

MEETING DATE: 08/02/10
AGENDA ITEM: Adoption of an Ordinance Amending Chapter 3.07, Finance and Revenue, of the Culver City Municipal Code, by Repealing Sections 3.07.005 through 3.07.090, Purchasing System, and Replacing those Sections with New Sections 3.07.005 through 3.07.095, Relating to the City's Purchasing Policies for Supplies, Equipment and Services and the Bid Process for Public Works Projects.

ATTACHMENTS

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ORDINANCE NO. 2010-_____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING CHAPTER 3.07, FINANCE AND REVENUE, OF THE CULVER CITY MUNICIPAL CODE, BY REPEALING SECTIONS 3.07.005 THROUGH 3.07.090, PURCHASING SYSTEM, AND REPLACING THEM WITH NEW SECTIONS 3.07.005 THROUGH 3.07.095, RELATING TO THE CITY'S PURCHASING POLICIES FOR SUPPLIES, EQUIPMENT AND SERVICES AND THE BID PROCESS FOR PUBLIC WORKS PROJECTS.

WHEREAS, City Charter Section 1605 provides: "The City Council shall establish procedures for the purchasing, storing and distribution of all supplies, materials and equipment required by any City department. The City Manager shall direct the implementation of such procedures for all City departments;" and,

WHEREAS, the existing procedures for the purchasing of supplies, equipment and services are set forth primarily in Culver City Municipal Code (CCMC) Sections 3.07.005 through 3.07.090; and,

WHEREAS, these provisions of the CCMC regarding purchasing policies and requirements have not been substantially changed in over twenty years, which requirements include dollar limit requirements before items must be approved by City Council which have not been adjusted since 1987; and

WHEREAS, during the past 23 years the Consumer Price Index has risen over 90%; and,

WHEREAS, City Charter Section 1604 provides: "The City Council shall, from time to time, establish, by ordinance, procedures to ensure the integrity of awarding all contracts for the construction or improvement of public works, buildings, streets, drains, sewers, utilities, parks and playgrounds;" and,

WHEREAS, the existing procedures for awarding public works contracts are set forth in the "old" City Charter Section 1304 which procedures, pursuant to new Charter

1 Section 2007, shall remain in effect until such time as the City Council establishes, by
2 ordinance, different procedures; and,

3 **WHEREAS**, it is the desire of the City Council to modernize the CCMC as it
4 relates to purchasing and the bid process for public works projects in accordance with the
5 intent of the City Charter and in order to meet the City Council's goals of working more
6 efficiently and effectively and streamlining the purchasing and contracting process, while
7 maintaining fairness to vendors and ensuring the integrity of awarding public works
8 projects.

9 **NOW THEREFORE**, the City Council of the City of Culver City, California,
10 **DOES HEREBY ORDAIN** as follows:

11 **SECTION 1.** Sections 3.07.005 through 3.07.090 of the Culver City
12 Municipal Code are hereby repealed and replaced with the following Sections 3.07.005
13 through 3.07.095:

14 ***PURCHASING, PUBLIC WORKS CONTRACTS,***
15 ***AND DISPOSITION OF CITY PROPERTY***

16 ***General Provisions***

- 17 § 3.07.005 Intent
18 § 3.07.010 Definitions
19 § 3.07.015 Purchasing officer designation duties and authority
20 § 3.07.020 Purchases and contracts require issuance of purchase order
21 § 3.07.025 Unauthorized purchases and contracts
22 § 3.07.030 Specialized contracting procedures
23 § 3.07.035 Interpretation of bid specification
24 § 3.07.040 Change orders
25 § 3.07.045 Exceptions to bidding requirements
26 § 3.07.050 Multi-year contracts
27 § 3.07.055 Equal bids
28 § 3.07.060 Awards of contracts to local businesses
§ 3.07.065 Employee interest prohibited
§ 3.07.070 Emergencies

