

SECOND AMENDMENT TO QUALIFIED CONVENTION CENTER
MANAGEMENT AGREEMENT

(Riverside Convention Center)

This Second Amendment to Qualified Convention Center Management Agreement (“Second Amendment”) is made as of the _____ day of _____, 2019 (“Effective Date”), by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation (“City”), and RAINCROSS HOSPITALITY CORPORATION, a California corporation (“Manager”).

RECITALS

A. The City and Manager entered into a Qualified Convention Center Management Agreement dated September 6, 2013 and amended on October 25, 2013 (collectively “Original Agreement”).

B. When the City and Manager entered into the Original Agreement, Internal Revenue Service regulations (“Regulations”) limited the management term to no more than ten (10) years.

C. Subsequent to the date of the Original Agreement the Regulations have changed and no longer cap the term of the management at ten (10) years. The parties desire to extend the term of the Original Agreement by an additional five (5) years to 2028.

D. The City is pleased with the performance of Manager and its success in operating the Convention Center. Successes include: Ranking in the Top 3 for Best Conference/Convention Center under 100,000 square feet by California Meetings and Events; establishing a rating of 96% for both customer satisfaction and clients likely to return; achieving 57% operational profit growth and 73% parking revenue growth; and economic impact growth of 37.85% since fiscal year 2014-15.

E. The City is presently negotiating with a developer for the development of Parking Lot 33, expansion of the Convention Center, development of the Plaza Area adjacent to the Convention Center, and the development of a new parking structure (“Project”). The Parties seek to work together during the pre-development, development and construction phases of the Project to allow for both the efficient development of the Project and to optimize Convention Center revenues and profitability during the development and construction period. The Parties acknowledge and agree that an expanded Convention Center will: 1) alter the responsibilities of Manager leading up to and after expansion, including providing pre-opening management services, 2) change the financial performance of the Convention Center; and 3) require the terms of the Original Agreement and this Second Amendment to be amended to reflect these changed circumstances. The Parties further agree that, upon the earlier of the issuance of a grading permit for the new parking structure or any other aspect of the Parking Lot 33 development, they will meet in good faith to discuss and revise the terms of the Original Agreement and this Second Amendment.

F. The Parties acknowledge that 1) the development of the areas adjacent to the Convention Center may negatively impact revenue and profitability of the Convention Center during construction; and 2) construction of the Plaza Area may interfere with existing rental obligations of Manager during a period of time when the Plaza Area is under construction. Manager will inform future clients of said potential short-term impacts.

G. The parties desire to amend the Original Agreement to extend the term by an additional five (5) years to 2028 and work together collaboratively to address the impact development and construction of Parking Lot 33 will have on the Agreement and operation of the Convention Center; and revise the CPI and budget submittal requirements, among other clarifying issues.

NOW THEREFORE, City and Manager hereby agree as follows:

1. The seventh WHEREAS clause of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“WHEREAS, the City and Manager have entered into the QMA with the intent of complying with U.S. Internal Revenue Service Procedure 97-13 and all references to Revenue Procedure 97-13 shall be deemed to be references to Revenue Procedure 97-13 as modified and superseded by Revenue Procedure 2016-44 as further modified and superseded by Revenue Procedure 2017-13, which Revenue Procedure is set forth in Exhibit “B” attached hereto and incorporated herein by reference.”

2. Section 1.1(i) of the Original Agreement is hereby amended to add the following additional paragraph:

“(i) The Convention Center also includes the 10,000 square foot plaza and landscape areas (“Plaza Area”) adjacent to the Convention Center. Said Plaza Area is shown on the site plan attached hereto as Exhibit “A-1” and incorporated herein by reference. Manager has exclusive use of this area until such time as said Plaza Area is included in any proposed development of Parking Lot 33, at which time it will become under the exclusive control of the City or the City’s selected developer of Parking Lot 33. The City shall give Manager at least twelve (12) months’ notice, if possible, prior to any development. For the purpose of this section, “development” means that point in time when a developer assumes control of Parking Lot 33 for any pre-construction activity.”

3. Section 1.1(j) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“(j) Consumer Price Index or CPI shall mean the March Consumer Price Index–All Urban Consumers for Riverside-San Bernardino-Ontario, CA

(CPI-U)/All Items, Not Seasonally Adjusted, 1982-84=100 as published by the United States Department of Labor Statistics, for the applicable comparison period and region. If the CPI shall cease to use 1982-84 as the base year, the CPI shall be converted in accordance with the conversion factor, if any, published by the United States Department of Labor, Bureau of Labor Statistics. If the CPI is discontinued or revised during the term of this Agreement, such government index or computation, if any, with which it is replaced shall be used. If no conversion factor is supplied by the United State Department of Labor Bureau of Statistics, either for a new base year or a new index, the parties shall agree upon a conversion factor for the CPI to be used.”

4. Section 2.1 of the Original Agreement is hereby amended to add the following paragraph at the end of said section.

“The above authorizations and obligations of Manager shall continue not only during the term of this QMA but also during any extensions of the Term.”

5. Section 2.10(e) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“(e) In soliciting bids and quotes and in entering into contracts with respect to the Convention Center, Manager shall comply with all applicable public bidding requirements. City shall provide Manager with a copy of its Purchasing Resolution No. 23256 regarding Goods, Services and Construction Contracts, which may be amended from time to time. A copy of Resolution No. 23256 is attached hereto as Exhibit “E” and incorporated herein by reference.”

6. Section 2.10 of the Original Agreement is hereby amended to add the following new subsection (f):

“(f) The Parties understand and agree that existing contract for the use of the Plaza Area may be impacted during any construction of the Plaza Area. Manager will use commercially reasonable efforts to modify existing contracts to avoid conflicts during the construction of the Plaza Area; provided, however, City understands and acknowledges that existing agreements with third parties may not be modified without the consent of such third parties, which is out of the control of Manager. Likewise, Manager will inform any prospective users of the construction and the unavailability of the Plaza Area during said construction. City agrees to work with Manager to relocate any existing contract for the use of the Plaza Area to another City facility at no cost to the Manager or Plaza Area user.”

7. Section 4.1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“4.1 Management Term. The Management Term shall commence on the Commencement Date and terminate on June 30, 2028, subject to termination as provided in Article 5 hereof.

(a) Prior Agreements. This QMA supersedes all other agreements and their respective amendments, verbal and written, between City and Manager for the operation of the Convention Center, including any agreement for the temporary operations at the Riverside Municipal Auditorium. All other or previous agreements shall terminate and have no further force or effect as of the Commencement Date of this QMA.

(b) Request for Proposals. On or before December 2026, the City shall issue a Request for Proposal to procure a management firm to manage the Convention Center after the end of this QMA. In the event Manager does not respond to the Request for Proposal or is not the successful proposer, Manager shall cooperate and ensure a smooth transition between Manager and the new manager.”

8. Section 5.2 (c)(vi) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“(vi) The City shall cause the Convention Center to recognize all business confirmed for the Convention Center with reservation dates after the expiration or early termination of this QMA. Manager shall cooperate with the City prior to and after termination of this QMA for the smooth transition of any confirmed reservations. At least six (6) months prior to the end of this QMA, Manager shall provide the City with a detailed list and related agreements/contracts of all future events scheduled after said end of the Term. The list shall include, but not be limited to, the name of the event, contact information for the event organizer, size, value, duration, food and beverage, and any special conditions. The City shall be responsible for any and all liability that may exist to groups whose confirmed future contracts are not honored in full and as contracted by the Manager after expiration or early termination of this QMA. For purposes of clarity, the Parties acknowledge that their respective indemnity obligations set forth in Article 14 apply to any breach of this Section.”

9. Section 6.1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“6.1 Target Annual Revenue Budget; Condition Precedent; Performance Metric.

(a) On or before December of each year, the City shall provide a projected budget preparation schedule to Manager in connection with the City’s two-year budget. The City and Manager shall meet and confer in good faith, to establish a written Target Annual Budget related to Operating Revenue (“Target Annual Revenue Budget”) of the Convention Center Management which shall be formalized on or before June 30 of the year the two-year budget is adopted. Manager shall comply with the timelines set forth in the budget preparation schedule.

(b) If Manager meets the Target Annual Revenue Budget then it shall receive an Incentive Bonus described in Article 9 below. Subject to the City’s review of the Convention Center financials, Manager will be deemed to meet the Target Annual Revenue Budget if the books of accounts reflect that Manager generated revenues that meet or exceed the Target Annual Revenue Budget. If Manager generates less revenue than the Target Annual Revenue Budget, then Manager shall not be eligible for the Incentive Bonus.

(c) Manager will provide the City with external Performance Measures to be mutually agreed upon by the City and Manager. Manager agrees to provide quarterly updates to the City in alignment with City Performance updates to City Council which estimated schedule will be provided to Manager no later than December of each year. The parties agree that they will coordinate from time to time for additional performance measures.”

10. Beginning on July 1, 2023, the following Section 6.1 shall replace Section 6.1 as amended above.

“(a) On or before December of each year, the City shall provide a projected budget preparation schedule to Manager in connection with the City’s two-year budget. The City and Manager shall meet and confer in good faith, to establish a written Target Annual Budget related to Operating Revenue (“Target Annual Revenue Budget”) of the Convention Center Management which shall be formalized on or before June 30 of the year the two-year budget is adopted. Manager shall comply with the time-lines set forth in the budget preparation schedule.

(b) If Manager meets the Target Annual Revenue Budget and Performance Measures, then it shall receive an Incentive Bonus described in Article 9 below. Subject to the City’s review of the Convention Center

financials, Manager will be deemed to meet the Target Annual Revenue Budget if the books of accounts reflect that Manager generated revenues that meet or exceed the Target Annual Revenue Budget. If Manager generates less revenue than the Target Annual Revenue Budget, then Manager shall not be eligible for the Incentive Bonus.

(c) Manager will provide the City with external Performance Measures to be mutually agreed upon by the City and Manager. Manager agrees to provide quarterly updates to the City in alignment with City Performance updates to City Council which estimated schedule will be provided to Manager no later than December of each year. The parties agree that they will coordinate from time to time for additional performance measures.”

11. Section 7.3 is hereby added to the Original Agreement as follows:

“7.3 Capital Projects. In connection with Manager’s proposed budget for the Management of the Convention Center, the City and Manager shall mutually agree to annually set aside up to One Hundred Thousand Dollars (\$100,000) of Convention Center profits for potential capital improvements (as defined in Exhibit “C”), unless otherwise approved by City Council, facility improvements, programs and/or services that will increase economic activity at the Convention Center and the City. All such set aside funds will be set aside in a special City operating account. City and Manager shall meet annually, or as needed, to review the available set aside balance and proposed expenditures. Manager understands and agrees that any project mentioned herein will be subject to Section 2.10 of this QMA.”

12. Beginning on July 1, 2023, Section 9.3 is hereby deleted in its entirety and replaced with the following:

“9.3 Incentive Bonus Eligibility. Manager shall receive an incentive bonus in the event Manager meets the Target Annual Revenue Budget for Revenues as set forth in Article 6 above including the specific weighted criteria outlined in this section below. Manager will be deemed to meet the Target Annual Revenue Budget if: a) total annual revenue for the given year is equal to or greater than the average of the previous three (3) years (e.g., Manager will receive 70% of incentive bonus); b) revenue per occupied square foot is equal to or greater than the average of the previous three (3) years (10% of incentive bonus); c) increase in food and beverage per attendee is equal to or greater than the average of the previous three (3) years (10% of incentive bonus); and d) parking revenue is equal to or greater than the average of the previous three (3) years (10% of incentive bonus). If Parking Lot 33 is removed due to construction of a development project, the weighted 10% shall be shifted equally to (b) and (c).”

13. Beginning on July 1, 2023, and/or upon completion of adjacent construction activity, whichever occurs first, Section 9.4 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“9.4 Incentive Bonus Calculation. Provided Manager meets the Target Annual Revenue Budget, Manager shall receive the Incentive Bonus in an amount equal to One Hundred Thousand Dollars (\$100,000.00). If Manager’s Base Fee is increased in accordance with Section 9.2 above, Manager shall receive the Incentive Bonus in an amount equal to One Hundred Twenty Thousand Dollars (\$120,000.00). Notwithstanding anything herein to the contrary, the Incentive Bonus shall not exceed twenty percent (20%) of the total annual compensation received by Manager in any given year. The Incentive Bonus will be payable at the end of each Fiscal Year immediately following the preparation of the financial statements by the Independent Auditor.”

14. Section 11.2 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“11.2 Parking Lot 33. Upon prior approval and in cooperation with the Public Works Department, Manager shall have the right to use of Parking Lot 33 for Convention Center events. Manager’s request shall include the amount of the Parking Lot 33 it needs for the subject event. Manager shall track all parking revenue expenses for each event for which it uses Parking Lot 33. Manager shall pay the City’s Public Works Department fifty percent (50%) of any net revenues and shall add the remaining fifty percent to the Gross Revenues of the Convention Center. Payments to the Public Works Department shall be made quarterly, within 30 days of the end of the respective quarter.

