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**ARTICLE I.
BUDGET**

Sec. 8-1. Term of the budget.

On or before the first Monday in September, commencing in 2010 and every other year thereafter, the City Manager shall file with the City Clerk a proposed budget for the City for the ensuing two-year term. Said budget shall conform to the requirements of the Charter and shall be processed by the City Council in the manner described therein.

(Ord. No. 92, 1997, 7-1-97; Ord. No. 131, 2009, 12-15-09)

Secs. 8-2—8-15. Reserved.

**ARTICLE II.
BONDS***

DIVISION 1. GENERALLY

Secs. 8-16—8-40. Reserved.

DIVISION 2. REPLACEMENT OF BONDS

Sec. 8-41. Procedure for replacement of certain bonds.

If any bonds or appurtenant interest coupons of the City have been lost, destroyed or wrongfully taken and the ordinances, trust indentures or related documents pursuant to which such bonds and interest coupons were issued do not provide a specific procedure under which the City is directed to execute and deliver replacements, the Mayor, City Clerk and Financial Officer are hereby authorized and directed to execute and deliver replacement bonds and interest coupons of the City if the following are provided to the Financial Officer in a form satisfactory to the Financial Officer and the City Attorney:

- (1) An appropriate affidavit or other evidence of ownership and loss, destruction or wrongful taking relating to the bond or interest coupon proposed to be replaced together with a written request for replacement received by the City before the City has notice that the bond or interest coupon has been acquired by a bona fide purchaser;
- (2) A corporate indemnity bond providing for explicit indemnification of the City by surety company acceptable to the Financial Officer from and against any and all costs, actions, suits, damages, charges or expenses in connection with the replacement of such bond or interest coupon, issued in a principal amount not less than:
 - a. In the case of a replacement bond, the sum of the stated principal amount of the bond plus the amount of all interest remaining to be paid on the bond unless such interest is represented by interest coupons which are also to be replaced, in which case such sum shall be the amount stated in b. below; or
 - b. In the case of a replacement interest coupon or coupons, the aggregate stated face value of such interest coupon or coupons.
- (3) Funds sufficient to provide for the printing of the replacement bond or interest coupon if such reprinting is necessary for replacement and to provide for any other expenses the City may incur in replacing the bond or interest coupon.

(Code 1972, § 3B-1)

Sec. 8-42. Options to pay matured bonds.

In the event that any bond or interest coupon that has been lost, destroyed or wrongfully taken has matured, the Mayor, City Clerk and Financial Officer may pay such bond or interest coupon in lieu of replacement provided that

* **Charter reference**—Municipal borrowing, Art. V, Part II.

Cross-references—Sales and use tax fund created to service bonds, § 8-84; issuance of bonds for certain public improvements, § 22-19; special assessment bonds authorized, § 22-111.

the conditions in § 8-41 for replacement have been fulfilled to the satisfaction of the Financial Officer and the City Attorney.
(Code 1972, § 3B-2)

Secs. 8-43—8-55. Reserved.

ARTICLE III. FUNDS**

DIVISION 1. GENERALLY

Sec. 8-56. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Account means a subdivision of a fund created for the purpose of segregating transactions or monies related to such transactions.

Account group is defined as an accounting entity used to establish accounting control and accountability for the City's general fixed assets and the unmatured principal of its general long-term debt. Account groups are not funds. They do not reflect available financial resources and related liabilities but are accounting records of the general fixed assets and general long-term debt, respectively, and certain associated information.

Fund is defined as a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations.

Fund type is defined as a group of homogeneous funds which are accounted for using the same accounting measurement focus.

(Ord. No. 185, 1986, § 30-1, 11-18-86)

Cross-reference—Definitions and rules of construction generally, § 1-2.

Sec. 8-57. Fund structure.

- (a) The following fund types are hereby created to facilitate classification of funds of the City:
 - (1) *General fund* to account for all governmental resources of the City except those required to be accounted for in another fund.
 - (2) *Special revenue funds* to account for the proceeds of specific revenue sources other than special assessments, expendable trusts, or for major capital projects that are legally restricted to expenditure for specified purposes.
 - (3) *Capital projects funds* to account for financial resources to be used for the acquisition or construction of major capital facilities.
 - (4) *Debt service funds* to account for the accumulation of resources for and the payment of general long-term debt principal, interest and related charges.
 - (5) *Special assessment funds* to account for the financing of public improvements or services deemed to benefit the properties against which special assessments are levied.

** **Charter reference**—Financial Administration Unit, Art. V, Part III.

- (6) *Enterprise funds* to account for operations:
 - a. That are financed and operated in a manner similar to private business enterprises where the intent of City Council is that the costs of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or
 - b. Where the City Council has decided that periodic determination of revenues earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes.
- (7) *Internal service funds* to account for the financing of goods or services provided by one (1) service area, department or agency to other service areas, departments or agencies of the City, or other governmental units, on a cost-reimbursement basis.
- (8) *Trust and agency funds* to account for assets held by the City in a trustee capacity and/or as an agent for individuals, private organizations, other governmental units and/or funds.

(b) Assets in the above created fund types shall be segregated into individual funds representing the financial resources from separate purposes from which such assets arose. Such individual funds include, but are not limited to, funds created under this Article.

(c) Expenditures shall be segregated into individual funds and shall be made to satisfy the purposes for which amounts were received or appropriated. Expenditures from these funds shall be made only for the purposes for which such individual fund was created. If there are amounts in any individual fund in excess of the amount required to satisfy the purpose of such individual fund and if the City Council has the authority to do so, the City Council may by ordinance authorize the transfer of such excess amount to any other individual fund of the City.

(d) Earnings of the funds of the City may be reserved by a segregation of fund equity into separate descriptive balance sheet accounts as necessary to satisfy requirements of the Charter, the Code or other legal requirements including separation of reserves for operating, debt service and future capital improvements.
 (Ord. No. 185, 1986, § 30-2, 11-18-86; Ord. No. 130, 2002, § 16, 9-17-02)

Sec. 8-58. Account groups created.

The following account groups are hereby created for the purpose of accounting for fixed assets and long-term liabilities not specifically belonging to any existing fund of the City:

- (1) *General fixed assets.* A management control and accountability listing of the City's general fixed assets not employed in commercial-type activities or held in trust.
- (2) *General long-term debt.* A management control and accountability listing of bonds, notes and other long-term liabilities including but not limited to capital leases, judgments, compensated absences, special termination benefits and similar commitments that are not a specific liability of any fund.

(Ord. No. 185, 1986, § 30-3, 11-18-86)

Sec. 8-59. Fund plan.

