

1 Title 7, PURCHASING AND TAXATION
2 Division 1. Purchasing and Disposition

3
4 Chapter 7.04
5 GENERAL PROVISIONS
6

7 **7.04.010 Purposes.**

8 ~~The purposes of this division are:~~

9 ~~A.—To provide for fair and equitable treatment of all persons involved in public purchasing by~~
10 ~~the City;~~

11 ~~B.—To ensure the maximum purchasing value of public funds in procurement;~~

12 ~~C.—To provide safeguards for maintaining a procurement and disposition system of quality and~~
13 ~~integrity.~~

14 The purposes of this division are to provide for an efficient, cost-effective and equitable system
15 of public purchasing by the City; to obtain the maximum purchasing value of public funds in
16 procurement; to provide for a procurement system of quality and integrity; to provide for selling
17 surplus goods in a manner which is efficient and equitable, and yields the highest sales price; and
18 to permit the continued development of procurement policies and practices.

19 **7.04.0320 Scope.**

20 A. Except as otherwise provided, tThis division applies to every disposition for value or
21 expenditure of public funds by the City for public purchasing ~~irrespective of its source.~~

22 B. When the procurement or disposition involves Federal, state, or county assistance or
23 contract funds or is subject to Federal, state, or county regulations, the procurement or
24 disposition shall be conducted in accordance with any applicable mandatory ~~Federal laws or and~~
25 regulations, ~~which is not reflected in this division. Nothing in this division shall be construed as~~
26 ~~prohibiting or limiting the City's right to employ its own personnel for the construction or~~

27 ~~reconstruction of public improvements or any other purpose without advertising for or receiving~~
28 ~~bids or proposals.~~

29 ~~**7.04.030 Administration.**~~

30 ~~The City Administrator and the Administrator's designee shall have the authority to adopt and~~
31 ~~enforce rules and regulations in accordance with the procedures set forth in Chapter 2 of this~~
32 ~~Code, to promote the efficiency of operations and compliance with the provisions of this~~
33 ~~division.~~

34 **7.04.160040 Definitions.**

35 The terms defined in this section shall have the meanings set forth below whenever they appear in this
36 division unless the context in which they are used clearly requires a different meaning or a different
37 definition is prescribed for a particular provision.

38 ~~The following terms shall have the following meanings when used in this division:~~

39 *Awarding authority* means the person or entity within the City authorized to award a
40 contract.

41 "*Bid*" means an offer, in writing, to furnish goods, ~~or~~ services, or construction in
42 conformity with the specifications, delivery terms and conditions or other requirements included
43 in the invitation for bids or an offer to purchase property, ~~pursuant to Chapter 7.08, Article 4.~~

44 *Brand name specification* means a specification by manufacturers' names or catalog serial or
45 other identification numbers.

46 *Brand name or equal specification* means a brand name specification to describe the standard of
47 quality, performance, and other characteristics needed to meet City requirements, and which provides
48 for the submission of equivalent products.

49 Business means any corporation, limited liability company, partnership, individual, sole
50 proprietorship, joint venture, association, or any other legal entity through which business is conducted.

51 Change order means a written order signed and issued by the City Manager directing the
52 contractor to make changes which the contract authorizes the City to order without the consent of the
53 contractor.

54 City Manager means the City Manager or the City Manager's designee.

55 “Competitive sealed bid” means a method of procurement in which a goods supply, service
56 or construction item is defined in a list of specifications: the specifications are included in an
57 invitation for Bids; the bids are received by a specified time in sealed envelopes or via
58 authorized electronic submission method; an award is made to the lowest responsible bidder
59 meeting all specifications, and cost is objectively measurable as defined in the specifications-
60 and responsible bidder providing the lowest bid.

61 “Competitive sealed proposal” means a method of procurement in which a goods,
62 services, or construction items are defined in a list of specifications; the specifications are
63 included in a Request for Proposals (RFP); proposals are received by a specified time in sealed
64 envelopes or via authorized electronic submission method; and an award is made to the proposer
65 most closely meeting specifications as determined by an evaluation that uses a set of evaluation
66 criteria. Cost is one criterion; among others, all of which may be assigned specific weights.

67 Construction means the erection, alteration, repair, improvement, or demolition of any public
68 structure or building, or other improvements of any kind, including any draining, dredging, excavation,
69 grading or similar work upon real property.

70 ~~_____~~ *“Contract”* means ~~anyall types of~~ City agreements, regardless of form or title, whether
71 formal or informal, what they may be called, for the procurement or disposition~~disposal~~ of
72 goods, services or construction.

73 *Contract file* means a file, in electronic or paper format, maintained by the City Manager containing
74 all determinations and other written records pertaining to any solicitation, award, or performance of a
75 contract.

76 *Contract modification* means any written alteration in specifications, delivery, period of
77 performance, price, quantity, or other provision of an existing contract whether accomplished by
78 unilateral action in accordance with a contract provision or by mutual action of the parties to the contract

79 ~~_____~~ *“Contractor”* means any person ~~or business~~ having a contract with the City.

80 ~~_____~~ *Formal contract* ~~“Cooperative purchasing”~~ means a contract for procurements exceeding
81 \$30,000.00~~procurement conducted by or on behalf of more than one governmental unit.~~

82 ~~“Department head” means one of the following: the City Clerk, the Chief of Police, the Director~~
83 ~~of Public Works, the Library Director, the Director of Recreation, the Director of Housing and~~
84 ~~Community Development or such other employees as the City Administrator may designate from~~
85 ~~time to time.~~

86 ~~“Emergency” means any condition or unforeseen curtailment, diminution or termination of an~~
87 ~~essential service which poses an immediate danger or threat to the public health, safety or~~
88 ~~welfare.~~

89 ~~“Environmentally preferable products” means products that have a lesser or reduced adverse~~
90 ~~effect on human health and the environment when compared with competing products that serve~~
91 ~~the same purpose. This comparison may consider raw materials acquisition, production,~~
92 ~~manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product.~~

93 | _____ “Goods” means supplies, materials, equipment, and all tangible property, except real
94 | property.

95 | _____ “Indefinite quantities contract” means a contract whereby the City agrees to purchase,
96 | and the contractor agrees to provide the goods or construction of a designated type or unit which
97 | the City may require, without specifying in the contract the exact quantity.

98 | _____ Informality means a minor defect or variation of a bid or proposal from the requirements of the
99 | Invitation to Bid, or the Request for Proposal, which does not materially affect the price, quality, quantity
100 | or delivery schedule for the goods, services, or construction being procured.

101 | _____ Kickback means any money, fee, commission, credit, gift, or compensation of any kind which is
102 | provided directly or indirectly to a contractor, a contractor employee, a subcontractor, a subcontractor
103 | employee, a public employee, or other person for the purpose of obtaining or rewarding favorable
104 | treatment in the award of a prime contract or a subcontract in connection with a contract awarded by the
105 | City.

106 | _____ Local business means an independently owned and operated business located within 150 miles of the
107 | City.

108 | ~~“Invitation for bids” means all documents, whether attached or incorporated by reference,~~
109 | ~~utilized for soliciting bids.~~

110 | ~~“Life cycle costs” means specific and quantifiable costs associated with an item over its useful~~
111 | ~~life, including costs of disposal, in addition to the purchase price.~~

112 | _____ “Locally supplied” means products and goods made or supplied, or services provided, by
113 | a local ~~from an~~ independently owned and operated individual, business, or organization located
114 | within 150 miles of the City.

115 Person means an individual, association, partnership, corporation, limited liability company,
116 government agency, or other entity, but does not include the City government.

117 ~~“Percentage price preference” means the percent by which a bid from a responsible bidder or~~
118 ~~price available from a vendor whose product contains recycled materials (or a greater use of~~
119 ~~recycled material) may exceed the lowest responsive bid submitted by a responsible bidder~~
120 ~~whose product does not contain recycled material (or a lesser use of recycled material).~~

121 ~~“Post-consumer waste” means an item that has served its intended use, such as old newspapers or~~
122 ~~magazines, and has been separated and diverted from the waste stream for the purposes of~~
123 ~~collection and recycling. It does not include waste generated during production of an end-~~
124 ~~product, such as printer’s waste.~~

125 ~~“Price preference” means a percentage of increase in price that the City may pay to obtain a~~
126 ~~designated recycled or environmentally preferable product or service.~~

127 “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any
128 goods, services or construction. It also includes all functions that pertain to the obtaining of any
129 supply, service, or construction, including the description of requirements, selection and
130 solicitation of sources, preparation and award of a contract, and all phases of contract
131 administration.

132 “Professional services” means ~~personal~~ services performed by a person whose
133 specialized knowledge and academic preparation have led the person to be of members of a
134 licensed or otherwise-recognized professional within their vocation. These services, including,
135 but not limited to, accountants, architects, land surveying, law, actuarial services,
136 professional engineering, and such other services that are customarily negotiated because the

137 ~~individuality of those services do not lend themselves to a fixed price bid. attorneys, auditors,~~
138 ~~engineers, medical practitioners, surveyors and the like.~~

139 “Proposal” means an offer to supply goods or perform services, or to purchase goods to
140 be disposed of in response to a request for proposals by the City where competitive sealed
141 proposals or negotiations will be used rather than the competitive sealed bid process.

142 Public entity means any Federal, State or local government, agency, committee, commission, board,
143 institution, or political subdivision created by Federal, State or local law to exercise some sovereign
144 power or to perform some governmental duty.

145 Public notice means notice of a procurement solicitation given in a manner reasonably calculated to
146 provide notice to persons interested in the solicitation. At a minimum, such notice shall include posting
147 notice of all pending procurements on the City’s website. Such notice may, but need not necessarily,
148 include publication in a newspaper of general circulation, electronic mailing lists, and web sites
149 maintained for that purpose.

150 Purchase order means a type of contract issued by the City not requiring countersignature by the
151 contractor.

152 ~~“Recycled material” means material recovered from or otherwise diverted from the waste-~~
153 ~~stream, including recycled paper. It includes post-consumer waste, but does not include those~~
154 ~~materials and by products generated from and commonly reused during production of an end-~~
155 ~~product.~~

156 ~~“Recycled paper” means paper or a paper product that contains recycled materials with a total-~~
157 ~~gross content of post-consumer waste of at least 80%, or if such a paper product is unavailable or~~
158 ~~otherwise impracticable to procure that the paper or paper product has been de-inked or contains~~
159 ~~a level of post-consumer waste that exceeds the then-current minimum content standards of the~~

160 ~~United States Environmental Protection Agency for paper and paper products containing~~
161 ~~recovered materials (40 CFR 250), or if a paper or paper product meeting the requirements set~~
162 ~~out herein is unavailable or otherwise impracticable to procure, that the paper or paper product~~
163 ~~conforms to the then-current minimum content standards adopted by the United States~~
164 ~~Environmental Protection Agency for paper and paper products containing recovered materials~~
165 ~~(40 CFR 250).~~

166 *“Request for proposals” (RFP)* means all documents, whether attached or incorporated by
167 reference, used for soliciting proposals.

168 *“Responsible bidder or offeror”* means a person ~~or entity~~ who has the capability ~~in all~~
169 ~~respects~~ to perform ~~fully~~ the contract requirements, and the experience, ~~integrity, reliability,~~
170 capacity, facilities, equipment and credit ~~which will~~ to assure ~~good faith~~ performance. ~~Any~~
171 ~~person who is in default on the payment of taxes, licenses or other moneys due the City shall not~~
172 ~~be deemed “responsible.”~~

173 *“Responsive bidder”* means a ~~person or entity who~~ that has submitted a bid ~~that~~ which
174 conforms in all material ~~respects~~ aspects to the ~~I~~ n invitation for ~~B~~ b bids.

175 *Services* means ~~the furnishing of labor, time, or effort by a contractor.~~

176 *“Specifications”* means any description of the ~~physical~~ design or functional
177 characteristics, or of the nature, of a good, service or construction item. It may include a
178 description of any requirement for inspecting, testing, or preparing a ~~supply~~ good, service or
179 construction item for delivery.

180 *Split purchasing* means ~~when a recognized need for a certain volume of goods, services,~~
181 ~~or construction is purposefully split into smaller increments in order to evade any requirement of~~
182 ~~this division.~~

183 Surplus goods means all goods the City Manager has determined have become surplus,
184 obsolete or unusable.

185 Tie bids are responsive bids from responsible bidders that are substantially the same in
186 price, terms and conditions and that meet all the requirements and evaluation criteria set forth in
187 the Invitation for Bids.

188 Using department means any City department, office, or agency that utilizes any goods,
189 services, or construction procured under this division.