Manager understands and agrees that the City intends to develop Parking Lot 33 with a private developer. The Parties agree to coordinate prior to and during any development to discuss how to maximize the revenue and profitability of the Convention Center and, if possible, phase construction to minimally impact the Convention Center’s operation and its events. Should any development occur, the City will require that any new development provide sufficient parking for the Convention Center. The City agrees to provide advance notice to Manager prior to development of Parking Lot 33 and will continue to provide status updates during all phases of construction.”

15. Section 16.18 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“The City and Manager have entered into this QMA with the intent of complying with U.S. Internal Revenue Service Procedure 97-13. Although

Manager makes no representations, and shall have no liability, regarding the effect, if any, of this QMA on the tax-exempt status of the financing structure that may be employed to generate the capital necessary to develop the Convention Center, Manager and the City agree to make reasonable modifications to this QMA as may be necessary in the reasonable opinion of the City's tax counsel to ensure the tax-exempt status of such financing. Manager agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the City with respect to the Convention Center. For example, Manager agrees not to claim any depreciation, investment tax credit or deduction for any payment as rent with respect to the Convention Center."

16. Exhibit "B" of the Original Agreement is hereby replaced in its entirety with Exhibit "B" attached to and incorporated herein by reference to this Second Amendment.

17. Exhibit "E" of the Original Agreement is hereby replaced in its entirety with Exhibit "E" attached to and incorporated herein by reference to this Second Amendment.

18. All terms and conditions of the Original Agreement and First Amendment not inconsistent with this Second Amendment, shall remain in full force and effect and are incorporated herein by this reference as if set forth in full.


[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed the day and year first above written.

CITY OF RIVERSIDE, a California charter city and municipal corporation


RAINCROSS HOSPITALITY CORPORATION, a California corporation

By: _____

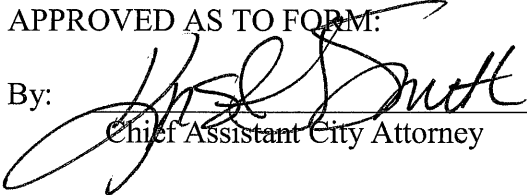
By: 
Printed Name: Ter Wegeland
Title: CEO

ATTEST:

By: _____
City Clerk

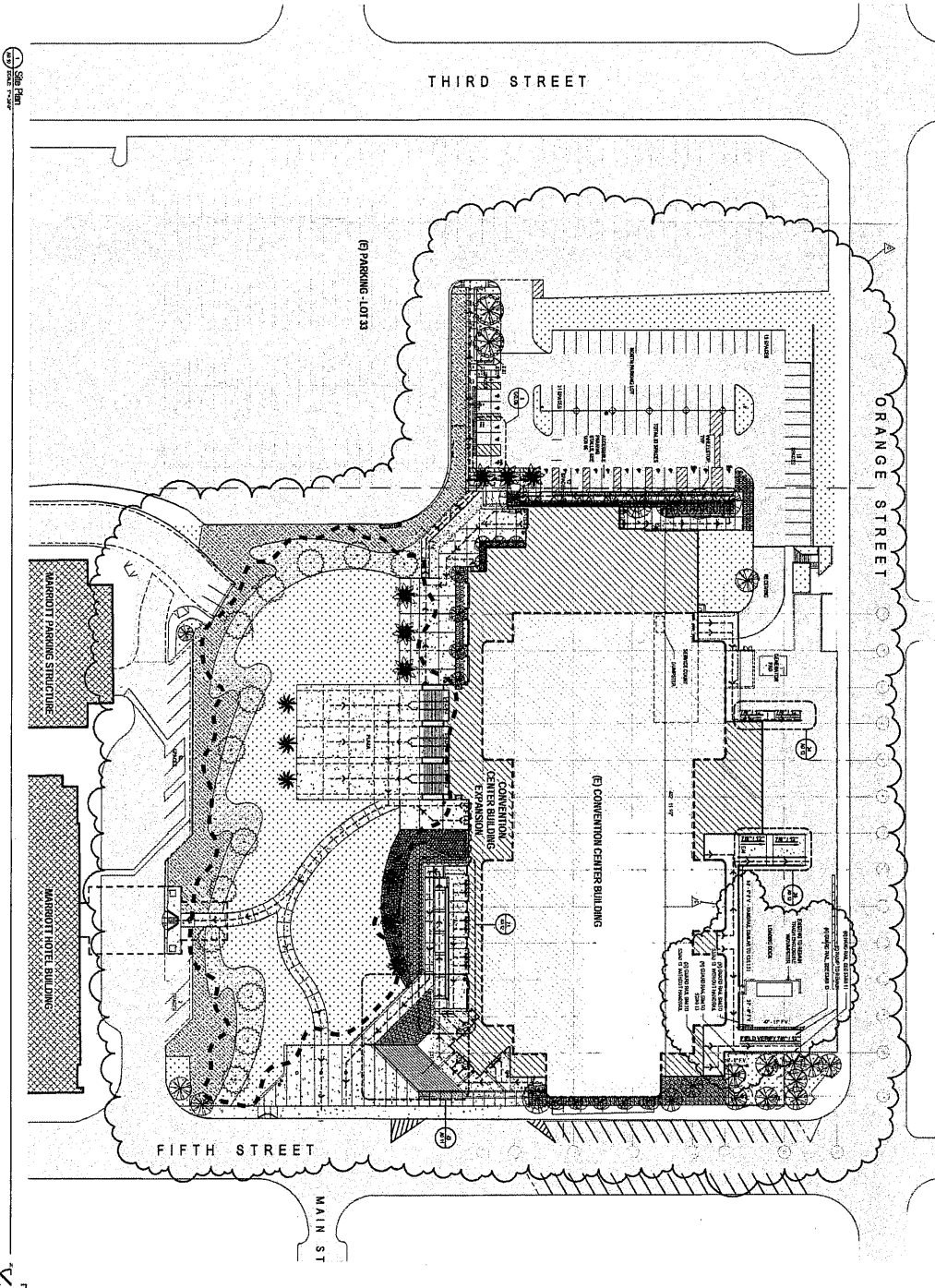
By: 
Printed Name: Scott McQuinn
Title: President

APPROVED AS TO FORM:

By: 
Chief Assistant City Attorney

CA 13-0540.2
08/06/19

EXHIBIT "A-1"



LEGEND

[Symbol]	CONCRETE
[Symbol]	WARRBOTT HOTEL
[Symbol]	ASPHALT DRIVE
[Symbol]	PAVING
[Symbol]	LANDSCAPING
[Symbol]	Structural Grid

REQUIRED PARKING

APPLICABLE REQUIREMENTS: 2008 CALIFORNIA BUILDING CODE, SECTION 103.01, TABLE 103.01.1, PART 1, COLUMN 2, AND 103.01.1, PART 1, COLUMN 3.

REQUIRED PARKING: 1.00 PER 1,000 SF OF GROSS FLOOR AREA (GFA) FOR OFFICE, BUSINESS, PROFESSIONAL, AND SERVICE USES; 1.50 PER 1,000 SF OF GFA FOR RETAIL, RESTAURANT, AND FOOD AND BEVERAGE USES; 2.00 PER 1,000 SF OF GFA FOR HOTEL USES; 1.00 PER 1,000 SF OF GFA FOR MULTIFAMILY RESIDENTIAL USES; 1.00 PER 1,000 SF OF GFA FOR COMMERCIAL USES; 1.00 PER 1,000 SF OF GFA FOR PUBLIC USES; 1.00 PER 1,000 SF OF GFA FOR OTHER USES.

LEGEND NOTES

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

2. ALL FINISHES ARE TO BE AS SHOWN ON THE ARCHITECTURAL DRAWINGS.

3. ALL UTILITIES ARE TO BE AS SHOWN ON THE MECHANICAL, ELECTRICAL, AND PLUMBING DRAWINGS.

4. ALL STRUCTURAL ELEMENTS ARE TO BE AS SHOWN ON THE STRUCTURAL DRAWINGS.

5. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE 2008 CALIFORNIA BUILDING CODE AND ALL APPLICABLE ORDINANCES.

Exhibit A-1

REVISED EXHIBIT "B"

26 CFR 601.601: Rules and regulations.
(Also: §§ 141, 145, 1.141-3, 1.145-2)

Rev. Proc. 2017-13

SECTION 1. PURPOSE

This revenue procedure provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) of the Internal Revenue Code or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 2016-44, 2016-36 IRB 316, to address certain types of compensation, the timing of payment of compensation, the treatment of land, and methods of approval of rates. Sections 2.11 through 2.14 of this revenue procedure generally describe the modifications and amplifications made to Rev. Proc. 2016-44 by this revenue procedure.

SECTION 2. BACKGROUND

.01 Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(a) provides that the term "private activity bond" means any bond issued as part of an issue (1) that meets the private business use test and private security or payment test, or (2) that meets the private loan financing test.

.02 Section 141(b)(1) provides generally that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Section 141(b)(6) defines "private business use" as use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person must be treated as a trade or business.

.03 Section 1.141-3(a)(1) of the Income Tax Regulations provides, in part, that the 10 percent private business use test of § 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Section 1.141-3(a)(2) provides that, in determining whether an issue meets the private business use test, it is necessary to look at both indirect and direct use of proceeds. Proceeds are treated as used in the trade or business of a nongovernmental person if a nongovernmental person, as a result of a single transaction or a series of related transactions, uses property acquired with the proceeds of an issue.

.04 Section 1.141-3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user as a result of ownership; actual or beneficial use of property pursuant to a lease, a management

contract, or an incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

.05 Section 1.141-3(b)(3) provides generally that the lease of financed property to a nongovernmental person is private business use of that property. For this purpose, any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease. Section 1.141-3(b)(3) further provides that, in determining whether a management contract is properly characterized as a lease, it is necessary to consider all the facts and circumstances, including the following factors: (1) the degree of control over the property that is exercised by a nongovernmental person; and (2) whether a nongovernmental person bears the risk of loss of the financed property.

.06 Section 1.141-3(b)(4)(i) provides generally that a management contract with respect to financed property may result in private business use of that property, based on all of the facts and circumstances. A management contract with respect to financed property generally results in private business use of that property if the contract provides for compensation for services rendered with compensation based, in whole or in part, on a share of net profits from the operations of the facility. Section 1.141-3(b)(4)(iv) provides generally that a management contract with respect to financed property results in private business use of that property if the service provider is treated as the lessee or owner of financed property for federal income tax purposes.

.07 Section 1.141-3(b)(4)(ii) defines "management contract" as a management, service, or incentive payment contract between a governmental person and a service provider under which the service provider provides services involving all, a portion, or

any function, of a facility. For example, a contract for the provision of management services for an entire hospital, a contract for management services for a specific department of a hospital, and an incentive payment contract for physician services to patients of a hospital are each treated as a management contract.

.08 Section 1.141-3(b)(4)(iii) provides that the following arrangements generally are not treated as management contracts that give rise to private business use:

(A) contracts for services that are solely incidental to the primary governmental function or functions of a financed facility (for example, contracts for janitorial, office equipment repair, hospital billing, or similar services); (B) the mere granting of admitting privileges by a hospital to a doctor, even if those privileges are conditioned on the provision of de minimis services if those privileges are available to all qualified physicians in the area, consistent with the size and nature of the hospital's facilities; (C) a contract to provide for the operation of a facility or system of facilities that consists primarily of public utility property, if the only compensation is the reimbursement of actual and direct expenses of the service provider and reasonable administrative overhead expenses of the service provider; and (D) a contract to provide for services, if the only compensation is the reimbursement of the service provider for actual and direct expenses paid by the service provider to unrelated parties.

.09 Section 141(e) provides, in part, that the term "qualified bond" includes a qualified 501(c)(3) bond if certain requirements stated therein are met. Section 145(a) provides generally that "qualified 501(c)(3) bond" means any private activity bond issued as part of an issue if (1) all property that is to be provided by the net proceeds of

the issue is to be owned by a 501(c)(3) organization or a governmental unit, and (2) such bond would not be a private activity bond if (A) 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying § 513(a), and (B) § 141(b)(1) and (2) were applied by substituting "5 percent" for "10 percent" each place it appears and by substituting "net proceeds" for "proceeds" each place it appears. Section 1.145-2 provides that, with certain exceptions and modifications, §§ 1.141-0 through 1.141-15 apply to § 145(a).

.10 Rev. Proc. 2016-44 provides safe harbor conditions under which a management contract does not result in private business use of property financed with governmental tax-exempt bonds under § 141(b) or cause the modified private business use test for property financed with qualified 501(c)(3) bonds under § 145(a)(2)(B) to be met. Rev. Proc. 2016-44 modified and superseded Rev. Proc. 97-13, 1997-1 C.B. 632; Rev. Proc. 2001-39, 2001-2 C.B. 38; and section 3.02 of Notice 2014-67, 2014-46 I.R.B. 822.

