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**ARTICLE I. IN GENERAL**

**SEC. 2.1 MILITARY LEAVES OF ABSENCE - DEFINED; APPLICATION FOR REINSTATEMENT**

Any officer or employee of the City who volunteers for or is ordered on active duty in the military service within the meaning of the Act of Congress of the United States cited as the Soldier's and Sailor's Relief Act of 1940, shall be granted a leave of absence by the City Council and shall retain his status as such officer or employee, except his right to draw his salary and wages, during the period of such active duty, and shall be reinstated to such position, upon written application, and a showing to the satisfaction of the City Council that he is physically and mentally equipped to perform the duties of his previous City employment. The written application and showing of physical and mental fitness shall be filed with the City Council at any time within ninety days after the termination of such military duty. (Ord. No. 96 N.S., 5/41)

**SEC. 2.2 SAME - STATUS OF REPLACEMENT PERSONNEL**

The appointment of any person temporarily employed to perform the duties of any such officer or employee volunteering for or ordered on such active duty, as referred to in the preceding section, shall specifically include a provision that such temporary appointee holds his position subject to revocation, upon the favorable action, by the City Council, on the application of the former occupant of such position. (Ord. No. 96 N.S., 5/41)

**ARTICLE II. PLANNING COMMISSION**

*REVOKED: Ordinance No. 395., N.S., 3/80, See Chapter 25.*

**ARTICLE III. RECREATION COMMISSION**

*REVOKED: Ordinance No. 395, N.S., 3/80, See Chapter 25.*

**ARTICLE IV. SPECIAL GAS TAX STREET IMPROVEMENT FUND**

**SEC. 2.20**      **CREATED**<sup>1</sup>

To comply with the provisions of Article 5 of Chapter 1 of Division 1 of the State Streets and Highways Code, with particular reference to the amendments made thereby by Chapter 642, Statutes of 1935, there is hereby created in the City treasury a special fund to be known as the "special gas tax street improvement fund." (Ord. No. 34 N.S., 11/35)

**SEC. 2.21**      **MONEYS TO BE PAID INTO FUND**

All moneys received by the City from the state under the provision of the State Streets and Highways Code for the acquisition of real property or interest therein or for the construction, maintenance of improvement of streets or highways other than state highways shall be paid into the fund created by the preceding section. (Ord. No. 34 N.S., 11/35)

**SEC. 2.22**      **EXPENDITURE OF MONEYS IN FUND**

All moneys in the fund created by section 2.20 shall be expended exclusively for the purposes authorized by, and subject to, all of the provisions of Article 5, Chapter 1, Division 1 of the State Streets and Highways Code. (Ord. No. 34 N.S., 11/35)

**ARTICLE V. CIVIL SERVICE SYSTEM**<sup>2</sup>

**Division 1. Generally**

**SEC. 2.23**      **DEFINITION OF "COMMISSION"**

As used in this article, the word "commission" shall be deemed to be the civil service commission created by this article. (Ord. No. 129 N.S., 3/49)

**SEC. 2.24**      **AUTHORITY OF COUNCIL AND OFFICERS CONCERNED WITH PERSONNEL MATTERS**

The Council and any other officer in whom is vested by law the authority to make transfers, promotions, demotions, reinstatements, lay-offs and to suspend or dismiss employees shall retain such authority, subject to the provisions of this article and subject to the provisions of Article V of the Charter of the City, it being the intent and spirit of this article to provide a fair and just

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1      For state law as to special gas tax street improvement fund, see Sts. and H.C.A., §196; see also, generally, Sts. & H.C.A., §§180 to 207.

2      For charter provisions as to personnel system, see Char., Art. V. For state law authorizing city to establish a personnel system, see Gov. C.A., §45001. As to military leaves of absence, see §§2.1, 2.2 of this Code.

approach to municipal employment in order that City employees may be selected and promoted on a merit basis, but in no sense to impair the efficiency of the public service. (Ord. No. 129 N.S., 3/49)

SEC. 2.25      ADOPTION OF SYSTEM

A civil service system is hereby adopted and provisions are hereby made for the establishment, maintenance and regulation of such system, for the selection, tenure, promotion, suspension and removal of appointive officers and employees of the City, and for the appointment and promotion of those in the classified service of the city to be made according to merit and fitness to be ascertained by competitive examination. (Ord. No. 129, N.S., 3/49)

SEC. 2.26      SCOPE OF ARTICLE<sup>3</sup>

The civil service system of the City shall govern the employment and personnel management of all appointive officers and employees of the City except members of boards and commissions, the city attorney, the city administrator, the city engineer, the city clerk, the director of finance, the director of planning, the director of recreation, the director of public works, the chief of police, the fire chief, all part-time and temporary employees, and those persons rendering professional, technical or expert services of any occasional or exceptional character. All of the officers and employees excepted from the civil service system shall serve at the pleasure of the City Council. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

SEC. 2.27      RETROACTIVE PROVISION

All appointive officers or employees of the City, other than the employees who have temporary or probationary appointments, who, under the provisions of Article V of the Charter of the City are placed under the civil service system, and who shall have served in such position continuously for a period of at least six months prior to the time Article V shall have become effective, and all such officers or employees who are on leaves of absence at the time Article V became effective, are thereby automatically inducted into such office or employment, under civil service and inducted into such office or employment, under civil service and without examination or investigation, as completely and effectively as if such person had been permanently appointed thereto under civil service, after examination and investigation. (Ord. No. 129 N.S., 3/49; Ord. No. 452, N.S., 12/83)

SEC. 2.28      PERSONNEL RULES - ADOPTION, ETC.