(a) The Financial Officer with the advice of the Controller and the City's independent auditors shall establish and maintain funds and accounts which shall:

- (1) Include those funds and accounts mandated or required by:
 - a. The Constitution and laws of the United States of America;
 - b. The Constitution and laws of the State of Colorado;
 - c. The Charter and City ordinances;
 - d. Generally accepted accounting principles.
- (2) Be categorized in accordance with fund types set forth in § 8-57.

(b) Monies in each individual fund shall be in the custody of and managed by the Financial Officer. The Financial Officer shall maintain accounting records and account for all of the monies as provided by law. Monies in each fund shall be invested or deposited by the Financial Officer in accordance with the provisions of law. All income from the assets of each fund shall become a part of the fund and shall be used for the purpose for which the fund was created. (Ord. No. 185, 1986, § 30-4, 11-18-86; Ord. No. 154, 1987, § 1, 10-20-87)

Secs. 8-60—8-70. Reserved.

DIVISION 2. CREATION OF VARIOUS FUNDS

Sec. 8-71. General fund created.

Pursuant to the Charter there is hereby created a fund to be known as the general fund which shall be used to account for all financial resources of the City except those required to be accounted for in another fund. (Ord. No. 185, 1986, § 30-5, 11-18-86)

Sec. 8-72. Capital projects fund.

There is hereby created a fund to account for the City's capital projects known as the capital projects fund. Revenues shall include transfers from other funds, contributions in aid of construction, proceeds from bond sales and other sources as may be determined. Expenditures shall be made for the purpose of capital projects approved by City Council.

(Ord. No. 185, 1986, § 30-6(18), 11-18-86)

Cross-references—Public improvements, Ch. 22; streets and sidewalks, Ch. 24.

Sec. 8-73. Cemetery fund.

Pursuant to the Charter there is hereby created a fund to account for cemetery operations known as the cemetery fund. Revenues for the fund shall include cemetery fees and charges, interest earnings and operating transfers from the general fund. Expenditures shall be made for approved purposes in connection with lawful cemetery operations.

(Ord. No. 185, 1986, § 30-6(1), 11-18-86)

Cross-reference—Cemetery, § 23-156 et seq.

Sec. 8-74. Community services fund.

There is hereby created a fund to account for human resource programs and other intergovernmentally funded programs known as the community services fund. Revenues for the fund shall be derived from intergovernmental revenue. Expenditures shall be made for approved purposes in connection with the administration and operation of the human resources program and any other program placed in the fund.

(Ord. No. 185, 1986, § 30-6(2), 11-18-86)

Sec. 8-75. Conservation trust fund.

There is hereby created a fund pursuant to Section 29-21-101, C.R.S., known as the conservation trust fund. Revenues for the fund shall include state lottery monies remitted to the City pursuant to Section 29-21-101, C.R.S. Expenditures shall be made in accordance with the state statutes.

(Ord. No. 185, 1986, § 30-6(3), 11-18-86)

Cross-reference—Parks, trails and recreation areas, § 23-201 et seq.

Sec. 8-76. Cultural services and facilities fund.

There is hereby created a fund to account for cultural activities known as the cultural services and facilities fund. Revenues for the fund shall include user fees and receipts for cultural activities as well as operating transfers from other funds. Expenditures shall be made for approved purposes in connection with cultural services and facilities of the City.

(Ord. No. 185, 1986, § 30-6(4), 11-18-86)

Sec. 8-77. Light and power fund.

There is hereby created a fund to account for the City's municipal electric utility known as the light and power fund. Revenues for the fund shall include receipts from charges for electric services. Expenditures shall be made for approved purposes in connection with furnishing electric services.

(Ord. No. 185, 1986, § 30-6(7), 11-18-86)

Cross-reference—Electric utility, § 26-391 et seq.

Sec. 8-78. Employees' retirement pension plan fund.

There is hereby created a fund to account for the employees' retirement pension plan known as the employees' retirement pension plan fund. Revenues shall include employer contributions to the plan as well as all other revenues earned in connection with the plan. Expenditures shall be made in accordance with the employees' retirement pension plan.

(Ord. No. 185, 1986, § 30-6(5), 11-18-86)

Cross-references—General employees' retirement plan, § 21-71 et seq.; Retirement Committee, § 21-86 et seq.

Sec. 8-79. Golf fund.

There is hereby created a fund to account for golf activities known as the golf fund. Revenues for the fund shall include user fees and receipts from golf courses. Expenditures shall be made for approved purposes in connection with golf facilities and activities.

(Ord. No. 185, 1986, § 30-6(6), 11-18-86)

Cross-references—Golf Board, § 2-231 et seq.; parks, trails and recreation areas, § 23-201 et seq.

Sec. 8-80. Neighborhood parkland fund.

There is hereby created a fund to account for the acquisition, development and administration of neighborhood parks known as the neighborhood parkland fund. Revenues shall include neighborhood parkland fees collected pursuant to § 7.5-71. Expenditures shall be made for approved purposes for the acquisition, development and administration of neighborhood parks, including purchases of new or replacement park site equipment and plantings.

(Ord. No. 185, 1986, § 30-6(8), 11-18-86; Ord. No. 51, 1996, § 5, 5-21-96)

Cross-references—Parks and Recreation Board, § 2-336 et seq.; parks, trails and recreation areas, § 23-201 et seq.; acquisition and development of neighborhood parks, § 7.5-70 et seq.; neighborhood parkland fees, § 7.5-71.

Sec. 8-81. Perpetual care fund.

There is hereby created a fund to account for perpetual care fees known as the perpetual care fund. Revenues shall include perpetual care fees. Expenditures shall be made for operating transfers to the cemetery fund and other approved purposes in connection with the perpetual care of cemetery lots.

(Ord. No. 185, 1986, § 30-6(9), 11-18-86)

Cross-references—Cemetery, § 23-156 et seq.; perpetual care fees, § 23-156.

Sec. 8-82. Police officers' pension fund.

There is hereby created a fund to account for the police officers' pension plan known as the police officers' pension fund. Revenues shall include employee and employer contributions to the plan as well as all other revenues earned in connection with the plan. Expenditures shall be made in accordance with the police officers' pension plan.

(Ord. No. 185, 1986, § 30-6(10), 11-18-86)

Cross-references—Personnel, pensions and retirement, Ch. 21.

Sec. 8-83. Recreation fund.

There is hereby created a fund to account for recreation activities known as the recreation fund. Revenues shall include user fees for recreational activities, excluding golf activities, and operating transfers from the general fund or other funds of the City. Expenditures shall be made for approved purposes in connection with recreational activities, excluding golf activities.

(Ord. No. 185, 1986, § 30-6(11), 11-18-86)

Cross-references—Parks and Recreation Board, § 2-336 et seq.; parks, trails and recreation areas, § 23-201 et seq.

Sec. 8-84. Sales and use tax fund.