Purchasing of Equipment, Goods, Supplies and Services

- § 3.07.075 Formal bid procedure
§ 3.07.080 Informal bid procedure

1 § 3.07.085 Professional and personal services

2 ***Public Works Contracts***

3 § 3.07.090 Contracts for public works projects

4 ***Disposition of Surplus Property***

5 § 3.07.095 Disposition of City surplus property

6
7 **§ 3.07.005 INTENT.**

8 The intent of this Subchapter is to establish purchasing procedures for
9 the purchase of equipment, goods, supplies and services; to establish
10 procedures to ensure the integrity of awarding all contracts for the
11 construction or improvement of public works, buildings, streets, drains,
12 sewers, utilities, parks and playgrounds; and to establish procedures for the
13 disposition of City property. Nothing in this Subchapter is intended to require
14 the City to solicit bids for equipment, goods, supplies or services, accept the
15 lowest bid to provide equipment, goods, supplies or services, solicit bids for a
16 public works project or award a public works contract to the lowest responsive
17 and responsible bidder, except as required by the City Charter, this Code and
18 applicable state and federal law.

19 **§ 3.07.010 DEFINITIONS.**

20 For the purposes of this Subchapter, the following definitions shall
21 apply unless the context clearly indicates or requires a different meaning.

22 ***Change Order.*** A written authorization from the City directing an
23 addition, deletion, or revision to an awarded purchase order or contract.

24 ***Local Business.*** A business that is located within the City of Culver
25 City and meets both of the following criteria: 1) The business has a current
26 Culver City business tax certificate; and 2) The local sales tax generated by
27 the business is allocated to the City of Culver City.
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1 **Lowest Responsive and Responsible Bidder.** The bidder who best
2 responds in price, quality, service, fitness, and/or capacity to the particular
3 requirements of the City. Price alone shall not be the determining factor but
4 shall be considered along with other factors, including, but not limited to, the
5 ability of the bidder to deliver, availability of parts or service, prior experience
6 and other factors relating to the particular needs of the City for the
7 equipment, goods, supplies or services to be purchased.

8 **Public Works Project.** The construction or improvement, excluding
9 maintenance and repair, of public buildings, works, streets, drains, sewers,
10 utilities, parks and playgrounds.

11 **Purchasing Officer.** The City Manager or his/her designee.

12 **§ 3.07.015 PURCHASING OFFICER DESIGNATION DUTIES AND**
13 **AUTHORITY.**

14 A. For the purpose of this Subchapter, the term Purchasing Officer
15 shall include the term "Purchasing Agent" as used in other parts of this Code.

16 B. The City Manager, or his/her designee, shall serve as Purchasing
17 Officer and have the following duties and authority:

18 1. Negotiate, purchase and contract for equipment, goods
19 and supplies used by the City, in accordance with City laws and regulations
20 and applicable state and federal law.

21 2. Develop and maintain a standardized system for the
22 procurement of equipment, goods, supplies and services.

23 3. Encourage open competitive bidding.

24 4. Advise the City Council on all matters pertaining to
25 purchasing.

26 5. Determine that bid specifications are adhered to in all
27 respects.
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1 6. Establish procedures and requirements for bidder's
2 security and performance bonds.

3 7. Maintain a vendor file, consisting of a list of prospective
4 suppliers who have made written requests that their names be added to such
5 vendor file.

6 8. Promulgate rules and regulations to implement the
7 provisions of this Subchapter.

8 **§ 3.07.020 PURCHASES AND CONTRACTS REQUIRE ISSUANCE OF**
9 **PURCHASE ORDER.**

10 In order to more efficiently manage all purchases and other contracts,
11 the City shall issue a purchase order to each vendor who agrees to provide
12 equipment, goods, supplies and materials to the City, and the City shall issue
13 a purchase order to accompany every contract for the performance of
14 services and Public Works Projects unless otherwise authorized by the City
15 Manager or the rules and regulations adopted by the City Manager pursuant
16 to this Subchapter. Except as otherwise provided herein, no contract shall be
17 deemed to be an authorization to proceed with work unless accompanied by
18 a properly authorized and executed purchase order nor shall any vendor or
19 contracting party be authorized to perform any service, perform any Public
20 Works Project, or provide any supplies or equipment without first receiving a
21 properly authorized and executed purchase order issued by the Purchasing
22 Officer upon verification of sufficient unencumbered appropriation balance.

23 **§ 3.07.025 UNAUTHORIZED PURCHASES AND CONTRACTS.**

24 A. It shall be unlawful for any officer, employee, or agent of the
25 City to order the purchase of equipment, goods or supplies, or to contract for
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1 services or contract for the performance of Public Works Projects, or
2 otherwise make any contract in violation of this Subchapter. Any order,
3 purchase, or contract made contrary to the provisions of this Subchapter shall
4 not be binding on the City, and the City shall not be obligated thereunder.