190 Written or in writing includes information that is electronically transmitted or stored.

191 ~~7.04.050—Expenditure of City funds.~~

192 ~~No City funds shall be expended unless:~~

193 ~~A.—The expenditure is authorized in the budget ordinance for the current year, previously~~
194 ~~approved by ordinance or an ordinance revising it;~~

195 ~~B.—The expenditure is made pursuant to a contract or purchase order signed in accordance with~~
196 ~~this division;~~

197 ~~C.—The contract or purchase order pursuant to which the expenditure is made has been~~
198 ~~approved by the City Council or by the City Administrator as required by this division.~~

199 ~~A.~~ **7.04.22060 Authority Powers and duties of the City ManagerCity Council**
200 **and Administrator.**

201 ~~A.—The City Council shall, by ordinance duly enacted, approve all expenditures of \$5,000.00 or~~
202 ~~more for professional services and all expenditures of \$10,000.00 or more for any other single~~
203 ~~purchase of goods or services other than professional services; provided, however, that~~
204 ~~ordinances approving such expenditures may be enacted upon a single reading without being~~
205 ~~read at 2 meetings of the City Council prior to adoption, if each such expenditure is specifically~~

206 ~~authorized in the budget ordinance for the current year or an ordinance revising it and the cost of~~
207 ~~the procurement is equal to or less than the budgeted amount.~~

208 ~~If the project, goods or services were authorized in the budget ordinance but exceed the budgeted~~
209 ~~amount, an ordinance approving such expenditure may be enacted upon a single reading without~~
210 ~~being read at 2 meetings of the City Council prior to adoption; provided, however, that the City~~
211 ~~Administrator makes a determination that funds are available to cover the cost of the~~
212 ~~procurement.~~

213 ~~B.— Nothing in subsection (A) of this section shall prohibit the City Council from approving the~~
214 ~~purchase of items not included in the City budget, upon receipt of a written justification and a~~
215 ~~written determination by the City Administrator that funds are available for the purchase. City~~
216 ~~Council approval shall be accomplished by 2 readings of an ordinance.~~

217 ~~C.— The City Administrator shall:~~

218 ~~1.— Approve all City expenditures for goods or services which are not required to be~~
219 ~~approved by the City Council, whether made pursuant to contract or purchase order;~~

220 ~~2.— Be responsible for the administration of a centralized system of purchasing and~~
221 ~~procurement of goods and services for the City and for effectuating the provisions of this~~
222 ~~division.~~

223 ~~3.— Establish such rules and regulations as he or she may deem necessary in order to carry~~
224 ~~out the provisions of this division.~~

225 ~~D.— The City Administrator may delegate his or her powers and duties under this division to a~~
226 ~~designated City employee.~~

227 ~~B. E.— The City Administrator shall have the authority to enter into contracts on behalf of~~
228 ~~the City for the purchase of goods and services once such purchases have been duly authorized in~~

229 ~~accordance with this division and cooperative purchasing agreements as authorized in this~~
230 ~~division. The Mayor shall have the authority to enter into all other contracts and agreements on~~
231 ~~behalf of the City, including, but not limited to, agreements with other governmental entities and~~
232 ~~agreements concerning matters of City policy, subject to the approval of the Council.~~

233 Except as otherwise provided in this division, the City Manager shall have the authority and
234 responsibility to:

235 A. Procure or supervise the procurement of all goods, services, and construction needed by the City;

236 B. Sell, trade or otherwise dispose of surplus goods belonging to the City;

237 C. Exercise general supervision and control over all inventories of supplies belonging to the
238 City;

239 D. Develop procedures, standards, and policies, and forms, including but not limited to a
240 Purchasing Manual, as may be necessary for the effective implementation of this division;

241 E. Conduct pre-bid or pre-proposal conferences where appropriate;

242 F. Make written recommendations for the award of formal contracts;

243 G. Keep informed of current developments in the field of purchasing, prices, market
244 conditions, and new products;

245 H. Assure that sufficient funds have been appropriated to cover the cost of all purchases or
246 contracts;

247 I. Establish and maintain programs for the inspection, testing, and acceptance of goods,
248 services, and construction;

249 J. Maintain contract files associated with procurements;

250 K. Change specifications and terminate solicitations;

251 L. Make determinations of bidder and offeror responsibility;

252 M. Require bonds, insurance, and other forms of protection for the City in connection with the

253 procurement process:

254 N. Ensure compliance with this division by reviewing and monitoring procurements conducted by
255 any designee, department, or employee delegated authority under Section 7.04.24;

256 O. Make all written determinations required by this division, except as may otherwise be provided
257 by this division; and

258 P. Perform other functions and duties as required by this division or as may be assigned.

259 **Sec. 7.04.23. City procurement records.** [See prior 7.08.100]

260 All determinations and other written records pertaining to any formal solicitation, award, or performance
261 of a contract shall be maintained for the City in a contract file. All records shall be maintained for such
262 time as required by State law or regulation but in no event less than three (3) years or according to
263 retention schedules approved by the State.

264 **Sec. 7.04.24. Delegation of authority by City Manager.**

265 The City Manager may establish procedures and standards for delegating authority to purchase certain
266 goods, services, or construction items, and to make determinations required by this division to other City
267 employees or departments, if such delegation is deemed appropriate for the effective procurement of
268 those items.

269 **Sec. 7.04.36. Types of contracts.**

270 Subject to the requirements of this division, any type of contract that is appropriate to the procurement
271 and that will promote the best interests of the City may be used.

272 **Sec. 7.04.37. Documentation of purchases required.**

273 For all purchases of goods or services, the person responsible for making the purchase shall obtain and
274 retain documentation of the purchase that includes the goods or services purchased, the identity of the
275 vendor, the date of the purchase, and the method of payment.

276 **Sec. 7.04.38. Formal written contracts required.**

277 Except for the purchase of goods and equipment, formal written contracts signed by the City Manager and
278 the contractor shall be required for procurements exceeding \$30,000.00, including indefinite quantities
279 contracts estimated to exceed \$30,000.00 in any given fiscal year or contract term.

280 **Sec. 7.04.39. Awarding authority.**

281 A. All contracts involving more than \$50,000.00 shall be awarded by the Council, except

282 1. when the contract involves more than \$50,000.00 because of a price preference for
283 environmentally preferable purchasing of no more than 15%; and

284 2. as may be specifically provided in this division.

285 B. Except for those contracts awarded by the Council and when emergency procurements are
286 necessary, all formal contracts shall be awarded by the City Manager.

287 C. All other contracts shall be awarded by the City Manager or Deputy City Manager, personally
288 (not their designees).

289 **Sec. 7.04.40. Contract modifications; change orders; price adjustments.**

290 The following contract changes (including contract modifications, change orders, and price adjustment)
291 must be approved by the Council:

292 A. Changes to any contract not originally awarded by the Council when the cumulative value of the
293 original contract and all changes to the contract exceed \$50,000.00;

294 B. Changes to any contract originally awarded, or any contract previously modified, by the Council
295 when the cumulative value of all changes exceed \$50,000.00 or 25% of the prior contract.

296 **Sec. 7.04.41. Multi-term contracts.**

297 A. A contract for goods or services may be entered into for any period of time deemed to be in the
298 best interest of the City provided the term of the contract and conditions of renewal or extension, if any,
299 are included in the solicitation and funds are available for the first fiscal period at the time of contracting.
300 When funds are not appropriated or otherwise made available to support continuation of performance in a
301 subsequent fiscal period, the contract shall be canceled with no penalty to the City.

302 B. Before renewing a contract for an additional term, the City Manager shall make a written
303 determination that renewal is preferable to instituting a new procurement process, which shall be included
304 in the contract file. In making a renewal determination, the Procurement Agent shall consider any
305 pertinent information, including the following:

306 1. Changes in pricing of the same or similar goods and services;

307 2. Advances in relevant technology;

308 3. Performance of the contractor;

309 4. Changes in the City's needs;

310 5. The costs the City will incur as a result of changing to a new contractor, such as required
311 equipment purchases, interruptions to City operations, and retraining of staff.

312 C. Subscriptions and Software Licenses. For subscription and software license contracts that include
313 an evergreen renewal clause, the department head shall consider the factors in subsection (B) and
314 make a recommendation to the City Manager whether to renew or terminate the contract at least
315 once every five years.

316 **Sec. 7.04.42. Voidable contracts.**

317 If any employee or official of the City purchases or contracts for goods, services, or construction in a
318 manner contrary to the provisions of this division, such purchase or contract is voidable by the City.

319 However, when, in the opinion of the City Manager, the contracting violation occurred through no fault of
320 the contractor, the contractor may be reimbursed on a quantum merit basis for goods, services, or
321 insurance furnished or work performed in good faith, in such amount as may be determined by the City
322 Manager.

323 **7.04.43. Reports to the City Council.**

324 To facilitate the City Council's oversight of purchasing activity, the City Manager shall make the
325 following reports to the City Council:

326 A. Periodically, and at least annually, a report of all procurements of \$30,000.00 or more that
327 includes the cost, method of source selection, the identity of persons submitting competitive bids
328 or proposals and the cost of the competitive bids or proposals, and a brief explanation of the
329 reason for the choice of vendor;

330 B. Periodically, and at least annually, a report of all emergency purchases between \$10,000.00 and
331 \$30,000 that includes the cost, the reason for the emergency, a brief explanation of the reason for
332 the choice of vendor; and any efforts taken following the emergency to prevent the need for
333 future emergency purchases; and

334 C. As soon as practicable, a report of each emergency procurement exceeding \$30,000 that includes
335 the cost, the reason for the emergency, a brief explanation of the reason for the choice of vendor;
336 and any efforts taken following the emergency to prevent the need for future emergency
337 purchases.

338

Chapter 7.08

339

SOURCE SELECTION ~~AND CONTRACT FORMATION~~

340

~~Sections:~~

341

Article ~~1~~1. General Provisions

342

~~7.08.010—Written contracts.~~

343

~~7.08.020—Voidable contracts.~~

344

~~7.08.030—Validity of claims.~~

345

~~Article 2. Competitive Bidding and Source Selection~~

346

~~7.08.040—Conditions for use.~~

347

~~7.08.050—Competitive sealed bidding.~~

348

~~7.08.060—Competitive sealed proposals.~~

349

~~Article 3. Other Procurement Methods~~

350

~~7.08.070—Procurements exempt from competitive bidding.~~

351

~~7.08.080—Procedure for procurements exempt from competitive bidding.~~

352

~~7.08.090—Extensions.~~

353

~~7.08.100—Records of procurement actions.~~

354

~~7.08.110—Compliance with Chapter 14.04.~~

355

~~7.08.120—Purchase orders.~~

356

~~7.08.130—Petty cash expenditures.~~

357

~~7.08.140—Purchase of recycled products.~~

358

~~7.08.145—Environmentally preferable purchasing.~~

359

~~Article 4. Disposition of Goods~~

360

~~7.08.150—Generally.~~

361

~~7.08.160—Methods of sale.~~

362 ~~7.08.170—Worthless items.~~

363 ~~Article 5. Living Wage Requirement~~

364 ~~7.08.180—Scope.~~

365 ~~7.08.190—Exemptions.~~

366 ~~7.08.200—Solicitation requirements.~~

367 ~~7.08.210—Living wage requirement.~~

368 ~~7.08.220—Notices.~~

369 ~~7.08.230—Enforcement.~~

370 ~~7.08.240—Review of living wage requirement.~~

371 ~~Article 1. General Provisions~~

372 ~~**7.08.51 In general**~~

373 ~~Notwithstanding any provision of this division, the Council may approve any method of procurement that~~
374 ~~it deems to be in the best interest of the City.~~

375 ~~**7.08.010—Written contracts.**~~

376 ~~A.—All contracts involving more than \$10,000.00 shall be awarded by the Council.~~

377 ~~B.—Written contracts signed by the City Administrator or the Administrator’s designee and the~~
378 ~~contractor shall be used for the following types of procurements:~~

379 ~~1.—Construction work exceeding \$10,000.00;~~

380 ~~2.—Professional services exceeding \$5,000.00.~~

381 ~~**7.08.020—Voidable contracts.**~~

382 ~~If any official of the City purchases or contracts for any goods, services or capital improvements~~
383 ~~in a manner contrary to the provisions of this chapter, such purchase or contract shall be voidable~~
384 ~~by the City. However, when, in the opinion of the City Administrator, the contracting violation~~
385 ~~occurred through no fault of the contractor, the contractor may be reimbursed on the basis of~~

386 ~~goods and services furnished or work performed in good faith, in such amount as the City~~
387 ~~Administrator may determine.~~

388 ~~**7.08.030—Validity of claims.**~~

389 ~~No person or entity shall have a valid or enforceable claim against the City for the payment of~~
390 ~~any moneys or any other thing of value pursuant to an alleged contract or agreement, unless the~~
391 ~~contract or agreement has been signed and authorized as provided in this division.~~

392 **Article II. Competitive Procurement ~~Bidding and Source Selection~~**

393 ~~**7.08.040—Conditions for use.**~~

394 ~~A.—General. All City contracts shall be awarded by competitive sealed bidding or competitive~~
395 ~~sealed proposals, except as otherwise provided in:~~

- 396 ~~1.—Section 7.08.070(A), Small purchases;~~
- 397 ~~2.—Section 7.08.070(B), Professional services;~~
- 398 ~~3.—Section 7.08.070(C), Emergency procurement;~~
- 399 ~~4.—Section 7.08.070(D), Sole source procurement;~~
- 400 ~~5.—Section 7.08.070(E), Cooperative purchasing.~~

401 ~~B.—City Vendors or Suppliers. The City Administrator or designee shall take all reasonable~~
402 ~~steps to assure that all qualified vendors or suppliers of goods or services residing or having their~~
403 ~~principal offices in the City are made aware of the City's issuance of invitations for bids or~~
404 ~~request for proposals and given an opportunity to submit bids or proposals in response thereto.~~

405 ~~**7.08.61050 Formal solicitation --**~~ **Competitive sealed bidding.**

406 ~~A. *Conditions for use.* Formal contracts shall be awarded by competitive sealed bidding, except as~~
407 ~~otherwise provided in this division.~~

408 ~~Competitive sealed bidding shall be used when all of the following circumstances apply:~~

- 409 ~~1.—Time permits the solicitation, submission and evaluation of sealed bids;~~

410 ~~2.—The award will be made on the basis of price and price-related factors;~~

411 ~~3.—It is not necessary to conduct discussions with responding sources about their bids; and~~

412 ~~4.—There is reasonable expectation of receiving more than one bid.~~

413 ~~B.—Procedure. The following general procedures shall be followed for awarding contracts by~~
414 ~~competitive sealed bidding.~~

415 ~~B. 1.—~~*Invitation for bBids.* An In invitation for Bids shall be issued and, which shall include
416 specifications and all contractual terms and conditions applicable to the procurement.