.11 Section 5.02 of Rev. Proc. 2016-44 sets forth general financial requirements for management compensation arrangements eligible for the safe harbor. Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 provide that the contract must neither provide to the service provider a share of net profits nor impose on the service provider the burden of bearing any share of net losses from the operation of the managed property. Before the publication of Rev. Proc. 2016-44, previously applicable revenue procedures expressly treated certain types of compensation, including capitation fees, periodic fixed fees, and per-unit fees (as defined therein), as not providing a share of net profits. Questions

have arisen regarding whether these common types of compensation continue to be treated in a similar manner under Rev. Proc. 2016-44. Related questions have arisen about whether a service provider's payment of expenses of the operation of the managed property without reimbursement from the qualified user (as defined in section 4.04 of Rev. Proc. 2016-44) affects the treatment of these types of compensation. To provide continuity with the previous safe harbors, this revenue procedure clarifies that these types of compensation and certain incentive compensation will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses.

.12 Sections 5.02(2) and 5.02(3) of Rev. Proc. 2016-44 also provide that the timing of payment of compensation cannot be contingent upon net profits or net losses from the operation of the managed property. Questions have arisen about the effect of these restrictions on the timing of payment of compensation. This revenue procedure clarifies that compensation subject to an annual payment requirement and reasonable consequences for late payment (such as interest charges or late payment fees) will not be treated as contingent upon net profits or net losses if the contract includes a requirement that the qualified user will pay the deferred compensation within five years of the original due date of the payment.

.13. Section 5.03 of Rev. Proc. 2016-44 provides that the term of the contract, including all renewal options (as defined in § 1.141-1(b)), must be no greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, under Rev. Proc. 2016-44,

economic life is determined in the same manner as under § 147(b), but without regard to §147(b)(3)(B)(ii), as of the beginning of the term of contract. Section 147(b)(3)(B)(i) provides that generally land is not taken into account, but § 147(b)(3)(B)(ii) provides that if 25 percent or more of the net proceeds of any issue is to be used to finance the acquisition of land, such land shall be taken into account and treated as having an economic life of 30 years. Questions have arisen about excluding land when the cost of the land accounts for a significant portion of the managed property. This revenue procedure provides that economic life is determined in the same manner as under § 147(b) as of the beginning of the term of the contract. Thus, land will be treated as having an economic life of 30 years if 25 percent or more of the net proceeds of the issue that finances the managed property is to be used to finance the costs of such land.

.14 Section 5.04 of Rev. Proc. 2016-44 provides that the qualified user must exercise a significant degree of control over the use of the managed property. Section 5.04 of Rev. Proc. 2016-44 further provides that this requirement is met if the contract requires the qualified user to approve, among other things, the rates charged for use of the managed property. Section 5.04 of Rev. Proc. 2016-44 also provides that a qualified user may show approval of rates charged for use of the managed property by either expressly approving such rates (or the methodology for setting such rates) or by including in the contract a requirement that service provider charge rates that are reasonable and customary as specifically determined by an independent third party. Questions have arisen about the requirement to approve the rates in various

circumstances in which it may not be feasible to approve each specific rate charged, such as for a physician's professional services at a § 501(c)(3) hospital or hotel room rates at a governmentally-owned hotel. This revenue procedure clarifies that a qualified user may satisfy the approval of rates requirement by approving a reasonable general description of the method used to set the rates or by requiring that the service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party.

SECTION 3. SCOPE

This revenue procedure applies to a management contract (as defined in section 4.03 of this revenue procedure) involving managed property (as defined in section 4.04 of this revenue procedure) financed with the proceeds of an issue of governmental bonds (as defined in § 1.141-1(b)) or qualified 501(c)(3) bonds (as defined in § 145).

SECTION 4. DEFINITIONS

For purposes of this revenue procedure, the following definitions apply:

.01 Capitation fee means a fixed periodic amount for each person for whom the service provider or the qualified user assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to such persons varies substantially. For example, a capitation fee includes a fixed dollar amount payable per month to a medical service provider for each member of a health maintenance organization plan for whom the provider agrees to provide all needed medical services for a specified period. A fixed periodic amount may include an automatic increase according to a specified, objective, external standard that is not

linked to the output or efficiency of the managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risk such as risk of catastrophic loss.

.02 Eligible expense reimbursement arrangement means a management contract under which the only compensation consists of reimbursements of actual and direct expenses paid by the service provider to unrelated parties and reasonable related administrative overhead expenses of the service provider.

.03 Management contract means a management, service, or incentive payment contract between a qualified user and a service provider under which the service provider provides services for a managed property. A management contract does not include a contract or portion of a contract for the provision of services before a managed property is placed in service (for example, pre-operating services for construction design or construction management).

.04 Managed property means the portion of a project (as defined in § 1.141-6(a)(3)) with respect to which a service provider provides services.

.05 Periodic fixed fee means a stated dollar amount for services rendered for a specified period of time. For example, a stated dollar amount per month is a periodic fixed fee. The stated dollar amount may automatically increase according to a specified, objective external standard that is not linked to the output or efficiency of the

managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective external standards. Capitation fees and per-unit fees are not periodic fixed fees.

.06 Per-unit fee means a fee based on a unit of service provided specified in the contract or otherwise specifically determined by an independent third party, such as the administrator of the Medicare program, or the qualified user. For example, a stated dollar amount for each specified medical procedure performed, car parked, or passenger mile is a per-unit fee. Separate billing arrangements between physicians and hospitals are treated as per-unit fee arrangements. A fee that is a stated dollar amount specified in the contract does not fail to be a per-unit fee as a result of a provision under which the fee may automatically increase according to a specified, objective, external standard that is not linked to the output or efficiency of the managed property. For example, the Consumer Price Index and similar external indices that track increases in prices in an area or increases in revenues or costs in an industry are objective, external standards.

.07 Qualified user means, for projects (as defined in § 1.141-6(a)(3)) financed with governmental bonds, any governmental person (as defined in § 1.141-1(b)) or, for projects financed with qualified 501(c)(3) bonds, any governmental person or any 501(c)(3) organization with respect to its activities which do not constitute an unrelated trade or business, determined by applying § 513(a).

.08 Service provider means any person other than a qualified user that provides services to, or for the benefit of, a qualified user under a management contract.

.9 Unrelated parties means persons other than either: (1) a related party (as defined in § 1.150-1(b)) to the service provider or (2) a service provider's employee.

SECTION 5. SAFE HARBOR CONDITIONS UNDER WHICH MANAGEMENT CONTRACTS DO NOT RESULT IN PRIVATE BUSINESS USE

.01 In general. If a management contract meets all of the applicable conditions of sections 5.02 through section 5.07 of this revenue procedure, or is an eligible expense reimbursement arrangement, the management contract does not result in private business use under § 141(b) or 145(a)(2)(B). Further, under section 5.08 of this revenue procedure, use functionally related and subordinate to a management contract that meets these conditions does not result in private business use.

.02 General financial requirements.

(1) In general. The payments to the service provider under the contract must be reasonable compensation for services rendered during the term of the contract. Compensation includes payments to reimburse actual and direct expenses paid by the service provider and related administrative overhead expenses of the service provider.

(2) No net profits arrangements. The contract must not provide to the service provider a share of net profits from the operation of the managed property. Compensation to the service provider will not be treated as providing a share of net profits if no element of the compensation takes into account, or is contingent upon, either the managed property's net profits or both the managed property's revenues and

expenses (other than any reimbursements of direct and actual expenses paid by the service provider to unrelated third parties) for any fiscal period. For this purpose, the elements of the compensation are the eligibility for, the amount of, and the timing of the payment of the compensation. Incentive compensation will not be treated as providing a share of net profits if the eligibility for the incentive compensation is determined by the service provider's performance in meeting one or more standards that measure quality of services, performance, or productivity, and the amount and the timing of the payment of the compensation meet the requirements of this section 5.02(2).

(3) No bearing of net losses of the managed property.

(a) The contract must not, in substance, impose upon the service provider the burden of bearing any share of net losses from the operation of the managed property. An arrangement will not be treated as requiring the service provider to bear a share of net losses if:

(i) The determination of the amount of the service provider's compensation and the amount of any expenses to be paid by the service provider (and not reimbursed), separately and collectively, do not take into account either the managed property's net losses or both the managed property's revenues and expenses for any fiscal period; and

(ii) The timing of the payment of compensation is not contingent upon the managed property's net losses.

(b) For example, a service provider whose compensation is reduced by a stated dollar amount (or one of multiple stated dollar amounts) for failure to keep the managed

property's expenses below a specified target (or one of multiple specified targets) will not be treated as bearing a share of net losses as a result of this reduction.

(4) Treatment of certain types of compensation. Without regard to whether the service provider pays expenses with respect to the operation of the managed property without reimbursement by the qualified user, compensation for services will not be treated as providing a share of net profits or requiring the service provider to bear a share of net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the compensation for services is: (a) based solely on a capitation fee, a periodic fixed fee, or a per-unit fee; (b) incentive compensation described in the last sentence of section 5.02(2) of this revenue procedure; or (c) a combination of these types of compensation.

(5) Treatment of timing of payment of compensation. Deferral due to insufficient net cash flows from the operation of the managed property of the payment of compensation that otherwise meets the requirements of sections 5.02(2) and 5.02(3) of this revenue procedure will not cause the deferred compensation to be treated as contingent upon net profits or net losses under sections 5.02(2) and 5.02(3) of this revenue procedure if the contract includes requirements that:

- (a) The compensation is payable at least annually;
- (b) The qualified user is subject to reasonable consequences for late payment, such as reasonable interest charges or late payment fees; and
- (c) The qualified user will pay such deferred compensation (with interest or late payment fees) no later than the end of five years after the original due date of the payment.

.03 Term of the contract and revisions. The term of the contract, including all renewal options (as defined in § 1.141-1(b)), must not be greater than the lesser of 30 years or 80 percent of the weighted average reasonably expected economic life of the managed property. For this purpose, economic life is determined in the same manner as under § 147(b) as of the beginning of the term of the contract. A contract that is materially modified with respect to any matters relevant to this section 5 is retested under this section 5 as a new contract as of the date of the material modification.

.04 Control over use of the managed property. The qualified user must exercise a significant degree of control over the use of the managed property. This control requirement is met if the contract requires the qualified user to approve the annual budget of the managed property, capital expenditures with respect to the managed property, each disposition of property that is part of the managed property, rates charged for the use of the managed property, and the general nature and type of use of the managed property (for example, the type of services). For this purpose, for example, a qualified user may show approval of capital expenditures for a managed property by approving an annual budget for capital expenditures described by functional purpose and specific maximum amounts; and a qualified user may show approval of dispositions of property that is part of the managed property in a similar manner. Further, for example, a qualified user may show approval of rates charged for use of the managed property by expressly approving such rates or a general description of the methodology for setting such rates (such as a method that establishes hotel room rates using specified revenue goals based on comparable properties), or by requiring that the

service provider charge rates that are reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company).

.05 Risk of loss of the managed property. The qualified user must bear the risk of loss upon damage or destruction of the managed property (for example, due to force majeure). A qualified user does not fail to meet this risk of loss requirement as a result of insuring against risk of loss through a third party or imposing upon the service provider a penalty for failure to operate the managed property in accordance with the standards set forth in the management contract.

.06 No inconsistent tax position. The service provider must agree that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the qualified user with respect to the managed property. For example, the service provider must agree not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the managed property.

.07 No circumstances substantially limiting exercise of rights.

(1) In general. The service provider must not have any role or relationship with the qualified user that, in effect, substantially limits the qualified user's ability to exercise its rights under the contract, based on all the facts and circumstances.

(2) Safe harbor. A service provider will not be treated as having a role or relationship prohibited under section 5.07(1) of this revenue procedure if:

(a) No more than 20 percent of the voting power of the governing body of the qualified user is vested in the directors, officers, shareholders, partners, members, and employees of the service provider, in the aggregate;

(b) The governing body of the qualified user does not include the chief executive officer of the service provider or the chairperson (or equivalent executive) of the service provider's governing body; and

(c) The chief executive officer of the service provider is not the chief executive officer of the qualified user or any of the qualified user's related parties (as defined in §1.150-1(b)).

(3) For purposes of section 5.07(2) of this revenue procedure, the phrase "service provider" includes the service provider's related parties (as defined in §1.150-1(b)) and the phrase "chief executive officer" includes a person with equivalent management responsibilities.

.08 Functionally related and subordinate use. A service provider's use of a project (as defined in § 1.141-6(a)(3)) that is functionally related and subordinate to performance of its services under a management contract for managed property that meets the conditions of this section 5 does not result in private business use of that project. For example, use of storage areas to store equipment used to perform activities required under a management contract that meets the requirements of this section 5 does not result in private business use.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-44 is modified, amplified, and superseded.

SECTION 7. DATE OF APPLICABILITY

This revenue procedure applies to any management contract that is entered into on or after January 17, 2017, and an issuer may apply this revenue procedure to any management contract that was entered into before January 17, 2017. In addition, an issuer may apply the safe harbors in Rev. Proc. 97-13, as modified by Rev. Proc. 2001-39 and amplified by Notice 2014-67, to a management contract that is entered into before August 18, 2017 and that is not materially modified or extended on or after August 18, 2017 (other than pursuant to a renewal option as defined in § 1.141-1(b)).

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Johanna Som de Cerff and David White of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact David White on (202) 317-6980 (not a toll free call).