In addition to such other matters as may be necessary and proper to carry out the intent and purposes of this article, rules shall be formulated by the civil service commission and shall be adopted by the City Council in the form as submitted or as changed by the City Council. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

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<sup>3</sup> For state law as to which officers and employees may be included in a personnel system, see Gov. C.A., §45002.

SEC. 2.29     SAME - ESTABLISHMENT OF SPECIFIC PROCEDURES AND REGULATIONS

The rules required by the preceding section shall establish specific procedures and regulations governing the following phases of the personnel system:

- (a) The preparation, installation, revision and maintenance of a position classification plan covering all positions in the classified service.
- (b) The formulation of minimum standards and qualifications for each class of position.
- (c) The public announcement of vacancies and examinations and the acceptance of applications for employment.
- (d) The preparation and conduct of examinations and the establishment an use of employment lists containing names of persons eligible for appointment.
- (e) The certification and appointment of persons from employment lists to fill vacancies and the making of temporary and emergency appointments.
- (f) The evaluation of employees during the probationary period.
- (g) The transfer, promotion, demotion and reinstatement of persons in the classified service.
- (h) The maintenance and use of necessary records and forms. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

SEC. 2.30     CONTRACTS FOR CARRYING OUT DUTIES, ETC., UNDER ARTICLE<sup>4</sup>

The City Council may contract for any competent governmental or other agency for the performance by such agency of such technical service in connection with the establishment of the civil service system or with its operation, as may be desired. The contract may include the delegation to such agency of the responsibility for the performance of the duties imposed in this article upon the civil service commission and the personnel clerk, but shall not include the delegation to such agency of the powers and duties vested in the City Council; provided, however, that there shall be no derogation of the powers of authority vested in the civil service commission by the terms of this article. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

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4     For authority of City to contract for the conducting of competitive examinations and any other service in connection with personnel selection and administration, see Gov. C. 345008.

SEC. 2.31     APPROPRIATIONS

The City Council shall appropriate such funds as are necessary to carry out the provisions of this article. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

Division 2. Civil Service Commission

SEC. 2.32     COMPOSITION OF CIVIL SERVICE COMMISSION

The civil service commission shall consist of five members, each residing in Piedmont, who shall be appointed by the City Council. The commission shall be organized and function in accordance with the provisions of Chapter 25.10 through 25.16 of this Code and Article VI of the Piedmont City Charter. (Ord. No. 129 N.S., 3/49; Ord. No. 417 N.S., 3/81; Ord. No. 452 N.S., 12/83)

SEC. 2.33     INELIGIBILITY OF MUNICIPAL EMPLOYEES

No person shall be appointed to the commission who holds any other public office or employment of the City. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

SEC. 2.34     FUNCTIONS

The functions of the commission shall be:

(a) To consider and recommend to the Council rules and amendments of rules, not contrary to any provisions in the Charter, to provide for the examination, appointment, promotion, supervision and control of those within the classified service; for the administration of the civil service system; a position classification plan; and other rules to carry out the provisions of this article, revisions and amendments hereto, and the provisions of the Charter.

(b) To act in an advisory capacity to the Council on problems concerning civil service administration.

(c) As provided by this article and by the rules adopted pursuant thereto, to hear appeals submitted by any person in the classified service relative to his employment status, or condition of employment, or any situation connected therewith.

(d) to make investigations concerning any matter relating to the civil service system or its administration. In any investigation or hearing conducted by the commission, it shall have the power to examine its witnesses under oath and compel their attendance or the production of evidence before it by subpoenas issued in the name of the City and attested by the city clerk. It shall be the duty of the chief of police to cause all such subpoenas to be served, and refusal of a person to attend or to testify in answer to such a subpoena shall subject such person to prosecution in the same manner set forth by law for failure to appear before the Council in response to a subpoena issued by the Council. Each member of the civil service commission



shall have the power to administer oaths to witnesses.

(e) To perform such other duties with reference to administration of the civil service system not inconsistent with the provisions of the Charter as the Council may require by ordinance.

(f) To hold hearings and make recommendations to the Council on the adoption or revision of the position classification plan and class specifications and revisions thereof, allocate and reallocate positions in the classified service to classes. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

SEC. 2.35 CLASSIFICATION PLAN SHALL BE PROVIDED BY COMMISSION SUBJECT TO COUNCIL APPROVAL

The commission shall provide for the standardization and classification of all positions and employments in the classified service of the City. Such classification may be in groups and subdivisions and may be based upon and graded according to duties and responsibilities and so arranged as to promote the filling of the higher grades so far as practicable through promotion. The classification plan, either as submitted by the commission or as changed by the Council, shall be adopted by the Council. Changes in the classification plan which the Council deems desirable may be recommended and adopted from time to time in the manner as herein provided for the original adoption of the classification plan. The council shall have the authority to withdraw the position of an appointive officer or employee from the operation of the civil service system if the Council finds the existence of a shortage of funds or a material change in duties or in the organization of the delivery of city services. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

Division 3. Personnel Clerk

SEC. 2.36 PERSONNEL OFFICER<sup>5</sup>

The Council may appoint a personnel officer who shall be responsible for supervising the administration of the civil service system. The personnel officer shall perform the following duties:

1. The personnel officer shall act in the capacity of clerk for the civil service system. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)
2. The personnel officer shall attend all meetings of the civil service commission. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)
3. The personnel officer shall administer all the provisions of this article and

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5 For state law authorizing City to provide for appointment of a personnel officer and delegate his powers relative to the personnel system, see Gov. C. 345004.

the rules established hereunder not specifically reserved to the Council or the commission. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

4. The personnel officer shall, under the direction of the commission, prepare rules, and revisions and amendments thereof, for the consideration of the commission. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