There is hereby created a fund to account for the City's sales and use tax revenue known as the sales and use tax fund. Revenues shall include collections of sales and use taxes under the City ordinances. Expenditures shall be made for approved purposes in connection with servicing the City's sales and use tax bonds, notes and other similar debt. Expenditures shall include transfers to other funds of the City and other expenditures as approved by City Council. (Ord. No. 185, 1986, § 30-6(17), 11-18-86; Ord. No. 154, 1987, § 2, 10-20-87)

Cross-reference—Sales and use taxes, § 25-71, et seq.

Sec. 8-85. Sewer fund.

There is hereby created a fund to account for the City's municipal wastewater utility known as the sewer fund. Revenues for the fund shall include receipts from charges for sewer services. Expenditures shall be made for approved purposes in connection with furnishing sewer services.

(Ord. No. 185, 1986, § 30-6(12), 11-18-86)

Cross-references—Water Utilities Board, § 2-436, et seq.; wastewater system, § 26-206, et seq.

Sec. 8-86. Storm drainage fund.

There is hereby created a fund to account for stormwater drainage known as the storm drainage fund. Revenues for the fund shall include stormwater plant investment fees and stormwater utility fees and other monies as might be available for stormwater drainage purposes. Expenditures shall be made for approved purposes in connection with construction of stormwater facilities and operation, administration and maintenance of stormwater facilities.

(Ord. No. 185, 1986, § 30-6(13), 11-18-86; Ord. No. 016, 2006, 2-21-06)

Cross-references—Water Utilities Board, § 2-436, et seq.; stormwater utility, § 26-491, et seq.; stormwater fees, § 26-511, et seq.; stormwater facilities, § 26-541, et seq.

Sec. 8-87. Street oversizing fund.

There is hereby created a fund to account for construction of arterial and collector streets known as the street oversizing fund. Revenues shall include all monies collected pursuant to § 24-111, et seq. Expenditures shall be made as specified in § 24-111, et seq.

(Ord. No. 185, 1986, § 30-6(14), 11-18-86)

Cross-references—Public improvements, Ch. 22; streets, § 24-91, et seq.; street oversizing funds, § 24-111, et seq.

Sec. 8-88. Transportation services fund.

There is hereby created a fund to account for all transportation services excepting public transit services. This fund shall be known as the transportation services fund. Revenues shall include transportation utility fees, taxes, intergovernmental revenue, transfers from the general fund or other funds of the City and other monies as might be available for transportation services. Expenditures shall be made for approved purposes in connection with transportation services.

(Ord. No. 185, 1986, § 30-6(15), 11-18-86; Ord. No. 96, 1989, § 1, 7-18-89)

Cross-references—Streets and sidewalks, Ch. 24; transportation utility, § 26-566, et seq.; transportation utility refund program, § 26-631, et seq.

Sec. 8-89. Water fund.

There is hereby created a fund to account for the City's municipal water utility known as the water fund. Revenues for the fund shall include receipts from charges for water services. Expenditures shall be made for approved purposes in connection with furnishing water services.

(Ord. No. 185, 1986, § 30-6(16), 11-18-86)

Cross-references—Water Utilities Board, § 2-436, et seq.; water, § 26-41, et seq.

Sec. 8-90. Transit services fund.

There is hereby created a fund to account for the provision, administration and development of public transit services, including fixed route, paratransit, ride-share and related services. This fund shall be known as the transit ser-

vices fund. Revenues shall include fees for services, advertising, contractual, intergovernmental revenue, transfers from the general fund or other funds of the City and any other monies as might be available for transit services. Expenditures shall be made for approved purposes in connection with public transit services.

(Ord. No. 96, 1989, § 2, 7-18-89)

Sec. 8-91. Home program fund.

There is hereby created a fund to account for the City's home investment partnership program grants received. This fund shall be known as the home program fund. Revenues shall include intergovernmental revenue and any other monies as might be required for the home program grants. Expenditures shall be made for approved purposes as stated in the grant contract.

(Ord. No. 43, 1996, § 1, 4-16-96)

Sec. 8-92. Capital improvement expansion fund.

There is hereby created a fund to account for the acquisition, construction and development of capital improvements as defined in § 7.5-17. Revenues shall include all fees collected pursuant to Chapter 7.5, and expenditures shall be made solely for the purposes described therein.

(Ord. No. 51, § 3, 5-21-96; Ord. No. 51, 1997, § 9, 3-18-97)

Sec. 8-93. General governmental capital improvement expansion account.

There is hereby created an account within the capital improvement expansion fund to account for the acquisition, construction and development of capital improvements related to the provision of general governmental services, as described in the capital improvements plan for general governmental services. Revenues shall include all fees collected pursuant to Subsection 7.5-31(a). Expenditures shall be made solely for the purposes described in Subsection 7.5-31(b) and according to all other applicable provisions of Chapter 7.5.

(Ord. No. 51, § 3, 5-21-96; Ord. No. 51, 1997, § 9, 3-18-97)

Sec. 8-94. Reserved.

Editor's Note: Section 8-94 was repealed by Ord. No. 064, 2010, § 3, 6-15-10.

Sec. 8-95. Community parkland capital improvement expansion account.

There is hereby created an account within the capital improvement expansion fund to account for the acquisition, construction and development of capital improvements related to the provision of community parklands, as described in the capital improvements plan for community parkland. Revenues shall include all fees collected pursuant to Subsection 7.5-28(a). Expenditures shall be made solely for the purposes described in Subsection 7.5-28(b) and according to all other applicable provisions of Chapter 7.5.

(Ord. No. 51, § 3, 5-21-96; Ord. No. 95, 1996, 7-16-96; Ord. No. 51, 1997, § 9, 3-18-97)

Sec. 8-96. Police capital improvement expansion account.

There is hereby created an account within the capital improvement expansion fund to account for the acquisition, construction and development of capital improvements related to the provision of police services, as described in the capital improvements plan for police services. Revenues shall include all fees collected pursuant to Subsection 7.5-29(a). Expenditures shall be made solely for the purposes described in Subsection 7.5-29(b) and according to all other applicable provisions of Chapter 7.5.

(Ord. No. 51, § 3, 5-21-96; Ord. No. 95, 1996, 7-16-96; Ord. No. 51, 1997, § 9, 3-18-97)

Sec. 8-97. Fire protection capital improvement expansion account.

There is hereby created an account within the capital improvement expansion fund to account for the acquisition, construction and development of capital improvements related to the provision of fire protection services to City residents, as described in the capital improvements plan for fire protection. Revenues shall include all fees collected

pursuant to Subsection 7.5-30(a). Expenditures shall be made solely for the purposes described in Subsection 7.5-30(b) and according to all other applicable provisions of Chapter 7.5.
(Ord. No. 51, § 3, 5-21-96; Ord. No. 95, 1996, 7-16-96; Ord. No. 51, 1997, § 9, 3-18-97)

Secs. 8-98—8-104. Reserved.