5 B. Purchases of equipment, goods, supplies, and services, and the
6 performance of Public Works Projects shall not be divided or staged for the
7 purpose of circumventing the requirements of this Subchapter.

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9 **§ 3.07.30 SPECIALIZED CONTRACTING PROCEDURES.**

10 A. Nothing in this Subchapter shall prohibit the City from using
11 specialized contracting procedures when authorized by state law. If state law
12 authorizes such procedures, they need not also be specifically authorized by
13 this Subchapter. Such specialized procedures may include, without
14 limitation, prequalification of general contractors or subcontractors and
15 design/build contracting procedures.

16
17 B. Notwithstanding any other provision of this Subchapter, for any
18 contract totally or partially funded by the State or Federal Government, all
19 applicable state and federal laws shall be followed, including, but not limited
20 to, applicable procurement standards and contracting procedures.

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22 **§ 3.07.035 INTERPRETATION OF BID SPECIFICATION.**

23 Oral interpretation of written bid specifications shall not be made to
24 prospective bidders. If the prospective bidder discovers discrepancies or
25 omissions in any specification, or if the bidder is in doubt as to the meaning of
26 any specification, the bidder shall request a written interpretation or
27 modification from the City. If interpretations or modifications are deemed
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1 necessary, the City will then issue a written addendum to all parties known to
2 have received copies of the specifications.

3 **§ 3.07.040 CHANGE ORDERS.**

4 A. Any alteration to, amendment of, or deviation from an awarded
5 purchase order or contract as to scope, cost, time for completion, material, or
6 equipment furnished as a part of the purchase order or contract, or any
7 alteration to, amendment of, or deviation from the nature of work to be
8 performed, shall require the completion and issuance of a Change Order or
9 execution of a contract amendment. Additions to work cannot be combined
10 with deletions to work to avoid the Change Order requirement.

11 B. If the original purchase order or contract was approved by the City
12 Manager, then the City Manager or his/her designee may approve a Change
13 Order for that purchase order or contract; provided, the combined amount of
14 the original purchase order and the Change Order does not exceed the City
15 Manager's purchasing authority. If the original purchase order or contract
16 was approved by the City Council, then the City Manager or his/her designee
17 may approve a change order in an amount that does not exceed the City
18 Manager's purchasing authority. All other Change Orders shall be approved
19 by the City Council or the person, if any, designated in a contract approved
20 by the City Council. No Change Order shall be binding on the City until
21 approved as provided in this Subchapter.

22 C. Change Orders shall not be issued unless:

23 1. The Change Order arises in good faith out of an unknown
24 condition or unforeseen circumstance differing materially from the conditions
25 of the purchase order or contract; or the Change Order arises due to an error,
26 as determined by the City, in the City's specifications that accompanied the
27 bid solicitation; or the City desires to make a material substitution or addition
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1 to the project based on new information obtained during the construction
2 phase of the project; and

3 2. The Change Order does not change the purpose of the
4 purchase order or contract; and

5 3. With regard to a service contract or a contract for Public
6 Works Project performance, the Change Order is reasonably related to the
7 scope of work authorized under the original contract; and

8 4. With regard to the purchase of equipment, goods or
9 supplies, the Change Order is required to allow the equipment, goods or
10 supplies to fulfill the purpose for which they were intended, and such Change
11 Order does not authorize the purchase of additional equipment, goods or
12 supplies that could also be purchased from another source and used
13 compatibly with the equipment, goods or supplies purchased.
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15 **§ 3.07.045 EXCEPTIONS TO BIDDING REQUIREMENTS.**

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17 The bidding requirements of this Subchapter shall not apply in the
18 following circumstances:

19 A. When the needed equipment, supplies or services that are
20 proprietary items of original equipment manufacturers and/or their authorized
21 exclusive distributors.

22 B. When the equipment is a component for equipment or a
23 system of equipment previously acquired by the City, and is necessary to
24 repair, maintain or improve the City's utilization of the equipment.