5. The personnel officer shall, under the direction of the commission, prepare a position classification plan an class specifications and revision thereof, for the consideration of the commission. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

SEC. 2.37 APPOINTMENTS

Appointments to vacant position sin the classified service shall be made in accordance with the rules established under this article. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

Division 4. Suspensions and Other Similar Official Actions

SEC. 2.38 DISCIPLINARY ACTIONS

Disciplinary actions against persons in the civil service shall be taken in accordance with the rules established under this article. (Ord. No. 452 N.S., 12/83)

SEC. 2.39 POLITICAL ACTIVITIES, ETC., BY CITY EMPLOYEES, ETC.<sup>6</sup>

No officer, agent, clerk or employee of the City, and no candidate for any city office shall, directly or indirectly, engage in any form of political activity during working hours on the premises of city property, nor while in uniform. (Ord. No. 129 N.S., 3/49; Ord. No. 452 N.S., 12/83)

**ARTICLE VI. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM**

SEC. 2.77 ADOPTED

An amendment to the contract between the City Council of the City of Piedmont, and the Board of Administration, California Public Employees' Retirement system is hereby authorized, a copy of said amendment being marked as 'Exhibit A' to his section and by such reference made a part hereof as though herein set out in full. (Ord. No. 322 N.S., 9/74; Ord. No. 449 N.S., 11/83)

**ARTICLE VII. MORAGA SPORTS FIELD USE RESTRICTIONS**

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6 For state law protecting and limiting the political activities of city personnel, see Gov. C. 3201 et seq.

(Dracena Quarry Use Restrictions rescinded by Ord. 538 N.S., 10/92)

*REVOKED: Ord. 569 N.S., 10/97, See Chapter 3*

**ARTICLE VIII. ABATEMENT OF NUISANCES<sup>7</sup>**

*REVOKED: Sections 126-131, Ordinance No. 505 N.S., 11/88.*

**ARTICLE IX. PARK COMMISSION**

*REVOKED: Ordinance No. 395 N.S., 3/80, See Chapter 25.*

**ARTICLE X. SPECIAL BOND DEPOSIT FUND**

**SEC 2.137 CREATED - COMPOSITION - RIGHTS OF DEPOSITOR TO CLAIM MONEY**

There is created in the City treasury a special fund to be known as the "bond deposit fund" into which shall be placed all security deposits, guarantee deposits, and faithful performance deposits of every kind. All moneys deposited with the City to assure faithful performance may be claimed by the depositor at any time following the performance and acceptance thereof by the City. All other moneys so deposited with the City and placed in such fund may be claimed by the depositor one year after the completion of all work done by such depositor in the City for which such deposit applied. Such deposit must be claimed by the depositor within four years following the completion of all work done by such depositor in the City or such deposit shall be forfeited to the City and the amount thereof will be transferred from the bond deposit fund to the general fund of the City. (Ord. No. 232 N.S., 12/62)

**SEC. 2.138 EXPENDITURE OF MONEY IN FUND**

Money deposited in the bond deposit fund shall be held in such fund and shall not be disbursed except (1) upon claim properly made, pursuant to section 2.137 or (2) upon the resolution of the City Council following a showing that such depositor, be expended for the purpose for which they were deposited in which case such resolution shall direct that such funds be paid for such work as may be required to make the necessary corrections, or otherwise reimburse the City for its damage. (Ord. No. 232 N.S., 12/62)

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7 For state law as to nuisances in cities, see Gov. C.A., 338771.

**ARTICLE XI. PEACE OFFICER RECRUITMENT AND TRAINING**

**SEC. 2.139 DESIRE OF CITY TO QUALIFY TO RECEIVE STATE AID; ADHERENCE TO STATE STANDARDS**

The City declares that it desires to qualify to receive aid from the state under the provisions of chapter 1 of title 4 of the California Penal Code.

Pursuant to section 13522 of such chapter 1, the City while receiving aid from the state pursuant to such chapter 1, will adhere to the standards for recruitment and training established by the state commission on peace officer standards and training, and any other similar standards set by state law.

Pursuant to Sec. 832.6(B) of the California Penal Code, all existing reserve officers who possess a Level I certificate issued by the Commission on Peace Officers Standards and Training, shall continue as Class I reserve police officers after January 1, 1981.

The police chief only shall possess the authority to issue weapons permits to police reserve officers who are in an off-duty capacity, and such permits shall be in writing. (Ord. No. 247 N.S., 6/64; Ord. No. 414 N.S., 11/80)

**ARTICLE XII. SPECIAL FUNDS<sup>8</sup>**

**SEC. 2.140 CREATION AND EXPENDITURES**

There are hereby created in the City treasury in accordance with state statutes the following funds; expenditures from such funds shall be made only in accordance with such statutes:

(a) The special gas tax engineering fund in accordance with section 2107.5 of the Streets and Highways Code.

(b) The motor vehicle license fee fund in accordance with section 11005 of the Revenue and Taxation Code.

(c) The traffic safety fund in accordance with section 1463 of the Penal Code and Section 42200 of the Vehicle Code. (Ord. No. 250 N.S., 9/64)

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8 For state law as to funds of cities generally, see Gov. C.A., §43400 et seq. As to transfers between funds, see Gov. C.A., §53791.