417 ~~C. 2.—~~*Public Notice.* Public notice of the In invitation for Bids shall be given at least fifteen
418 (15) days prior to the date set forth therein for the opening of bids, unless the City Manager determines,
419 in writing, that circumstances require a shorter notice period.~~a reasonable time prior to the date set~~
420 ~~forth therein for the opening of bids. Such notice may include publication in a newspaper of~~
421 ~~general circulation.~~

422 ~~3D.:~~ *Bid o*~~Opening of Bids.~~ Bids shall be opened publicly in the presence of one (1) or more
423 witnesses at the time and place designated in the In invitation for Bids. The amount of each bid,
424 and such other relevant information as is deemed appropriate~~may be specified by regulation,~~
425 together with the name of each bidder, shall be recorded; The record and each bid shall be
426 open to public inspection.

427 ~~E.4.—~~*Late bids.* Late bids will not be accepted.

428 ~~F. Bid a~~*Acceptance and e*~~Evaluation of Bids.~~ Except as authorized in this article, bBids
429 shall be accepted without alteration or correction. Bids shall be evaluated based on the
430 requirements set forth in the In invitation for Bids, which may~~Those include~~ criteria to
431 determine acceptability such as inspection, testing, quality, workmanship, delivery, and
432 suitability for a particular purpose~~that will affect the bid price and be considered in evaluation~~
433 ~~for award shall be objectively measurable, such as, but not limited to, discounts, transportation~~

434 ~~costs and total or life cycle costs.~~ The Invitation for Bids shall set forth the evaluation criteria
435 to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation for
436 Bids.

437 G. *Waiver of minor informality or immaterial bid defect.* The City Manager may waive a minor
438 informality or immaterial bid defect if such waiver is determined to be in the best interest of the City. A
439 minor informality means a bid requirement that is merely a matter of form or is an immaterial provision in
440 the solicitation. A bid defect is immaterial when the significance of the defect is negligible when
441 contrasted with the total cost or scope of the procurement. The decision of the City Manager with respect
442 to whether a requirement is a minor informality or whether a bid defect is immaterial is final and may not
443 be challenged by a bidder.

444 H.5. *Correction or ~~s~~Withdrawal of ~~b~~Bids; cancellation of awards.*

445 1. *Where a mistake is discovered before bid opening, the bid may be modified or withdrawn*
446 by written or electronic notice received by the City Manager prior to the time set for bid opening.

447 2. *Where a mistake is discovered after bid opening but prior to contract award, a bid:*

448 a. *May be corrected where the error made, and the intended bid price can be*
449 determined solely from the bid documents submitted, and the City Manager determines
450 that the mistake was inadvertent and bona fide;

451 b. *May be withdrawn where the bid was submitted in good faith and the bid price is*
452 substantially lower than the other bids due solely to a clerical mistake therein as opposed
453 to a judgment mistake and the mistake was due to an unintentional arithmetic error or an
454 unintentional omission of a quantity of work, labor or material made directly in the
455 compilation of a bid, which unintentional arithmetic error or unintentional omission can
456 be clearly shown by objective evidence drawn from inspection of original work papers,
457 documents and materials used in the preparation of the bid.

458 3. Where an error is discovered in the successful bid after the award of the contract and the
459 conditions of subsection (H)(2)(a). or (H)(2)(b) of this section are satisfied, the bid may be
460 corrected or withdrawn, respectively, and the contract amended or rescinded as appropriate.
461 provided that no bid correction or contract amendment shall be permitted that would cause the
462 contract price to exceed the next lowest bid unless the contractor has made substantial progress in
463 performing under the contract, the performance is acceptable, and the Procurement Agent makes
464 a written determination that it is in the best interest of the City to do so.

465 4. No bid may be withdrawn or award canceled when the result would be prejudicial to the
466 interests of the City or fair competition.

467 5. No bidder who is permitted to withdraw a bid shall, for compensation, supply any
468 material or labor to or perform any subcontract or other work agreement for the person or
469 business to whom the contract is awarded, or otherwise benefit, directly or indirectly, from the
470 performance of the project for which the withdrawn bid was submitted.

471 6. If a bid is withdrawn or award canceled under the authority of this section, the lowest
472 remaining bid shall be deemed to be the low bid.

473 7. Nothing herein shall prevent the City from rejecting all bids if deemed to be in the
474 interest of the City or fair competition.

475 8. All decisions to permit the correction or withdrawal of bids or cancellation of an award
476 based upon bid mistakes, shall be supported by a written determination made by City Manager.

477 ~~Correction or withdrawal of inadvertently erroneous bids before or after award or cancellation of~~
478 ~~awards or contracts based on bid mistakes shall be permitted in accordance with such regulations~~
479 ~~as the City Administrator may establish. After the opening of bids, no changes in bid prices or~~
480 ~~other provisions of bids prejudicial to the interest of the City or fair competition shall be~~
481 ~~permitted. Except as otherwise provided by regulation, all decisions to permit the correction or~~

482 ~~withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by a~~
483 ~~written determination by the City Administrator.~~

484 I. ~~6.~~—*Contract aAward.* Subject to the provisions set forth herein, contracts shall be awarded to
485 the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in
486 the Invitation for Bids.

487 ~~The contract shall be awarded with reasonable promptness by written notice to the most-~~
488 ~~responsible and responsive bidder whose bid meets the requirements and criteria set forth in the-~~
489 ~~invitation for bids.~~

490 1. When the terms and conditions of the Invitation for Bids provide that multiple
491 awards may be made, awards may be made to more than one bidder.

492 2. If the bid from the lowest responsible bidder exceeds available funds or is deemed
493 excessive, the City Manager may (a) negotiate with the lowest responsible bidder to obtain an
494 acceptable contract price, and if unsuccessful, may thereafter enter into negotiations with the next
495 lowest bidder; or (b) reject all bids and solicit new bids, with or without revised specifications.

496 3. When the contract is not awarded to the lowest bidder, a written statement of the
497 reasons for awarding the contract to another bidder shall be prepared by the City Manager and
498 maintained in the contract file.

499 J. *Tie bids.* In the case of a tie bid between a local business and a non-local business award shall be
500 made to the local business. If tie bids are received from two or more local businesses or from two (2) or
501 more nonlocal businesses, a drawing shall be conducted. A witness shall be present to verify the drawing
502 and shall certify the results on the bid tabulation sheet. The City reserves the right to reject all bids and
503 rebid the contract.

504 K. 7.—Multi-step ~~s~~Sealed ~~b~~Bidding. When it is considered impractical to initially prepare a
505 purchase description to support an award based on price, an ~~I~~invitation for ~~B~~bids may be issued
506 requesting the submission of unpriced offers to be followed by an ~~I~~invitation for ~~B~~bids limited to
507 those bidders ~~or offerors~~ whose offers have been qualified under the criteria set forth in the first
508 solicitation.

509 L. Single bid. Where only a single bid is received, and the price is not acceptable to the City, the
510 City may either negotiate with the bidder for a more acceptable price or reject the bid. If the bid is
511 rejected, the City may re-solicit for bids or may utilize any other procurement method reasonably
512 designed to obtain the best price.

513 M. Contract award based on "best value." Notwithstanding subsection 7.08.61(I), a contract may
514 be awarded on a best value analysis provided that the criteria for analysis was included in the invitation
515 for bids. The contract shall be awarded to the responsive, responsible bidder whose bid is determined to
516 be the best value to the City and that conforms in all material respects to requirements and criteria set
517 forth in the invitation for bids.

518 ~~C.—Cancellation of Invitation for Bids. An invitation for bids, or other solicitations may be~~
519 ~~canceled or any or all bids may be rejected, in whole or in part, as may be specified in the~~
520 ~~solicitation when it is in the best interests of the City.~~

521 **7.08.62060. Formal solicitation -- —Competitive sealed proposals.**

522 A. Conditions for Use. ~~Formal contracts may be awarded by A contract may be entered into~~
523 ~~by the use of~~ competitive sealed proposals where the City Manager, in consultation with the
524 using department, -method:determines

525 ~~1.—When the City Administrator that determines, in writing, that due to stated circumstances,~~
526 ~~the use of~~ competitive sealed bidding is either not practicable~~practical~~ or not advantageous to the
527 City; ~~or~~

528 ~~2. For the procurement of professional services.~~

529 B. ~~Written justification. A written justification for utilizing sealed proposals shall be submitted to~~
530 ~~the Awarding Authority before any resulting contract is awarded, except that no written justification is~~
531 ~~required for utilizing competitive sealed proposals to procure~~

532 1. ~~Professional services.~~

533 2. ~~Design-build projects.~~

534 C. ~~Request for Proposals (RFP); evaluating factors. The City Manager shall issue a written~~
535 ~~Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the~~
536 ~~relative importance of price and other factors that shall be used in evaluating the proposal, and applicable~~
537 ~~contractual terms and conditions, including any specific capabilities and qualifications required of the~~
538 ~~contractor. Proposals shall be solicited through a request for proposals.~~

539 ~~DC. Public Notice. Adequate P~~public notice of the ~~RFP~~request for proposals shall be given in
540 the same manner as provided in Section 7.08. ~~61(C)050-(B)(2).~~

541 ~~ED. Receipt and opening of p~~Proposals. ~~No proposals shall be handled so as to permit~~
542 ~~disclosure of the identity of any offeror or the contents of any proposal to competing offerors~~
543 ~~during the evaluation process. A register of proposals shall be prepared containing the name of~~
544 ~~each offeror, the number of modifications received, if any, and a description sufficient to identify~~
545 ~~the item offered. The register of proposals shall be open to public inspection only after contract~~
546 ~~award. There shall be no public opening of proposals and no proposal shall be otherwise handled so as to~~
547 ~~permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors~~
548 ~~during the evaluation process. The proposals, except for information identified by the offeror as~~
549 ~~confidential or proprietary, shall be open for public inspection after contract award.~~

550 F. *Late proposals.* Late proposals shall be accepted only when it is established to the satisfaction of
551 the City Manager that the lateness was due to unexpected weather or traffic conditions, or other
552 conditions beyond the control of the offeror. The City Manager may require documentation and/or other
553 proof of the condition resulting in the late proposal. No late proposal shall be accepted when to do so
554 would confer an advantage on the late offeror or otherwise undermine fair competition. All decisions to
555 accept late proposals shall be supported by a written determination made by the City Manager.

556
557 ~~E. *Evaluation Factors.* The request for proposals shall state the relative importance of price and~~
558 ~~other evaluation factors.~~

559 GF. *Discussion with Responsible Offerors and Revisions to Proposals.* IfAs provided in the
560 RFP, the City Manager or the using department may conductrequest for proposals; discussions
561 ~~may be conducted~~ with responsible offerors who submit proposals determined to be reasonably
562 susceptible to being selected for award for the purpose of clarification to facilitateassure full
563 understanding of, and responsiveness to, conformance with the solicitation requirements.