REVISED EXHIBIT "E"

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RESOLUTION NO. 23256

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA ESTABLISHING RULES AND REGULATIONS FOR THE PROCUREMENT OF GOODS, SERVICES AND CONSTRUCTION CONTRACTS AND ESTABLISHING CONTRACT EXECUTION AUTHORITY, HEREINAFTER TO BE KNOWN AS THE PURCHASING RESOLUTION; AND REPEALING RESOLUTION NO. 22576.

WHEREAS, the City Manager, subject to approval of the City Council, is authorized and directed by Article VI, Section 601 (d) of the Charter of the City of Riverside, Article XI, Section 1105 of the Charter of the City of Riverside, and Chapter 3.16 of the Riverside Municipal Code to prepare and recommend adoption of rules and regulations governing the contracting for and the procuring, purchasing, storing, distributing and disposing of all supplies, materials and equipment required by any office, department or agency of the City; and

WHEREAS, the City Manager is authorized by Resolution as directed by Article IV, Section 419 of the Charter of the City of Riverside, to bind the City, with or without written contract, for the acquisition of equipment, materials, supplies, labor, services, or other items, if included within the budget approved by the City Council, and may impose a monetary limit upon such authority; and

WHEREAS, the City Council desires to consolidate the City's various rules and regulations governing procurements into a single resolution documenting the requirements and to maintain clarity and transparency for the City's procurement policies and procedures.

NOW, THEREFORE, IT IS RESOLVED by the City Council of the City of Riverside California, as follows:

Section 1: That the following rules and regulations are hereby adopted for the administration of the City's centralized purchasing system:

1 **TITLE: PURCHASING RESOLUTION RULES AND REGULATIONS**

2 **TABLE OF CONTENTS**

3 **ARTICLE ONE: DEFINITION OF TERMS5**

4 SECTION 100. Definitions.....5

5 **ARTICLE TWO: GENERAL PURCHASING POLICY STATEMENT AND**

6 **DELEGATED AUTHORITY FOR PURCHASES AND CONTRACT**

7 **EXECUTION11**

8 SECTION 200. Policy11

9 SECTION 201. Exceptions.....12

10 SECTION 202. Authorization12

11 SECTION 203. Delegation by City Manager12

12 SECTION 204. City Attorney Authorization12

13 **ARTICLE THREE: EMERGENCY PROCUREMENT13**

14 SECTION 300. Policy13

15 SECTION 301. Conditions13

16 SECTION 302. Authorization13

17 SECTION 303. Expenditure Limits.....14

18 **ARTICLE FOUR: INFORMAL PROCUREMENT.....14**

19 SECTION 400. Policy14

20 SECTION 401. Informal Procurement Procedure15

21 SECTION 402. General Limitations on Informal Procurement15

22 SECTION 403. Exceptions.....15

23 SECTION 404. Utilities Exception.....15

24 SECTION 405. Riverside Public Library Exception.....16

25 SECTION 406. Request for Bids or Proposals.....17

26 SECTION 407. Rejections and Awards.....17

27 SECTION 408. Contract Bonds.....17

28 SECTION 409. Public Records17

1	SECTION 410. Bidder Contact with City	18
2	ARTICLE FIVE: FORMAL PROCUREMENT	18
3	SECTION 500. Policy	18
4	SECTION 501. Formal Procurement Procedure	18
5	SECTION 502. General Limitations on Formal Procurement.....	18
6	SECTION 503. Soliciting Formal Bids	19
7	SECTION 504. Submittal of Bids and Bid Securities	19
8	SECTION 505. Opening of Bids	20
9	SECTION 506. Tabulation and Inspection of Bids	20
10	SECTION 507. Rejection of Bids.....	20
11	SECTION 508. Awards	20
12	SECTION 509. Approval of Contracts	21
13	SECTION 510. Contract Bonds.....	21
14	SECTION 511. Assignment of Contract	21
15	SECTION 512. Public Records	22
16	SECTION 513. Bidder Contact with City	22
17	ARTICLE SIX: ACQUISITION OF GOODS	22
18	SECTION 600. Policy	22
19	SECTION 601. Acquisition of Goods Procedure	22
20	SECTION 602. Exceptions	22
21	SECTION 603. Grant Purchases.....	24
22	SECTION 604. Preference Policy	24
23	SECTION 605. Local Preference	24
24	SECTION 606. Recycled Goods Preference	25
25	ARTICLE SEVEN: ACQUISITION OF SERVICES.....	25
26	SECTION 700. Policy	25
27	SECTION 701. Acquisition of Services Procedure.....	25

1	SECTION 702. Exceptions.....	26
2	SECTION 703. Grant Purchases.....	28
3	ARTICLE EIGHT: ACQUISITION OF CONSTRUCTION SERVICES	28
4	SECTION 800. Policy	28
5	SECTION 801. Acquisition of Construction Services Procedure	28
6	SECTION 802. Exceptions.....	29
7	SECTION 803. Grant Purchases.....	30
8	SECTION 804. Change Order Exception.....	30
9	ARTICLE NINE: ACQUISITION OF DESIGN-BUILD SERVICES.....	30
10	SECTION 900. Policy	30
11	SECTION 901. Acquisition of Design-Build Services Procedure	30
12	SECTION 902. Exceptions.....	30
13	SECTION 903. Grant Purchases.....	30
14	ARTICLE TEN: ACQUISITION OF REAL PROPERTY	31
15	SECTION 1000. Policy	31
16	SECTION 1001. Acquisition of Real Property Procedure	31
17	SECTION 1002. Exceptions.....	31
18	SECTION 1003. Grant Purchases.....	31
19	SECTION 1004. Signatory Authority.....	31
20	SECTION 1005. Public Utilities.....	32
21	SECTION 1006. Notification to Manager	32
22	ARTICLE ELEVEN: PURCHASE ORDER AND PURCHASE REQUISITION PROCEDURES	32
23	SECTION 1100. Policy and Purpose.....	32
24	SECTION 1101. Who May Requisition	32
25	SECTION 1102. Purchase Requisition Procedure.....	33
26	SECTION 1103. Purchase Order and Encumbrance of Funds	33
27	SECTION 1104. Change Orders.....	33

1 SECTION 1105. Bidders' Lists34
2 **ARTICLE TWELVE: DISPOSITION OF SURPLUS GOODS**35
3 SECTION 1200. Reporting.....35
4 SECTION 1201. Custody of Surplus Goods35
5 SECTION 1202. Transfer35
6 SECTION 1203. Disposition35
7 SECTION 1204. Library Books36
8 SECTION 1205. Contributions to Other Agencies.....36
9

10 **ARTICLE ONE: DEFINITION OF TERMS**

11 SECTION 100. Definitions. The words set forth hereinafter in this Resolution shall have
12 the following meanings whenever they appear in these rules and regulations, unless the context in
13 which they are used clearly requires a different meaning:

14 (a) "Awarding Entity" means the City Council when referencing Procurement for the City
15 or for any Using Agency of the City except for the Riverside Board of Public Utilities or Riverside
16 Department of Public Utilities and Board of Library Trustees or Library Department; and means
17 the Riverside Board of Public Utilities when referencing Procurement for the Riverside
18 Department of Public Utilities in accordance with Article XII, Section 1202 of the Charter of the
19 City of Riverside; and means the Board of Library Trustees when referencing Procurement for the
20 Library Department in accordance with Article VIII, Section 808(d) of the Charter of the City of
21 Riverside.

22 (b) "Bid" means an offer or proposal submitted by a Bidder setting forth the price for the
23 Goods, Services, or Construction to be provided.

24 (c) "Bidder" means any individual, firm, entity, partnership, corporation, or combination
25 thereof, submitting a Bid, acting directly or through a duly authorized representative of a Using
26 Agency.

1 (d) "Change Order" means a City-issued document used to modify a Purchase Order to
2 add, delete, or revise the quantity, price or scope of Goods, Services, Professional Services or
3 Construction being provided.

4 (e) "City" means the City of Riverside.

5 (f) "Competitive Procurement" means a process involving the solicitation under the
6 authority and supervision of the Manager by Formal Procurement or Informal Procurement (all as
7 hereinafter defined) under procedures and circumstances intended to foster effective, broad-based
8 competition within the private sector to provide Goods, Services or Construction to the City.

9 (g) "Construction" means the process of building, altering, repairing, improving or
10 demolishing any public structure or building, or other public improvements of any kind, and
11 includes the projects described in Article XI, Section 1109 of the Charter of the City of Riverside;
12 it does not include routine operation, maintenance or repair of existing structures, buildings or real
13 property by the City's own forces. "Construction" shall also include "public project" as defined in
14 Section 20161 of the California Public Contract Code.

15 (h) "Contract" means any type of legally recognized agreement to provide Goods, Services
16 or Construction, no matter what it may be titled or how described, including executed Purchase
17 Orders, for the Procurement or disposition of Goods, Services or Construction, but does not include
18 any agreement for collective bargaining, utility extensions, subdivision improvements or any
19 agreements whereby an owner of real property or his or her authorized representative agrees to
20 construct improvements of a public nature on property to be dedicated to the City.

21 (i) "Contractor" means any Person (as hereinafter defined) who enters into a Contract with
22 the City.

23 (j) "Cooperative Purchasing" means a purchasing method whereby the Procurement
24 requirements of two or more governmental entities are combined in order to obtain the benefit of
25 volume Procurement or reduction in administrative expenses. Cooperative Purchasing practices
26 may include other agencies who conduct volume procurements on behalf of governmental
27 agencies.

1 (k) "Design-Bid-Build" means a traditional method of construction project delivery
2 involving the selection and award of professional design services followed by a separate process
3 for construction services once the design documents are complete.

4 (l) "Design-Build" means a process involving contracting with a single entity for both the
5 design and Construction of a public works project pursuant to a competitive negotiation process
6 established by City Council ordinance from time to time in accordance with Article XI, Section
7 1114 of the City of the Charter of the City of Riverside and Chapter 1.07 of the Riverside
8 Municipal Code.

9 (m) "Emergency Procurement" means the Procurement of Goods, Services or Construction
10 without utilizing Competitive Procurement in circumstances set forth in Article Three hereof as
11 constituting an "emergency".

12 (n) "Field Order" means in construction projects, a written order passed to the contractor
13 from the City or architect which will effect a minor change in work, requiring no further adjustment
14 to the contract sum or expected date of completion.

15 (o) "Formal Bid" means a written Bid which shall be (1) submitted in a sealed envelope,
16 or electronically, in conformance with a City-prescribed format and procedure, (2) publicly
17 opened, read and-recorded at a City-specified date, time and place, and (3) accepted only by an
18 award made by the Awarding Entity.

19 (p) "Formal Procurement" means Procurement by written Notice Inviting Bids and Formal
20 Bid, Request for Proposals, or Request for Qualifications and includes Procurement of
21 Construction, Goods and Services subject to the bidding requirements of Section 1109 of the City
22 Charter.

23 (q) "Goods" means supplies, materials, equipment and other things included within the
24 definition of "Goods" in Section 2105 of the California Uniform Commercial Code.

25 (r) "Grant" means funding from State, Federal or other sources, which require specific use
26 of the funding provided to the City.

1 (s) "Informal Bid" means an offer, which may be conveyed to the Manager by email, letter,
2 memo, financial system or other means, to provide for stated prices, Goods, Services or
3 Construction, which are not required to be Procured by Formal Procurement; Informal Bids shall
4 be solicited only by City personnel from a Using Agency who are authorized to do so, and for each
5 instance of Procurement by Informal Bid, the authorized personnel shall obtain Informal Bids from
6 at least three different Persons, if possible.

7 (t) "Informal Procurement" means Competitive Procurement by Request For Bid, Request
8 for Proposals or Request for Information submitted by Persons in the Open Market submitted to
9 the Using Agency or Manager.

10 (u) "Life Cycle Cost" means the estimated total cost of Goods, Services or Construction
11 Procured by the City over the useful life of the Goods, Services or Construction based upon their
12 initial Procurement price as adjusted by projected operating, maintenance and related ownership
13 expenses which the City will incur during their useful life.

14 (v) "Lowest Responsive Bidder" means the Bidder or Offeror who submits the lowest
15 responsive Formal Bid, Informal Bid, or Offer in response to the City's invitation or request
16 therefore, as determined by the City.

17 (w) "Manager" means the City's Purchasing Manager, who supervises the City's
18 Purchasing Division located in the Finance Department.

19 (x) "Negotiated Procurement" means the business marketplace in which a User Agency or
20 the Manager, exercising prudent business practices and judgment, would Procure Goods, Services
21 or Construction utilizing a negotiation procedure, subject to approval by the Manager, instead of
22 Informal or Formal Bid.

23 (y) "Open Market" means the private sector business marketplace in which private persons,
24 exercising prudent business practices and judgement, would Procure Goods, Services, or
25 Construction utilizing Informal Bid or Formal bid procedures.

1 (z) "Person" means any individual, partnership, limited partnership, association,
2 corporation, labor union, committee, club, governmental entity or other entity recognized by
3 California law.