### **ARTICLE XIII. HOLIDAYS**

#### **SEC. 2.141 ESTABLISHED**

The holidays in this City are New Year's Day (January 1st), Washington's Birthday (third Monday in February), Good Friday from 1:30 p.m. until 4:30 p.m., Memorial Day (last Monday in May), Independence Day (July 4th), Labor Day (first Monday in September), Columbus Day (second Monday in October), Veteran's Day (fourth Monday in October), Thanksgiving Day (fourth Thursday in November), the Friday after Thanksgiving Day, and Christmas Day (December 25th). If any of the above holidays falls on Saturday, the preceding Friday will be a holiday, and if any of the above holidays falls on a Sunday, the following Monday will be a holiday. (Ord. No. 265 N.S., 10/66; Ord. No. 289 N.S.; Ord. No. 292 N.S., 12/70)

### **ARTICLE XIV. PENSION FUND INVESTMENT**

#### **SEC. 2.142 TERMS "BOARD" AND "PENSION FUND" DEFINED**

The term "board" as used herein shall mean the board of any pension plan to which the City is required to make contributions; the term "pension fund" as used herein shall mean a pension fund to which the City is required to make contributions. (Ord. No. 274 N.S., 1/68)

#### **SEC. 2.143 EXCLUSIVE CONTROL OF BOARD**

The board shall have the exclusive control of the investment and reinvestment of the pension funds and the means by which such investment and reinvestment are made; provided, however, that the board shall be precluded from doing business with any person, firm or investment counselor which shall have in its employ or be making commission payments to any member of the City Council or any member of the city pension board. (Ord. No. 275 N.S., 12/67)

#### **SEC. 2.144 INVESTMENT COUNSEL - PERSONS NOT ELIGIBLE FOR EMPLOYMENT**

No person engaged in business as a broker or securities dealer, or who has a direct pecuniary interest in any such business, and who receives commissions for transactions performed as agent for the board, shall be eligible for employment as investment counsel for the board. (Ord. NO. 275 N.S., 12/67)

#### **SEC. 2.145 SAME - CONDITIONS OF EMPLOYMENT**

The Board may employ investment counsel to render service in connection with the board's investment program, but the board shall not engage investment counsel unless: (a) the principal business of the person selected by the board consists of rendering investment supervisory services, that is, the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; (b) the principal ownership and control of such person rests with individuals who are actively engaged in such business for a period of ten or more years; (c) such

person is registered as an investment advisor under the laws of the United States of America from time to time in effect; (d) the contract between the board and the investment counsel is of no specific duration and is voidable at any time by either party. (Ord. No. 466 N.S., 6/85)

**SEC. 2.146 MORTGAGE SERVICING INSTITUTION AGREEMENTS; FEE; MONTHLY POSTINGS OF CASH TRANSACTIONS**

The board may enter into servicing agreements with qualified mortgage servicing institutions for the handling of mortgage service details, and may reimburse such services the customary fee charged by the trade, but in no event shall the fee exceed one-twelfth of one-half percent per month of the unpaid balance of the loan or loans serviced under a servicing agreement. The services shall furnish the board, or its investment counsel, each month, with respect to each mortgage serviced, postings of all cash transactions affecting each mortgage. Neither the board nor the City shall undertake to service any mortgage investment unless no mortgage servicing institution can be found to service mortgages by the pension fund upon the conditions required by this section, and in such event, the board may undertake such mortgage servicing pending a sale of all such mortgages. (Ord. No. 274 N.S., 1/68)

**SEC. 2.147 MANNER OF INVESTING FUNDS BY BOARD**

The board may invest the moneys and assets of the pension fund and may sell any of its investment, either to raise cash or for the purpose of reinvesting in other assets, as the board shall from time to time provide by resolutions. (Ord. No. 466 N.S., 6/85)

**SEC. 2.148 REVOKED (Ord. No. 466 N.S., 6/85)**

**SEC. 2.149 AUTHORIZATION OF BOARD TO EMPLOY CUSTODIAN OF SECURITIES AND INVESTMENTS OF FUND; DUTIES OF CUSTODIAN**

The board is authorized to employ a trust company or the trust department of a bank, at the expense of the pension fund, and to act as custodian of the securities and investments of the fund and to present interest coupons, and matured bonds for payment, maintain records and accounts, deliver sold securities, and perform other services of a like nature for the board. (Ord. No. 275 N.S.)

**ARTICLE XV. PURCHASING**

**SEC. 2.150 GENERAL PROVISIONS**

(a) This Article shall be known as the City of Piedmont City Purchasing Ordinance. Pursuant to the provisions of the City's Charter, the provisions of this Article shall prevail over any conflicting state law. In the event of a conflict between a provision of the City's Charter and this Article, the City's Charter provision shall prevail.

(b) Purpose. The purpose of this Article is to establish procedures and policies for

purchasing goods, materials, equipment, supplies, and services (including Professional Services and Public Works of Improvement). It is the policy of the City of Piedmont to utilize Competitive Bidding Processes to obtain the best quality and prices for Public Works Projects and needed goods, materials, equipment, supplies and services, except as specifically provided in this Article. The City's purchasing functions shall be governed by this Article and by the City's Administrative Purchasing Policy, which shall be adopted by resolution of the City Council, as may be amended from time to time.

(c) City Council Approval Requirement. City Council approval is required for all contracts unless otherwise specified in this Article, or in another provision of federal or state law.

(d) Definitions

“Bid” means a response to a solicitation for the performance of a Public Works Project, or for a purchase of goods, materials, equipment, or supplies including, without limitation, a bid, a proposal, and/or a statement of qualifications and experience.

“Bidder” means a person or company that submits a bid, proposal, or any response to a solicitation for a bid.

“Change Order” means a change or addendum to an executed contract.

“Competitive Bidding Process” means a selection process where contractors, service providers and/or vendors compete for contracts to supply the City goods, materials, equipment, supplies, and services, and are selected through a formal or informal process that allows full, fair and open competition for all qualified contractors and/or vendors with selection based on specified criteria established to best meet the needs of the City. Invitations for bids, requests for proposals, and requests for statement of qualifications and experience are examples of competitive bidding processes. A competitive bidding process that awards a contract to the lowest responsive, responsible bidder after public advertisement is referred to as a competitive bidding process by formal solicitation.