564 Offerors shall then be afforded an~~accorded fair and equal treatment with respect to any~~
565 ~~opportunity tofor discussion and revision their of proposalproposals, and such revisions may be~~
566 ~~permitted after submissions and~~ prior to award for the purpose of obtaining best and final
567 proposaloffers. In conducting discussions, there shall be no discloseddiscussion of any
568 information derived from proposals submitted by -of the identity of competing offerors.

569 H. *Ranking of proposals; negotiation; award.* The City Manager, in consultation with the using
570 department, shall evaluate the final proposals based on criteria contained in the RFP and rank in order of
571 preference the most qualified offerors. The City Manager shall negotiate a contract with the top-ranked
572 offeror. If the City Manager is unable to negotiate a satisfactory contract with the top-ranked offeror, the
573 City Manager may thereafter enter into negotiations with the next highest ranked offeror and, if
574 unsuccessful, with each successive next highest ranked offeror. The contract shall be awarded to the

575 highest ranked offeror with whom a satisfactory contract has been negotiated. If a contract satisfactory to
576 the City cannot be reached, the City may terminate negotiations, restart the solicitation process, or
577 terminate the solicitation. If, at any time during the process, it is determined in writing that only one
578 offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under
579 consideration, a contract may be negotiated and awarded to that offeror.

580 I. *Multiple awards.* Multiple awards may be made under a single RFP if the RFP provides for
581 multiple awards.

582 ~~G.—Award. Award shall be made to the responsible offeror whose proposal is determined to be~~
583 ~~the most advantageous to the City, taking into consideration price and evaluation factors set forth~~
584 ~~in the request for proposals. The contract file shall contain the basis on which the award is made.~~

585 ~~H.—Cancellation of Request for Proposals. A request for proposals or other solicitations may be~~
586 ~~canceled or any or all proposals may be rejected, in whole or in part, as may be specified in the~~
587 ~~solicitation when it is in the best interests of the City.~~

588 **Sec. 7.08.63. Informal solicitation.**

589 A. Any purchase not exceeding \$30,000.00 may be made in accordance with informal procurement
590 procedures established by the City Manager that provide for informal solicitation of bids, quotations,
591 proposals or offers.

592 B. The award shall be made to the lowest responsive and responsible person. The name of the person
593 submitting a bid, quotation, proposal, or offer and the date and amount of each bid, quotation, or offer
594 shall be recorded and maintained as part of the contract file.

595 **Sec. 7.08.64. Request for expressions of interest.**

596 A. *Conditions of use.* A request for expressions of interest may be used to:

597 1. Obtain information needed to prepare a subsequent procurement;

598 2. Develop a ready source of potential offerors who can respond to a subsequent
599 procurement; or

600 3. Resolve technological or programmatic questions relative to how the City requirements
601 can best be supplied.

602 B. *Public notice.* Public notice of a request for expressions of interest shall be given in the same
603 manner provided in Section 7.08.61(C).

604 C. *Evaluation.* A request for expressions of interest must contain evaluation factors and an
605 explanation of how the list of offerors eligible to receive a subsequent solicitation will be determined.

606 D. *Selection Committee.* The Procurement Agent may form a selection committee to review and
607 evaluate the proposals and recommend a list of offerors who will be eligible to receive a subsequent
608 solicitation.

609 E. *Subsequent solicitation.* A request for expressions of interest does not directly lead to the award
610 of a contract. A subsequent solicitation may be accomplished through competitive sealed bidding,
611 competitive sealed proposals, or an informal solicitation. Proposals received under a request for
612 expressions of interest may form a basis for justifying a non-competitive contract award.

613 **Sec. 7.08.65. Unsolicited proposals.**

614 A. *Processing of Unsolicited Proposals.* If the City receives a proposal, other than one submitted
615 in response to a solicitation, the City Manager shall forward the proposal to the using department.

616 B. *Conditions for Use.* To be considered for evaluation, an unsolicited proposal:

617 1. Shall be in writing;

618 Shall be sufficiently detailed to allow a judgment to be made concerning the potential
619 utility of the proposal to the City; and

620 2. Shall contain a novel or innovative concept, application, approach, or method or
621 which demonstrates a novel capability of the offeror of the proposal.

622 C. *Evaluation.* The City Manager shall determine whether the proposal meets the requirements of
623 Section 7.08.65(B). The City Manager shall make the determination within thirty (30) days after
624 receiving the unsolicited proposal. If the City Manager fails to make a determination within thirty days,
625 the unsolicited proposal shall be considered disapproved.

626 D. If the City Manager determines that the proposal does not meet the requirements of this section, a
627 contract award shall not be made based on the unsolicited proposal.

628 E. *Discussion with Responsible Offeror.* The City Manager and the using department may
629 conduct discussions with an offeror who submits an unsolicited proposal for the purpose of clarification
630 and to assure full understanding. An offeror may be afforded an opportunity to revise their proposal prior
631 to award.

632 F. *Public notice before award.* Not less than thirty (30) days before the award and execution of a
633 contract based on an unsolicited proposal, the City Manager shall publish a notice of intent to award the
634 contract on the City's website. If, during the 30-day period before contract award, a person files a written
635 petition with the City for reconsideration of an approval determination, the awarding authority shall
636 reconsider and make written findings affirming or reversing the approval.

637 G. *Contract Award.* Subject to the provisions set forth herein, award of an unsolicited proposal
638 shall be made in accordance with Section 7.04.39.

639 H. *Confidentiality.* The proposal, except for information properly identified by the offeror as
640 proprietary or confidential, shall be open for public inspection.

641 **Sec. 7.08.66. Right to cancel solicitations; right to reject bids, proposals and offers.**

642 A. The City Manager may, when in the best interest of the City, cancel an Invitation for Bids, a
643 Request for Proposals, or other solicitation. The reasons therefor shall be made a part of the contract file.

644 B. Any or all bids, proposals, or offers may be rejected in whole or in part by the Awarding
645 Authority.

646 **Sec. 7.08.67. Responsibility of bidders and offerors.**

647 A. *Determination of responsibility.* A determination shall be made as to the capability of the
648 bidder of offeror to fully perform the contract requirements. Where competitive sealed bids or
649 competitive sealed proposals are used, any determination of nonresponsibility shall be made in writing.

650 B. *Factors to consider.* The following factors shall be considered in determining whether a bidder
651 or offeror is "responsible:"

652 1. Price and other criteria set forth in the solicitation documents;

653 2. The ability, capacity, skill and financial resources of the bidder or offeror to perform the
654 contract or provide the service required within the time specified, without delay or interference;

655 3. The character, integrity, reputation, judgment, experience, and efficiency of the bidder or
656 offeror;

657 4. References and the quality of performance of previous contracts or services;

658 5. The previous and existing compliance by the bidder or offeror with laws and policies
659 relating to a contract with the City;

660 6. The ability of the bidder or offeror to provide future maintenance and service for the use
661 of the subject of the contract;

662 7. Such other factors deemed relevant to the determination of nonresponsibility.

663 C. Presumed nonresponsibility. A bidder or offeror who has been disbarred or who is in default
664 on payment of taxes, licenses, fees, fines, or other monies due the City or other government entity, for
665 whatever reason, may be deemed to be nonresponsible.

666 D. Failure to provide information. The failure of a bidder or offeror to promptly supply
667 information or records in connection with an inquiry with respect to responsibility may be grounds for a
668 determination of nonresponsibility with respect to such bidder or offeror.

669 E. Nondisclosure of information.

670 1. Confidential information furnished by a bidder or offeror pursuant to this section shall
671 not be made public without the prior written consent of the bidder or offeror.

672 2. The City shall not be required to disclose specific information received from references if
673 such information was disclosed in confidence or if the disclosure of said information could affect
674 the ability of the City to obtain future references.

675 F. Prequalification. Where a competitive procurement process is used, the City Manager may
676 prequalify bidders or offerors to submit a bid or proposal based on the criteria for determining
677 "responsibility" as set forth in this section and in the solicitation documents. Prequalification of a bidder
678 or offeror shall not constitute a conclusive determination that a bidder or offeror is responsible, and such
679 bidder or offeror may be rejected as non-responsible at any time on the basis of subsequently discovered
680 information.

681 **Article III. Cooperative Procurement**

682 **Sec. 7.08.71. Cooperative procurement authorized.**

683 A. The City may participate in, sponsor, conduct, or administer cooperative procurement agreements
684 with one or more other public entities when the best interests of the City would be served thereby.

685 B. The City may contract with any contractor who offers goods, services, or construction on the

686 same terms as provided other public entities that have arrived at those terms through a recent competitive
687 procurement procedure similar to the procedure used by the City.

688 **Sec. 7.08.72. Contracting with public entities.**

689 A. The City may contract directly with other public entities for goods or services when such goods
690 or services were obtained through competitive procurement procedures.

691 B. The City may contract with any public entity to provide or receive any work or services of the
692 type the City or such other public entity performs for its jurisdiction.

693 **Sec. 7.08.73. Joint use of facilities.**

694 The City may enter into agreements or memoranda of understanding with other public entities for the
695 common use or lease of facilities upon terms agreed upon between the parties.

696 **Sec. 7.08.74. Supply of personnel, information, and technical services.**

697 The City may enter into agreements or memoranda of understanding with other public entities for
698 supplying or receiving personnel, information, or technical services.

699

700 **Article IV.3. Other Non-Competitive Procurement Methods**

701 **~~7.08.081070~~ Small pProcurements ~~exempt from competitive bidding.~~**

702 A. For procurements of less than \$10,000.00, reasonable efforts shall be used to obtain
703 goods and services at the lowest cost.

704 B. For procurements from \$10,000.00 up to \$30,000.00, other than sole source and
705 cooperative purchasing, proposals for goods or services shall be solicited from at least three
706 qualified sources— Small Purchases. Any procurement not exceeding the amount of \$10,000.00-
707 may be made without the requirement of competitive bidding; provided, however, that-

708 ~~procurement requirements shall not be artificially divided so as to constitute a small purchase~~
709 ~~under this section.~~

710 ~~B.—Professional Services. Any procurement of or contract for professional services may be~~
711 ~~made without the requirement of competitive bidding. The City Administrator may, by~~
712 ~~regulations, establish competitive negotiation or selection procedures for professional service~~
713 ~~contracts or classes of professional service contracts.~~

714 ~~C.—Emergency Procurement. The City Administrator or designee may make or authorize others~~
715 ~~to make emergency procurements without the requirement of competitive bidding when there~~
716 ~~exists a threat to the public health, welfare or safety under emergency conditions, provided that~~
717 ~~the City Administrator or designee shall make a written determination of the basis for the~~
718 ~~emergency, which shall be approved by the City Council by resolution, that such emergency~~
719 ~~procurements shall be made with such competition as is practicable under the circumstances and~~
720 ~~that the City Administrator shall make a written determination of the basis for the selection of the~~
721 ~~particular contractor, which shall be included in the contract file. In no case, shall failure to plan~~
722 ~~for provision of a City service constitute an emergency under this subsection.~~

723 **7.08.82. D.—Sole Source Procurement. [See prior 7.08.070(D)]**

724 A. A contract of any value may be awarded without competition when the Awarding Authority
725 determines, based on a good faith review of available sources, that

726 1. There is only one (1) source practicably available for the required supply, goods, service,
727 or construction item; or

728 2. The availability of used machinery or equipment is limited, such as to make competitive
729 procurement impractical, and a delay in procurement would be detrimental to the City.

730 B. A record of sole source procurements shall be maintained that lists each contractor's name, the
731 amount and type of each contract, a listing of the items and services procured under each contract, and the
732 reasons justifying the sole source procurement.

733 ~~A contract may be awarded for a good, service or construction item without the requirement of~~
734 ~~competitive bidding when, under such regulations as the City Administrator may establish, the~~
735 ~~City Administrator determines, in writing, that there is only one available source for the good,~~
736 ~~service or construction item or if a specific manufacturer's product is required to ensure~~
737 ~~compatibility with existing installed equipment and so notifies the City Council. The City~~
738 ~~Administrator's determination shall be subject to review and approval by the City Council by~~
739 ~~resolution.~~

740 **Sec. 7.08.83. Phased projects or services.**

741 When the appropriate Awarding Authority determines in writing that a project or a service of a complex
742 nature carried out in phases makes it not feasible to continue subsequent phases with other than the first
743 phase source, contracts for subsequent phases may be awarded to the first phase source without
744 competition.

745 **Sec. 7.08.84. Emergency procurements. [See prior 7.08.070(C)]**

746 A. The City Manager may authorize emergency procurements of goods, services, or construction of
747 any value without competition under any of the following circumstances:

- 748 1. Where there exists a threat to public health, welfare or safety;
- 749 2. Where delay would significantly injure the City financially or otherwise;
- 750 3. To prevent a breakdown in machinery and/or threatened termination of essential services
751 (including maintenance and repair of essential office equipment);
- 752 4. To prevent spoilage;

753 5. Any other circumstance in which goods, services, or construction are needed for
754 immediate use;

755 B. Emergency procurements shall be made with such competition as is practical under the
756 circumstances.

757 C. As soon as practicable, a record of each emergency procurement shall be made containing the
758 following:

759 1. A written explanation of the circumstances of the emergency;

760 2. A tabulation of bids or quotes received, if any;

761 3. The contractor's name, the amount and type of contract, a listing of the items procured
762 under the contract.

