Chapter 2.04 is amended to add new provisions (underscoring) and delete provisions (~~strikethrough~~) as follows:

Article I – Bidding Contracting and Purchasing

2.04.010 – Definitions.

The following words and phrases whenever used in this article shall be construed as defined in this section:

"Apprentice" is defined as that term is defined in the Oakland Municipal Code.

"Appropriation Resolution" is defined as a city of Oakland resolution approved by the City Council that includes:

1. A description of the material or service to be obtained under contract;
2. A not-to-exceed contract amount for the material or service;
3. Identification of the funding source for the material or service;
4. An estimated time frame for execution and completion of the contract; and

5. A statement identifying the contract-related program or project as "new" or "previously existing."

"Advertisement" as required in Section 2.04.050 A, below, means a written public notice published or placed in the City's official paper of record, iSupplier, the City's official website describing the specifics of a product or service needed, City's contracting requirements, estimated value of service, terms, deadlines and other pertinent information. This definition shall not apply to "informal bid" or request for proposal/qualifications processes described in Sections 2.04.040 and 2.04.051, below.

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"City Administrator" means the City Administrator of the city of Oakland or an officer specifically designated to act for the City Administrator. Authorizations not specified in this article shall be made in writing by the City Administrator and filed with the City Clerk.

"Disadvantaged business enterprise (DBE)" is defined as that term is defined in the Oakland Municipal Code.

"Emergency Purchase" means a purchase deemed by the City Administrator to be necessary for the immediate preservation of the public peace, health or safety as described in Sections 2.04.020.G and H, below.

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"Formal bidding, solicitation or proposals/qualifications" means the competitive processes (advertising and bidding or solicitation) required in Sections 2.04.050 (supplies, services or combination) and 2.04.051 (professional services), for the purchase of supplies, services or combination in excess of fifty thousand dollars (\$50,000.00), or for the purchase of professional services in excess of twenty-five thousand dollars (\$250,000.00)

"Informal bidding, solicitation or proposals/qualifications" means the competitive processes (advertising and bidding or solicitation) required by the City Administrator in a city administrative instruction for the purchase of supplies, services or combination up to and including fifty thousand dollars (\$50,000.00), or for the purchase of professional services up to and including twenty-five thousand dollars (\$250,000.00). Solicitation of three quotes or responses (required from local certified businesses first) shall be the minimum number of businesses solicited.

"Local business" means a business firm with fixed offices or distribution points located within city of Oakland boundaries and listed in the permits and license tax paid file with an Oakland business street address.

"Local business enterprise" and "small business enterprise" means a business firm for profit or not for profit entity certified by the Office of the City Administrator as a "Local Business Enterprise" with fixed office or distribution point(s) located within the geographic boundaries of Oakland and as otherwise defined under Oakland's LBE/SLBE construction, procurement and professional services contracting programs.

"Local hire is defined as that term is defined in the Oakland Municipal Code.

"Oakland Certified" means a local business or nonprofit entity of any size that the Office of the City Administrator has deemed, through the local business certification process, to be an Oakland certified business/entity for the purposes of City of Oakland procurement of goods and services, including professional services.

"Pay-go funds" are the annual appropriations to the Mayor and each Councilmember to pay for discretionary projects.

"Prevailing wages" is defined as that term is defined in the Oakland Municipal Code.

"Professional services" means services which are of an advisory nature that provide a recommended course of action or personal expertise that will result in a transmittal of information to the city, either verbal or written, related to city administration and management or program management, innovation and which must be performed by appropriately licensed consultants, architectural or engineering personnel, or which are so technical or complex in nature that such services must be performed by persons possessing unique or special training, education or skills. Notwithstanding the above, this definition shall not include contracts for services between the city and another public entity.

~~"Local business enterprise" is defined as that term is defined in the Oakland Municipal Code.~~

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"Purchase" means and includes rental or lease of supplies, as well as purchase.

"Services" means and includes labor, professional services, consulting services, or a combination of services and supplies which shall include public works projects.

"Supplies" means and includes supplies, materials, commodities and equipment.

2.04.015 - Scope of the purchasing ordinance.

The provisions of this chapter shall apply to city contracts for public works projects, public works construction projects, procurements and purchases (as defined in Section 2.04.010), and to services including, but not limited to, contracts for services that are professional, technical or scientific in nature as well as contracts for any other services. However, this chapter has not applied to and shall not apply to agreements for grants awards given by the City of Oakland to support nonprofit and similar organizations providing service programs to the public at large, nor shall it apply to pay-go grants to non-City entities which are governed by Chapter 2.07.

2.04.016 - Reserved.

2.04.017 - Reserved.

2.04.018 - Pay-go funded purchase of services, goods and materials—Conditions for exemption from Council approval.