4 (aa) "Procure" and "Procurement" mean buying, purchasing, renting, leasing or otherwise
5 acquiring or obtaining Goods, Services or Construction; this also includes all functions and
6 procedures pertaining thereto.

7 (bb) "Professional Services" means advisory, consulting, architectural, information
8 technology, engineering, financial, legal (including claims adjustment), surveying, research or
9 developmental and any other services which involve the exercise of professional discretion and
10 independent judgment based on an advanced or specialized knowledge, expertise or training
11 gained by formal studies or experience.

12 (cc) "Purchase Order" means a City-issued document with any necessary terms and
13 conditions, which authorizes the delivery of Goods, the rendering of Services or the performance
14 of Construction at a stated price and encumbers City funds for the payment therefore; when
15 approved by the City Council through the biennial budget process or at another time during the
16 start of any fiscal year, a Purchase Order shall be referred to as an "Annual Purchase Order."

17 (dd) "Purchase Requisition" means a written request prepared on the requisite City form
18 prepared by the Manager, and submitted by a Using Agency to the Manager for Procurement of
19 specified Goods, Services or Construction.

20 (ee) "Request for Proposals" means a written solicitation issued by the Purchasing
21 Division, through the supervision of the Manager, which (1) generally describes the Goods or
22 Services sought to be Procured by the City, (2) sets forth minimum standards and criteria for
23 evaluating proposals submitted in response to it, (3) generally describes the format and content of
24 proposals to be submitted, (4) provides for negotiation of terms and conditions of the Procurement
25 Contract and (5) may place emphasis on described factors other than price to be used in evaluating
26 proposals.

1 (ff) "Request for Bid" means a written or verbal solicitation issued under the authority and
2 supervision of the Manager for Formal or Informal Bids for described Goods, Services or
3 Construction, which may be Procured by Formal or Informal Procurement.

4 (gg) "Request for Qualifications" means a written solicitation issued by the Purchasing
5 Division, through the supervision of the Manager, which (1) generally describes the Goods or
6 Services sought to be Procured by the City, (2) sets forth in determining what qualified Persons
7 can provide those services by providing minimum standards and criteria for the Goods or Services
8 sought, and (3) generally describes the format and content of proposals to be submitted, and (4)
9 may provide for negotiation of the Procurement Contract.

10 (hh) "Request for Information" means a written solicitation issued by a Using Agency,
11 through the supervision of the Manager, which (1) generally describes the Goods or Services
12 sought to be Procured by the City, (2) sets forth in determining what Persons can provide Goods
13 or Services sought to be Procured by the City, and (3) does not provide for the negotiation of any
14 Procurement Contract.

15 (ii) "Responsible Bidder" means a Bidder who is determined by the Manager or the
16 Awarding Entity to be responsible based on the following criteria:

17 (1) The Bidder's ability, capacity and skill to perform the Contract, and to provide
18 post-performance maintenance and repair;

19 (2) The Bidder's facilities and resources;

20 (3) The Bidder's character, integrity, reputation, judgment, experience and
21 efficiency;

22 (4) The Bidder's record of performance of prior Contracts with the City and others;
23 and

24 (5) The Bidder's compliance with laws, regulations, guidelines and orders
25 governing prior Contracts performed by the Bidder.

26 (jj) "Responsive Bid" means a Formal Bid or Informal Bid submitted in response to a City-
27 issued Notice Inviting Bids or Request For Bids, which meets and conforms to the substantive

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1 requirements specified by the City without material qualification or exception, as determined by
2 the City.

3 (kk) "Services" means all services which are described in City specifications or are in the
4 nature of advertising, cleaning, gardening, insurance, janitorial, leasing of Goods, membership,
5 postal, printing, security, subscriptions, travel, utilities (electric, gas, telegraph, telephone,
6 transportation and water), weeding and discing, and the repairing, maintaining or servicing of
7 Goods, but does not include Professional Services, real property transactions, Construction,
8 Design-Build, nor employment and collective bargaining Contracts.

9 (ll) "Specifications" means a City-issued or referenced definite, detailed written description
10 of the Goods to be furnished, the Services to be performed or the Construction work to be done
11 and materials to be used under a Contract with the City, which specifies the composition,
12 Construction, dimension, durability, efficiency, form, nature, performance characteristics and
13 standards, quality, shape, texture, type and utility of Goods, Services or Construction sought by
14 the City.

15 (mm) "Surplus Goods" means any Goods having a remaining useful life or salvage value
16 but which are no longer used, needed for use or retained for potential use by the Using Agency
17 which has care, custody or control of them.

18 (nn) "Using Agency" means all City departments, institutions, offices, boards,
19 commissions, divisions, agencies and authorities which derive their support totally or in part from
20 City funds and for which the Manager is directed to Procure Goods, Services, Professional
21 Services, Design-Build, or Construction.

22 **ARTICLE TWO: GENERAL PURCHASING POLICY STATEMENT AND**
23 **DELEGATED AUTHORITY FOR PURCHASES AND CONTRACT EXECUTION**

24 SECTION 200. Policy. It is hereby determined and declared to be the policy and
25 requirement of the City that Procurement of Goods, Services and Construction by the City shall,
26 whenever practicable and advantageous to the City, be based on Competitive Procurement,
27 whether by Informal Procurement (ARTICLE FOUR) if permitted, or Formal Procurement
28

1 (ARTICLE FIVE) if required, except as otherwise provided in this Resolution or the City Charter.
2 Goods, Services and Construction must be procured in compliance with this Resolution.

3 SECTION 201. Exceptions. Competitive Procurement shall not be required in
4 circumstances explicitly stated in this Resolution; exceptions to Competitive Procurement will be
5 included with each type of Procurement under ARTICLE THREE (Emergency Procurement),
6 ARTICLE SIX (Procurement of Goods), ARTICLE SEVEN (Procurement of Services),
7 ARTICLE EIGHT (Procurement of Construction), ARTICLE NINE (Procurement of Design-
8 Build Services, and ARTICLE TEN (Procurement of Real Property).

9 SECTION 202. Authorization. The City Manager is authorized to approve, execute, and
10 bind the City to:

11 (a) Contracts and purchase orders for Goods, Professional Services, and Design-Build
12 Services of \$50,000 or less, entered into in accordance with the policies and procedures outlined
13 in this Resolution, and

14 (b) Such other contracts as are expressly approved by the City Council, Board of Public
15 Utilities, and Board of Library Trustees.

16 SECTION 203. Delegation by City Manager. The City Manager is authorized to delegate
17 such authority to his or her designees, including among others, Department Heads, when the City
18 Manager deems it is in the best interests of the City to do so.

19 SECTION 204. City Attorney Authorization. The City Attorney is authorized to approve,
20 execute, and bind the City to contracts up to \$50,000 for expert and consultant services in
21 connection with existing and anticipated litigation and/or claim defense or prosecution, and other
22 such related matters, including, but not limited to, expert witnesses, arbitrators, mediators, court
23 transcripts, court reporters, process servers, private investigators, court filing and messenger
24 services, and other legal support services.

1 **ARTICLE THREE: EMERGENCY PROCUREMENT**

2 SECTION 300. Policy. While the need for Emergency Procurement is recognized, the
3 practice shall be curtailed as much as possible by anticipating needs so that normal Competitive
4 Procurement may be used.

5 SECTION 301. Conditions. An "emergency" shall be deemed to exist under anyone or
6 more of the following circumstances:

7 (a) A great public calamity;

8 (b) An immediate need to prepare for national or local defense;

9 (c) A breakdown in machinery, facilities or essential services which requires the immediate
10 Procurement of Goods, Services or Construction to protect the public health, welfare, safety,
11 property, or personal/confidential information;

12 (d) A Using Agency operation directly affecting the public health, welfare or safety, the
13 protection of public property, or personal/confidential information, is so severely impacted by any
14 cause that personal injury or property destruction appears to be imminent and probable unless
15 Goods, Services or Construction designed or intended to mitigate the risks thereof are Procured
16 immediately; or

17 (e) A Using Agency is involved in a City project, which is of such a nature that the need
18 for particular Goods, Services or Construction can only be ascertained as the project progresses
19 and, when ascertained, must be satisfied immediately for the preservation of public health, welfare,
20 safety or property.

21 SECTION 302. Authorization. Emergency Procurement may be initiated by the head of
22 a Using Agency or his or her duly authorized representative (the "individual") only as follows:

23 (a) During normal City business hours for non-Riverside Public Utilities purchases, the
24 individual shall contact the Manager and explain to the Manager's satisfaction the reasons and
25 justification for Emergency Procurement. If the nature of the emergency is such that Goods,
26 Services or Construction must be Procured immediately and the Manager is satisfied with the
27 explanation of reasons and justifications given therefor, the Manager shall authorize the
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1 Procurement and cause an emergency Purchase Order to be issued as soon as possible and in no
2 event later than the following business day. A Purchase Requisition confirming the Procurement
3 must be prepared by the individual and submitted to the Manager no later than the following
4 business day. Items exceeding \$50,000 need to be approved by the City Council.

5 (b) After normal City business hours for non-Riverside Public Utilities purchases, the
6 individual shall exercise his or her best judgment in ascertaining whether the actual circumstances
7 necessitate Emergency Procurement, and if deemed necessary shall order it. As soon as possible
8 and in no event later than the following business day, the individual shall prepare a Purchase
9 Requisition confirming the Emergency Procurement and deliver it to the Manager, who shall then
10 review and cause an emergency Purchase Order therefor to be prepared. Upon Manager
11 concurrence, the word "confirmation" shall be clearly imprinted on all Purchase Requisitions and
12 Purchase Orders issued in confirmation of Emergency Procurement.

13 (c) For urgent purchases relating to Riverside Public Utilities, Article, XII, Section 1202(b)
14 of the City's Charter applies and shall be followed.

15 (d) For urgent purchases as defined by Article XI, Section 1109 relating to Public Works
16 Contracts over \$50,000; urgent items procured while not following Competitive Procurement, in
17 order to preserve life, health or property, shall be authorized by resolution passed by at least five
18 affirmative votes of the City Council and the resolution must contain a declaration of the facts
19 constituting such urgency.

20 SECTION 303. Expenditure Limits. Total emergency expenditures for one event, unless
21 otherwise stated in this resolution or approved by subsequent City Council action, shall not exceed
22 \$25 million as set forth in Municipal Code Section 9.20.090, Emergency Expenditures.

23 **ARTICLE FOUR: INFORMAL PROCUREMENT**

24 SECTION 400. Policy. For the acquisition of Goods, Services and Construction, Informal
25 Procurement will be conducted by the Using Agency, through the approval of the Manager and
26 the Manager's duly authorized representatives in a manner and under circumstances intended to
27 elicit competitive responses.

1 SECTION 401. Informal Procurement Procedure. The process, forms and systems used
2 to conduct Informal Procurement, as recommended by the Manager and Chief Financial Officer
3 and approved by the City Manager, shall be included in the City's Administrative Manual.

4 SECTION 402. General Limitations on Informal Procurement. Informal Procurement may
5 be conducted under the supervision of the Manager if the Procurement expenditure is estimated to
6 be Fifty Thousand Dollars (\$50,000.00) or less, does not fall within the Utilities Exception, and
7 does not involve the Procurement of Construction or Goods of the type required by Section 1109
8 of the City Charter to be acquired by Formal Procurement.

9 SECTION 403. Exceptions. Competitive Procurement shall not be required for
10 Information Technology software maintenance and license renewals; training; advertising; or
11 professional recruitment services where the Manager is satisfied that the best price, terms and
12 condition for the Procurement thereof have been negotiated.

13 SECTION 404. Utilities Exception. The Water, Electric and Sewer Utilities have a need
14 for compatibility within their respective systems for uniform operation, maintenance and
15 replacement, and this need can be met by procuring certain supplies, equipment, and materials
16 supplies through Informal Procurement or Negotiated Procurement. Section 1109 of the City
17 Charter provides that such procurements may be exempted from formal competitive procurement
18 requirements if the City Council so determines by at least five affirmative votes.