763 To the extent feasible under the circumstances, a person to whom purchasing authority
764 has been delegated shall obtain the approval of the City Manager for emergency procurement in excess of
765 \$10,000.00.

766 **Sec. 7.08.85. Related construction projects.**

767 Contracts may be awarded without competition for construction of City improvements if:

768 A. City improvements consist of a single structure, portion of a single structure or complex of related
769 structures containing both City and private improvements or improvements of another government; and

770 B. The party with whom the City contracts for construction of the City improvements is also
771 constructing the private or other governmental improvements within the single structure or complex of
772 related structures; and

773 C. There is a written determination that this method of procurement is in the best interests of the
774 City.

775 **Sec. 7.08.86. Contract extensions.** [See prior 7.08.090 Extensions]

776 A. Unless otherwise provided in the solicitation documents, an extension of a contract may be
777 awarded without competition when a written finding is made that circumstances warrant the extension of
778 an existing contract, provided the extension is for not more than one year and the pro rata cost of the
779 extension does not exceed 110% of the original price.

780 B. Before extending a contract, the City Manager shall make a written determination that extending
781 the contract is preferable to instituting a new procurement process, which shall be included in the contract
782 file. In making an extension determination, the City Manager shall consider any pertinent information,
783 including the following:

784 1. Changes in pricing of the same or similar goods and services;

785 2. Advances in relevant technology;

786 3. Performance of the contractor;

787 4. Changes in the City's needs;

788 5. The costs the City will incur as a result of changing to a new contractor, such as required
789 equipment purchases, interruptions to City operations, and retraining of staff.

790 ~~E.—Cooperative Purchasing. The City Administrator may enter into contracts or agreements for~~
791 ~~cooperative purchasing, as defined in Section 7.04.040 (F) of this chapter, without the~~
792 ~~requirement of competitive bidding by the City, provided that such cooperative purchasing meets~~
793 ~~all of the requirements of this division and Chapter 8A of this Code and is consistent with their~~
794 ~~provisions in every respect and that the cooperative purchasing agreement is subject to review~~
795 ~~and approval by the City Council by resolution prior to any actual purchase or purchases being~~
796 ~~made thereunder.~~

797 ~~**7.08.080—Procedure for procurements exempt from competitive bidding.**~~

798 ~~Insofar as it is practical, in all procurements exempt from the requirement of competitive~~
799 ~~bidding, with the exception of sole source procurement and cooperative purchasing, proposals~~
800 ~~for the good or service required shall be solicited from at least 3 qualified sources. In the event~~
801 ~~that 3 qualified sources do not exist, the City Administrator or his or her designee shall make a~~
802 ~~written determination of that fact and report that determination to the City Council.~~

803 ~~**7.08.090—Extensions.**~~

804 ~~An extension of a contract may be awarded without competition when the City Administrator~~
805 ~~finds, in writing, that circumstances warrant the extension of an existing contract at the same unit~~
806 ~~price, provided that the extension occurs within 12 months of the date of the execution of the~~
807 ~~original contract and does not exceed 25% of the total original price.~~

808 ~~**Sec. 7.08.87. Exemptions.**~~

809 ~~The following are exempt from competitive procurement but are subject to the requirements of sections~~
810 ~~7.04.37, 7.04.38 and 7.04.39:~~

811 ~~A. Professional services and other services associated with actual or potential litigation,~~
812 ~~administrative, or regulatory proceedings.~~

813 ~~B. Professional services not exceeding \$50,000.00. No contractor or other person may be a party to,~~
814 ~~or beneficiary of, more than one contract awarded pursuant to this provision within any given fiscal year.~~

815 ~~C. Purchases for water, sewer, electric, or other utility services.~~

816 ~~D. Sale, rental, or purchases of land and improvements on the land, and rights-of-way.~~

817 ~~E. Grants or contracts with other public bodies.~~

818 F. Goods purchased from a public auction sale, including an internet auction, provided that a written
819 determination is made in advance by the City Manager that such purchase is in the best interest of the
820 City.

821 G. Purchases for special police work when the Chief of Police certifies to the City Manager that
822 items are needed for undercover police operations.

823 H. Purchases of goods and personal services for direct use by individual recipients of services under
824 the public assistance programs administered by the City.

825 I. Purchases from nonprofit sheltered workshops serving the handicapped.

826 J. Expenditures for travel, subscription, courses, seminars, and conventions, membership dues and
827 subscription fees.

828 K. Advertising.

829 L. Procurement of temporary employment services.

830 M. Procurement of entertainment, instructional, facilitating, or educational services for City officials,
831 staff, or residents, or for social, cultural, or recreational programs or events offered or sponsored by the
832 City.

833 N. Acquisition of works of art for public display.

834 O. Employment contracts and employee relocation costs.

835 P. Sponsorship agreements.

836 Q. On-going proprietary software maintenance or support.

837 R. Employee benefits.

838 **Sec. 7.08.88. Special procurements.**

839 A. The Awarding Authority may authorize non-competitive procurement methods upon a written
840 determination that a unique or unusual circumstance exists that makes competitive procurement contrary
841 to the City's interest.

842 B. A non-competitive procurement method is permissible when all of the following conditions are
843 satisfied:

844 1. An offer of goods or services is available for a limited period that expires before the
845 competitive procurement process can be completed;

846 2. The City Manager determines that the cost of procuring similar goods or services is
847 reasonably likely to be greater if the City foregoes the offer;

848 3. The procurement of the goods or services is authorized in the City budget; and

849 4. The procurement does not exceed \$50,000.00.

850 C. A record of special procurements shall be maintained that lists the date of each contract, the
851 contractor's name, the amount and type of each contract, the goods or services procured, and a summary
852 of the reasons justifying the special procurement. A file shall be retained for at least five years for each
853 special procurement that includes a copy of the contract, the written determination that competitive
854 procurement was not in the City's best interest, and documentation supporting the determination.
855 Supporting documentation may include correspondence regarding the expiration of the offer, historical
856 pricing from the vendor, and contemporaneous pricing from competitive vendors.

857 **7.08.100—Records of procurement actions.**

858 ~~A.—Contents of Record. All determinations and other written records pertaining to any~~
859 ~~solicitation, award or performance of a contract shall be maintained for the City in a contract file.~~
860 ~~All records shall be maintained for such time as required by State law or regulation but for not~~
861 ~~less than 3 years.~~

862 ~~B.— Submission to the City Council. A copy of such record shall be submitted to the City~~
863 ~~Council upon request. Such record shall be available for public inspection.~~

864 ~~**7.08.110—Compliance with Chapter 14.04.**~~

865 ~~Notwithstanding any other provision of this division, all procurement actions shall comply in~~
866 ~~every respect with all the provisions of Chapter 14.04 of this Code, known as the “Takoma Park~~
867 ~~Nuclear-Free Zone Act.”~~

868 ~~**7.08.120—Purchase orders.**~~

869 ~~A.— City purchases shall be memorialized by a written contract or a purchase order signed in~~
870 ~~accordance with this chapter. Purchase orders shall be consecutively numbered from the start of~~
871 ~~each fiscal year. Purchase orders shall be signed by the City Administrator or his or her designee.~~

872 ~~B.— No department head shall make any purchase on behalf of or chargeable to the City except~~
873 ~~by means of a purchase order signed in accordance with subsection (A) of this section; provided,~~
874 ~~however, that this subsection (B) shall not apply to expenditures made in advance of a purchase~~
875 ~~in emergencies as defined in and subject to the regulations that may be established by the City~~
876 ~~Administrator; provided, however, that in the case of emergency expenditures, a purchase order~~
877 ~~must be obtained from the City Administrator or designee within 72 hours of the purchase.~~

878 ~~C.— No person employed by the City or providing services to the City as an independent~~
879 ~~contractor shall purchase or cause to be purchased through or from the City any item for his or~~
880 ~~her personal use. Without limitation on any other legal actions or remedies available, violations~~
881 ~~of this section shall be sufficient cause for dismissal, suspension or termination of employment~~
882 ~~or of any contract for services, as the City Council may determine. A violation of this section~~
883 ~~shall be a Class A offense.~~

884 ~~**7.08.130—Petty cash expenditures.**~~

885 ~~The City Administrator shall have the authority to establish procedures for petty cash-~~
886 ~~expenditures. Such procedures may provide for departmental petty cash levels of up to \$200.00~~
887 ~~for expenditures made by or with the approval of department heads. Such petty cash~~
888 ~~expenditures shall be made after such price shopping as the department head deems appropriate~~
889 ~~or is otherwise established by the City Administrator.~~

890 ~~**7.08.140—Purchase of recycled products.**~~

891 ~~A.—General Preference. The City shall purchase recycled products whenever sufficient~~
892 ~~quantities are readily available and meet the City’s specifications. The City shall purchase~~
893 ~~recycled products that contain the highest percentage of recovered material and are produced to~~
894 ~~the greater extent with post-consumer materials.~~

895 ~~B.—Price Preference. To the extent practicable the City shall purchase recycled products and~~
896 ~~may provide for a price preference not to exceed 15%.~~

897 ~~C.—Purchase of Certain Specified Products and Services. Notwithstanding any other provision~~
898 ~~of this division, all procurement actions shall comply with the following provisions:~~

899 ~~1.—All City stationery and envelopes with the City return address shall be made of recycled~~
900 ~~paper.~~

901 ~~2.—The City newsletter shall be produced on recycled content newsprint.~~

902 ~~3.—When the City is using an outside printer, the City must obtain both a price quote for~~
903 ~~recycled and nonrecycled paper and shall require that the job be done using recycled paper if~~
904 ~~there is a price differential of 15% or less.~~

905 ~~4.—All copiers and laser printers purchased by the City after the effective date of this~~
906 ~~legislation shall be able to use recycled paper, and all copiers shall be able to perform 2-~~
907 ~~sided copying as an automatic function.~~

908 ~~D.—Product Specifications. All departments of the City shall review and revise product~~
909 ~~specifications so as to conform to the following guidelines:~~

910 ~~1.—Specifications shall not require the use of products made from virgin materials.~~

911 ~~2.—Specifications shall not exclude the use of recycled products.~~

912 ~~3.—A minimum percentage of recovered material content shall be incorporated into each~~
913 ~~specification when it is known that there are sufficient and readily available supplies of a~~
914 ~~particular recycled product.~~

915 ~~E.—Practicability of Procurement. In an assessment of the practicability of procurement of~~
916 ~~goods containing recycled materials, the City shall consider, among other relevant factors,~~
917 ~~product availability, product suitability for intended use, including whether the product meets~~
918 ~~established performance standards and will not negatively impact the health and safety of~~
919 ~~employees and residents, and cost.~~

920 ~~F.—Certification of Recycled Content. The City shall require the seller to certify in writing that~~
921 ~~any recycled product sold to the City by competitive bid contract or cooperative purchase~~
922 ~~contains the minimum percentage of recovered materials set forth in the City's product~~
923 ~~specification and shall also specify the percentage of post-consumer materials contained in the~~
924 ~~product.~~

925 ~~G.—Labeling of Recycled Products. To the extent practical, all products purchased by the City~~
926 ~~made from recycled materials shall be labeled as such. City stationery, envelopes with the City~~
927 ~~return address and the City newsletter shall be labeled as being printed on recycled paper.~~

928 **7.08.89145 Environmentally preferable purchasing.**

929 A. General Preferences. Environmental and energy considerations shall become part of the
930 City's normal purchasing and procurement decisions, with the goals of justifying environmental
931 and energy costs of City decisions and choosing minimal-effect options, consistent with such

932 traditional factors as safety, price, performance, and availability. The City also prefers to do
933 business with vendors and contractors that are locally owned, use and sell environmentally
934 preferable products or services, produce minimal waste, and use recycled products and
935 environmentally preferable purchasing practices, as services provided by local suppliers reduce
936 environmental impact due to transportation and keep municipal funds in the community. To the
937 greatest extent practicable, the City shall purchase environmentally and energy preferable
938 products and services that:

- 939 1. Use recycled materials.
- 940 2. Generate minimal waste in manufacturing or use.
- 941 3. Are durable, longer lasting, reusable, refillable or compostable.
- 942 4. Use minimal energy and water.
- 943 5. Involve minimal use of toxic and hazardous materials.
- 944 6. Minimize production of greenhouse gases.
- 945 7. Minimize production of environmental pollutants including ozone precursors.
- 946 8. Are locally supplied or produced.