25 C. When the requesting department determines in writing, after
26 conducting a good faith review of the available sources, that there is only one
27 source for the required equipment, good, supply or service. The department
28 requesting sole source procurement shall provide written evidence to support

1 a sole source determination. Such evidence shall be approved by the
2 Purchasing Officer. The Purchasing Officer may require that negotiations be
3 conducted as to price, delivery and terms. The Purchasing Officer may also
4 require the submission of cost or pricing data in connection with an award
5 under this Section or may require that formal or informal bidding procedures
6 be used.

7 D. Where items to be purchased are for resale to the public.

8 E. Where items to be purchased are computer software,
9 hardware maintenance services or software maintenance services.

10 F. Any contract involving the purchase of equipment, goods,
11 supplies or services entered into with another governmental entity.

12 G. Purchases of equipment, goods or supplies where
13 competitive bid procedures have already been utilized by the City, another
14 public agency, including, but not limited to, federal, state and county
15 governments, including, state of California agencies, counties, cities, joint
16 power agencies and special districts, or nonprofit agencies whose main
17 purpose is to assist cities or other public entities, including, but not limited to,
18 the League of California Cities and Independent Cities Association; provided,
19 the equipment, goods or supplies are supplied to the City at the same or
20 better price, as was obtained through the competitive bid procedures of that
21 entity;

22 H. Emergency procurement as set forth in Section 3.07.070 of
23 this Subchapter.

24 I. Contracts for professional or personal services as set forth in
25 Section 3.07.085 of this Subchapter.

1 **§ 3.07.050 MULTI-YEAR CONTRACTS.**

2 Unless otherwise limited by the City's Charter, this Code or applicable
3 state or federal law, the term of a contract shall be as set forth in the contract,
4 and may include extensions as authorized in the contract. The City Manager
5 may approve a multi-year contract; provided, the annual value of the multi-
6 year contract as extended does not exceed the City Manager's purchasing
7 authority. Otherwise, multi-year contracts shall require the approval of the
8 City Council. In the event the same supplier, contractor or consultant has
9 been utilized for a period of five years, the formal or informal bidding
10 procedures as set forth in Sections 3.07.075 and 3.07.080 of this Subchapter
11 shall apply.

12 **§ 3.07.055 EQUAL BIDS.**

13 Whenever two or more equivalent bids are received, the City Manager
14 or the City Council may choose whichever of the following options it deems to
15 serve the best interest of the City:

- 16 A. Select one bid, giving preference to a business located
17 within Culver City; or
18 B. Reject all bids and re-solicit for bids; or
19 C. Reject all bids and authorize negotiation of an agreement
20 between the City and one of the equivalent bidders.

21 **§ 3.07.060 AWARDS OF CONTRACTS TO LOCAL BUSINESSES.**

22 The City shall give preference to a Local Business when awarding any
23 contract for the purchase of equipment, goods or supplies; provided, the
24 Local Business to be awarded the contract will be able to provide equipment,
25 goods or supplies which are equal in quality and meet all bid specifications of
26 the City and of other competing bidders, and the contract to be awarded
27 meets one of the following criteria, as determined by the Purchasing Officer:
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1 A. The difference between bids from the Local Business and a
2 business outside the City is less than the current sales tax benefit the City
3 would receive from the local sales tax; or

4 B. Any other reason which would reasonably justify selection of
5 a Local Businesses based upon criteria which do not illegally discriminate
6 against outside businesses.

7 **§ 3.07.065 EMPLOYEE INTEREST PROHIBITED.**

8 No employee, member of the City Council, nor any appointed member
9 of a City Commission, Board or Committee, shall be financially interested,
10 directly or indirectly, in any purchase order or contract for furnishing
11 equipment, goods, supplies or services within the purview of this Subchapter.
12 Any purchase order or contract involving former City employees, members of
13 the City Council, or any appointed member of a City Commission, Board or
14 Committee, shall be awarded solely by the City Council at a public meeting.

15 **§ 3.07.070 EMERGENCIES.**

16 A. In case of a locally declared emergency or if the City Manager
17 determines there is an unforeseen emergency situation that threatens life,
18 property or the general public health, safety and welfare, the City Manager or
19 the Purchasing Officer, is authorized to expend City funds without limitation
20 on amount and without following the purchasing or bidding procedures
21 otherwise required by this Subchapter. An emergency purchase shall be
22 limited to such equipment, goods, supplies or services necessary to satisfy
23 the emergency need.