A. The City Administrator is authorized to purchase services (professional or otherwise), goods, materials or equipment for capital improvement projects, in any amount, designated by the Mayor or individual Councilmembers from their respective balances in the City's pay-go fund account without review or action by the City Council subject to each of the following requirements:

1. Such purchases may be made only for the purposes permitted by the funding source(s) of the pay-go account;
2. Such purchases shall be paid for only with pay-go funds or by a combination of pay-go and private funds, such as funds raised by community groups or individuals for a park or other community project; and
3. Such purchases shall be subject to all City of Oakland contracting laws, programs and policies such as, but not limited to, living wage, prevailing

wages, equal benefits, local and small local business enterprise and nondiscrimination or City Council waiver by resolution shall be obtained as necessary by each of these programs or policies.

- B. City Administrator Must Maintain Separate Record of Pay-Go Purchases and Make Annual Report to City Council Identifying Prior Fiscal Year's Purchases. The City Administrator shall maintain a separate record of pay-go purchases including the name of the person who designated the purchase, the amount of the purchase, the purpose of the purchase, and the name, address and any other information sufficient to identify the consultant, contractor or vendor. No later than October of each year, the City Administrator shall provide an informational report to the City Council's Finance Committee and to the City Council regarding pay-go purchases that were made during the prior fiscal year.

2.04.020 – Authority of the City Administrator.

~~A. City Administrator's Purchase Authority. Except as provided in Section 2.04.020.B, the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council as follows:~~

1. ~~Supplies, Services or a Combination. Purchases up to two hundred fifty one hundred thousand dollars (\$24500,000.00) in any single transaction or term agreement; and~~
2. ~~Professional Services. Purchases up to two one hundred fifty thousand dollars (\$24500,000.00) in any single transaction or term agreement.~~

~~**B. Limits for Non budget Identified, Redevelopment Agency Funded, Affordable Housing, Voter Approved Measure Funded and Technological, Computer Related Purchases or Contracts. The City Administrator's contract authority is subject to lower limits for certain types of purchases or contracts.**~~

1. ~~**Purchases or Contracts Subject to Lower Limits:**~~
 - a. ~~Purchases or contracts related to programs or projects that have not been previously identified in:~~
 - i. ~~The current, approved CIP budget;~~
 - ii. ~~The approved operating budget; or~~
 - b. ~~Purchases or contracts for services or supplies related to affordable housing projects;~~
 - c. ~~Purchases or contracts that are or will be funded, directly or indirectly, by the Redevelopment Agency;~~
 - d. ~~Purchases or contracts that are or will be funded, directly or indirectly, by funds generated by a voter approved measure; or~~
 - e. ~~Purchases or contracts for any technological, computer or computerized system services, software, equipment, hardware or products.~~
2. ~~**Purchase Limits. The City Administrator is authorized to bind the City by written contract or purchase order for the types of purchases or contracts identified above without previous specific action of the Council as follows:**~~
 - a. ~~Supplies, Services or a Combination. Purchases up to fifty thousand dollars (\$50,000.00) in any single transaction or term agreement;~~
 - b. ~~Professional Services. Purchases up to fifteen thousand dollars (\$15,000.00) in any single transaction or term agreement.~~

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~~3. Appropriation Resolution. Notwithstanding the limits in this section, any purchase or contract identified in a Council-approved Appropriation Resolution is subject to the City Administrator's limits in Section 2.04.020.A.~~

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C. Advertising and Bidding or Solicitation. The City Administrator shall conduct competitive solicitation processes required in this chapter (Section 2.04.040.B) for all purchases or contracts within City Administrator authority.

D. Reports. The City Administrator shall present the following reports to the City Council on a periodic basis:

~~1. Redevelopment Agency Funded Contracts. A prospective report listing all contracts anticipated within the next year to be directly or indirectly paid from Redevelopment Agency funds.~~

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2. General Report. A bi-annual report listing all purchases and contracts authorized by the City Administrator, or the City Administrator designee, within the City Administrator's contract authority during the preceding six-month period prior-year. The City Administrator shall post a list of all contracts in which she has authorized waivers of the advertising and competitive selection requirements under Section 2.04.042 D. or 2.04.051 B. of the Oakland Municipal Code.

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E. Findings Required for Service Contracts. The City Administrator shall make determinations required by Oakland Charter Section 902(e) for service contracts as follows:

1. Professional Services Contracts. Contracts for professional services shall be of a professional, scientific or technical and temporary nature.
2. Council Approval for Other Service-Only Contracts. The City Administrator shall submit all other service-only contracts to the Council for approval. Such contracts shall be in the public interest because of economy or better performance and must obtain a vote of two-thirds of the members of the Council.
3. Loss of Employment or Salary. Contracts for professional services or service-only shall not result in the loss of employment or salary by any person having permanent status in the competitive service.

F. Local Vendor Preferences. The City Administrator is authorized in the evaluation of all sealed, faxed and telephone bids for the purchase of supplies, to extend a two and one half percent preference to local Oakland certified business enterprises and an additional two and one half percent preference to Oakland certified small local business enterprises in award of all purchase orders.

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The City Administrator shall semiannually prepare and submit to the City Council a report on participation by local and small local business enterprises in City contracts for the prior year.