“Contract” means a written agreement between the City and a contractor, the City and a service provider, and/or the City and a vendor. “Contract” includes, but is not limited to, a purchase order, a contract for services, a contract for maintenance, leasing of property or equipment, an addendum or change order, a letter agreement, a memorandum of understanding or memorandum of agreement.

“Cooperative Contracts” means a contract already solicited and/or awarded by other public agencies, often under the sponsorship of non-profit cooperative contract associations, allowing the City to purchase goods, services and equipment that have already been competitively bid or assessed pricing, without the need for the City to undertake a separate solicitation request action.

“Emergency” means a sudden, unexpected occurrence that poses a clear and

imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. (Reference: Public Contract Code Section 1102).

“Formal Competitive Bidding Process” means a competitive bidding process that may award a contract to the lowest responsive, responsible bidder after public advertisement by formal solicitation.

“Informal Competitive Bidding Process” means a competitive bidding process that may award a contract to the lowest competitive bidder after solicitation of bids without public advertisement by informal solicitation.

“Master Services Agreement” means a contract for consulting and general services to be provided on an “as-needed” rather than a continuous basis, with a total compensation stated as a maximum limit, which establishes a general scope of work and payment parameters and includes the terms and conditions common to most City contracts.

“Professional Services” means services that require a professional license or high level of technical skill including, without limitation, economic and financial services, attorneys, actuaries, psychologists, medical doctors, claims consultants, insurance brokers, internet and related technology services, consultants and experts for litigation in which the City or any of the boards, commissions, officers or employees are involved, architect, landscape architect, engineer, environmental project development and permit processing, land surveying, land use planning, and construction project management.

“Proprietary Material” means material or information which has been delineated in writing by the contractor, Professional Service provider, service provider, or vendor as being proprietary, and which meets the criteria under state or federal law for qualifying as proprietary material or information.

“Public Work of Improvement” or “Public Works Project” means a project that is paid for, in whole or in part, from public funds, and done under contract with the City or performed by City forces as authorized pursuant to the City Charter or this Article, and that involves at least one of the following:

- (i) A project for the construction, erection, improvement, painting, demolition, or repair of public buildings and works;
- (ii) Work in or about streams, bays, waterfronts, embankments, or other work for protection against overflow; or
- (iii) Street or sewer work except maintenance or repair.

“Responsible Bidder” means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience, specified in notice



inviting bids, including the project specifications, prepared for the project bid by the City, to satisfactorily perform the professional services contract including the Public Works project. (Reference: Public Contract Code Section 1103).

“Sole Source” means procurement which is only available from a single manufacturer or source.

“Standing Supply/Services Purchase Order Agreement” means a contract for supplies or services common to one or several departments on an “as-needed” basis, with a total compensation stated as a maximum limit, which establishes a general order and payment parameters and includes the terms and conditions common to most City contracts.

“Urgent Purchases” mean immediate purchases of goods, materials, equipment, supplies or services made when an urgent circumstance exists, and procurement should not be delayed by use of normal competitive and financial procedures. Lack of planning shall not constitute justification for an urgent purchase.

(e) Contract Price

(1) Whenever a Contract estimated cost or Contract price is referred to in this Article, for the purpose of determining the appropriate purchasing procedure, that cost or price excludes sales tax and freight.

(2) No Contract shall be subdivided or separated into two or more Contracts to avoid the requirements of this Article.

(f) Written Contracts

(1) All Contracts entered into by the City pursuant to this Article shall be in writing and shall be executed by the City Administrator or other duly authorized officer or employee of the City.

(2) All Contracts shall require the contracting party, to the maximum extent allowed by law, to defend, indemnify, and hold harmless the City, its officers, officials, employees, and consultants upon the terms specified by the City as being sufficient to cover all damages and loss related to the work, service or purchase provided by the contracting party or its subcontractors or employees.

(3) All Contracts shall require the contracting party to obtain and maintain such insurance coverage as is specified by the City as being sufficient to protect the City, its officers, officials, employees, and consultants from damages and loss related to the work, service or purchase provided by the contracting party or its subcontractors or employees.

(4) All Contracts shall require the contracting party to obtain and shall maintain all

licenses, including City business licenses and permits as may be required to provide the contracted goods, materials, equipment, supplies, and services.

(g) City Not Liable / No Waiver.

The City shall not be liable for payment or other obligation for a Contract, service, or purchase that was subject to, but failed to comply, with, this Article. No provision of this Article shall impose a mandatory duty of enforcement on the City or on any of its officers, officials, employees, boards or councils. If any section purports to impose a mandatory duty of enforcement, said section shall be deemed to invest the City, and appropriate officer, official, employee, board or council with discretion to enforce the section or not enforce it. These procedures are for the City's sole and exclusive benefit. The City's failure to follow, enforce, or expressly include the provisions of this Article in any Contract shall not constitute a waiver of this Article's requirements or the City's right of enforcement. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

**SEC. 2.151 PURCHASING OFFICER RESPONSIBILITY AND PROCEDURES**

The City Administrator is appointed the purchasing officer of the City. The duties of the purchasing officer may be combined with those of any other City officer or position. The purchasing officer or the purchasing officer's designated representative shall have the duties prescribed by the City's Administrative Purchasing Policy. The City Administrator or City Administrator's designated representatives may sign contracts on behalf of the City when authorized by ordinance, resolution, or other City Council action and may establish rules and regulations as the City Administrator finds necessary to administer this Article and the Administrative Purchasing Policy.