947 B. Price Preference. To the greatest extent practicable, the City shall purchase environmentally
948 preferable and locally supplied products and services, and may provide for a price preference for
949 such products and services not to exceed 15%.

950 C. Locality Preference. The City may give preference in purchasing products and services to
951 locally supplied products, goods, and services, Montgomery County green certified businesses,
952 and State of Maryland certified small businesses.

953 D. The City Manager shall promulgate regulations implementing this section, which shall include
954 legitimate environmentally friendly certifications and industry standards, specifications for the purchase

955 of certain goods and services as appropriate, and environmentally harmful chemicals, compounds, and
956 materials to be avoided.

957 ~~D.—Purchase of Certain Specified Products and Services. City procurement actions shall comply~~
958 ~~with the following provisions:~~

959 ~~1.—Energy and Water Savings. Where applicable, energy-efficient equipment shall be~~
960 ~~purchased with the most up-to-date energy efficiency functions. This includes, but is not~~
961 ~~limited to, high-efficiency space heating systems and high-efficiency space-cooling~~
962 ~~equipment.~~

963 ~~2.—Energy Efficiency Certifications. All products purchased by the City for which United-~~
964 ~~States Environmental Protection Agency (U.S. EPA) Energy Star or WaterSense certification~~
965 ~~is available shall meet that certification, when practicable. When Energy Star or WaterSense-~~
966 ~~labels are not available, energy-efficient products that are in the upper 25% of energy-~~
967 ~~efficiency as designated by the Federal Energy Management Program are preferred.~~

968 ~~3.—Recycled Content Products. All products for which the U.S. EPA has established~~
969 ~~minimum recycled content standard guidelines, such as those for printing paper, office-~~
970 ~~paper, janitorial paper, construction, landscaping, parks and recreation, transportation,~~
971 ~~vehicles, miscellaneous, and nonpaper office products, shall contain the highest post-~~
972 ~~consumer content practicable, but no less than the minimum recycled content standards-~~
973 ~~established by U.S. EPA Guidelines. These standards are described at www.epa.gov/epg.~~

974 ~~4.—Remanufactured Products. The City shall purchase remanufactured products such as~~
975 ~~laser toner cartridges, tires, furniture, equipment, and automotive parts whenever practicable,~~
976 ~~but without reducing safety, quality, or effectiveness.~~

977 ~~5.—Ozone Depleting Compounds. The use of refrigerants, solvents and other products~~
978 ~~shown to deplete stratospheric ozone shall be phased out and new purchases shall not contain~~
979 ~~them.~~

980 ~~6.—Pollutants. All detergents shall be readily biodegradable and, where practicable, shall~~
981 ~~not contain phosphates.~~

982 ~~E.—Product Specifications. All departments of the City shall review and revise product~~
983 ~~specifications so as to conform to the following guidelines, to the extent practicable:~~

984 ~~1.—Specifications shall not require the use of products made from virgin materials.~~

985 ~~2.—Specifications shall not exclude the use of recycled or remanufactured products.~~

986 ~~3.—A minimum percentage of recovered material content shall be incorporated into each~~
987 ~~specification when it is known that there are sufficient and readily available supplies of a~~
988 ~~particular recycled product.~~

989 ~~4.—Cleaning or disinfecting products (i.e., for janitorial or automotive use) shall not contain~~
990 ~~ingredients that are carcinogens, mutagens, or teratogens. These include chemicals listed by~~
991 ~~the U.S. EPA or the National Institute for Occupational Safety and Health on the Toxics~~
992 ~~Release Inventory.~~

993 ~~5.—Wherever practicable, products and materials shall use and meet the following federal~~
994 ~~standards where applicable:~~

995 ~~a.—U.S. EPA Energy Star (energy efficient products);~~

996 ~~b.—U.S. EPA WaterSense (water efficient products);~~

997 ~~c.—U.S. EPA guidelines (various other products at www.epa.gov/epg);~~

998 ~~d.—U.S. Green Building Council LEED standards.~~

999 ~~6.—At the discretion of the City Manager, industry standards for environmentally preferable~~
1000 ~~products, including construction, landscaping, paper, park and recreation, transportation,~~
1001 ~~vehicular, nonpaper office and other products should be followed. Current examples of these are:~~

- 1002 ~~a.—Responsible Purchasing Network (various products);~~
- 1003 ~~b.—EcoLogo (various products), Green Seal (various products);~~
- 1004 ~~c.—Greenguard Environmental Institute (various products);~~
- 1005 ~~d.—CFPA (chlorine free paper);~~
- 1006 ~~e.—EPEAT (electronics);~~
- 1007 ~~f.—Forest Stewardship Council (paper products);~~
- 1008 ~~g.—Resilient Floor Covering Institute (flooring products);~~
- 1009 ~~h.—Carpet and Rug Institute (carpets).~~

1010 ~~F.—Practicability of Procurement. In an assessment of the practicability of the procurement or~~
1011 ~~purchase of specific environmentally preferable or locally available products, the City shall~~
1012 ~~consider, among other relevant factors, product availability, product longevity, and product~~
1013 ~~suitability for its intended use, including whether the product meets established performance~~
1014 ~~standards, any adverse impact of the product on the health and safety of employees and residents,~~
1015 ~~and cost. Nothing contained in this section shall require a City department, purchaser, or~~
1016 ~~contractor to procure or purchase products that do not perform adequately for their intended use,~~
1017 ~~exclude adequate competition, or cost more than 15% above the standard cost for the product.~~

1018 **Sec. 7.08.89. Socially responsible purchasing.**

1019 A. General Preferences. Social responsibility considerations shall become part of the City's normal
1020 purchasing and procurement decisions, with the goals of promoting social justice, consistent with such
1021 traditional factors as safety, price, performance, and availability.

1022 B. The City Manager shall promulgate regulations implementing this section, which shall include
1023 legitimate socially conscious certifications and industry standards, specifications for the purchase of
1024 certain goods and services as appropriate, and materials and sources to be avoided.

1025 **Article V4. Disposition of Surplus Goods**

1026 **7.08.101150 Generally.**

1027 All using departments shall submit to the City Manager reports listing inventories of all goods that are no
1028 longer used, that have become obsolete or which are surplus to the needs of the department. The City
1029 Manager shall transfer serviceable surplus goods between using departments in lieu of filling requisitions
1030 for the purchase of new or additional inventory of the same or similar articles unless such transfer is
1031 determined by the City Manager to be contrary to the best interests of the City.

1032 ~~A.— All departments, at such times and in such form as may be prescribed, shall submit to the~~
1033 ~~City Administrator reports listing stocks of all articles which are no longer used, which have~~
1034 ~~become obsolete or which are surplus to the needs of the department. The City Administrator~~
1035 ~~shall transfer serviceable surplus goods between using departments in lieu of filling requisitions~~
1036 ~~for the purchase of new or additional stock of the same or similar articles, unless such transfer is~~
1037 ~~contrary to the best interests of the City as determined by the City Administrator.~~

1038 ~~B.— The City Administrator shall provide a report on disposed equipment/goods to the Council~~
1039 ~~on a quarterly basis.~~

1040 **7.08.102160 Methods of sale.**

1041 A. All surplus goods shall be disposed of using any of the following methods which will yield the
1042 greatest return under the circumstances:

- 1043 1. Transfer to another City department, whenever feasible, before other methods of disposal
1044 are considered.

1045 2. Sale to the highest responsible bidder by the competitive bid or proposal procedures
1046 prescribed in Article II of this division, except that the goal shall be to obtain the highest price
1047 from prospective purchasers.

1048 3. Competitive auction sale, including internet auction sale, after reasonable public notice.

1049 4. Trade-in or exchange of goods that are of current need.

1050 5. Surplus goods may be first offered to City employees at a set price determined by the
1051 City Manager to be reasonably equivalent to the best price the City could expect to obtain on the
1052 open market.

1053 B. Notwithstanding any other provision of this section, the City Manager may authorize making a
1054 gift, loan, or sale below fair market value of surplus goods to other public entities or to non-profit entities
1055 upon a written determination that such gift, loan, or sale would be in the best interest of the City.

1056 ~~A. Except as provided in this article, all goods which have become surplus, obsolete or~~
1057 ~~unusable and whose current estimated value is \$10,000.00 or more shall be sold to the highest~~
1058 ~~responsible bidder by the competitive bid or proposal procedures prescribed in Article 2 of this~~
1059 ~~chapter, except that the goal shall be to obtain the highest price from prospective purchasers. The~~
1060 ~~City Administrator may waive the competitive bid or proposal procedures and sell such property~~
1061 ~~by auction or by private sale after reasonable public notice when the return to the City is~~
1062 ~~expected to be increased or the nature of the goods is such as to make competitive bid or~~
1063 ~~proposal procedures impractical.~~

1064 ~~B. Goods which have been found by the City Administrator to have become surplus, obsolete~~
1065 ~~or unusable, and whose current value is estimated to be less than \$10,000.00, may be disposed of~~
1066 ~~by the methods described in regulations the City Administrator may establish. Such dispositions~~
1067 ~~shall, wherever feasible, be based on competitive price quotations and shall be made to a~~

1068 ~~responsible purchaser offering the highest price. The City Administrator is authorized to sell by~~
1069 ~~auction such property to the highest responsible bidder, after public notice, when, in the City~~
1070 ~~Administrator's opinion, the return to the City is expected to increase by this procedure. In order~~
1071 ~~to produce the highest return for the disposition of such personal property, the City~~
1072 ~~Administrator may select from the following disposition methods the method which will yield~~
1073 ~~the greatest return under the circumstances of each disposition:~~

- 1074 ~~1.—Competitive sealed bids;~~
- 1075 ~~2.—Competitive sealed proposals;~~
- 1076 ~~3.—Competitive auction sale;~~
- 1077 ~~4.—Trade in or exchange for goods which are of current need;~~
- 1078 ~~5.—Competitive negotiation.~~

1079 **7.08.170 Worthless items.**

1080 In the event that the City ~~Manager~~Administrator or designee determines that the goods offered
1081 for disposal have no real or scrap value, they may be recycled or disposed of as refuse in a manner
1082 that complies with all applicable environmental laws, regulations and permits.

1083 **Sec. 7.08.104. Waivers.**

1084 Upon a written determination that strict compliance with this article is contrary to the best interests of the
1085 City, the City Manager may waive the provisions of this article and authorize the disposal of surplus
1086 goods in the most practical manner.

1087 **Article VI. Contract Requirements**

1088 **Sec. 7.08.116. Standard contract provisions.**

1089 Contracts shall include:

1090 A. Such standard provisions that may be required by any procedures, standards or policies developed
1091 by the City Manager to implement this division.

1092 B. Such other provisions determined by the City Manager in consultation with the using department
1093 to be appropriate under the circumstances.

1094 **Sec. 7.08.117. Incentive contracting.**

1095 Construction and other contracts may include provisions that afford the contractor the opportunity to
1096 share in any cost savings realized by the City when project costs are reduced by such contractor, without
1097 affecting the project quality, during construction of the project. Any fee charged by the project engineer
1098 or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated
1099 as part of any cost savings.

1100 **Sec. 7.08.121. Maximum practical competition.**

1101 All specifications shall be drafted so as to promote overall economy for the purposes intended and to
1102 encourage maximum free and open competition in satisfying the City's minimum needs and shall not be
1103 unduly restrictive. This section applies to all specifications including, but not limited to, those prepared
1104 for the City by architects, engineers, designers, and drafters.

1105 **Sec. 7.08.136. Bid security.**

1106 A. Requirement for bid security.

1107 1. Bid security shall be required for all construction contracts where performance security is
1108 required.

1109 2. At the discretion of the City Manager, bid security may be required for other contracts.

1110 3. Where bid security is required, a successful bidder shall forfeit such security upon failure
1111 to enter into a contract within the time specified in the Invitation for Bids or contract award.

1112 B. *Form of security.* Bid security shall be in the form of a bond provided by a surety company
1113 authorized to do business in Maryland, or the equivalent in cash, letter of credit, or in such other form
1114 satisfactory to the City.

1115 C. *Amount of bid security.* Bid security for a construction contract shall be in an amount equal to
1116 at least 5% of the amount of the bid. Bid security for other than a construction contract shall be in such
1117 amount as is determined by the City Manager to sufficiently guarantee that the bidder to whom the
1118 contract is awarded will enter into the contract for the work described in the bid.

1119 D. *Rejection of bids for noncompliance with bid security requirements.* When the invitation for
1120 bids requires security, noncompliance requires that the bid be rejected, unless it is determined in writing
1121 that such noncompliance is insubstantial.

1122 E. *Withdrawal of bids.* If a bidder is permitted to withdraw a bid before award, or is excluded from
1123 the competition prior to award, no action shall be taken against the bidder or the bid security.