19 If it appears to the Manager to be in the best interest of overall economy and efficiency of
20 the City to do so, and it is within existing budget appropriation, the following supplies, equipment,
21 and materials are determined to be peculiar to the needs of the Water Utility, the Electric Utility,
22 and the Sewer Utility and may be acquired by Informal Procurement or Negotiated Procurement,
23 regardless of their estimated Procurement expenditure amounts, provided that the City's Board of
24 Public Utilities or City Council shall have approved the proposed acquisition if required under the
25 provisions of the City Charter, either by approval of the procurement contract or approval of annual
26 purchase orders:

- 1 Automatic Reclosers with associated controllers and communications equipment
- 2 Batteries and Chargers
- 3 Blower Equipment, Parts and Repair
- 4 Bus and Bus Support
- 5 Capacitors
- 6 Chemicals
- 7 Circuit Breakers
- 8 Circuit Switcher
- 9 Conduit and Duct
- 10 Connectors
- 11 Dewatering Equipment, Parts and Repairs
- 12 Electric Motor Controls
- 13 Electrical Line Devices
- 14 Electrical Motors, Panels, Panel Equipment, Materials and Repairs
- 15 Fiber Optics Equipment and Materials
- 16 Fire Hydrants
- 17 Fittings, Electrical, Water, and Sewer
- 18 Insulators and Bushings
- 19 Luminaries
- 20 Meter and Metering Devices
- 21 Mobile Substation
- 22 Pipe and Pipe Fittings
- 23 Pole Line Hardware
- 24 Poles, Utility
- 25 Power Generation Materials, Equipment, Parts and Repair
- 26 Prefabricated Electrical Enclosures
- 27 Pumps and Repairs
- 28 Regulators
- Relaying and Protective Devices
- Road and Backfill Materials
- SCADA Equipment
- Substation and Distribution Automation Equipment
- Substation Online Monitoring Equipment and Devices
- Substation Supervisory Equipment
- Surge Arrestors
- Switches, Switchgear, and Accessories Testing Equipment
- Transformers and Accessories Treatment Equipment
- Tubing, Copper and Plastic
- Valves and Operators
- Vaults and Accessories
- Wire and Cable
- Uninterruptable Power Supplies
- Well Equipment (including incidental labor to install, which labor shall not exceed the amount set by state law for which bids are required for public works projects of a general law city)
- Such other supplies and materials peculiar to the needs of the Public Utilities Department, which are carried as inventory items in Central Stores stock.

24 SECTION 405. Riverside Public Library Exception. The following supplies, materials and
 25 services are determined to be peculiar to the needs of the Library Department through City Charter
 26 Section 808(d). If it appears to the Manager to be in the best interest of overall economy and
 27 efficiency of the City to do so and is within existing budget appropriation, be acquired by Informal
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1 Procurement or Negotiated Procurement, regardless of their estimated Procurement expenditure
2 amounts, provided that the City's Board of Library Trustees or City Council shall have approved
3 the proposed acquisition if required under the provisions of the City Charter, either by approval of
4 the procurement contract or approval of annual purchase orders:

- 5 Books
- 6 Journals
- 7 Maps
- 8 Office Supplies
- 9 Publications
- 10 Subscription Services
- 11 Other Needs as determined by the Manager

12 SECTION 406. Request for Bids or Proposals. The Manager or Using Agency shall solicit
13 Informal Bids by means of a written or verbal Request for Bids, accompanied by City
14 specifications, if deemed necessary by the Manager. Where the Using Agency seeks the
15 procurement of Services or Professional Services, a Request for Proposal or Request for
16 Qualifications, as appropriate, may be issued. Responses to the City's Request for Bids, Proposals,
17 or Qualifications shall be in writing, and documentation of responses shall be submitted to the
18 Manager prior to payment by the Finance Department.

19 SECTION 407. Rejections and Awards. The Manager may reject any and all Informal
20 Bids submitted in response to a Request for Bids and otherwise shall award all Informal Bids,
21 insofar as practicable, to the Lowest Bidder. The Manager shall be authorized to administer
22 Contracts for Goods and Services awarded by Informal Procurement, including but not limited to
23 Purchase Orders. Where the Using Agency seeks the procurement of Services or Professional
24 Services through a Request for Proposal or Request for Qualifications, the Informal Bid shall be
25 awarded in accordance with the evaluation criteria set forth in the Request for Proposals or Request
26 for Qualifications.

27 SECTION 408. Contract Bonds. The provisions of Section 510 shall also apply to all
28 Contracts for Goods, Services or Construction awarded under Informal Procurement.

SECTION 409. Public Records. The Manager shall maintain and keep records of all
Informal Procurements, including Informal Bids received, in accordance with the applicable City's

1 Record Retention Schedule adopted by the City Council from time to time, and those records shall
2 be open to public inspection upon request during normal City business hours.

3 SECTION 410. Bidder Contact with City. All communications from Bidders shall be
4 directed only to the City representative and in the form as designated in the Request for Bids. Any
5 communications, whether written or verbal with any City Councilmember or City staff other than
6 the City representative designated in the Request for Bids, prior to the award of a contract, is
7 strictly prohibited. Bidders violating this section shall be disqualified from consideration and
8 rejected by the Manager.

9 **ARTICLE FIVE: FORMAL PROCUREMENT**

10 SECTION 500. Policy. For the acquisition of Goods, Services and Construction, Formal
11 Procurement shall be conducted by the Manager and the Manager's duly authorized
12 representatives in conjunction with a Using Agency, or may be conducted by the Using Agency,
13 through the approval of the Manager and the Manager's duly authorized representatives in a
14 manner and under circumstances intended to elicit competitive responses.

15 SECTION 501. Formal Procurement Procedure. The process, forms and systems used to
16 conduct Formal Procurement, as recommended by the Manager and Chief Financial Officer and
17 approved by the City Manager, shall be included in the City's Administrative Manual.

18 SECTION 502. General Limitations on Formal Procurement. Formal Procurement shall
19 be conducted under the supervision of the Manager if the Procurement expenditure is estimated to
20 be more than Fifty Thousand Dollars (\$50,000.00) or falls within Section 1109 of the City Charter,
21 except in those Procurement situations described in:

- 22 (a) Article Three (Emergency Procurement);
- 23 (b) Section 402 (Informal Procurement – General Limitations);
- 24 (c) Section 403 (Exceptions);
- 25 (d) Section 404 (Utilities Exception);
- 26 (e) Section 405 (Riverside Public Library Exception);
- 27 (f) Section 602 (Acquisition of Good Exceptions);

- 1 (g) Section 702 (Acquisition of Services Exceptions);
- 2 (h) Section 802 (Acquisition of Construction Exceptions);
- 3 (i) Section 902 (Design-Build Exceptions); and
- 4 (j) Section 1002 (Acquisition of Real Property Exceptions)

5 SECTION 503. Soliciting Formal Bids. A Notice Inviting Bids shall be published at least
6 once in a newspaper of general circulation in the City, the first publication of which shall be at
7 least ten days before the time and date set by the Manager for opening the Formal Bids received.
8 The notice shall include a general description of the Goods, Services or Construction sought to be
9 Procured by the City, shall state where Specifications therefor may be obtained and shall set forth
10 the time and place for a public opening of Formal Bids received timely. The Manager shall, in
11 addition and as practicable, solicit Formal Bids from a sufficient number of responsible
12 prospective bidders whose names appear on the bidders' lists maintained pursuant to Section 1105
13 hereof by causing to be sent to them notification that will acquaint them with the Procurement
14 items sought by the City. The words "Bid" and "Bids" as hereinafter set forth within this Article
15 shall mean Formal Bid and Formal Bids, respectively. A Notice Inviting Bids for the procurement
16 of Services or Professional Services may be issued in the form of a Request for Proposals or
17 Request for Qualifications as deemed appropriate by the Manager.

18 SECTION 504. Submittal of Bids and Bid Securities. Bids and bid securities, which
19 security shall guarantee the Bid and be forfeited to the City if the Bidder is awarded the Contract
20 but fails or refuses to honor the Bid and execute the Contract documents timely, shall be submitted
21 to the City in the following manner:

22 (a) For Formal Procurement subject to Section 1109 of the City Charter, the Bids shall be
23 (i) submitted in the manner required by the City as specified in the solicitation document, (ii)
24 accompanied by the type and amount of Bid security prescribed by Section 1109, (iii) sealed as
25 prescribed in the notice inviting Bids or the specifications referenced in the notice, and (iv)
26 submitted to the City's Purchasing Division within the time and in the manner specified by the
27 notice or Specifications.

1 (b) For Formal Procurement not subject to Section 1109 of the City Charter, the Bid shall
2 be submitted in the form required by the City, accompanied by the type and amount of Bid security
3 specified, sealed, and submitted to the Purchasing Division within the time and manner specified
4 in the notice inviting Bids or the Specifications referenced in the notice.

5 SECTION 505. Opening of Bids. The Bids shall be opened and referenced as to Bidder
6 identity and amounts Bid in public at the time and place specified in the published notice, and no
7 Bid shall be received or recognized by the Purchasing Division, which has not been received prior
8 to the time so specified. If, upon the opening of Bids to provide Goods, Services or Construction
9 not subject to the provisions of Section 1109 of the City Charter, the Manager determines that the
10 actual expenditure therefor would appear to be Fifty Thousand Dollars (\$50,000.00) or less, the
11 Manager may convert the Formal Procurement to Informal Procurement procedures for award of
12 a Contract.

13 SECTION 506. Tabulation and Inspection of Bids. After the Bids have been opened and
14 referenced, the Manager shall cause them to be tabulated. Upon completion and verification of the
15 tabulation of the Bids, they shall be subject to inspection as public records per Section 512.

16 SECTION 507. Rejection of Bids. The Manager may in his/her discretion reject any and
17 all Bids, or any segregable portions thereof, for any one or more types of Goods, Services or
18 Construction included in the Specifications when the public interest is served thereby, provided
19 specifically that any potential award does not otherwise require consideration by the Awarding
20 Entity. The Awarding Entity may also take any other action permitted by Section 1109 of the City
21 Charter.

22 SECTION 508. Awards. Contracts procured through Formal Procurement shall be
23 awarded by the Awarding Entity to the Lowest Responsive and Responsible Bidder, except that:

24 (a) Contracts procured through Formal Procurement may be awarded by the Manager
25 where the procurement is made using Cooperative Procurement methods and a supplemental
26 appropriation is not otherwise required;

1 (b) A Contract for Goods may be awarded to a local Responsive Bidder who is not the
2 Lowest Responsive Bidder but who has certified that it is a local vendor pursuant to Section 604
3 hereof and who is subject to taxation under the City's "Uniform Local Sales and Use Tax
4 Ordinance" (Chapter 3.08 of the City Municipal Code) if the Bid difference amount between the
5 local Responsive Bidder and the Lowest Responsive Bidder does not exceed five percent (5%) of
6 the Lowest Responsive Bid;

7 (c) Contracts procured through Formal Procurement for Services or Professional Services,
8 where a Request for Proposals or Request for Qualifications was used to solicit Bids, shall be
9 awarded by the Awarding Entity in accordance with the evaluation criteria set forth in the Request
10 for Proposals or Request for Qualifications.

11 SECTION 509. Approval of Contracts. All Contracts procured through Formal
12 Procurement shall be approved as to form by the City Attorney.

13 SECTION 510. Contract Bonds. Contract bonds executed by good and sufficient sureties
14 authorized to conduct surety business in the State of California and in such amounts as are required
15 by law or deemed adequate to insure the faithful performance of a Contract in the time and manner
16 prescribed therein shall be required of the successful Bidder for all Contracts over \$25,000, where
17 they are required by law and in other instances as determined by the Manager. Contract bonds
18 requirements shall be set out in the notice inviting bids or the specifications. "Contract bonds"
19 means performance bonds (or functional equivalent such as supply bonds) to guarantee the
20 Contractor's faithful performance of the awarded Contract in the time, manner and workmanship
21 specified and payment bonds to guarantee the Contractor's payment of claims as prescribed in
22 Section 9550 et seq. of the California Civil Code.

23 SECTION 511. Assignment of Contract. Contracts procured through Formal Procurement
24 shall not be assigned by the Contractor without the written consent of the City Manager. In no
25 event shall a Contract or any part thereof be assigned to a Bidder who was declared not to be a
26 Non-Responsive Bidder during consideration of the Bids submitted in response to advertisement
27 for that particular Procurement.

1 SECTION 512. Public Records. The Manager shall maintain and keep records of all
2 Formal Procurements, including Formal Bids received, in accordance with the applicable City's
3 Record Retention Schedule adopted by the City Council from time to time, and those records shall
4 be open to public inspection upon request during normal City business hours.

5 SECTION 513. Bidder Contact with City. All communications from Bidders shall be
6 directed only to the City representative and in the form as designated in the Notice Inviting Bids.
7 Any communications, whether written or verbal with any City Councilmember or City staff other
8 than the City representative designated in the Notice Inviting Bids, prior to the award of a contract,
9 is strictly prohibited. Bidders violating this section shall be disqualified from consideration and
10 rejected by the Manager.

11 ARTICLE SIX: ACQUISITION OF GOODS

12 SECTION 600. Policy. Acquisition of Goods by a Using Agency under the supervision of
13 the Manager:

14 (a) Of \$50,000 or less may follow the Informal Procurement process, unless as required
15 by Section 1109 of the City Charter;

16 (b) Anticipated to be more than \$50,000, shall follow the Formal Procurement process.

17 SECTION 601. Acquisition of Goods Procedure. The process, forms and systems for the
18 acquisition of Goods, as approved by the Manager, Chief Financial Officer, and City Manager,
19 shall be included in the City's Administrative Manual.

20 SECTION 602. Exceptions. Competitive Procurement through the Informal Procurement
21 and Formal Procurement process shall not be required in any of the following circumstances:

22 (a) When an emergency arises and Emergency Procurement is undertaken pursuant to
23 Article Three hereof;

24 (b) When the Procurement involved is less than \$10,000.00;

25 (c) When the Procurement can only be obtained from a sole source or timely from a single
26 source and the Manager is satisfied that the best price, terms and conditions for the Procurement
27 thereof have been negotiated;

1 (d) When the Procurement consists of replacement parts for the City's vehicles and aviation
2 units.