DIVISION 3. SELF-INSURANCE PROGRAM AND FUND

Sec. 8-105. Creation and purpose of the program and fund.

A self-insurance program and a self-insurance fund are hereby authorized and created for the City. However, the establishment of the program and the fund shall not be construed so as to expand in any way the City's legal liability to third-party claimants, whether under the provisions of the Colorado Governmental Immunity Act or otherwise. Other governmental entities may participate in the program provided that each such entity has entered into an intergovernmental agreement with the City as authorized by Section 29-1-203, C.R.S., and, in such event, the terms and conditions of the intergovernmental agreement shall govern the City's obligations under the program to that other governmental entity.

(Ord. No. 177, 2000, § 2, 12-19-00)

Sec. 8-106. Covered expenses.

Except to the extent that the City has agreed otherwise in an intergovernmental agreement with any other participating entity concerning the participating entity's legal liability to third-party claimants, as authorized in § 8-105, the fund shall only be used to pay the City's uninsured portion of the following "covered expenses":

- (1) The City's indemnity and defense obligations to its employees under Division 6, Article VI of Chapter 2 of this Code.
- (2) The City's costs and attorneys' fees in defending the City and/or any of its employees against:
 - a. Any claim arising under contract;
 - b. An action under Rule 106 of the Colorado Rules of Civil Procedure;
 - c. A declaratory judgment action;
 - d. An action arising under a state or federal statute; and
 - e. An inverse condemnation action.
- (3) Judgments entered against and settlements agreed to by the City in civil actions for damages arising under tort, state or federal statute, or Rule 106(a)(2) of the Colorado Rules of Civil Procedure;
- (4) The City's costs and expenses incurred for the repair or replacement of City property, real or personal, which costs are sustained by reason of the theft of or the damage to said property, excluding normal wear and tear, provided that such theft or damage is customarily covered by a commercial property insurance policy;
- (5) The City's defense costs, attorneys' fees, medical expenses, disability benefits, indemnity benefits and other costs associated with workers' compensation claims filed against the City;
- (6) Insurance premiums, broker fees and taxes for liability, property and workers' compensation insurance policies;
- (7) Such costs of administering the program as are deemed reasonable and necessary City's Director of Purchasing and Risk Management; and
- (8) Loss prevention costs for safety training, incentive programs, personal protective equipment for employees, industrial hygiene studies and other expenses that are deemed appropriate by the City's Director of Purchasing and Risk Management.

(Ord. No. 177, 2000, § 2, 12-19-00; Ord. No. 013, 2004, 2-3-04)

Sec. 8-107. Funding of the program.

The program shall be funded by monies appropriated by the City Council for expenditure from the fund, and the fund is hereby created to be used for payment of the covered expenses as described in § 8-106. Notwithstanding the foregoing, no payment from the fund shall exceed the uninsured portion of any covered expense.
(Ord. No. 177, 2000, § 2, 12-19-00)

Sec. 8-108. Implementation and administration.

(a) The City's Purchasing Agent shall be responsible for implementation and administration of the program, including the settlement of claims. The Purchasing Agent is authorized to promulgate rules for the proper daily management, operation and maintenance of the program, and is further authorized to enter into a professional services agreement pursuant to relevant provisions of this Code for the administration of claims.

(b) The Purchasing Agent shall authorize expenditures from the fund for covered expenses described in § 8-106 and shall maintain such accounting records pertaining to each such transaction as may be deemed necessary by the City's Financial Officer. Covered expenses shall be paid on an occurrence basis.

(c) The total amount of the covered expenses paid out of the fund shall be allocated among the various departments of the City, and the departments charged therefor, according to the Purchasing Agent's assessment of each department's exposure. Factors to be considered by the Purchasing Agent shall include, without limitation, each department's payroll, revenue, value of property utilized, previous loss history, expected losses and reserves for workers' compensation claims that may be required by the Colorado Department of Labor and Employment.
(Ord. No. 177, 2000, § 2, 12-19-00; Ord. No. 130, 2002, § 17, 9-17-02)

Sec. 8-109. Reserved.

**ARTICLE IV.
PURCHASING AND CONTRACTING***

DIVISION 1. GENERALLY

Sec. 8-110. Procurement application.

This Article shall apply to the procurement of all materials, services and professional services required or used by all departments and agencies of the City, including businesses and enterprises operated by the City, whether used in the construction of City improvements or otherwise, irrespective of the source of the funds, excepting only donations, the procurement of legal and litigation services, musical, dramatic and other fine arts performances and services or activities subject to contracts between the City and other governmental bodies. When any procurement involves the expenditure of federal or state funds, the procurement shall be conducted in accordance with any mandatory applicable federal or state laws or regulations. This Article does not create or confer any right or entitlement upon any person to bid on or receive an award of any City contract.
(Ord. No. 84, 1990, 8-7-90)

***Editor's note**—Ord. No. 84, 1990, adopted Aug. 7, 1990, repealed former Art. IV, "Purchasing," §§ 8-110—8-132, derived from Code 1972, §§ 2-56—2-69, and Ord. No. 97, 1987, §§ 1, 2, adopted July 21, 1987, and added a new Art. IV, §§ 8-110—8-206.

Charter reference—Purchasing, Art. V, Pt. IV.

Cross-references—The Director of Administrative Services shall be responsible for the function and duties of the Financial Administration Unit and the Purchasing Division, § 2-500.

Sec. 8-111. Purpose.

The purposes of this Article are to provide for the fair and equitable treatment of all persons involved in public purchasing by the City, to maximize the purchasing value of public funds, to codify and standardize the City's purchasing procedures for the orderly and efficient administration thereof, to provide safeguards for maintaining a procurement system of quality and integrity and to foster effective, broad-based competition within the free enterprise system.

(Ord. No. 84, 1990, 8-7-90)

Sec. 8-112. Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section:

Alternative delivery method process shall mean a process of construction using either the construction manager process, design/build process or design/select/ build process.

Brand name shall mean a specification limited to one (1) or more items by manufacturers' names or catalog numbers.

Change order shall mean any written modification to an existing contract authorizing changes within the scope of work, additions or deletions to the work or an adjustment to any other provision of the contract.

Confidential information shall mean any information which is available to an employee only because of the employee's status as an employee of the City and which is not a matter of public knowledge or available to the public on request.

Construction shall mean the process of building, improving, altering or demolishing improvements. *Construction* shall not include the operation, repair or maintenance of improvements.

Construction manager process shall mean the process of entering into a contract for the design and construction of a project together with a contract with a business organization having the expertise and resources to help manage the design and construction of the project and establish a guaranteed maximum price for the project.