1124 **Sec. 7.08.137. Contract performance and payment bonds.**

1125 A. When required, amounts. When a construction contract is awarded the following bonds or other
1126 security, in a form satisfactory to the City, shall be delivered to the City and shall become binding on the
1127 parties upon the execution of the contract:

1128 1. A performance bond payable to the City, executed by a surety company authorized to do
1129 business in this State, or the equivalent in cash or other security, conditioned upon the faithful
1130 performance of the contract, including all warranties and guarantees. The bond or other security
1131 shall be in an amount equal to 100% of the price specified in the contract; and

1132 2. A payment bond, executed by a surety company authorized to do business in this State, or
1133 the equivalent in cash, letter of credit, or other security satisfactory to the City, for the protection
1134 of all persons supplying labor and materials, including lessors of equipment to the extent of the

1135 fair rental value thereof, to the contractor or its subcontractors for the performance of the work
1136 provided for in the contract.

1137 a. For a contract exceeding \$100,000.00 the bond or other security shall be in an
1138 amount equal to 100% of the price specified in the contract.

1139 b. For a contract exceeding \$30,000.00 but not exceeding \$100,000.00 the bond or
1140 other security shall be in an amount equal to 50% of the price specified in the contract.

1141 c. No payment bond is required for a contract not exceeding \$30,000.00 unless a
1142 written determination is made that a payment bond is appropriate under the
1143 circumstances. Such a bond shall be in an amount not to exceed 50% of the contract
1144 price.

1145 B. *Certification of payments.* Any contractor, prior to receiving a progress or final payment under
1146 a contract covered hereunder, shall certify in writing that such contractor has made payment from the
1147 proceeds of prior payments, and that such contractor will make timely payments from the proceeds of the
1148 progress or final payment then due such contractor, to such contractor's subcontractors and suppliers in
1149 accordance with such contractor's contractual arrangement with them.

1150 C. *Waiver or reduction of requirement for bonds.* The City Manager may waive or reduce, in
1151 writing, the requirement for performance bonds for construction contracts under \$30,000.00.

1152 D. *Maintenance bond.* Contract specifications may require security in an amount determined by
1153 the City Manager; adequately cover reasonable maintenance, repair, or replacement costs during the
1154 contract warranty or guarantee period.

1155 **Sec. 7.08.138. Additional bonds.**

1156 Nothing in this article shall be construed to limit the authority of the City to require any additional bonds
1157 or other security in addition to, or in cases other than, those specified.

1158 7.08.139 Nuclear-Free requirements.

1159 A. The City and its officials, employees or agents shall not knowingly and intentionally grant any
1160 award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.

1161 B. The City and its officials, employees or agents shall not knowingly and intentionally grant any
1162 award, contract or purchase order, directly or indirectly, to purchase or lease products produced by
1163 a nuclear weapons' producer.

1164 C. The recipient of a City contract, award or purchase order shall certify to the City Clerk by a notarized
1165 statement that it is not knowingly or intentionally a nuclear weapons' producer.

1166 D. The City shall phase out the use of any products of a nuclear weapons' producer which it owns or
1167 possesses. Insofar as non-nuclear alternatives are not available, for the purpose of maintaining a product
1168 during its normal useful life and for the purpose of purchasing or leasing replacement parts, supplies and
1169 services for such products. Subsections (A) and (B) of this section shall not apply.

1170 E. The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall annually publish a
1171 list of nuclear weapons' producers to guide the City, its officials, employees and agents in the
1172 implementation of subsections (A) through (C) of this section. The list shall not preclude application or
1173 enforcement of these provisions to or against any other nuclear weapons' producer.

1174 F. Waivers.

1175 1. The provisions of subsections (A) and (B) of this section may be waived by resolution passed
1176 by a majority vote of the Mayor and Council, provided that:

1177 a. The Mayor and Council shall determine, after a diligent good-faith search, that a
1178 necessary good or service cannot reasonably be obtained from any source other than
1179 a nuclear weapons' producer;

1180 b. The City Manager shall notify the Nuclear-Free Takoma Park Committee of the
1181 Mayor and Council's intent to consider a waiver resolution 30 days prior to the formal
1182 consideration of such a resolution and that the Committee, upon receipt of such notice,
1183 shall provide the City Council with its considered advice; provided, however, that failure
1184 to provide such advice shall not prohibit the City Council from taking appropriate action
1185 after the 30-day notification period; and

1186 c. The City Council shall hold a public hearing prior to the passage of a waiver
1187 resolution and no sooner than 30 days after the notification to the Committee of the City
1188 Council's intent to consider such a resolution.

1189 2. The reasonableness of an alternative source shall be determined upon the consideration of the
1190 following factors:

1191 a. The intent and purpose of this chapter;

1192 b. Documented evidence establishing that the necessary good or service is vital to the
1193 health or safety of the residents or employees of the City, with the understanding that the
1194 absence of such evidence shall diminish the necessity for waiver;

1195 c. The recommendations of the City Manager and the Nuclear-Free Takoma Park
1196 Committee;

1197 d. The availability of goods or services from a non-nuclear-weapons' producer
1198 reasonably meeting the specification or requirements of the necessary good or service;

1199 e. Quantifiable substantial additional costs that would result from the use of a good or
1200 service of a non-nuclear-weapons' producer, provided that this factor shall not become
1201 the sole consideration.

1202 G. Nothing in this chapter shall be interpreted, construed or applied to prevent the Mayor and
1203 Council or the City Manager or his or her designee of the City, from acting to remedy, ameliorate or
1204 prevent an emergency situation presenting a clear and present danger to the public health, safety and
1205 general welfare, as defined in Section 2-6.1 of this Code, provided that should any such emergency
1206 situation require the purchase of products or services from or entry into a contract with a nuclear weapons
1207 producer, then the City Manager or his or her designee shall notify the Chairperson or his or her designee
1208 of the Nuclear-Free Takoma Park Committee within 3 working days of the City's actions.

1209 **7.08.140 Compliance with living wage requirements.**

1210 All non-exempt procurement actions shall comply with Article VII, Living Wage Requirement, of this
1211 chapter.-

1212 **Article VII5. Living Wage Requirement**

1213 **7.08.180 Scope.**

1214 Every City contract for the provision of services, awarded after a competitive bid or proposal
1215 process, shall require the contractor and any subcontractor to pay each employee assigned to
1216 perform services under the City contract a living wage. As used in this article, “covered
1217 employer” refers to any contractor or subcontractor who is subject to the City’s living wage
1218 requirement.

1219 **7.08.190 Exemptions.**

1220 The provisions of this article do not apply to the following:

1221 A. A contract for services valued at less than \$20,000.00.

1222 B. A contract:

1223 1. With a public entity.

1224 2. With a nonprofit organization that has qualified for an exemption from Federal income
1225 taxes under Section 501(c)(3) of the Internal Revenue Code.

1226 3. Procured through an emergency procurement, sole source procurement, or cooperative
1227 purchase procurement.

1228 4. For electricity, telephone, cable television, water, sewer, or similar service delivered by
1229 a regulated public utility.

1230 5. For the purchase or lease of goods, equipment or vehicles.

1231 C. If the City Manager makes a written determination that application of this article would
1232 conflict with an applicable Federal, State or County program, contract, or grant requirement, then
1233 the living wage requirements of this article shall not apply to the contract or program.

1234 **7.08.200 Solicitation requirements.**

1235 A. The City's living wage requirement shall be identified and set forth in all non-exempt
1236 procurement solicitations for the contract.

1237 B. Each response to a bid or proposal to provide services to the City and each City contract for
1238 services must include a certification that the contractor and each subcontractor shall comply with
1239 the City's living wage requirements or a certification by the contractor or subcontractor setting
1240 forth the applicable exemption from the living wage requirement, along with supporting
1241 documentation for the exemption. Any contractor or subcontractor who knowingly makes a false
1242 statement in such certification, or who fails to comply with the living wage requirement during
1243 performance of a City contract for services, shall be subject to loss of the contract and
1244 disqualification from future City contracts.

1245 C. A contractor must not split or subdivide a contract, pay an employee through a third party,
1246 or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any
1247 requirement under this article.

1248 D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to
1249 any employee who provides services to the City under a City contract, the contractor or
1250 subcontractor may:

1251 1. Certify in its bid or proposal the per-employee hourly cost of the employer's share of the
1252 premium for that insurance; and

1253 2. Reduce the wage paid under Section 7.08.210 to any employee covered by the health
1254 insurance by all or part of the per-employee hourly cost of the employer's share of the health
1255 insurance premium

1256 **7.08.210 Living wage requirement.**

1257 A. Except as permitted under Section 7.08.200(D), each covered employer must pay each
1258 employee who is not exempt under subsection (F) of this section no less than the City's living
1259 wage rate.

1260 B. The City's living wage rate shall be equal to the Montgomery County living wage rate
1261 established and published by Montgomery County pursuant to Section 11B-33A of the
1262 Montgomery County Code and any applicable regulations, as amended and in effect from time-
1263 to-time.

1264 C. The City's living wage rate shall be adjusted as of July 1st of each year to reflect the most
1265 current Montgomery County living wage rate and shall be applicable to any contract awarded
1266 thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at
1267 the time a contract is awarded to a covered employer by the City shall remain in effect under
1268 such contract during its original term. At the time of the exercise of any renewal option under a
1269 City contract with a covered employer, the required wage rate shall be adjusted as provided
1270 above, and as adjusted, shall remain in effect during the renewal term.

1271 D. The City Manager shall establish the applicable living wage rate by April 1st of each year
1272 and cause such rate to be published in English and Spanish on the City's web site. Notice of the
1273 required living wage rate also shall be stated in procurement solicitations, as required by Section
1274 7.08.200(A).

1275 E. Each covered employer must include the living wage requirements of this article in every
1276 subcontract so that the provisions of this article will be binding upon each subcontractor.

1277 F. The living wage requirements of this section do not apply to any employee:

- 1278 1. Who performs no measurable work related to any contract with the City;
- 1279 2. Who participates in a government-operated or government-sponsored program that
1280 restricts the earnings of or wages paid to employees to a level below the wage required under
1281 this section;
- 1282 3. Who participates for no longer than 120 days in any calendar year in a government-
1283 operated or government-sponsored summer youth employment program; or
- 1284 4. For whom a lower wage rate is expressly set in a bona fide collective bargaining
1285 agreement.

1286 G. If any Federal, State, or City law or regulation requires payment of a higher wage, that law
1287 or regulation controls. If any applicable collective bargaining agreement requires payment of a
1288 higher wage, that agreement controls.

1289 **7.08.220 Notices.**

1290 A. Each covered employer shall conspicuously post notice of the required City living wage
1291 rate, in English and Spanish, on such form as shall be provided by the City.

1292 B. Within 3 days of an employee's request, a covered employer shall provide to such employee
1293 a written statement in English and Spanish, on such form as shall be provided by the City, of the
1294 then required living wage rate.

1295 **7.08.230 Enforcement.**

1296 A. During the term of the City contract and for a period of 3 years after the expiration or earlier
1297 termination of the City contract, each contractor and subcontractor subject to the provisions of
1298 this article, shall keep and preserve records which show the wages provided by such contractor
1299 and its subcontractors to each employee who provided services under the City contract. The City
1300 Manager, or designee, shall have the power to examine such records at reasonable times during
1301 normal business hours for the purpose of administering and enforcing the provisions of this
1302 article, and to make copies of all or any parts thereof.

1303 B. As an additional term of the City contract, no covered employer shall discharge, reduce the
1304 compensation of, or otherwise retaliate against an employee for asserting any right under this
1305 article, filing a complaint of violation, or taking any other action to enforce the requirements of
1306 this article. Any retaliation is subject to all sanctions for noncompliance with this article.

1307 C. City contracts may specify that liquidated damages for any noncompliance with this article
1308 include the amount of any unpaid wages, with interest at the judgment rate from the date
1309 originally due and less any deductions required or permitted by law, and that the contractor is
1310 jointly and severally liable for any noncompliance by a subcontractor.

1311 D. Any contractor or subcontractor which fails to pay an employee the living wage required by
1312 this article shall be liable to the employee in the amount of the unpaid wages, plus interest at the
1313 judgment rate from the date originally due and less any deductions required or permitted by law,
1314 reasonable attorney's fees, and damages for any retaliation for asserting any right under this
1315 article. Any aggrieved employee of a covered employer under a City contract shall be deemed a
1316 third-party beneficiary of the City contract and of the provisions mandated by this article in the
1317 City contract.