F. Emergency Supply and Services Procurement. In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract or purchase order exceeding the City Administrator's non-emergency purchase authority in any one transaction, without advertising or previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

G. Emergency Professional Services and Consultant Agreements. In a situation deemed by the City Administrator to be an emergency for the immediate preservation of the public peace, health or safety, the City Administrator may authorize a contract exceeding the City Administrator's non-emergency purchase authority in any one transaction, without previous specific action by the City Council, for the payment for services, or a combination thereof, to be furnished to the City. All emergency contracts awarded by the City Administrator shall be presented for informational purposes to the City Council within a reasonable time of contract execution.

H. City Administrator Authority During City Council Annual Recess. Notwithstanding the provisions of subsections A and B of this section, during the month of August through the first City Council meeting in September, known as the annual recess of the City Council, as provided for in the City Council's Rules of Procedures, the City Administrator shall be authorized: (1) to bind the City, by written contract or purchase order, involving an expenditure not exceeding five hundred thousand dollars (\$500,000.00), without previous specific action by the City Council, for the purchase of supplies or payment for services, or a combination thereof, in any one transaction, to be furnished to the City, subject to the availability of funds and procedures set forth in this article, including competitive bidding, and (2) to bind the City, by written contract, involving an expenditure not exceeding three hundred thousand dollars (\$300,000.00) in any one transaction, subject to the availability of funds for the payment for professional services and consultant services furnished to the City and procedures set forth in this article, without previous specific action of the City Council. Contracts for professional services, supplies, services or combination that are in excess of the City Administrator's authority shall be subject to the City Council's recess agenda process and shall be presented to the City Council for ratification upon return from its annual recess.

I. Apprentice Hiring and Local Hire. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids for public works projects to require contractors to comply with the City's apprentice hire and programs as set forth in this code.

J. Living Wage. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for services to require contractors or consultants to comply with the City's living wage ordinance, as set forth under Chapter 2.28 of this code.

K. Prevailing Wage. The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bids and/or proposals for public works projects to require bidders/contractors to pay prevailing wages as required under this code.

L. Oakland Specifications for Public Works Construction ("Greenbook"). The City Administrator is authorized in evaluation of all sealed, faxed and telephoned bid and/or proposals for public works construction to require bidders/contractors to comply with and perform construction in accord with the Oakland Specifications for Public Works Construction ("Greenbook"), as set forth in this code. Notwithstanding the above, nothing herein is intended to limit authority of the City Council to modify the specifications for public works construction by legislative action on a case-by-case basis.

M. Local and Small Local Business Enterprise (L/SLBE) Contracting Programs. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids for

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public works projects, for the purchase of supplies and in evaluation of proposals for professional services contracts, to require contractors to comply with, and to extend the benefits of, Oakland's L/SLBE construction, procurement and professional services contracting programs, as set forth in this code.

- N. Equal Benefits Program. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids and/or proposals for services to require contractors or consultants to comply with the City's Equal Benefits Program requirements.
- O. Equal Benefits Program. The City Administrator is authorized in the evaluation of all sealed, faxed and telephoned bids and/or proposals for services to require contractors or consultants to comply with the City's Equal Benefits Program requirements.

2.04.021 - City Auditor authority.

- A. City Auditor Purchase Authority. The City Auditor shall have the authority to bind the City by written contract in any amount without previous specific action of the Council or City Administrator to obtain professional, technical or scientific services needed to audit the books, accounts, money and securities of all departments and agencies of the City and such other matters as the Council may request; to report to the Council periodically the results of such audits and to advise and make recommendations to the City Administrator regarding accounting forms design, fiscal and statistical reports and the methods or procedures for maintaining the accounts and accounting system throughout all departments, offices and agencies of the City; to report to the Council instances of noncompliance with accepted accounting principles where recommendations for compliance have not been implemented by the City Administrator after reasonable time and opportunity; and to conduct surveys, reviews, and audits as the Auditor deems to be in the best public interest or as required by the Council or Mayor as specified in Oakland Charter Article IV, Section 403.
- B. City Auditor Contracts Subject to Council Appropriation of Contract Funds. All contracts authorized by the City Auditor pursuant to this section shall be subject to the prior or concurrent appropriation and allocation of funds by the City Council in (1) the current two-year or mid-cycle adjusted budget for the City Auditor, including any budget adjustments allowed, or (2) an appropriation resolution as defined in section 2.04.010 above, or (3) a funding resolution specific to a particular contract(s).
- C. Reports. The City Auditor shall present to the City Council, on an annual basis, a report listing all professional services contracts authorized by the City Auditor during the prior year.
- D. Compliance with Competitive Process, Personnel Findings, Purchasing Programs and Other Purchasing Requirements. With the exception of the contract authority granted under this section, all contracts entered into by the City Auditor pursuant to this section are subject to the competitive processes required under sections 2.04.050 and 2.04.051, below, and the personnel findings, purchasing programs and other purchasing requirements set forth or referenced in the remainder of this chapter.