The City Administrator or his/her designated representative shall have authority to:

- (a) Purchase or contract for supplies, services and equipment required by any department or agency within the City in accordance with purchasing procedures prescribed by this Article XV, such administrative regulations as the purchasing officer shall adopt for the internal management and operation, and such other rules and regulations as are prescribed by the City Council by resolution;
- (b) Negotiate and recommend execution of contracts for the purchase of supplies, services and equipment;
- (c) Negotiate and recommend to the Council execution of contracts for Professional Services;
- (d) Act to procure for the City the needed quality in supplies, services and equipment at least expense to the City;
- (e) Discourage uniform bidding and endeavor to obtain as full and open competition as possible on all purchases;

- (f) Prepare and recommend to the Council rules governing the purchase of supplies, services and equipment for the City;
- (g) Prepare and recommend to the Council revisions and amendments to the purchasing rules.
- (h) Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
- (i) Prescribe and maintain such forms as reasonably necessary to the operation of this Article XV and other rules and regulations;
- (j) Supervise the inspection of all supplies, services and equipment purchased to insure conformance with specifications; and
- (k) Where practical, maintain a prospective Bidders list or require departments to maintain their own prospective Bidders lists and maintain vendors catalog files and records needed for the efficient operation of the purchasing division.
- (l) Utilize other procurement methods as provided in this Article XV when to do so is more beneficial, economical, and in the City's best interests.
- (m) Authorize in writing any City department or agency to purchase or contract for specified supplies, services and equipment, but shall require that such purchases or contracts be made in conformity with the procedures established by this Article XV, and shall further require periodic reports from the City department on the purchases and contracts made under written authorization. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.152 CITY ADMINISTRATOR AUTHORITY

- (a) The City Administrator shall have authority to award contracts for the purchase of materials, supplies, equipment, or services without the City Council approval if the purchase is in the amount of \$75,000 or less, and sufficient funds for such purchase have been appropriated in the City's budget. These purchases shall be subject to procurement procedures set forth in this Article.
- (b) The City Administrator shall have authority to award contracts for professional services or Public Works projects greater than \$5,000 but less than \$75,000, without City Council approval, if sufficient funds for such services have been appropriated in the City's budget. These purchases shall be subject to procurement procedures set forth in this Article.

- (c) The City Administrator shall have authority to approve change orders for City Council approved Public Works projects not to exceed the Estimated Project Construction Budget.
- (d) In the event of an emergency or urgent circumstances, the City Administrator may authorize the expenditure of any unencumbered moneys from the operating reserve, notwithstanding the fact that such moneys may not have been appropriated for such purpose. Bid procedures set forth in Sections 2.156 through 2.167 shall not apply to these purchases. The City Administrator shall report to the City Council any emergency or urgent purchase made at the next City Council meeting following such action.
- (e) The City Administrator may delegate in writing the authority to purchase or contract for specified supplies, services, and equipment as long as such purchases or contracts are made in conformity with the procedures established by this Article.
- (f) The City Council shall receive a report listing all contracts approved by the City Administrator at a minimum on an annual basis. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.153 BIDDING

Except as otherwise provided in this Article XV or the Purchasing Policy and Procedures, purchases of supplies, professional services, and equipment shall be made by the bid procedures set forth in Sections 2.156 through 2.167. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.154 EXCEPTIONS

Bid procedures set forth in Sections 2.156 through 2.167 do not apply to purchases of supplies, services, and equipment in the following circumstances:

- (a) The amount involved does not exceed \$5,000.
- (b) Emergency or Urgent Purchases.
- (c) Supplies, services, or equipment that can only be obtained from a sole source.
- (d) The procurement of professional services. However, the City Council may require the bid procedure by resolution in a particular instance;
- (e) A gift of funds is made to the City with conditions specifying particular goods, services, or equipment, or a particular provider of same. Where such a conditional gift is used to fund only a portion of a purchase or project, the balance of the purchase or contract shall conform to the bidding requirements of this Article XV.

(f) The City has already awarded a bid for supplies, services, and equipment, following normal bidding procedures pursuant to Sections 2.156 through 2.167 hereof and purchases the same or substantially the same supplies, services, and equipment for the same amount previously bid or within 1% of the amount previously bid with the same supplier, provider or manufacturer awarded the original bid.

(g) In any cooperative arrangement with the United States Government or any agency or division thereof, the State of California, County of Alameda or any other governmental jurisdiction in which the City is able to obtain favorable prices based on bids or proposals made for supplies, services and equipment to the other governmental agency, the City is authorized to enter into appropriate written agreements with the other governmental entity to achieve this purpose.

(h) Where another governmental entity has obtained or awarded a bid for supplies, services and equipment based on its own bidding procedures, the City may purchase the same or substantially the same supplies, services, and equipment for the same amount of the bid to the other governmental entity or within 1% of such amount with the same supplier, provider or manufacturer the bid was awarded to by the other governmental entity.

(i) Alternative methods for procuring supplies, services and equipment, and exceptions to Competitive Bidding Processes as set forth herein:

(1) Design-Build Authorization. Subject to authorization of the City Council, the City may utilize an alternate procedure for bidding on building construction projects in excess of \$75,000 pursuant to the procedures in California Public Contract Code Section 22160, et seq., and specifically incorporated herein, as it may be amended from time to time.

(2) City's Best Interest. Except where otherwise required by federal law or by reason of the source of funding for the project, goods, materials, equipment, supplies, and services may be obtained by negotiated Contract and without a Competitive Bidding Process, when the City Council determines that, due to the nature of the goods, materials, supplies, equipment, or services, (1) a Competitive Bidding Process is not likely to serve the best interests of the City or to result in the lowest price, or (2) there is a less expensive alternative (e.g., State contract, used equipment, etc.) that will serve the City equally as well. Such motion shall be approved unanimously by the Council.