24 B. In the absence or unavailability of the City Manager or Purchasing
25 Officer, any department head shall have like authority, but shall file a written
26 report with the City Manager within five days after such emergency purchase.

1 C. Expenditures made during a locally declared emergency or in an
2 emergency situation must be reported to the City Council at the next regular
3 City Council meeting if approval for such expenditures would otherwise have
4 been subject to the approval of the City Council.

5 **§ 3.07.075 FORMAL BID PROCEDURE.**

6 Except as otherwise provided in this Subchapter, purchases of
7 equipment, goods and supplies of an estimated value of more than
8 \$30,000.00 shall be by formal sealed written competitive bids. Awards for
9 such expenditures shall be made by the City Council to the Lowest
10 Responsive and Responsible Bidder in accordance with the following
11 provisions:

12 A. **Budget Verification.** Prior to bid solicitation, the
13 Purchasing Officer shall confirm the requested purchase is identified in the
14 current fiscal year adopted budget. For items not identified in the current
15 fiscal year adopted budget, the requesting City department shall be required
16 to receive City Council approval prior to bid solicitation.

17 B. **Bid Specifications.** Bid specifications shall be prepared
18 and include the criteria that must be met to be considered the Lowest
19 Responsive and Responsible Bidder.

20 C. **Notice Inviting Bids.** Notices inviting sealed bids shall
21 be published in a newspaper of general circulation within the City at least ten
22 days prior to the date set for opening of the bids. In addition, notices inviting
23 bids shall be disseminated to at least three prospective bidders approved by
24 the Purchasing Officer, and all those who have requested to be placed on the
25 bidders list. Notices shall be posted at City Hall and other public posting
26 locations as determined by the Purchasing Officer. Notices shall include a
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1 general description of the articles for which bids are being sought, and the
2 time, date and location for submitting and opening of the bids.

3 D. ***Bid Submittal and Bid Opening.*** Sealed bids shall be
4 submitted to the City Clerk and shall be opened in public at the time and
5 place stated in the notice inviting bids. All bids received shall be available for
6 public inspection at the time and place of opening, and thereafter, in the
7 Office of the City Clerk. Bids must be received prior to the bid opening to be
8 considered.

9 E. ***Rejection or Waiver of Bid Requirements.***

10 1. The City Council may reject any and all bids
11 presented and may re-solicit for bids in its discretion.

12 2. Except as provided in Section 3.07.090, the City
13 Council may waive any irregularities or informalities in any bid or bidding.

14 3. Except as provided in Section 3.07.090, upon
15 determining that conformance with the procedures set forth in this Section
16 would be contrary to the best interests of the City or upon determining that
17 compliance with the procedures would be impractical, the City Council may
18 waive any or all of the requirements of this Section and, if it deems it to be in
19 the City's best interest, authorize a negotiated contract.
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21 **§ 3.07.080 INFORMAL BID PROCEDURE FOR PURCHASE**
22 **OF EQUIPMENT, GOODS AND SUPPLIES.**

23 Except as otherwise provided in this Subchapter, any purchase of
24 equipment, goods or supplies of an estimated value of \$30,000.00 or less
25 may be made by the Purchasing Officer in the open market pursuant to the
26 procedure prescribed in this Section without following the formal competitive
27 bid procedures prescribed in Section 3.07.075 of this Subchapter. Such
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1 purchases shall be based upon competitive quotations, whenever practical,
2 as determined by the City Manager, and shall be awarded to the Lowest
3 Responsive and Responsible Bidder.

4 **§ 3.07.085 PROFESSIONAL AND PERSONAL SERVICES.**

5 A. Except as otherwise provided in this Subchapter, the City may
6 award purchase orders and contracts in any amount for professional or
7 personal services without complying with the provisions of this Subchapter;
8 provided, the purchase order or contract shall be based upon competitive
9 quotations, whenever practical, as determined by the City Manager.

10 B. For purposes of this Section, professional services shall include,
11 but not be limited to, services of engineers, architects, accountants,
12 attorneys, doctors, and similar professionals when the City is contracting for
13 the skill, integrity, judgment, and/or special technical ability of the
14 professional.