2.04.030 – City Council approval requirements.

- A. Council Award of Purchases or Contracts in Excess of City Administrator's Authority. The Council shall award any purchase orders or contracts in excess of the City Administrator's authority as follows:

1. ~~City Council Authority. Except for purchases subject to limits in Section 2.04.030.A(2), the Council shall award all contracts in the following amounts:~~

- a. ~~Supplies, Services or Combination. Purchases in excess of two one hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement; and~~
- b. ~~Professional Services. Purchases in excess of two one hundred fifty thousand dollars (\$250,000.00) in any single transaction or term agreement.~~

2. ~~Nonbudget Identified, Redevelopment Agency Funded, Affordable Housing, Voter Approved Measure Funded and Technological, Computer Related Purchases or Contracts. The Council shall award all contracts in excess of the City Administrator's limits as follows:~~

- a. ~~Supplies, Services or Combination. Purchases in excess of fifty thousand dollars (\$50,000.00) in any single transaction or term agreement;~~
- b. ~~Professional Services. Purchases in excess of fifteen thousand dollars (\$15,000.00) in any single transaction or term agreement;~~
- c. ~~Appropriation Resolution. Notwithstanding the limits in this section, any purchase or contract identified in a Council approved Appropriation Resolution is subject to the City Administrator's limits in 2.04.020.A.~~

B. ~~Validity of Contracts. Legislative actions of the Council awarding any contract shall not constitute a contract. No contract shall be binding or of any force or effect until signed by the City Administrator. The City Administrator's signature shall constitute certification that there remains an unexpended and unapplied balance of the appropriations or funds sufficient to pay the estimated expense of executing the contract.~~

C. ~~Contract Extensions, Renewals, Amendments. The requirements for City Council approval specified in Section 2.04.030 shall apply to all expenditures, extensions, amendments or renewals of an existing or expired contract or term agreement whenever aggregated expenditures under the original contract or term agreement, or extensions, renewals or amendments that exceed: (1) the City Administrator's contract approval limit, or (2) the total contract amount approved by Council in a City resolution.~~

2.04.040 – Contracting procedures.

A. ~~Contracts Subject to Council Appropriation and Allocation of Program or Contract Funds. All contracts authorized by the Council or City Administrator shall be subject to the prior appropriation and allocation of funds by the City Council for the City programs, activities, functions or operations, which the purchase of any supplies, professional or other services or combination are intended to support.~~

B. ~~Limits for Informal and Formal Solicitation Procedures.~~

- 1. ~~Informal Advertising and Bidding. Informal advertising and bidding procedures established by the City Administrator are required for purchase orders or contracts for supplies, construction services or combination involving expenditures between five hundred dollars (\$500.00) and fifty thousand dollars and one cent (\$50,000.01) in any single transaction or term agreement;~~
- 2. ~~Formal Advertising and bidding. Formal advertising and bidding, described in Section 2.04.050, is required for purchase orders or contracts for supplies,~~

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construction services or combination involving expenditures in excess of fifty thousand dollars (\$50,000.00) in any one transaction or term agreement.

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3. Informal RFP/RFQ Process. Informal advertising and solicitation of proposals/qualifications is required for professional services contracts involving expenditures of ~~fifty twenty-five~~ fifty thousand dollars (\$50,000.00) or less;

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4. Formal RFP/RFQ Process. Formal advertising and solicitation of proposals/qualifications described in Section 2.04.051 is required for professional services contracts involving expenditures of more than ~~fifty twenty-five~~ fifty thousand dollars (\$50,000.00).

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C. Purchase Orders, Contract Format, Petty Cash.

1. Purchase orders shall be used for all purchases of supplies, services or combination or professional services in excess of five hundred dollars (\$500.00). The purchase order shall incorporate by reference all relevant agreements, including but not limited to the City of Oakland Professional Services Agreement, negotiated agreements, vendor agreements and exhibits, attachments, addendums and other supporting documents that, together, constitute the entire agreement.
2. All purchases and contracts for supplies, services or combination of professional services in excess of five hundred dollars (\$500.00) shall be in writing, in a format approved by the City Attorney.
3. The City Administrator shall institute control procedures for petty cash funds without prior use of purchase orders or contracts.

D. Miscellaneous Procedures.

1. Notwithstanding the above, nothing shall preclude the City Administrator from placing any purchase, procurement or contract within the City Administrator's approval limit on the City Council agenda for discussion or approval.
2. The City Administrator shall institute informal contacting procedures for the purchase of supplies, services or combination.
3. The City Administrator shall institute informal and formal contracting procedures for the purchase of professional services.
4. The City Administrator shall maintain a centralized list of all contracts executed by the City Administrator, or the City Administrator's designees, within the City Administrator's authorization limit, for the prior year.
5. Pursuant to the City Charter, the City Attorney will draft standardized contract terms and conditions and standardized contracts for professional services, purchasing, procurement and for supplies, services or combination.
6. Pursuant to the City Charter, the City Attorney will approve the form and legality of all contracts before their execution.