(3) Other. Competitive Bidding Processes may be dispensed with in accordance with any other section of the City Charter or this Article that provides such an exemption.

(4) Purchases Not Susceptible to Competitive Bidding Process. Except where otherwise required by federal law or by reason of the source of funding for the project, goods, materials, equipment, supplies and services may be obtained by negotiated Contract and without a Competitive Bidding Process, where such purchases are not readily adaptable to the open market and bidding processes. Such purchases include, but shall not be limited to: (1) utility services (telephone, gas, water, sewer and electricity) provided to City buildings and facilities, (2) franchises awarded by the City Council, (3) insurance or bond premiums, (4) subscriptions, memberships, software licenses, advertisements and travel expenses.

(5) Master Service Agreements. Master Service Agreements may be made with specific vendors to provide services over time. The Master Service Agreement will establish the basic contractual terms and purchase or task orders with specific scopes of work and payment terms shall be required for purchases made through Master Service Agreements.

(6) Standing Supply/Service Purchase Order Agreements. Standing Supply Purchase Order Agreements may be made with specific vendors for purchase of repetitive-use goods, materials, equipment, and/or supplies common to one or several departments. The Standing Supply Purchase Order Agreements will establish the basic contractual terms and purchase orders with specific goods, materials, equipment and/or supplies and payment terms shall be required for purchase made through Standing Supply Purchase Order Agreements.

(j) Use of City Forces. City employees may be used to perform services in accordance with the City's Charter and shall not be subject to the terms of this Article. (Ord. No. 482 N.S., 2/87, Ord. No. N.S. 503, 10/88, Ord. No. 716 N.S., 02/15, Ord. 727 N.S., 4/17)

SEC. 2.155 PURCHASES FOR \$5,000.00 OR LESS

Purchases of services, supplies or equipment for \$5,000 or less and for which an appropriation is included in the Adopted Budget, shall be approved by individual Department Head requiring the services, supplies, or equipment. Additional purchasing procedures shall be established by City's Administrative Purchasing Policy. (Ord. No. 716 N.S., 02/15, Ord. 727 N.S., 4/17)

SEC. 2.156 PURCHASES EXCEEDING \$5,000.00, NOT EXCEEDING \$75,000.00

Except as otherwise provided in this Article XV, budgeted purchases of services, supplies and equipment of an estimated value of more than five thousand dollars (\$5,000.00) and not

exceeding seventy-five thousand dollars (\$75,000.00) may be made to the lowest responsive, responsible bidder after informal solicitation in the open market without public advertisement pursuant to the procedure prescribed in Sections 2.156 through 2.159. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.157 MINIMUM NUMBER OF BIDS – INFORMAL SOLICITATION

Open market purchases shall, whenever possible, be based on at least three bids of record and shall be awarded to the lowest responsive, responsible bidder. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.158 NOTICE INVITING BIDS – INFORMAL SOLICITATION

The purchasing officer or designee shall solicit bids from prospective providers by one or more of the following methods: written request, telephone, or public notice posted on a public bulletin board in City Hall. (Ord. No. 433, N.S. 2/83, Ord. 727 N.S., 4/17)

SEC. 2.159 WRITTEN BIDS

The purchasing officer shall keep a record of all open market orders and bids for a period of one year after the submission of bids or the placing of orders. This record, while so kept, and subject to Proprietary Material, shall be open to public inspection. (Ord. No. 716 N.S., 02/15, Ord. 727 N.S., 4/17)

SEC. 2.160 PURCHASES EXCEEDING \$75,000.00

Except as otherwise provided in this Article XV, purchases and contracts for supplies, services, and equipment of a value greater than seventy-five thousand (\$75,000.00) dollars shall be entered into after a Competitive Bidding Process by formal solicitation, and awarded to the lowest responsive, qualified responsible bidder, pursuant to the procedure prescribed in Sections 2.160 through 2.166 hereof. (Ord. No. 482, N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.161 NOTICE INVITING BIDS – FORMAL SOLICITATION

- (a) For any Public Works Project, the estimated cost of which is more than seventy-five thousand dollars (\$75,000), the City Administrator or City Administrator's designee may solicit from prospective Bidders Statements of Qualifications (SOQ) in a manner consistent with the procedures in the Purchasing Policy and in conformance with this Article. Prospective Bidders shall complete fully the SOQ, which when completed, shall be submitted as a declaration under penalty of perjury. Advertisement of the SOQ to prospective Bidders shall be made in the manner of advertising public notice inviting Bids. Said responses shall be submitted in sealed envelopes as provided in the SOQ and shall be identified as responses to the SOQ for the designated project. Whenever prequalification is required of any Bidder for a Contract, it shall be required for all prospective Bidders for that Contract.

(b) Notices inviting bids shall include a general description of the services, supplies, or equipment to be purchased, shall state where bid blanks and specifications may be secured, and the time and place for opening bids.