15 C. For purposes of this Section, personal services shall include, but
16 not be limited to:

17 1. Any communication, gas, water, electric light and power
18 service or similar utility service;

19 2. Insurance, postage, freight and courier service;

20 3. Travel/hotel accommodations, education and training
21 expense;

22 4. Subscriptions and memberships;

23 5. Repair or maintenance service for equipment, machinery
24 or other City-owned personal property; and

25 6. Repair and maintenance service for City-owned or
26 occupied real property and buildings; and

1 7. Rental of real property or equipment and other personal
2 property.

3 **§ 3.07.090 CONTRACTS FOR PUBLIC WORKS PROJECTS.**

4 The following procedures shall govern the award of contracts for
5 Public Works Projects:

6 A. ***Public Works Projects of \$30,000 or Less.*** The
7 bidding of Public Works Projects involving an expenditure of \$30,000.00 or
8 less, which are included in the current fiscal year adopted budget, shall
9 comply with the informal bid procedures set forth in Section 3.07.080 of this
10 Subchapter.

11 B. ***Public Works Projects of More than \$30,000 but Less***
12 ***than \$75,000.*** The bidding of Public Works Projects involving an expenditure
13 of more than \$30,000.00, but less than \$75,000.00, which are included in the
14 current fiscal year adopted budget, shall comply with the formal bid
15 procedures set forth in Section 3.07.075 of this Subchapter. The plans and
16 specifications for Public Works Projects in this category that are not included
17 in the current fiscal year adopted budget shall be approved by City Council
18 prior to any solicitation of bids.

19 C. ***Public Works Projects of More than \$75,000.*** The
20 bidding of Public Works Projects involving an expenditure of more than
21 \$75,000.00, shall comply with the formal bid procedures as set forth in
22 Section 3.07.075 of this Subchapter. Prior to bid solicitation of bids, the
23 project plans and specifications for Public Works Projects in this category
24 shall be approved by the City Council.

25 D. ***Award of Contract.*** The award of a contract for a Public
26 Works Project involving the expenditure of more than \$30,000 shall be made
27 by the City Council to the Lowest Responsive and Responsible Bidder. The
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1 award of a contract for a Public Works Project involving the expenditure of
2 \$30,000 or less may be made by the City Manager to the Lowest Responsive
3 and Responsible Bidder.

4 E. ***Waiver of Bidding Procedures.*** The City Council, by
5 four affirmative votes, may award a contract for a Public Works Project
6 without complying with the formal bid procedures set forth in Section
7 3.07.075; provided, a public hearing is held on the award of the contract.
8 Notice of the public hearing shall be published in a newspaper of general
9 circulation within the City at least ten days prior to the date set for the public
10 hearing.

11 **§ 3.07.095 DISPOSITION OF CITY SURPLUS PROPERTY.**

12 The Purchasing Officer shall dispose of all City-owned surplus and
13 obsolete personal property by bid, auction, negotiated sale or exchange. The
14 Purchasing Officer shall attempt to obtain the best value for the property that
15 can be reasonably obtained.

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17 **SECTION 2.** Pursuant to Section 619 of the City Charter, this Ordinance
18 shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616
19 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption,
20 the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the
21 Culver City News and shall post this Ordinance or a summary thereof in at least three
22 places within the City.

23 **SECTION 3.** The City Council hereby declares that, if any provision, section,
24 subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared
25 invalid or unconstitutional by any final action in a court of competent jurisdiction or by
26 reason of any preemptive legislation, then the City Council would have independently
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1 adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases
2 or words of this ordinance and as such they shall remain in full force and effect.

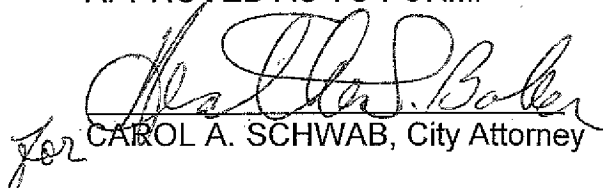
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4 **APPROVED AND ADOPTED** this ____ day of _____, 2010.

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6 _____
7 CHRISTOPHER ARMENTA, Mayor
8 City of Culver City, California

9 ATTEST:

APPROVED AS TO FORM:

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11 _____
12 MARTIN R. COLE, City Clerk
13 A10-00264

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for  CAROL A. SCHWAB, City Attorney