2.04.0452 – Competitive Process for Purchasing Computerized / Information Technology Systems (Combined Purchase of Products and Professional Services)

- A. For the purpose of this section, "Computerized or Information Technology (IT) Systems" shall mean computerized or automated systems comprised of software, computer hardware, and/or equipment and/or technical support and maintenance services, and will be referred to hereafter as "IT Systems". Such IT Systems include, but are not limited to, financial, payroll, payment collection, financial auditing, tracking, cataloguing,

parking meter, security and other electronic systems obtained in a single purchase or in multiple, related concurrent purchases.

- B. For the acquisition of any IT System, the City Administrator shall conduct a multiple-step solicitation process by soliciting proposals, requiring vendor demonstrations when appropriate and feasible, and evaluating and rating proposals and performance in demonstrations on the basis of uniform criteria to be determined by the City Administrator on a case-by-case basis.
- C. Contracts for IT Systems shall be awarded based on the combination of product suitability for the proposed project and record of product performance, vendor(s) qualifications, expertise and record(s) of performance on projects for other agencies or businesses, prices and fees and other appropriate criteria the City Administrator determines to best meet the needs of the City.
- D. Waiver. The City Council may waive the requirements of this section upon a recommendation of the City Administrator and finding and determination by the City Council that it is in the best interests of the City to waive solicitation processes.

2.04.045 - Pre-qualification and bid processes for general construction services and the Preferred Small Local Business ("PSLB") program.

- A. Optional Prequalification for Construction Work over \$250,000.00. The City may, in its discretion and when deemed by the City Administrator to be in the best interests of the City, establish a list of pre-qualified businesses to perform as-needed and specified construction work in excess of \$250,000.00 ("large projects").
 - 1. When deemed by the City Administrator to be in the best interests of the City, the City will advertise a request for qualifications for licensed construction services in accord with Subsection 2.04.050 A., below, to perform as-needed or specified construction work exceeding \$250,000.00.
 - 2. When a pre-qualified list is established for large projects, the City may limit solicitations for bids for such work to three or more business on the pre-qualified list.
 - 3. Contracts awarded through a pre-qualified process are subject to the City's insurance, bond, labor and all social equity policies such as, but not limited to, payment of prevailing wages, local and small local business participation and local hire.
- B. Mandatory Preferred Small Local Business Program (MPSLB)—Pre-Qualification for Construction Work Under \$250,000.00. The City will establish a list of pre-qualified businesses to perform as-needed and specified construction work less than \$250,000.00 ("small projects").
 - 1. The City will solicit qualifications solely from Oakland certified small, local business enterprises in order to establish a MPSLB pre-qualified list of small local businesses to perform small project construction contracts.
 - 2. When a pre-qualified list is established the City will limit solicitations for bids for such work to three or more business on the MPSLB pre-qualified list.
 - 3. Reserved.
 - 4. MPSLB contracts are exempt from the requirements of Oakland's Local and Small Local Business Enterprise (L/SLBE) program for construction contracts.
 - 5. With the exception of the L/SLBE program, MPSLB contracts are subject to insurance, bond, labor and social equity policies such as, but not limited to, payment of prevailing wages and local hire.

- 6. Circumstance for Open Market Solicitation. The City Administrator may solicit bids on the open market, without advertising, when all responsive bids exceed the engineer's estimate.
- C. Award of Construction Contracts. Contracts awarded through a pre-qualification process shall be awarded to the lowest responsible, responsive bidder.
- D. Construction contracts awarded through a pre-qualification process exceeding \$100,000.00 are subject to Council approval in accord with Section 2.04.030, above.
- E. Removal From Pre-Qualified List. Businesses that lose necessary qualifications to perform the work, including, but not limited to, licenses or insurance, or that become disqualified or debarred, shall be removed from the pre-qualified list.

2.04.050 – Bid procedure.

- A. When Advertising Required. Where the cost of services, supplies or combination required by the city exceeds fifty thousand dollars (\$50,000.00), the City Clerk shall call for formal bids by advertising as defined in Section 2.04.010, above, and at least once in the official newspaper of city not less than ten calendar days before the date for receiving bids. The City Administrator may deem it advisable to require more than one advertising of the call for bids.

Notwithstanding the foregoing, the requirements of this section shall not apply to the mandatory preferred small local business (MPSLB) pre-qualification program in Subsection 2.04.045 B., above, for construction services.

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- B. Bid Security. Whenever the city calls for bids for services and whenever the City Administrator deems it advisable in calls for bid supplies, each bidder shall be required to submit with the bid as bid security either cash, certified check or a cashier's check of or on some responsible bank in the United States, in favor of and payable at sight to the city, in an amount not less than ten percent of the aggregate amount of the bid.