Contract shall mean any agreement enforceable by law between the City and one (1) or more outside parties, regardless of form or title, for the procurement of materials, services or construction.

Cost data shall mean factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

Design/build process shall mean a process for managing a construction project in which a primary or main contractor submits a combined proposal to provide the design and construction services for the entire construction project.

Design/select/build process shall mean a process for managing a construction project in which the design and construction of the project are contracted for separately but the designer and construction contractor work with the City as part of an integrated team for the design and construction of the project.

Improvements shall mean any structure, building, street, utility or other valuable addition to real property amounting to more than mere repairs or partial replacement and intended to enhance its value or utility or to adapt it for new or further purposes.

Invitation for bids shall mean all documents, whether attached or incorporated by reference, utilized for soliciting bids.

Legal services shall mean the advice, representation, document preparation or related services of an attorney as special counsel provided to the City upon the request of the City Attorney.

Litigation services shall mean professional or other services procured by the City Attorney for the purpose of evaluating, preparing, providing or presenting evidence at the trial of any lawsuit to which the City is a party. Litigation services shall not include legal services.

Maintenance shall mean acts of repair, replacement or other acts necessary to keep any improvements or personal property in proper condition and good working order, to prevent decline in, failure or cessation of the existing condition of the improvement or personal property or to restore any improvement to its original condition after partial failure or destruction. This term shall not include improvements.

Materials shall mean all personal property, including but not limited to supplies, equipment, parts, printing and insurance; excluding, however, leases of a permanent interest in real property, securities and financial paper and water and water rights whether represented by shares of stock in ditch and irrigation companies, units of the Northern Colorado Water Conservancy District or otherwise.

Price data shall mean factual information concerning prices for items substantially similar to those being procured. *Prices* as used in this definition shall refer to offered or proposed selling prices, historical selling prices and current selling prices.

Pricing agreement shall mean an agreement by which procurements are conducted by or on behalf of more than one (1) governmental body.

Procurement shall mean the purchasing, renting, leasing or other acquisition of any materials, services, professional services or construction. It shall also include all functions that pertain to obtaining any material, service or construction, including the description of requirements, the selection and solicitation of sources and the preparation and award of contract. *Procurement* shall not include the buying, purchasing, renting or leasing of real property.

Professional services shall mean the furnishing of labor, time, effort or expertise by a contractor with specialized knowledge in a field, including but not limited to architecture, engineering, medicine, finance, accounting, appraisal and land surveying.

Public notice shall mean any publication reasonably calculated to inform responsible bidders or offerors. Public notice shall occur for a reasonable time and may be disseminated through any means of mass communication, including but not limited to newspapers, other written publications, posting, television, radio, other broadcasting media and electronic billboards.

Request for proposals shall mean all documents, whether attached or incorporated by reference, utilized for soliciting proposals.

Responsible bidder or offeror shall mean a person who meets the criteria specified in § 8-160 of this Article and who has the capability in all respects to perform fully the contract requirements and the experience, integrity, reliability, capacity, facilities, equipment, insurance and credit which will ensure good-faith performance.

Responsive bidder or offeror shall mean a person whose bid or offer conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

Services shall mean the performance of maintenance or the furnishing of labor, time or effort which does not involve the delivery of a specific end product other than a report or other item which is merely incidental to the performance of the service. *Services* shall not include services rendered under an employment agreement nor shall it include *professional services* as that term is defined in this Section.

Specification shall mean any description of the physical or functional characteristics of or the nature of the material, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery or a procedure for determining whether the requirements are satisfied.

Using agency shall mean any service area, department, board or commission of the City requiring supplies, professional services, services or construction procured pursuant to this Article.

Work order shall mean a written order defining a discrete service and/or material with a definite project, price and time of completion which is used in conjunction with a work order contract to create an enforceable contract.

Work order contract shall mean a master contract for completion of a project or provision of services or materials on an as-needed basis establishing all terms and conditions requested by the City except those contained in the work orders to be issued pursuant to the work order contract.

(Ord. No. 84, 1990, 8-7-90; Ord. No. 130, 2002, § 18, 9-17-02; Ord. No. 026, 2008, § 1, 3-18-08)

Sec. 8-113. Authority and duties of Purchasing Agent.

(a) The Purchasing Agent shall serve as the public purchasing official for the City, and shall be responsible for the procurement of all materials, services, professional services and construction for the City which are governed by the terms of this Article.

(b) The Purchasing Agent may formulate and promulgate rules and regulations for the administration of this Article, not inconsistent with the provisions of this Article, with respect to purchasing procedures. Any rules and regulations promulgated by the Purchasing Agent hereunder shall be effective upon the Purchasing Agent's filing of the same with the City Clerk.

(Ord. No. 84, 1990, 8-7-90; Ord. No. 026, 2008, § 2, 3-18-08)

Charter reference—Powers and duties of Purchasing Agent, Art. V, § 27.

Sec. 8-114. Procurement contrary to this Article.

Except as may be otherwise provided by law, it shall be unlawful for any City officer or employee to order a procurement contrary to the provisions of this Article. Any procurement or contract so made shall be void and wholly without effect and shall not be binding upon the City in any manner.

(Ord. No. 84, 1990, 8-7-90)

Secs. 8-115—8-135. Reserved.

DIVISION 2. SPECIFICATIONS

Sec. 8-136. Intent.

All specifications, including but not limited to design, performance and brand name specifications, shall be drafted so as to provide a clear and concise description of the material, service or construction desired.

(Ord. No. 84, 1990, 8-7-90)

Sec. 8-137. Preparation.

Before any procurement, the Purchasing Agent shall cause to be prepared written specifications detailing the City's requirements for the materials, service or construction. The Purchasing Agent may request other departments or agencies of the City to prepare specifications for procurements to be made primarily for such department or agency.

(Ord. No. 84, 1990, 8-7-90)

Sec. 8-138. Approval.

(a) Specifications prepared primarily for a procurement for a specific department or agency of the City shall be approved by both the Purchasing Agent and the head of the using agency before being submitted for bid.

(b) If the Purchasing Agent and head of the using agency cannot agree, the matter shall be referred to the City Manager.

(Ord. No. 84, 1990, 8-7-90)

Sec. 8-139. Brand name specification.

(a) A brand name specification may be used when the Purchasing Agent has determined that sufficient sources for competition exist for the procurement of the material and that the use of the brand name specification is not intended to limit or restrict competition.

(b) A brand name specification may also be used to describe the standard of quality, performance and other salient characteristics of a material in lieu of a description of its physical or functional characteristics. In such cases, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard desired and that the substitution of equivalent materials is permitted.

(Ord. No. 84, 1990, 8-7-90)

Secs. 8-140—8-155. Reserved.

