ORDINANCE NO. 9859-26

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA; AMENDING THE CODE OF ORDINANCES, CHAPTER 2, ARTICLE VI, DIVISION 3, PURCHASING; AMENDING SECTION 2.561 METHODS OF SOURCE SELECTION; REPEALING SUBDIVISION V PUBLIC-PRIVATE PARTNERSHIPS; REPEALING SECTIONS 2.581 - 2.587; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Division 3 of Article VI, Chapter 2 establishes fair and equitable methods of administering purchases of commodities, services, and construction to maximize the purchasing value of public funds; and

WHEREAS, in 2013, the Florida Legislature enacted Chapter 2013-223, Laws of Florida, section 2 of which governs public-private partnerships (the "P3 Statute"); and

WHEREAS, public-private partnerships ("P3") are commonly recognized as contractual agreements between a public body and the private sector that allow for greater private sector participation in the delivery of public projects; and

WHEREAS, there is a public need for timely and cost-effective delivery of projects serving a public purpose, and this need may not be wholly satisfied by existing methods of procurement; and

WHEREAS, P3's have demonstrated that they can meet the needs of the public by improving the schedule for project delivery, lowering project costs, and providing other benefits to the public; and

WHEREAS, the City of Clearwater (the "City") wishes to encourage investment in the City by private entities, to facilitate funding sources for the development of public projects, and to provide for the greatest possible flexibility in contracting for public projects under the P3 Statute; and

WHEREAS, the City is a "responsible public entity" as defined in the P3 Statute, authorized to follow the processes described in the P3 Statute to establish a P3 for a "qualifying project" as defined in the P3 Statute; and

WHEREAS, the P3 Statute recognizes the authority of local governments to create procurement processes for qualifying projects, and does not limit a local government's existing authority to enter into agreements with the private sector, including authority from existing home rule powers; and

WHEREAS, in 2021, the City adopted Ordinance 9502-21 which created the P3 method of project delivery and uniform procedures to be used by both the City and private entities for the procurement of such projects; and

WHEREAS, in 2024, the Florida Legislature amended the P3 statute; and

WHEREAS, rather than amend the City's Code of Ordinances after each statutory change, this Ordinance will repeal Subdivision V in its entirety. Section 2.561 will be amended so that the City will follow the same processes and procedures as set forth in Florida Statutes 255.065, as may be further amended from time to time; and

WHEREAS, the City has determined that the adoption of this Ordinance to be in the best interest of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA IN SESSION AND DULY ASSEMBLED THAT:

Section 1: The above-mentioned recitals are true and accurate and included herein by reference.

Section 2: Section 2.561 of the Code of Ordinances of the City of Clearwater is hereby amended to read as follows:

Sec. 2.561. Methods of source selection.

(1) *Methods of source selection.* Unless otherwise authorized by law, all city contracts shall be procured by one of the following methods:

(a) Competitive sealed bidding.

(b) Competitive sealed proposals.

(c) Request for qualifications.

(d) Small purchases.

(e) Professional services subject to CCNA.

(f) Construction management at risk and design-build contracts.

(g) Invitation to negotiate.

(h) Job order contracting.

(i) Reverse auctions.

(j) Exceptions pursuant to section 2.563.

(k) Public-private partnerships (P3).

(2) *Competitive sealed bidding.* Except as otherwise provided in this division, the purchase of commodities, services, or construction of an estimated value over $50,000.00 shall be by written contract with the vendor submitting the lowest responsive and responsible bid whose bid has been solicited, received, and approved pursuant to the following procedures:

(a) *Invitation to bid (ITB).* An invitation to bid shall be requested from three or more vendors for commodities, services, or construction when the estimated value exceeds $50,000.00. Award through this process is based solely on bids received and is not subject to negotiation following bid opening. The contract may not be divided to avoid this monetary threshold. An invitation to bid must include a purchase description of the commodities, services, or construction sought; the time and date for the receipt of bids and the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining acceptability of the bid. If the city contemplates renewal of the contract, that fact must be stated in the ITB. In the alternative, the city council or designee may award to the responsive, responsible bidder offering the lowest cost as the primary awardee and the next responsive, responsible bidder offering the next lowest cost as an alternate awardee(s), meeting all specifications, terms, and conditions. Nothing herein is meant to prevent multiple awards to the responsive and responsible bidders when such multiple awards are clearly stated in the bid solicitation documents. In the case of identical responsive and responsible bids, the decision as to the winning bid(s) must be made in accordance with the terms contained in the competitive solicitation.

(b) *Notice inviting bids.* Notice for an invitation to bid shall be published at least 21 days prior to the bid opening date. Publication may be accomplished on the city's website, a newspaper of general circulation, or other means.