Alternatively, any bid may be accompanied by a surety bond as follows:

1. For contract bids of five hundred thousand dollars (\$500,000.00) or less, the surety bond must be furnished by a United States non admitted corporate surety that has an A.M. best rating A-, at minimum, guaranteeing to the city that the bidder will enter into the contract and file the required bonds within the period;
2. For contract bids over five hundred thousand dollars and one cent (\$500,000.01) and less than one million dollars (\$1,000,000.00), the surety bond must be furnished by a United States non admitted corporate surety that has an A.M. best rating of A+, at minimum;
3. For contract bids over one million dollars (\$1,000,000.00) and less than five million dollars (\$5,000,000.00), the surety bond must, at minimum, be furnished by a United States non admitted corporate surety that appears on the Treasury List subject to the bonding limits which the Treasury List imposes on such surety;
4. For contract bids in excess of five million dollars (\$5,000,000.00), the surety bond must be furnished by a corporate surety admitted in the state of California or Lloyds or London; and
5. Prospective bidders may file annual surety bonds covering all bids to be made by such bidder during a calendar year with approval of the City Administrator.

If the bidder to whom the contract is awarded shall, for twenty (20) calendar days after receipt of the contract, fail or neglect to enter into the contract and file the required bonds, the bid security or bid surety bond shall be forfeited. The City Administrator shall draw the money due on such bid security or bid surety bond and pay the same or any cash deposited into the City Treasury, and under no circumstances shall it be returned to the defaulting bidder.

- C. Multiple Bids. No person, firm or corporation shall be allowed to make or file or be interested in more than one bid for the same supplies, services or both.
- D. Bid Forms. All bids shall be made upon forms to be prepared by city and furnished upon application. All bids shall be clearly written without any erasure or interlineations.
- E. Opening of Bids and Awards. All bids submitted under this section shall be sealed, identified as bids on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids. Bids shall be opened by the City Administrator or the City Administrator's designated representative, in public, at the time and place designated in the notice inviting bids. Bids received after the specified time shall not be accepted and shall be returned to the bidder unopened. The contract shall be let to the lowest responsible bidder, as defined herein, by the City Council at any time not exceeding sixty (60) calendar days after bid opening. The City Council may reject any and all bids and waive informalities or minor irregularities in the bids.

In the bid for Public Works Construction Projects, the City Administrator may deem it advisable to delay the submission of a list of subcontractors to be on the project. Such list shall be sealed, identified as a subcontractor list on the envelope and submitted to the City Clerk at the place and time specified in the public notice inviting bids.

- F. Disposition of Bid Security. All bid securities and bid bonds shall be returned to the unsuccessful bidders after award of the contract. The bid security and bid bond of the successful bidder shall be returned after execution of the contract and deposit of the necessary bonds.
- G. Approval of Faithful Performance and Labor and Materials Bonds—Waiver. Faithful performance and labor and material bonds in an amount equal to at least fifty (50) percent of the contract price shall be required by city specifications of contracts for services and shall be approved as to form by the City Attorney. Whenever the City Administrator deems it advisable in the purchase of supplies, City Administrator may require the furnishing of a faithful performance bond in an amount equal to at least twenty-five (25) percent of the contract price; that bond shall be approved as to form by the City Attorney.
- H. Time of Completion. The contract shall specify the time within which the work shall begin and when it shall be completed according to specifications. The City Administrator may extend time for acts of the city, acts of God, weather or strikes, or other circumstances over which the contractor has no control. The Council may extend the time, but in no event shall the time for the performance of any contract be extended more than ninety (90) days in addition to extensions as authorized by the City Administrator, except by a two-thirds vote of the Council.

In case of failure on the part of the contractor to complete the contract within the time specified in the contract or within the extension of the time as provided, the contract may be terminated and the contractor shall not be paid or allowed any further compensation for any work done under the contract, and the City Administrator may proceed to complete such contract either by reletting or otherwise, and the contractor and contractor's surety shall be liable to the city for all loss or damage that the city may suffer because contractor fails to complete the contract on time.

- I. Exceptions to Competitive Bidding. Upon a finding in each instance by the City Council that any of the following conditions exist, the provisions of this section shall not apply:
 - 1. To contracts involving professional or specialized services such as, but not limited to, services rendered by architects, engineers and other specialized professional consultants;
 - 2. When calling for bids on a competitive basis is impracticable, unavailing or impossible;
 - 3. Placement of insurance coverage;
 - 4. When public work is performed by the city with its own employees;
 - 5. In other cases when specifically authorized by the City Council after a finding and determination that it is in the best interests of the city.
- J. No Bids. If no valid bids are received after advertising as required, the City Administrator may proceed to hire or have the services performed or purchase the supplies in the open market.

2.04.051 – Competitive process and qualification-based awards for professional services contracts.