3 (e) When Cooperative Purchasing is available and undertaken or when Goods can be
4 obtained through Federal, State and/or other public entity pricing contracts or price agreements;

5 (f) Where payment for Goods is to be made to a Federal, State, and/or other public entity;

6 (g) When Goods can be Procured from a Bidder who offers the same or better price, terms
7 and conditions as the Bidder previously offered as the Lowest Responsive Bidder under
8 Competitive Procurement provided that, in the opinion of the Manager, it is in the best interests of
9 the City to do so;

10 (h) When the Procurement is subject to Section 403 of this Resolution.

11 (i) When the Procurement is subject to Section 404 of this Resolution, which generally
12 allows for items peculiar to the needs of Riverside Public Utilities (Section 1203 of the City
13 Charter) and Public Works to be made through Informal or Negotiated Procurement.

14 (j) When the Procurement is subject to Section 405 of this Resolution, which generally
15 allows for books, journals, maps, publications and other supplies peculiar to the needs of the library
16 to be made through Informal or Negotiated Procurement subject to the provisions of Section 808(d)
17 of the City Charter;

18 (k) When the Procurement is for wholesale energy, energy ancillary services, energy
19 transmission, wholesale water commodity, and water transmission purchases by or on behalf of
20 the City's Public Utilities Department;

21 (l) When the Procurement is for public art or Museum artifacts; and

22 (m) When approved by the Manager, the City requires Goods not subject to the bidding
23 requirements of Section 1109 of the City Charter, which are of such a nature that suitable technical
24 or performance specifications describing them are not readily available and cannot be developed
25 in a timely manner to meet the needs of the City, in which case the Manager shall be authorized to
26 negotiate with any Person or Persons for the Procurement thereof upon the price, terms and
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1 conditions deemed by the Manager to be in the best interest of the City and in doing so may utilize
2 Informal Procurement or Negotiated Procurement process.

3 (n) When the Procurement is for the renewal of maintenance, license(s), support, or a
4 similar need for existing technology systems, including hardware, and the items procured are from
5 the owner/developer of the software/hardware or from a sole source provider, and the Manager is
6 satisfied that the best price, terms and conditions have been negotiated;

7 (o) When the Procurement is for the renewal of maintenance, license(s), support, or a
8 similar need for existing technology systems, including hardware, and the items are procured from
9 a vendor/reseller that was originally selected based on the City's procurement standards, provided
10 that 1) the vendor has been used continuously since such selection and 2) if there are any non-
11 substantive changes to the procurement, the Manager is satisfied that the best price, terms and
12 conditions have been negotiated;

13 SECTION 603. Grant Purchases. When the Procurement for Goods are to be procured
14 through the use of Federal or State grant funding, procurement shall be done in accordance with
15 the procedures herein. If the receipt of grant funding is conditioned upon requirements and
16 procedures more strict than as set forth herein, the procedures necessary for the receipt of the grant
17 funding shall be followed. The Using Agency is responsible for compliance with all aspects of
18 grant requirements and shall inform the Manager of any and all grant requirements which affect
19 the expenditure of grant funds and the procurement of Goods, Services, or Construction with grant
20 funds.

21 SECTION 604. Preference Policy. In the Manager's administration of Competitive
22 Procurement pursuant to this Resolution, the Manager shall be authorized to give such preferences
23 for Goods, Services or Construction as chartered cities are required to give by applicable State or
24 Federal law, or such preferences as are permitted by such law and specifically provided for from
25 time to time by City Council resolution or ordinance.

26 SECTION 605. Local Preference. In the Procurement of Goods for the City's
27 requirements, preference shall be given to those vendors who have a local presence in the City of
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1 Riverside, provided that price, quality, terms, delivery and service reputation are determined to be
2 equal by the Manager under the criteria set forth in Section 508 hereof. To qualify as a local
3 vendor, the Bidder must certify to the following at the time of Bid submission:

4 (a) It has fixed facilities with employees located within the City limits;

5 (b) It has a business street address within the City limits (Post Office box or residential
6 address shall not suffice to establish a local presence);

7 (c) All sales tax returns for the Goods purchased must be reported to the State through a
8 business within the geographic boundaries of the City and the City will receive one percent (1 %)
9 or such percentage of sales tax of Goods purchased as is allocable to the City from time to time
10 under then existing state law; and

11 (d) It has a City business license.

12 False certifications shall be immediate grounds for rejection of any Bid or if the Bid is
13 awarded, grounds for voiding the Bid, terminating any Contract, and seeking damages thereto.

14 SECTION 606. Recycled Goods Preference. In the Procurement of Goods for the City's
15 requirements, preference shall be given, as the City Council from time to time hereafter directs by
16 resolution or ordinance, to recycled Goods as defined and provided for in such state legislation as
17 the State Assistance for Recycling (STAR) Markets Act of 1989 (commencing at Section 12150
18 of the California Public Contract Code) and the California Integrated Waste Management Act of
19 1989 (commencing at Section 40000 of the California Public Resources Code).

20 **ARTICLE SEVEN: ACQUISITION OF SERVICES**

21 SECTION 700. Policy. Acquisition of Services by a Using Agency under the supervision
22 of the Manager:

23 (a) Of \$50,000 or less may follow the Informal Procurement process;

24 (b) Anticipated to be more than \$50,000, shall follow the Formal Procurement process.

25 SECTION 701. Acquisition of Services Procedure. The process, forms and systems used
26 in the acquisition of Services as approved by the Manager, Chief Financial Officer, and City
27 Manager, shall be included in the City's Administrative Manual.

1 SECTION 702. Exceptions. Competitive Procurement through the Informal Procurement
2 and Formal Procurement process shall not be required in any of the following circumstances:

3 (a) When an emergency arises and Emergency Procurement is undertaken pursuant to
4 Article Three hereof;

5 (b) When the Procurement involved is less than \$10,000.00;

6 (c) When the Procurement can only be obtained from a sole source or timely from a single
7 source and the Manager is satisfied that the best price, terms and conditions for the Procurement
8 thereof have been negotiated;

9 (d) When the Procurement consists of services needed for the replacement parts for the
10 City's vehicles, aviation units, and other City equipment;

11 (e) When Cooperative Purchasing is available and undertaken or when Services can be
12 obtained through Federal, State and/or other public entity pricing contracts or price agreements;

13 (f) Where payment for Services is to be made to a Federal, State, and/or other public entity;

14 (g) When Services can be Procured from a Contractor who offers the same or better price,
15 terms and conditions as the Contractor previously offered as the Lowest Responsive Bidder under
16 Competitive Procurement or negotiations conducted by the City or another public agency,
17 provided that, in the opinion of the Manager, it is in the best interests of the City to do so;

18 (h) When the Procurement is subject to Section 403 of this Resolution.

19 (i) When the Procurement is subject to Section 404 of this Resolution, which generally
20 allows for items peculiar to the needs of Riverside Public Utilities (Section 1203 of the City
21 Charter) and Public Works to be made through Informal or Negotiated Procurement.

22 (j) When the Procurement is subject to Section 405 of this Resolution, which generally
23 allows for books, journals, maps, publications and other supplies peculiar to the needs of the library
24 to be made through Informal or Negotiated Procurement subject to the provisions of Section 808(d)
25 of the City Charter;

1 (k) When the Awarding Entity waives bidding requirements under and according to the
2 circumstances set forth in Section 1109 of the City Charter, or when it is determined by the
3 Manager to be in the best interests of the City to do so;

4 (l) When the Procurement is for wholesale energy, energy ancillary services, energy
5 transmission, wholesale water commodity, and water transmission purchases by or on behalf of
6 the City's Public Utilities Department;

7 (m) When the Procurement is for the retention of outside legal counsel and services;

8 (n) When the Procurement is for the retention of services associated with litigation and/or
9 claims, or other such related matters, including but not limited to, expert witnesses, arbitrators,
10 mediators, court transcripts, court reporters, process servers, private investigators, court filing and
11 messenger services, and other legal support services;

12 (o) When the Procurement is by the City Manager or designee for an interim Department
13 Head, interim Assistant/Deputy Department Head or an interim Senior Management employee;

14 (p) When approved by the Manager and the Procurement is for the hiring of special
15 instructors/performers, including but not limited to Library, Museum, or Park, Recreation, and
16 Community Services classes.

17 (q) When the Procurement is for the annual maintenance, license(s), support, or similar
18 need for current technology systems, including hardware, and the items procured are from the
19 owner/developer of the software/hardware or from a sole source provider, and the Manager is
20 satisfied that the best price, terms and conditions have been negotiated;

21 (r) When the Procurement is for the renewal of maintenance, license(s), support, or a
22 similar need for existing technology systems, including hardware, and the items are procured from
23 a vendor/reseller that was originally selected based on the City's procurement standards, provided
24 that 1) the vendor has been used consecutively since then and 2) if there are any non-substantive
25 changes to the procurement, the Manager is satisfied that the best price, terms and conditions have
26 been negotiated;

1 (s) When the Competitive Procurement of less than \$50,000 for consultant services is
2 waived with the written approval of the City Manager; and

3 (t) When approved by the Manager, Services not subject to the bidding requirements of
4 Section 1109 of the City Charter, which are of such a nature that suitable technical or performance
5 specifications describing them are not readily available and cannot be developed in a timely
6 manner to meet the needs of the City, in which case the Manager shall be authorized to negotiate
7 with any Person or Persons for the Procurement thereof upon the price, terms and conditions need
8 by the Manager to be in the best interest of the City and in doing so may utilize Informal
9 Procurement or Negotiated Procurement process.

10 SECTION 703. Grant Purchases. When the Procurement of Services are to be procured
11 through the use of Federal or State grant funding, procurement shall be done in accordance with
12 the procedures herein. If the receipt of grant funding is conditioned upon requirements and
13 procedures more strict than as set forth herein, the procedures necessary for the receipt of the grant
14 funding shall be followed. The Using Agency is responsible for compliance with all aspects of
15 grant requirements and shall inform the Manager of any and all grant requirements which affect
16 the expenditure of grant funds and the procurement of Goods, Services, or Construction with grant
17 funds.

18 **ARTICLE EIGHT: ACQUISITION OF CONSTRUCTION SERVICES**

19 SECTION 800. Policy. Acquisition of Construction Services shall be completed in
20 conformance with Section 1109 of the City Charter. To the extent not inconsistent with the City
21 Charter, the provisions of this Resolution, as amended from time to time, shall apply to all Design-
22 Build and Design-Bid-Build Public Works Projects. Formal Procurement process and Awarding
23 Entity approval shall be required for acquisition of all services above \$50,000 pursuant to City
24 Charter Section 1109 and 1202(b).

25 SECTION 801. Acquisition of Construction Services Procedure. The process, forms and
26 systems used to acquire Construction Services, as approved by the Manager, Chief Financial
27 Officer, and City Manager, shall be included in the City's Administrative Manual.

1 SECTION 802. Exceptions. Except as otherwise required by the City Charter, Competitive
2 Procurement through the Informal Procurement and Formal Procurement process shall not be
3 required in any of the following circumstances:

4 (a) When an emergency arises and Emergency Procurement is undertaken pursuant to
5 Article Three hereof;

6 (b) When the Procurement involved is less than \$10,000.00;

7 (c) When the Procurement can only be obtained from a sole source or timely from a single
8 source and the Manager is satisfied that the best price, terms and conditions for the Procurement
9 thereof have been negotiated;

10 (d) When procurements are conducted by Consultants on behalf of the City;

11 (e) When Construction Services can be Procured from a Contractor who offers the same or
12 better price, terms and conditions as the Contractor previously offered as the Lowest Responsive
13 Bidder under Competitive Procurement or negotiations conducted by the City or another public
14 agency, provided that, in the opinion of the Manager, it is in the best interests of the City to do so;

15 (f) When Cooperative Purchasing is available and undertaken or when Services can be
16 obtained through Federal, State and/or other public entity pricing contracts or price agreements;

17 (g) Where payment for Services is to be made to a Federal, State, and/or other public entity;

18 (h) When the Awarding Entity waives bidding requirements under and according to the
19 circumstances set forth in Section 1109 of the City Charter, or when it is determined by the
20 Manager to be in the best interests of the City to do so;

21 (i) When approved by the Manager, the City requires Construction Services, not subject to
22 the bidding requirements of Section 1109 of the City Charter, which are of such a nature that
23 suitable technical or performance specifications describing them are not readily available and
24 cannot be developed in a timely manner to meet the needs of the City, in which case the Manager
25 shall be authorized to negotiate with any Person or Persons for the Procurement thereof upon the
26 price, terms and conditions deemed by the Manager to be in the best interest of the City and in
27 doing so may utilize Informal Procurement or Negotiated Procurement process.

1 SECTION 803. Grant Purchases. When the Procurement for Construction Services are to
2 be procured through the use of Federal or State grant funding, procurement shall be done in
3 accordance with the procedures herein. If the receipt of grant funding is conditioned upon
4 requirements and procedures more strict than as set forth herein, the procedures necessary for the
5 receipt of the grant funding shall be followed. The Using Agency is responsible for compliance
6 with all aspects of grant requirements and shall inform the Manager of any and all grant
7 requirements which affect the expenditure of grant funds and the procurement of Construction
8 Services with grant funds.