(1) Publication. Notice inviting bids shall be published at least ten working days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation in the City;

(2) Prospective Bidders List. The purchasing officer shall also solicit sealed bids from responsible prospective suppliers, prequalified Bidders, and/or those Bidders who have requested their names to be added to a bidders list; and

(3) Bulletin Board. The purchasing officer shall also advertise pending purchases by a notice posted on a public bulletin board in City Hall. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

#### SEC. 2.162 BIDDER'S SECURITY

When deemed necessary by the purchasing officer, bidder's security may be prescribed in the notices inviting bids. Bidders shall be entitled to return of bid security, provided that the successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within ten days after the notice of the award of contract has been mailed unless the City is responsible for the delay. The City Council may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsible bidder; the amount of the lowest bidder's security shall be applied by the City to the difference between the low bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

#### SEC. 2.163 BID OPENING PROCEDURE

Sealed bids shall be submitted to the purchasing officer in accordance with procedures provided in the notice inviting bids, and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the notice inviting bids. Unless provided otherwise in the notice inviting bids, a tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

#### SEC. 2.164 REJECTION OF BIDS

In its discretion, the Council may reject any and all bids presented and proceed with a new notice of inviting bids. In the alternative, the City Council may authorize negotiations with one or more bidders for purchase of services, supplies and equipment at a price lower than the original bid without making substantial changes in specifications. This provision shall apply to all purchases for supplies, equipment, or services. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)



SEC. 2.165 AWARD OF CONTRACTS

- (a) Except as otherwise provided in this Article XV, Contracts shall be awarded by the City Council to the lowest responsive, responsible qualified bidder.
- (b) Determination of Lowest Responsible Bidder. In determining the "lowest responsible bidder," the following factors may be considered in addition to price.
  - (1) The Bidder's ability, capacity, and skill to perform the Contract or provide the service required.
  - (2) The Bidder's character, integrity, reputation, judgment, experience and efficiency.
  - (3) The quality of performance of previous Contracts or services for the City or other contracting parties.
  - (4) The Bidder's previous and existing compliance with the laws and ordinances relating to a Contract or service.
  - (5) The sufficiency of the Bidder's financial resources.
  - (6) The Bidder's ability to provide future maintenance and service for the use of the subject of the Contract.
  - (7) Any other criteria appropriate for the type of Contract to be awarded.
- (c) Selection of a Professional Services provider shall be made on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. The City Administrator or City Administrator's designee may solicit from prospective professional service providers Statements of Qualifications (SOQ) to assure that the professional services are engaged on the basis of demonstrated competence and professional qualifications necessary for the type of services to be performed and at a fair and reasonable price to the City. Prospective professional service providers shall complete fully the SOQ, which when completed, shall be submitted as a declaration under penalty of perjury. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.166 TIE BIDS

If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of new notice inviting bids, the Council may accept the one it chooses or accept the lowest bid made by negotiation with the tie bidders at the time of bid opening. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.167 PERFORMANCE BONDS

The Council shall have authority to require a performance bond before entering a contract in such amounts as it finds reasonably necessary to protect the best interests of the City. If the City Council requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.168 ESTIMATES OF REQUIREMENTS

All City Departments and agencies shall file detailed estimates of their requirements of supplies, services and equipment in such manner, at such time, and for such future periods as the purchasing officer prescribes. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.169 MODIFICATIONS OF PUBLIC WORKS CONTRACTS

Alterations, deviations, additions or deletions from the original scope of work for Public Works Projects, which are determined by the City to be necessary during the progress of the work, shall be documented by written change orders.

- (a) The City Administrator or designated representative may authorize change orders not to exceed the Estimated Project Construction Budget.
- (b) The cost of each change order shall be determined by a fair and reasonable valuation, agreed to in writing by the Public Works Director or his/her designee, and an authorized representative of the contractor, and shall be deducted from the contingency budget. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

SEC. 2.170 PURCHASE ORDERS

In addition to other provisions included in this Article, purchase of supplies, services and equipment in an amount exceeding \$5,000 but less than or equal to \$25,000 shall be made only by purchase order (including confirming purchase orders when goods are purchased on an emergency basis). Check request forms may be substituted for purchase orders when the purchasing officer considers it necessary. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

**SEC. 2.171 ENCUMBRANCE OF FUNDS**

Except in cases of emergency and urgent procurement, the purchasing officer shall not issue any purchase order for supplies, services or equipment unless there exists an unencumbered appropriation in the fund account against which the purchase is to be charged. Any emergency or urgent procurement shall first be approved by the City Administrator or designee. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

**SEC. 2.172 INSPECTION AND TESTING**

The purchasing officer shall require the receiving department to inspect supplies and equipment delivered and contractual services performed to determine their conformance with the specifications set forth in the order or contract. The purchasing officer shall have the authority to 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. (Ord. No. 482 N.S., 2/87, Ord. 727 N.S., 4/17)

**SEC. 2.173 APPEAL FROM DECISION TO PURCHASE**

Bidders aggrieved by the purchasing officer's decision may appeal or protest in writing as provided in the notice inviting bids within the time limits in the notice inviting bids or no later than ten (10) working days from date of award, whichever period is shorter. The purchasing officer or his designee shall review the appeal or protest and issue a written determination within ten (10) working days. The written decision from the purchasing officer or his designee shall be final. (Ord. 727 N.S., 4/17)

**ARTICLE XVI. LIBRARY SERVICES COMMISSION**

*REVOKED: Article XVI Library Services Commission, Ord. No. 395 N.S., 3/80, See Chapter 25.*

**SEC 2.175 CLAIMS PROCEDURES.**

Pursuant to the authority contained in Section 935 of the Government Code of the State of California, the following claims procedures are established for those claims against the City for money or damages not now governed by state or local laws.

a. Notwithstanding the exemption set forth in Section 905 of the Government Code of the State of California, all claims against the City for damages or money, when a procedure for processing such claims is not otherwise provided by state or local laws, shall be presented within the time limitations and in the manner prescribed by Section 910 through 915.2 of the Government Code of the State.

b. Such claims shall further be subject to the provisions of Section 945 through 946 of the Government Code of the State relating to the prohibition of suits in the

absence of the presentation of claims and action thereon by the Council. (Ord. No. 551 N.S., 1/94)

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