- A. Request for Qualifications or Proposal for Professional Services Contracts in Excess of Fifty Twenty-Five-Thousand Dollars (\$5025,000.00). The City Administrator, or the City Administrator's designee, shall conduct a request for proposal ("RFP") or request for qualifications ("RFQ") process for the award of contracts that exceed fifty thousand dollars (\$5025,000.00) and are exempt from bidding under Section 2.04.050.I.1. The city's RFP and RFQ processes shall be set forth in a City Administrator's administrative instruction. The RFP or RFQ requirement applies, but is not limited to, contracts for professional, technical or specialized services. The selection and award of contracts for professional services shall be based on demonstrated competence and qualifications for the types of services to be performed, at fair and reasonable prices to the city.
- B. Waiver- City Administrator Authority, City Council Authority. Upon a finding by the City Administrator that it is in the best interests of the City, the City Administrator may waive said RFP/Q requirements for professional services contracts up to \$50,000. Upon a finding by the City Council or its designee that it is in the best interests of the city, the City Council may waive said the RFP/Q requirements for an RFP or RFQ process for contracts in any amount.

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2.04.060 – Lowest responsible bidder.

In addition to price, in determining the lowest responsible bidder, consideration shall be given to:

- A. The quality and performance of the supplies to be purchased or services to be provided by the seller;
- B. The ability, capacity and skill of the bidder to perform the contract or provide the supplies or services required;
- C. The ability of the bidder to provide the supplies or services promptly or within the time specified, without delay;
- D. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- E. The quality of bidder's performance on previous purchases by, or contracts with, the city;

- F. The ability of the bidder to provide future maintenance, repair parts and services for the use of the supplies purchased;
- G. As permitted by law, a certified bidder's affirmative action hiring plan to be submitted with all sealed bids for supplies and commodities over five thousand dollars (\$5,000.00).
 1. To be considered responsible and as permitted by law, bidder shall submit certification that bidder is in compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375), and
 2. To be considered responsible and as permitted by law, the bidder must have a current work force racially and ethnically proportionate to the population parity for the area from which bidder's work force is drawn (national, state, or local), must comply with subsection (G)(1) of this section, or must have an affirmative action plan to achieve population parity for the area in which they do business. The plan should include all aspects of employment recruiting, hiring, promotions, and layoff.

2.04.070 – Open market purchase.

Except as otherwise provided by this chapter or unless otherwise directed by the City Administrator, all purchases of supplies or services involving an expenditure of city funds in an amount not exceeding fifteen thousand dollars (\$15,000.00) shall be purchased, when feasible and when in the best interest of the city, in the open market by written quotation or telephone solicitation, without newspaper advertisement and without observing the procedure prescribed for the award of formal bid purchases.

The procedure for such open-market purchases shall be as specified in control procedures to be established by the City Administrator.

2.04.080 – Cooperative purchasing agreements.

Where advantageous for the city, the City Administrator may purchase supplies or services as defined in Section 2.04.010, through legal contracts of other governmental jurisdictions or public agencies that were awarded pursuant to an appropriate competitive process (i.e., advertised and bid for products and non-professional services; advertised and awarded through an RFP/Q process for professional services) without further contracting, solicitation, or formal bidding. Cooperative agreements are subject to City of Oakland purchasing and other applicable policies and requirements set forth in the City's standard contracts and insurance requirements.

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2.04.090. Surplus supplies, purchases.

When it is advantageous to the city, the City Administrator may direct the purchase of surplus supplies from the United States Government, or any agency thereof, or from the state of California, or any agency thereof, or any public body, without compliance with open market purchase provisions, formal bidding requirements or entering into a formal contract.

2.04.100 – Inspection and testing.

The receiving department shall inspect supplies delivered and services performed to determine their conformity with the specifications set forth in the purchase order or contract and shall report any deficiencies to the City Administrator or officer authorized by the City Administrator. The city may require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with specifications.

2.04.110 – Contract splitting prohibited.

- A. It is unlawful to split or separate into smaller work orders, projects, purchase orders or contracts or any public work project for the purpose of evading the provisions of this article.
- B. Splitting or separating a transaction means reducing the amount of any supply or service to be furnished to the city when there is a reasonable knowledge that the same supply or service will be additionally required within the same budgetary term, when there are funds available for the project or purchase and the sole purpose is to knowingly avoid the formal calling of bids. When it is to the benefit of the city to split or separate a transaction, the proposed splitting or separation shall be referred to the City Council for its determination in accordance with Section 2.04.050.I.

2.04.120 - Surplus supplies and equipment—Disposal or destruction.

- A. Authority of Purchasing Supervisor. All using departments shall submit to the Purchasing Supervisor, at such times and in such form as Purchasing Supervisor shall prescribe, reports showing all supplies that are no longer used or that have become obsolete or worn out. The Purchasing Supervisor shall have authority to sell at public auction after advertising for one day in the official newspaper of city all supplies that cannot be used by any department or that have become unsuitable for city use, or to exchange or trade in the same for new supplies. However, the sales of such supplies may be made to other public bodies at the fair market value.
- B. Authority of City Administrator. Except as otherwise prohibited by law, the City Administrator may authorize the abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations, of city property which has no commercial value or of which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Such determination shall be made in writing and countersigned by the Director of Finance and Management and City Administrator.
- C. Donation of Property. Except as otherwise prohibited by law, the donation to public bodies, charitable or nonprofit civic organizations, of surplus supplies or any other surplus property owned by the city (excluding real property) that has a value exceeding its continued care, handling, maintenance or storage, may be authorized only by resolution or ordinance of the City Council upon a finding by the City Council that such property is surplus to city needs and that the donation is in the best interests of the city.
- D. Sale of Property. Sale by means other than public auction of surplus supplies or any other surplus property owned by the city (excluding real property) may be authorized only by resolution or ordinance of this City Council upon a finding by the City Council that such sale is in the best interests of the city. However, such sales shall be authorized only at or above the fair market value of the property as determined by the City Administrator.