DIVISION 3. CONTRACT FORMATION AND AWARD*

Sec. 8-156. Methods of source selection.

All procurements subject to the terms of this Article shall be awarded by competitive sealed bidding pursuant to § 8-157, except as provided in:

- (1) Section 8-158 concerning awards by competitive sealed proposals; and
 - (2) Section 8-161 concerning exemptions to the use of competitive bids or proposals.
- (Ord. No. 84, 1990, 8-7-90; Ord. No. 83, 1991, § 1, 7-16-91)

Sec. 8-157. Competitive sealed bidding.

(a) Procurements accomplished pursuant to this Section shall be awarded to the lowest responsive and responsible bidder after competitive sealed bidding.

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

(c) Public notice shall be given and shall include the bid title, place, date and time of bid opening.

(d) All bids shall be opened in public at the time and place stated in the invitation for bids. The amount of each bid and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder, shall be recorded. Thereafter, the record of bids and each bid shall be available for public inspection in the office of the Purchasing Agent in the same manner as are other public records. In the event of good cause as determined by the Purchasing Agent, bid openings may be postponed.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in Subsection (g) of this Section. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria and/or processes for determining acceptability, such as inspection, provision of sample materials, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price shall be objectively measurable, such as discounts, transportation costs and total or life cycle costs. The invitation for bids shall set forth all evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(f) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be authorized when deemed appropriate by the Purchasing Agent.

- (1) Mistakes discovered before bid opening may be corrected or withdrawn in writing by the bidder. Any such corrections or notices of withdrawal must be received in the office designated in the invitation for bids prior to the time set for bid opening.

* **Charter references**—Competitive bidding, Art. V, § 27; contracts for services, Art. V, § 30.

- (2) After bid opening, the following provisions shall apply:
 - a. A low bidder alleging a material mistake of fact may be permitted by the Purchasing Agent to correct its bid if the mistake is clearly evident on the face of the bid document and the intended correct bid is similarly evident.
 - b. A low bidder alleging a material mistake of fact may be permitted by the Purchasing Agent to withdraw its bid: (i) if the mistake is clearly evident on the face of the bid but the intended correct bid is not similarly evident or (ii) if the mistake is not clearly evident on the face of the bid but the bidder submits evidence to the Purchasing Agent which clearly and convincingly demonstrates that a mistake was made, in which case the bidder must show the nature of the mistake and the bid price actually intended.
- (3) No changes in bid prices or other provisions of bids prejudicial to the interests of the City or fair competition shall be permitted.
- (4) All decisions to permit the correction or withdrawal of bids or to cancel awards or contracts based on bid mistakes will be supported by a written determination made by the Purchasing Agent.

(g) The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. If the lowest responsive and responsible bid exceeds budgeted funds and either time constraints or economic considerations preclude resolicitation of work of a reduced scope, the Purchasing Agent is authorized to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder or to modify the scope of work, so as to bring the bid within the amount of available funds.

(Ord. No. 84, 1990, 8-7-90)

Sec. 8-158. Competitive sealed proposals.

(a) Procurements for the following are eligible for award by competitive sealed proposals:

- (1) Materials and services when the Purchasing Agent determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the City;
 - (2) Professional services; and
 - (3) City improvements when the Purchasing Agent determines that the use of alternative delivery methods will provide substantial benefit to the City while retaining sufficient competitive pricing and/or performance.
- (b) Procurements accomplished pursuant to this Section shall be solicited through a request for proposals.
- (c) Public notice shall be given and shall include the proposal title, place, date and time of proposal opening.

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be maintained containing the name of each offeror and shall be open for public inspection after the award of the contract in the office of the Purchasing Agent in the same manner as are other public records.

(e) The request for proposals shall state evaluation factors and their relative importance.

(f) After proposal opening, interviews may be conducted with the highest ranked responsible offeror or offerors for the purpose of clarification and to assure full understanding of, and responsiveness to, solicitation requirements. Offerors selected for interview shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and prior to award in order to reflect clarifications in the proposal's scope of work or contract amount. In conducting interviews, there shall be no disclosure by the City or any officer, employee or committee thereof, of any information derived from proposals submitted by competing offerors, nor shall there be any disclosure of information discussed by the evaluation committee in selecting the highest ranked offeror(s). After the contract has been awarded and a written contract executed with the selected offeror(s), the total points of the evaluation committee will be retained by the Purchasing Agent for a period

of time consistent with the City's record retention policy. Individual rating sheets and notes prepared or utilized by members of the evaluation committee shall not be made available for public inspection.

(g) The contract shall be awarded with reasonable promptness by written notice to the responsible offeror whose proposal is determined in writing to be the most advantageous to the City, taking into consideration the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation.

(h) The Purchasing Agent is authorized to negotiate the final price and precise scope of work with the selected offeror.

(Ord. No. 84, 1990, 8-7-90; Ord. No. 83, 1991, § 2, 7-16-91; Ord. No. 144, 1996, 12-3-96; Ord. No. 026, 2008, § 3, 3-18-08)

Sec. 8-159. Competitive negotiated procurement.

(a) Procurement for goods, services, products for resale or redistribution, distribution services usage and competitive business arrangements that are related to the establishment of strategic business plans or relationships of any City utility in a competitive market environment shall be eligible for award by competitive negotiation under this Section, provided that the following conditions are met:

- (1) The Purchasing Agent determines in writing, with the approval of the City Manager, that the use of competitive sealed bidding or competitive sealed proposal processes are either not practicable or not advantageous to the City; and
- (2) There is a minimum of two (2) vendors/businesses willing and able to provide the basic goods, services or products to be procured through competitive negotiation.

(b) In order to initiate a competitive negotiated procurement under this Section, the procuring utility shall, in a manner acceptable to the Purchasing Agent as sufficient to identify potential appropriate and qualified vendors of the goods or services to be procured, investigate and research the market for such goods or services, and identify those vendors determined to be appropriate and qualified candidates in light of the competitive and other interests of the procuring utility.

(c) The procuring utility may contact selected vendors, or may consider appropriate and qualified vendors that have initiated contact with the City, provided that a rational basis for identifying and selecting candidate vendors in view of the interests of the procuring utility is applied consistently to all vendors reasonably known to the procuring utility.

(d) The Purchasing Agent shall, with the approval of the City Manager, be responsible for accepting and soliciting all offers made on behalf of the procuring utility under the provisions of this Section.

(e) Each vendor participating in competitive negotiations under this Section shall be accorded a fair and reasonable opportunity to present and explain the goods or services to be provided by such vendor.

(f) The basis for final selection of a vendor under a competitive negotiation process, and the final terms of the contract under which goods or services shall be procured under this Section, shall each be subject to the review and approval of the Purchasing Agent and City Manager.