9 SECTION 804. Change Order Exception. Field Orders are specifically allowed on
10 Design-Build and Design-Bid-Build projects, if contemplated for in the contract.

11 **ARTICLE NINE: ACQUISITION OF DESIGN-BUILD SERVICES**

12 SECTION 900. Policy. Acquisition of Design-Build Services shall be completed in
13 conformance with Section 1114 of the City Charter and Chapter 1.07 of the City Municipal Code.
14 To the extent not inconsistent with the City Charter and Municipal Code, the provisions of this
15 Resolution, as amended from time to time, shall apply to all Design-Build Public Works Projects.
16 All Design-Build Services, regardless of Procurement dollar amount and approval limits for each
17 Awarding Entity, shall follow the selection process and process outlined in Chapter 1.07 of the
18 City Municipal Code.

19 SECTION 901. Acquisition of Design-Build Services Procedure. The process, forms and
20 systems used to acquire Design-Build Services, as approved by the Manager, Chief Financial
21 Officer, and City Manager, shall be included in the City's Administrative Manual.

22 SECTION 902. Exceptions.

23 (a) When an emergency arises and Emergency Procurement is undertaken pursuant to
24 Article Three hereof;

25 SECTION 903. Grant Purchases. When the Procurement for Design-Build Services are to
26 be procured through the use of Federal or State grant funding, procurement shall be done in
27 accordance with the procedures herein. If the receipt of grant funding is conditioned upon
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1 requirements and procedures more strict than as set forth herein, the procedures necessary for the
2 receipt of the grant funding shall be followed. The Using Agency is responsible for compliance
3 with all aspects of grant requirements and shall inform the Manager of any and all grant
4 requirements which affect the expenditure of grant funds and the procurement of Design-Build
5 Services with grant funds.

6 **ARTICLE TEN: ACQUISITION OF REAL PROPERTY**

7 SECTION 1000. Policy. Acquisition of Services by a Using Agency under the
8 supervision of the Real Property Services Manager:

9 SECTION 1001. Acquisition of Real Property Procedure. The process, forms and systems
10 used to conduct the acquisition of Real Property, as approved by the Manager, Community &
11 Economic Development Director, Chief Financial Officer, and City Manager, shall be included in
12 the City's Administrative Manual.

13 SECTION 1002. Exceptions. None.

14 SECTION 1003. Grant Purchases. When the Procurement for Real Property is to be
15 procured through the use of Federal or State grant funding, procurement shall be done in
16 accordance with the procedures herein. If the receipt of grant funding is conditioned upon
17 requirements and procedures more strict than as set forth herein, the procedures necessary for the
18 receipt of the grant funding shall be followed. The Using Agency is responsible for compliance
19 with all aspects of grant requirements and shall inform the Manager of any and all grant
20 requirements which affect the expenditure of grant funds and the procurement of Real Property
21 with grant funds.

22 SECTION 1004. Signatory Authority. When the cost of acquisition of real property by
23 the City is Fifty Thousand Dollars (\$50,000) or less, or when the cost of acquisition of real property
24 by the City is over Fifty Thousand Dollars (\$50,000) and said acquisition has been previously
25 approved by the City Council, the City Manager, any of the Assistant City Managers, or the
26 Community & Economic Development Director are hereby authorized to negotiate and execute
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1 any and all documents necessary to complete the transaction, including, but not limited to,
2 Purchase and Sale Agreements and Escrow Instructions.

3 SECTION 1005. Public Utilities. Pursuant to Article XII, Section 1202(b), when
4 Riverside Public Utilities funds in excess of \$50,000 are utilized for the full or partial payment for
5 the acquisition of Real Property, the Board of Public Utilities must approve the purchase prior to
6 approval of the City Council.

7 SECTION 1006. Notification to Manager. Within 90 days following the acquisition of
8 real property, the acquiring City Department will notify the Manager of the acquisition so that the
9 property may be added to the City's schedule of insured property.

10 **ARTICLE ELEVEN: PURCHASE ORDER AND PURCHASE REQUISITION**
11 **PROCEDURES**

12 SECTION 1100. Policy and Purpose. The purpose of the Purchase Requisition is to inform
13 the Manager, in clear and explicit terms, of the Procurement needs and processes followed of the
14 Using Agencies, thus enabling the Manager to oversee the Procurement of all Goods, Services,
15 Construction, and Design-Build work required by the City. Except as otherwise provided in this
16 Resolution, each Using Agency shall prepare a Purchase Requisition and submit it to the Manager
17 to provide documentation for the proper Procurement process followed. Goods shall not be
18 ordered and/or received, and Services, Construction and Design-Build work shall not commence
19 until a Purchase Requisition has been approved by the Manager or designee and a Purchase Order
20 has been issued. No Purchase Requisition shall be broken into smaller units to evade any
21 requirement of this Resolution, except that unrelated items requisitioned by Using Agencies may
22 be separated to provide different lists to vendors dealing in different types of Goods, Services,
23 Construction and Design-Build work.

24 SECTION 1101. Who May Requisition. All Purchase Requisitions shall be completed
25 and shall be approved by the head or duly authorized representative of the Using Agency making
26 the requisition. At such times and in such manner as shall be prescribed by the Manager, the head
27 of each Using Agency shall file with the City's Chief Financial Officer a written designation of
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1 each person who is authorized to approve Purchase Requisitions on behalf of the Using Agency or
2 any division or section thereof.

3 SECTION 1102. Purchase Requisition Procedure. The process, forms and systems used to
4 process Purchase Requisitions, as approved by the Manager, Chief Financial Officer, and City
5 Manager, shall be included in the City's Administrative Manual.

6 SECTION 1103. Purchase Order and Encumbrance of Funds. All Procurement of Goods,
7 Services Construction, and Design-Build shall be made by Purchase Order. Certain procurements
8 for Services, Construction and Design-Build may have terms and conditions that govern those
9 Procurements stated in Agreement/Contracts and in such case the Purchase Order will be utilized
10 to track and encumber funds. No Purchase Orders shall be required for petty cash purchases less
11 than an amount recommended from time to time by the Chief Financial Officer and approved by
12 the City Manager. Except in cases of Emergency Procurement, no Purchase Order shall be issued
13 unless there exists an unencumbered appropriation in the fund account against which the
14 Procurement is to be charged. Except for Emergency Procurement, no Goods, Services,
15 Construction or Design-Build work shall be ordered, obtained or received without authorization
16 by the Manager, which authorization shall be in the form of an executed or confirming Purchase
17 Order. The Manager, or his designees, shall be authorized to issue and execute Purchase Orders in
18 accordance with policies and procedures established by the City Manager from time to time, that
19 are consistent with this Resolution.

20 SECTION 1104. Change Orders. Modifications to a Purchase Order shall be made only
21 by Change Order. Subject to the availability of funds, Change Orders may be utilized for purposes
22 of (1) adding and/or deleting quantity of items being procured, (2) modifying unit prices, (3)
23 modifying scope of work/services being provided, where the modification is reasonably related to
24 the original scope of work/services, (4) changing funding source(s), (5) modifying contract
25 completion time, or (6) any other change approved by the Manager. Unless otherwise specifically
26 authorized by the Awarding Entity, Change Orders which cumulatively exceed the following will
27 require Awarding Entity approval:

- 1 a) 10% of the original contract price for Contracts and/or Purchase Orders up to \$50,000;
2 additional percentage authority may be authorized by the Manager up to \$50,000 or as
3 otherwise specified for in the City Charter;
- 4 b) Any Change Order which causes the contract price to exceed \$50,000, if the Contract
5 and/or Purchase Order was not previously approved by the Awarding Entity;
- 6 c) 10% of the original contract price for Contracts and/or Purchase Orders previously
7 approved by the Awarding Entity and the total Change Order amount will not exceed
8 \$150,000.

9 Any Change Order involving the modification of the scope of work/services where the
10 modification is not reasonably related to the original scope of work/services, as determined by the
11 City Attorney's Office, to the Contract is specifically prohibited.

12 An Awarding Entity can pre-approve change orders for more than the allowances included
13 above, provided the amount of the change order is explicitly stated in the recommendations to the
14 Awarding Entity. Any pre-approved change order authority will be in lieu of the amounts provided
15 above and not in addition to, unless otherwise specifically authorized by the Awarding Entity.

16 The Manager, or his designees, shall be authorized to issue and execute Change Orders in
17 accordance with policies and procedures established by the City Manager from time to time, that
18 are consistent with this Resolution. For purposes of this Section the term Contract also includes
19 Professional Services.

20 SECTION 1105. Bidders' Lists. The Manager shall maintain public lists of prospective
21 bidders for each class of Goods, Services or Construction for which Competitive Procurement is
22 required. These lists shall set forth the names and addresses of prospective sources of Goods or
23 Services and shall include the manufacturer of the Goods or the provider of the Services in all
24 instances in which the manufacturer or provider follows the practice of direct bidding in addition
25 to or in lieu of bidding through a local wholesaler, distributor or representative.

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ARTICLE TWELVE: DISPOSITION OF SURPLUS GOODS

SECTION 1200. Reporting. Each Using Agency shall submit to the Manager, at such times and in such form as the Manager prescribes, reports describing all Goods held by the Using Agency, which the Using Agency has determined to be Surplus Goods. At such time that a periodic physical inventory of the Goods held by any Using Agency is required by the Manager, the Using Agency shall segregate all of its surplus Goods and a report thereof shall be furnished to the Manager by the Using Agency for the transfer or disposition of such Goods.

SECTION 1201. Custody of Surplus Goods. Each Using Agency shall retain custody of its surplus Goods in such manner and at such place as the Manager shall direct, until their transfer or final disposition has been made. No Using Agency shall in any event permit any surplus Goods held by it to be loaned or donated without City Council approval, or destroyed or otherwise removed from the City's custody without the prior written approval of the Manager.

SECTION 1202. Transfer. Before disposing of surplus Goods, including unclaimed property delivered to the Manager by the Police Department, the Manager shall first canvass all other Using Agencies to assure that the surplus Goods cannot be used by another Using Agency. If another Using Agency expresses a desire to use the Goods or hold them for potential future use, the Manager shall assist in transferring the Goods to that Using Agency.

SECTION 1203. Disposition. The Manager is hereby authorized to dispose of City surplus Goods and Police Unclaimed Property which are not used or needed by any Using Agency or which have become unsuitable for City use. The Manager may dispose of such Goods and Property by any of the following procedures:

(a) They may be exchanged or traded in on new Goods;

(b) They may be sold utilizing competitive procedures similar to those prescribed herein for Formal Procurement or Informal Procurement;

(c) They may be sold at public auction conducted by the Manager or a professional auctioneer which the Manager is hereby authorized to retain on the basis of a negotiated flat fee,

1 hourly fee or percentage of the amount of the sale, whichever is determined by the Manager to be
2 in the best interests of the City;

3 (d) They may be sold utilizing a negotiation process when the Manager deems in writing
4 that such process is in the best interests of the City;

5 (e) They may be disposed of as scrap or destroyed if they have no resale value;

6 (f) In accordance with State law, City's Municipal Code, and City's Administrative
7 Manual policies and procedures; or

8 (g) They may be sold to another public agency utilizing a negotiation process when the
9 Manager deems in writing that such process is in the best interests of the City.

10 SECTION 1204. Library Books. Notwithstanding anything to the contrary in this
11 Resolution, books and other items which are subject to Section 808(d) of the City Charter and
12 which the Library Department has determined to discard may be disposed of in accordance with
13 policies as are adopted from time to time by the Board of Library Trustees and approved by the
14 City Council.

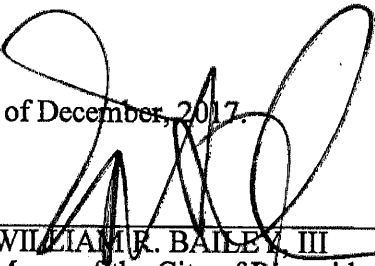
15 SECTION 1205. Contributions to Other Agencies. Nothing contained in this Resolution
16 shall affect the power and authority of the City Council to make contributions of funds, Goods,
17 Services or Construction to other agencies.

18 Section 2: That the City Manager or his/her designee is authorized to execute all Contracts
19 awarded in accordance with this Resolution.

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21 Section 3: That Resolution No. 22576, and all amendments thereto, is hereby repealed.
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ADOPTED by the City Council this 19th day of December, 2017.



WILLIAM R. BAILEY III
Mayor of the City of Riverside

Attest:



COLLEEN J. NICOL
City Clerk of the City of Riverside

I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the foregoing resolution was duly and regularly adopted at a meeting of the City Council of said City at its meeting held on the 19th day of December 2017, by the following vote, to wit:


Ayes: Councilmembers Gardner, Melendrez, Soubirous, Conder, Mac Arthur,
Perry, and Adams

Noes: None

Absent: None

Abstained: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Riverside, California, this 20th day of December, 2017.



COLLEEN J. NICOL
City Clerk of the City of Riverside