2.04.130 - Administrative controls.

The City Administrator shall prepare administrative directives and controls sufficient to carry out the intent of this article.

2.04.140 – Collusion with bidder – Effect on officer.

Any officer of the city, or of any department thereof, who shall aid or assist a bidder in securing a contract to furnish labor, material or supplies at a higher price than that proposed by any other bidder, or who shall favor one bidder over another by giving or withholding information or who shall willfully mislead any bidder in regard to the character of the material or supplies called for, or who shall knowingly accept materials or supplies of a quality inferior to those called for by the contract, or who shall knowingly certify to a greater amount of labor performed than has been actually performed or to the receipt of a greater amount or different kind of material or supplies than has been actually received, shall be deemed guilty of malfeasance and shall be removed from office, and be forever ineligible to hold any office or employment.

2.04.150 - Unauthorized purchases—Exceptions.

It is unlawful for any officer or employee to purchase or contract for supplies or services for the city other than as hereinafter prescribed, excepting purchases made from petty cash, emergency purchases or other purchases conforming to control procedures established by the City Administrator. Any purchases, contracts or obligations to pay made contrary to the provisions of this article shall be null and void.

2.04.160 - Acceptance, appropriation and expenditures from restricted gift proceeds.

Notwithstanding any other provision of this article, the City Administrator is delegated limited authority to accept restricted gifts and donations to the city up to fifty thousand dollars (\$50,000.00), including money gifts, and to appropriate and expend monies derived from such gifts/donations, without City Council action, provided that: (1) the gift/donation does not create unbudgeted costs for the city, (2) the gift/donation is for a program or project that has been approved by the Council in the biennial or mid-cycle operating or Capital Improvement Program (CIP) budget, or by City Council legislation during the fiscal year, and 3) the gift/donations or proceeds therefrom are used in accord with restrictions and/or special conditions of the donor.

Notwithstanding the above, the City Administrator is authorized to expend monies derived from restricted gifts/donations that exceed fifty thousand dollars (\$50,000.00) without City Council action when the gift has been approved, accepted and appropriated by City Council resolution provided such expenditure is in accord with any restrictions or special conditions of donor.

All funds accepted hereunder shall be deposited into the City Treasury. The City Administrator will provide an annual report to Council on all gifts and donations accepted hereunder during the previous year.

2.04.170 – Affirmative action program for supplies, materials, commodities and equipment.

- A. To the extent permitted by law, the Purchasing Supervisor will establish a goal in the purchase of supplies and commodities that reflects the minority composition of the Standard Metropolitan Statistical Area (SMSA). Separate goals will be established for public works projects, community development projects and economic development and employment contractors.
- B. To the extent permitted by law, the Purchasing Supervisor will submit a yearly affirmative action plan for the purchasing of supplies and commodities to the City Administrator. The plan is to include: affirmative action requirements of vendors; a local vendor report that includes a local minority supplier development program, a progress report and new year participation goals; and an outline of new ideas developed to advance the affirmative action program during the coming year.

2.04.180 – Design-build project delivery method.

The city may use the alternative fast-track project delivery method commonly known as "design-build" with or without formal bidding when the circumstances surrounding the project substantiate that it is in the "best interests of the city" to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or the City Administrator's designee, will prepare and publish an administrative instruction, that will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and administrative procedures for the use of such alternative project delivery methods such as design-build.

2.04.190 – Construction manager-at-risk project delivery method.

The city may use the alternative project delivery method commonly known as "construction manager-at-risk" with or without formal bidding when it is in the "best interests of the city" to waive formal bidding pursuant to Section 2.04.050. The City Administrator, or the City Administrator's designee, will prepare and publish an administrative instruction, that will contain guidelines for the use of such alternative project delivery methods. These guidelines will provide the criteria and procedures for alternative project delivery methods such as construction manager-at-risk.

SECTION 2. Remaining Provisions Unchanged. Except as amended, all provisions, articles, sections, subsections, sentences, clauses or phrases of Oakland Municipal Code Chapter 2.04 shall remain unchanged and in full force and effect.

SECTION 3. Severability. If any article, section, subsection sentence, clause or phrase of this ordinance or exhibit is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of remaining portions, which shall remain in full force and effect.

SECTION 4. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND CALIFORNIA

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID , ,
AND PRESIDENT GIBSON-McELHANY

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California

DATE OF ATTESTATION: _____