(g) Prior to the renewal or extension of any contract for goods or services under this Section beyond the original potential term of such contract, the City Manager or procuring utility shall require that an assessment of the subject vendor's performance and the benefits to the City of the terms of such contract be conducted by a qualified third party, to be selected by the Purchasing Agent.

(Ord. 179, 1997, 11-18-97)

Sec. 8-160. Responsibility of bidders and offerors.

- (a) In determining whether a bidder or offeror is responsible, the following shall be considered:

- (1) The ability, capacity and skill of the bidder or offeror to perform the contract or provide the services required;
- (2) Whether the bidder or offeror can perform the contract or provide the service promptly and within the time specified without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder or offeror;
- (4) The quality of the bidder's or offeror's performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder or offeror with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder or offeror to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the materials and services to the particular use required;
- (8) The ability of the bidder or offeror to provide future maintenance and service for the use of the subject of the contract;
- (9) Any other circumstances which will affect the bidder's or offeror's performance of the contract.

(b) In addition to the authority for rejection found in §§ 8-157, 8-158, 8-160, 8-163, 8-164 and 8-166 of this Article, the Purchasing Agent shall have the authority to reject all bids or proposals or any portions thereof when the interests of the City and the public will be served thereby. All such decisions will be supported by a written determination made by the Purchasing Agent.

(c) No bidder or offeror shall be in default on the performance of any other contract with the City or in the payment of any taxes, licenses or other monies due to the City.
(Ord. No. 84, 1990, 8-7-90; Ord. 179, 1997, 11-18-97)

Sec. 8-161. Exemptions to use of competitive bid or proposal.

(a) *Minor purchases.*

- (1) The Purchasing Agent shall have the power to negotiate without formal competition for the purchase of any materials, professional services, services or construction not exceeding a cost of sixty thousand dollars (\$60,000.) per year of contract. Where a project has been previously bid, project managers may approve, pursuant to administrative guidelines approved by the Purchasing Agent, change orders up to the minor purchase limit established in this Subsection; provided, however, that no such change order shall authorize any expenditure of funds in excess of the amounts budgeted and appropriated for the project.
- (2) Such negotiated purchases shall be made in the open market, but wherever practical or advantageous, the Purchasing Agent shall obtain quotes from at least three (3) suppliers. Negotiated purchases of materials, services or construction shall be awarded to the person supplying the lowest responsible and responsive quote.
- (3) The purchasing procedures adopted pursuant to § 8-113 of this Article may authorize the purchase of materials, services or professional services in the open market by other departments or agencies of the City, provided that no such purchase shall exceed five thousand dollars (\$5,000.) except that the Purchasing Agent may authorize the procurement of materials and services in an amount not to exceed ten thousand dollars (\$10,000.) per procurement when purchased pursuant to a pricing agreement approved by the Purchasing Agent and purchased by an employee of the City authorized by the Purchasing Agent to make such purchases.
- (4) No procurement will be divided so as to constitute a minor purchase under this Subsection.

(b) *Emergency purchases.*

- (1) In the case of an apparent emergency requiring the immediate purchase of materials, professional services, services or construction, the City Manager shall have the power to authorize the Purchasing Agent to secure necessary items in the open market regardless of the amount of the expenditure.
 - (2) In no event shall the contract price exceed commercially reasonable prices.
 - (3) A full written report of the circumstances of all emergency purchases over two hundred thousand dollars (\$200,000.) shall be made by the City Manager to the City Council. The report shall be received by the City Council in an open meeting, and such report shall be open to public inspection.
- (c) *Construction change orders.*
- (1) Notwithstanding the provisions of Paragraph (a)(1) of this Section, one (1) or more change orders to an existing construction contract may be executed without competition unless the cumulative amount of such change orders exceeds the greater of:
 - a. Fifteen (15) percent of the original contract amount; or
 - b. Sixty thousand dollars (\$60,000.).
 - (2) Any construction change order which authorizes a new improvement under a construction contract may be executed without competition when:
 - a. The new improvement is required for the completion of an improvement which is currently under construction pursuant to a competitive bidding or competitive proposal process;
 - b. The new improvement results from the discovery of differing or unforeseen physical conditions at the site of the improvement under construction and is required for the completion of the improvement under construction; and
 - c. An administrative finding has been made by the Purchasing Agent that it would be in the City's best interest to negotiate with the on-site contractor for the construction of the new improvement.
- (d) *Miscellaneous exemptions.*
- (1) A contract for materials, professional services or services may be awarded without competition if the Purchasing Agent determines in writing that one (1) or more of the following conditions exists:
 - a. There exists only one (1) responsible source;
 - b. Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public;
 - c. A particular material or service is required to maintain interchangeability or compatibility as a part of an existing integrated system;
 - d. A particular material, professional service or service is required in order to standardize or maintain standardization for the purpose of reducing financial investment or simplifying administration;
 - e. The material is perishable;
 - f. The material qualifies as an object of fine art;
 - g. A particular material is required to match materials in use, so as to produce visual harmony;
 - h. A particular material is required to enable use by a specific individual;
 - i. A particular material is prescribed by a professional advisor;
 - j. The material, professional service or service is the subject of a change order.
 - (2) The Purchasing Agent shall submit each determination made under this Subsection (d) to the City Manager, who shall approve or reject the procurement.
 - (3) The City Manager shall submit all procurements under this Subsection (d) which exceed a cost of two hundred thousand dollars (\$200,000.) to the City Council in an open meeting for final approval.

(4) Any procurement approved under this Section by the City Manager or the City Council may be used as the basis for a negotiated purchase of additional quantities of the same materials or services at any time within a period of five (5) years from the date of approval; provided, however, that subsequent procurements may be expressly limited to a specific number of purchases or a period of less than five (5) years.

(e) *Purchase of utility services.*

(f) *Materials, certain services and construction competitively bid within twenty-four (24) months.* In any case where the City has, within the preceding twenty-four (24) months, pursuant to an invitation for bids, awarded a contract for the procurement of any materials or for the procurement of services, professional services or construction bid on a unit price basis, the Purchasing Agent may negotiate with the successful bidder for the purchase of additional quantities of the materials or units of services or construction. The Purchasing Agent may, based upon a reasonably prudent investigation of market conditions at the time, make procurements at a price warranted by such conditions, even if the resulting cost to the City is greater than the amount of the previous award.

(Ord. No. 84, 1990, 8-7-90; Ord. No. 83, 1991, § 3, 7-16-91; Ord. No. 144, 1996, 12-3-96; Ord. 179, 1997, 11-18-97; Ord. No. 026, 2008, § 4, 3-18-08)

Sec. 8-162. Bid and performance bonds.

(a) When deemed necessary by the Purchasing Agent, bid bonds or other equivalent security shall be required and the invitation for bids or request for proposals shall describe the requirements. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the Purchasing Agent upon its failure to enter into a contract within fifteen (15) days after the award.