1318 **7.08.240 Review of living wage requirement.**

1319 The City Council shall review the living wage requirement, including the exemptions set forth in
1320 Section 7.08.190, every 3 years following the effective date of this article. Subsequent to such
1321 review, the City Council shall determine whether to continue or modify the City's living wage
1322 requirement. The Council's failure to conduct such review shall have no effect on the validity of
1323 the living wage requirement set forth in this article. ~~(Ord. 2007-55 § 1 (part), 2007)~~

1324 **Chapter 7.12**

1325 **ETHICS IN CONTRACTING**

1326
1327 **Article VIII. Ethics in Contracting**

1328 **Sections:**

1329 ~~7.12.010—Collusive bidding.~~

1330 ~~7.12.020—Authority to disqualify or suspend contractors.~~

1331 ~~7.12.030—Ethics of City officers and employees—Violations of competitive bidding regulations~~
1332 ~~declared misdemeanor.~~

1333 **Sec. 7.04.250. Multiple bidding.**

1334 A. Unless multiple or alternate bids are requested in the solicitation, more than one (1) bid or
1335 proposal received in response to a single solicitation from a business, including any affiliate, under the
1336 same or different names will be rejected.

1337 B. Reasonable grounds for believing that a bidder or offeror is interested in more than one bid or
1338 proposal for a solicitation both as a bidder or offeror and as a subcontractor for another bidder or offeror,
1339 will result in rejection of all bids or proposals in which the bidder or offeror is interested. However, a
1340 business acting only as a subcontractor may be included as a subcontractor for two or more bidders or
1341 offerors submitting a bid or proposal for the work.

1342 C. Bidders or offerors rejected under the above provisions shall be disqualified if they respond to a
1343 re-solicitation for the same work.

1344 D. The City Manager may waive the provisions in subsection (b) of this section upon a written
1345 determination that the City's interest would be best served by such a waiver.

1346 E. Amount of liability for damages. A person who enters into a contract with the City after engaging
1347 in collusion with another person for the purpose of defrauding the City shall be liable for damages equal

1348 to three (3) times the value of the loss to the City that is attributable to the collusion.

1349 F. All documents involved in any procurement in which collusion is suspected shall be retained until
1350 the City Attorney approves their destruction.

1351 **7.04.26012.010 Collusive bidding.**

1352 ~~A. Notification. When collusion is suspected among any bidders or offerors, the City~~
1353 ~~Administrator shall transmit a written notice of such suspicion to Corporation Counsel.~~

1354 A. Notification, rejection of bids or proposals. When collusion is suspected among any bidders
1355 or offerors, any or all bids or proposals may be rejected, and a written notice of such suspicion shall be
1356 transmitted to the City Attorney.

1357 B. *Retention of ~~d~~Documents.* All documents involved in any procurement in which collusion is
1358 suspected shall be ~~made available to Corporation Counsel upon request. All documents shall be~~
1359 retained until ~~the City Attorney~~Corporation Counsel approves their destruction.

1360 C. Amount of ~~L~~iability for ~~D~~amages. A person who enters into a contract with the City after
1361 engaging in collusion with another person for the purpose of defrauding the City shall be liable
1362 for damages equal to three (3) times the value of the loss to the City which is attributable to the
1363 collusion.

1364 ~~**7.12.020—Authority to disqualify or suspend contractors.**~~

1365 ~~A. After reasonable notice to the person involved and reasonable opportunity for that person to~~
1366 ~~be heard, the City Administrator, after consulting with Corporation Counsel, is authorized to~~
1367 ~~disqualify a person for cause from consideration for award of contracts. The disqualification~~
1368 ~~shall be for a period of not more than 3 years. After consultation with Corporation Counsel, the~~
1369 ~~City Administrator is authorized to suspend a person from consideration for award of contracts if~~
1370 ~~there is probable cause to believe that the person has engaged in any activity which might lead to~~
1371 ~~disqualification. The suspension shall be for a period not exceeding 3 months.~~

1372 ~~B.—The causes for disqualification include:~~

1373 ~~1.—Conviction for commission of a criminal offense as an incident to obtaining or~~
1374 ~~attempting to obtain a public or private contract or subcontract, or in the performance of such~~
1375 ~~contract or subcontract;~~

1376 ~~2.—Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery,~~
1377 ~~falsification or destruction of records, receiving stolen property or any other offense~~
1378 ~~indicating a lack of business integrity or business honesty which currently, seriously and~~
1379 ~~directly affects responsibility as a City contractor;~~

1380 ~~3.—Conviction under State or Federal antitrust statutes arising out of submission of bids or~~
1381 ~~proposals;~~

1382 ~~4.—Violation of contract provisions, as set forth below, of a character which is regarded to~~
1383 ~~be so serious as to justify disqualification action:~~

1384 ~~a.—Deliberate failure without good cause to perform in accordance with the~~
1385 ~~specifications or within the time limit provided in the contract;~~

1386 ~~b.—A recent record of failure to perform or of unsatisfactory performance in accordance~~
1387 ~~with the terms of one or more contracts, provided that failure to perform or~~
1388 ~~unsatisfactory performance caused by acts beyond the control of the contractor shall not~~
1389 ~~be considered to be a basis for debarment;~~

1390 ~~5.—Any other cause determined to be so serious and compelling as to affect responsibility as~~
1391 ~~a City contractor, including disqualification by another governmental entity for any cause~~
1392 ~~listed in this division.~~

1393 ~~6.—Violation of Chapter 3.04, Ethics.~~

1394 Sec. 7.04.270. Illegal gifts and kickbacks.

1395 A. Gifts. A bidder, offeror, or contractor must not make or offer to make a gift to a public official or
1396 employee that the public official or employee is prohibited from accepting under Title 2, Ethics.

1397 B. No person shall demand or receive anything of value in return for an agreement not to compete
1398 on a public contract.

1399 C. A person must not:

1400 1. Provide, attempt to provide, or offer to provide a kickback;

1401 2. Solicit, accept, or attempt to accept a kickback;

1402 3. Claim that the unlawfully induced contract or subcontract fulfills any legal, regulatory, or
1403 contractual requirement.

1404 D. If a person makes a gift, kickback or other prohibited payment as described in this section, the
1405 amount thereof shall be conclusively presumed to have been included in the price of the prime contract or
1406 the subcontract and ultimately borne by the City and will be recoverable from both the maker and
1407 recipient. Recovery from one offending party shall not preclude recovery from other offending parties.
1408 The City may offset the amount of any gift, kickback, or other payment from any sum owed to the prime
1409 contractor by the City.

1410 **Sec. 7.04.280. Split purchasing/sale prohibited.**

1411 No purchase or sale shall be divided for the purpose of evading the provisions of this division.

1412 **Sec. 7.04.290. Conflicts of interest.**

1413 A. The provisions of Title III, Ethics, shall be applicable to this division.

1414 B. No City official or employee shall participate in any procurement, except in the exercise of an
1415 administrative or ministerial duty which does not affect the disposition or decision with respect to it,
1416 when the official or employee knows that the official or employee or any member of the official's or
1417 employee's immediate family has a financial interest pertaining to the procurement. Where an official or

1418 employee or any member of the official's or employee's immediate family holds a financial interest in a
1419 blind trust, the official or employee shall not be deemed to have a conflict of interest with regard to
1420 matters pertaining to that financial interest, provided that the existence of the blind trust has been
1421 disclosed in writing to the City Manager.

1422 C. Upon discovery of an actual or potential conflict of interest, the official or employee shall
1423 promptly file a written statement of disqualification and shall withdraw from further participation in the
1424 transaction involved.

1425 D. For the purposes of this section, a person who owns less than three percent (3%) of the stock of
1426 any publicly held corporation listed on a national stock exchange shall not be considered to have a
1427 financial interest in that corporation.

1428 **Sec. 7.04.300. Disclosure of subsequent employment.**

1429 No public employee or former public employee having official responsibility for procurement
1430 transactions shall accept employment with any bidder, offeror or contractor with whom the employee or
1431 former employee dealt in an official capacity concerning procurement transactions for a period of one (1)
1432 year from the cessation of employment by the City unless the employee or former employee, provides
1433 written notification to, and obtains written approval from, the City Manager prior to commencement of
1434 employment by that bidder, offeror or contractor.

1435 **Sec. 7.04.310. Remedies; penalties.**

1436 In addition to any other penalties provided by applicable law, any contract in violation of the provisions
1437 of this article shall be voidable at the option of the City, and any person responsible for the making of a
1438 contract in willful violation of the provisions of Sections 7.04.260, 7.04.270 or 7.04.290 shall be
1439 charged with a misdemeanor.

1440 ~~7.12.030—Ethics of City officers and employees—Violations of competitive bidding-~~
1441 ~~regulations declared misdemeanor.~~
1442 ~~A.—The provisions of Chapter 3.04, Ethics, shall be applicable to this chapter.~~
1443 ~~B.—In addition to the provisions of Chapter 3.04, no contract shall be let or awarded in which~~
1444 ~~any official or employee of the City is financially interested and through which the official or~~
1445 ~~employee may individually profit financially, nor shall any official or employee of the City, in~~
1446 ~~any capacity whatsoever, represent any person where such representation involves an appearance~~
1447 ~~before the City Council or before any department of the City. Any contract in violation of the~~
1448 ~~provisions of this subsection shall be void, and any person responsible for the making of a~~
1449 ~~contract in willful violation of the provisions of this subsection shall be guilty of a misdemeanor.~~

1450

1451

1452

Chapter 14.04

1453

NUCLEAR-FREE ZONE

1454

1455

* * *

1456 ~~14.04.060 Eligibility for City contracts.~~

1457 ~~A.—The City and its officials, employees or agents shall not knowingly and intentionally grant~~
1458 ~~any award, contract or purchase order, directly or indirectly, to any nuclear weapons producer.~~

1459 ~~B.—The City and its officials, employees or agents shall not knowingly and intentionally grant~~
1460 ~~any award, contract or purchase order, directly or indirectly, to purchase or lease products~~
1461 ~~produced by a nuclear weapons' producer.~~

1462 ~~C.—The recipient of a City contract, award or purchase order shall certify to the City Clerk by a~~
1463 ~~notarized statement that it is not knowingly or intentionally a nuclear weapons' producer.~~

1464 ~~D.—The City shall phase out the use of any products of a nuclear weapons' producer which it~~
1465 ~~owns or possesses. Insofar as non-nuclear alternatives are not available, for the purpose of~~
1466 ~~maintaining a product during its normal useful life and for the purpose of purchasing or leasing~~

1467 ~~replacement parts, supplies and services for such products. Subsections (A) and (B) of this~~
1468 ~~section shall not apply.~~

1469 ~~E.—The City Council, upon advice of the Nuclear-Free Takoma Park Committee, shall within 6~~
1470 ~~months of its appointment and annually thereafter establish and publish a list~~
1471 ~~of nuclear weapons’ producers to guide the City, its officials, employees and agents in the~~
1472 ~~implementation of subsections (A) through (C) of this section. The list shall not preclude~~
1473 ~~application or enforcement of these provisions to or against any other nuclear weapons’~~
1474 ~~producer.~~

1475 ~~F.—Waivers.~~

1476 ~~1.—The provisions of subsections (A) and (B) of this section may be waived by~~
1477 ~~resolution passed by a majority vote of the Mayor and Council, provided that:~~

1478 ~~a.—The Mayor and Council shall determine, after a diligent good faith search,~~
1479 ~~that a necessary good or service cannot reasonably be obtained from any source~~
1480 ~~other than a nuclear weapons’ producer;~~

1481 ~~b.—The City Administrator or his or her designee shall notify the Nuclear-Free~~
1482 ~~Takoma Park Committee of the Mayor and Council’s intent to consider a waiver~~
1483 ~~resolution 30 days prior to the formal consideration of such a resolution and that~~
1484 ~~the Committee, upon receipt of such notice, shall provide the City Council with~~
1485 ~~its considered advice; provided, however, that failure to provide such advice shall~~
1486 ~~not prohibit the City Council from taking appropriate action after the 30-day~~
1487 ~~notification period; and~~

1488 ~~c.—The City Council shall hold a public hearing prior to the passage of a waiver~~
1489 ~~resolution and no sooner than 30 days after the notification to the Committee of~~
1490 ~~the City Council’s intent to consider such a resolution.~~

1491 ~~2.—The reasonableness of an alternative source shall be determined upon the~~
1492 ~~consideration of the following factors:~~

1493 ~~a.—The intent and purpose of this chapter;~~

1494 ~~b.—Documented evidence establishing that the necessary good or service is vital~~
1495 ~~to the health or safety of the residents or employees of the City, with the~~
1496 ~~understanding that the absence of such evidence shall diminish the necessity for~~
1497 ~~waiver;~~

1498 ~~c.—The recommendations of the City Administrator and the Nuclear-Free~~
1499 ~~Takoma Park Committee;~~

1500 ~~d.—The availability of goods or services from a non-nuclear weapons’ producer~~
1501 ~~reasonably meeting the specification or requirements of the necessary good or~~
1502 ~~service;~~

1503 ~~e.—Quantifiable substantial additional costs that would result from the use of a good or service of a non-~~
1504 ~~nuclear weapons’ producer, provided that this factor shall not become the sole consideration.~~