(b) All contracts for construction the cost of which exceed the sum of one hundred thousand dollars (\$100,000.) shall require a performance bond or other equivalent security.

(c) Nothing in this Section shall be construed to limit the authority of the City to require additional bonds or security.

(Ord. No. 84, 1990, 8-7-90; Ord. 179, 1997, 11-18-97; Ord. No. 026, 2008, § 5, 3-18-08)

Sec. 8-163. Other procedural prerequisites for award of contracts.

(a) In the case of a contract for procurement primarily for the use of a specific department or agency of the City, the head of such using agency or designee thereof shall also approve an award before written notice of the award is sent.

(b) In any case where competitive sealed bids or proposals are required by this Article and less than three (3) are received, the Purchasing Agent shall document the rationale for rejecting or awarding the bid or proposal.

(c) The Purchasing Agent shall not award any contract or finalize any procurement until the funds necessary to defray the cost of such procurement are appropriated and available, excepting only:

(1) Cases of emergency under Subsection 8-161(b); and

(2) Cases where revenue to pay the bidder or offeror will be raised through the performance of the contract.

(d) No contract for the acquisition of property or the construction of improvements or other expenditures which is to be financed by bonds or other obligations shall be effective until the proceeds of the bonds or obligations have been received by the Financial Officer. Improvements to be paid for by special assessments are excepted from this requirement.

(e) In any case where two (2) or more bids are received for the same total amount of unit price and are otherwise eligible for award, the low bidder shall be determined by any method which will, in the judgment of the Purchasing Agent, discourage the submission of tied bids.

(Ord. No. 84, 1990, 8-7-90; Ord. No. 144, 1996, 12-3-96; Ord. 179, 1997, 11-18-97)

Sec. 8-164. Prequalification of bidders and offerors.

Any person desiring to receive invitations for bids or requests for proposals from the City may submit to the Purchasing Agent such information as the Purchasing Agent may require to determine that person's acceptability as a bidder or offeror. The Purchasing Agent may maintain one (1) or more lists compiled from such submittals and may utilize the same in lieu of public notice for soliciting competitive sealed bids or competitive sealed proposals; provided, however, that the Purchasing Agent may use such list in lieu of public notice only if public notice of the prequalification procedure and intended use of the list has been given within the preceding twenty-four (24) months. (Ord. No. 84, 1990, 8-7-90; Ord. 179, 1997, 11-18-97)

Sec. 8-165. Cooperative procurement plans.

The Purchasing Agent shall have the authority to join with other units of government in cooperative procurement plans, including but not limited to the State and the Multiple Assembly of Procurement Officials, when the best interests of the City would be served thereby. Upon written approval by the Purchasing Agent, competitive sealed bids, competitive sealed proposals or pricing agreements received by any other governmental agency shall be the equivalent of bids or proposals received by the City and may be the basis for any procurement by the City. (Ord. No. 84, 1990, 8-7-90; Ord. 179, 1997, 11-18-97; Ord. No. 026, 2008, § 6, 3-18-08)

Sec. 8-166. Solicitations or awards in violation of law.

(a) If, prior to the bid opening or the closing date for receipt of proposals, the Purchasing Agent determines that a solicitation is in violation of federal, state or municipal law, then the solicitation shall be canceled or revised to comply with applicable law.

(b) If, after the bid opening or the closing date for receipt of proposals, the Purchasing Agent determines that a solicitation or a proposed award of a contract is in violation of federal, state or municipal law, then the solicitation or proposed award shall be canceled.

(c) If, after an award, the Purchasing Agent, after consultation with the City Attorney, determines that a solicitation or award of a contract was in violation of applicable law:

- (1) If the person awarded the contract has not acted in violation of Article IV, Section 9 of the Charter, the contract may be ratified and affirmed if it is determined by the Purchasing Agent that doing so is in the best interests of the City, or the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, prior to the termination;
- (2) If the person awarded the contract has acted in violation of Article IV, Section 9 of the Charter, the contract may be declared null and void, if such action is in the best interest of the City.

(Ord. No. 84, 1990, 8-7-90; Ord. 179, 1997, 11-18-97)

Secs. 8-167—8-184. Reserved.

DIVISION 4. CONTRACT ADMINISTRATION

Sec. 8-185. City Attorney review.

All written contracts shall be on forms previously approved by the City Attorney and any changes or additions shall be approved by the City Attorney. (Ord. No. 026, 2008, § 7, 3-18-08)

Sec. 8-186. Multi-year contracts.

(a) No contract for services or professional services, including all renewals, shall be made by the City for a period longer than five (5) years, unless authorized by ordinance, which ordinance shall not be passed as an emergency ordinance.

(b) Multi-year contracts shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis or by nonlapsing appropriation.

(c) When funds are not appropriated or otherwise made available to support the continuation of the City's performance in a subsequent fiscal period, the contract shall be canceled.
(Ord. No. 84, 1990, 8-7-90)

Sec. 8-187. Multiple source award.

A multiple source award may be made when an award to two (2) or more bidders or offerors for similar supplies or services is necessary for adequate delivery, service or product compatibility.
(Ord. No. 84, 1990, 8-7-90; Ord. No. 82, 1991, § 1, 7-16-91)

Sec. 8-188. Right to inspect plant.

The City may inspect the plant, place of business or work site of any contractor or subcontractor which is pertinent to the performance of any contract awarded or to be awarded by the City.
(Ord. No. 84, 1990, 8-7-90)

Sec. 8-189. Right to audit records.

(a) The City may, at reasonable times and places, audit the books and records of any contractor who has submitted cost or pricing data to the extent such books, documents, papers and records are pertinent to cost or pricing data.

(b) The City shall be entitled to audit the books and records of any contractor or subcontractor when a negotiated contract is not a firm, fixed-price contract.
(Ord. No. 84, 1990, 8-7-90)

Secs. 8-190—8-205. Reserved.

DIVISION 5. RESOLUTION OF CONTROVERSIES

Sec. 8-206. Resolution of controversies.

(a) The Purchasing Agent is authorized, after consultation with the City Attorney, to settle and resolve any questions regarding:

- (1) Any protest concerning the solicitation or award of a contract;
- (2) Debarment or suspension from consideration for award of contracts; and
- (3) Any controversy arising between the City and a contractor by virtue of a contract between them, including, without limitation, controversies based upon breach of contract, mistake, misrepresentation or any other cause for contract modification or rescission.

(b) This authority shall be exercised pursuant to procedures established pursuant to § 8-113 which shall provide for an expeditious resolution of the controversy.
(Ord. No. 84, 1990, 8-7-90; Ord. No. 144, 1996, 12-3-96)