(c) *Notice inviting bids for construction projects.* Construction projects with an estimated cost of $500,000.00 or less shall be published at least 21 days prior to the established opening date and at least five days prior to any scheduled pre-bid conference. Construction projects exceeding $500,000.00 shall be published at least 30 days prior to the established opening date and at least five days prior to any scheduled pre-bid conference. Publication may be accomplished on the city's website, a newspaper of general circulation, or other means.

(d) *Security (bid bonds).* When the estimated cost of a construction contract is $150,000.00 or higher, or when otherwise deemed necessary by the city manager, security in the form of a bid bond issued by a surety company licensed to do business in Florida or a cash bond in an amount equal to ten percent of the bid shall be prescribed in the public notices inviting bids. A vendor shall forfeit a bid security upon a refusal or failure to execute the contract within ten days after the notice of award of contract has been posted on the city's website unless the city is solely responsible for the delay in executing the contract. The city council may, upon the refusal or failure of the vendor to execute the contract, award the contract to the next lowest vendor. In such event, the amount of the forfeited security shall be applied by the city to the contract price differential between the lowest bid and second lowest bid, and the surplus, if any, shall be returned to the forfeiting vendor.

(e) *Performance and payment bonds.* When the estimated cost of a construction contract is $150,000.00 or higher, or when otherwise deemed necessary by the city manager, a performance bond and a payment bond is required. The security must be provided in accordance with the minimum requirements of F.S. § 255.05. The bonds shall be issued by a surety insurer authorized to do business in Florida and in an amount equal to 100 percent of the price specified in the contract. Nothing in this subsection shall be construed to limit the authority of the city to require additional security.

(f) *Security in lieu of performance and payment bonds.* In lieu of the bond required by this section, a vendor may file with the city, an alternative form of security in the form of cash, money order, certified check, cashier's check, irrevocable letter of credit, or a security of a type listed in F.S. Ch. 625. Any such alternative form of security shall be for the same purpose and be subject to the same conditions as those applicable to the bond required herein. The determination of the value of the alternative form of security shall be made by the purchasing agent or designee.

(g) *Bid opening procedures.* Sealed written bids shall be returned to the city and identified as bids on the envelope, together with other information as may be specified in the invitation to bid. Bids shall be opened publicly, in the presence of one or more witnesses, on the time and at the time and place stated in the public notices. A tabulation of all bids received, including the amount of each bid, the name of each bidder, and such other relevant information as may be specified, shall made available to the public as required by law.

(3) *Competitive sealed proposals.* Except as otherwise provided in this division, the purchase of commodities or services of an estimated value over $50,000.00 shall be written contract with the vendor submitting the lowest responsive and responsible proposal whose proposal has been solicited, received, and approved pursuant to the following procedures:

(a) *Request for proposals (RFP).* Request for proposals shall be requested from three or more vendors for commodities or services when the estimated value exceeds $50,000.00. The purchase may not be divided to avoid this monetary threshold. A best value decision may result from this process where price is not the sole determinant for award. To procure commodities or services through an RFP, the procurement division must first determine that the use of an ITB is not practicable. The RFP must include a purchase description of commodities or services sought; the relative importance of price and other evaluation criteria; the time and date for the receipt of proposals and of the public opening; and all contractual terms and conditions applicable to the procurement, including the criteria to be used in determining responsiveness and acceptability of the proposal. In awarding to a vendor pursuant to an RFP, the city council or designee may award to one or more responsive, responsible vendor in accordance with the selection criteria published in the RFP.

(b) *Notice of proposals.* Projects with an estimated cost of $500,000.00 or less shall be published at least 21 days prior to the established opening date. Projects exceeding $500,000.00 shall be published at least 30 days prior to the established opening date. Publication may be accomplished on the city's website, a newspaper of general circulation, or other means.

(c) *Receipt of proposals.* A register of proposals shall be prepared and shall be open for public inspection as required by law.

(d) *Evaluation factors.* The RFP shall state the relative importance of price and other factors and subfactors, if any.

(e) *Discussions with responsible offerors and revisions to proposals.* As provided in the RFP, discussions may be conducted with responsible offerors, who submitted proposals reasonably determined to be selected for award, to clarify and assure the full understanding and responsiveness to the RFP requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. When conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(f) *Award.* Award shall be made to the responsible offeror whose proposal conforms to the RFP and is determined in writing to be the most advantageous to the city taking into consideration best value and the evaluation factors set forth in the RFP. No other factors or criteria shall be used in the evaluation. Written notice of the award of a contract to the successful offeror shall be promptly given to all offerors.

(4) *Request for qualifications (RFQ).* An RFQ is a qualifications-based selection process. Pursuant to F.S. § 287.055, an RFQ is required for the selection of professional services involving architecture, professional engineering, landscape architecture, or registered surveying and mapping. An RFQ may be issued to establish a roster of responsive and responsible firms utilized on an as-needed basis. Projects utilizing an RFQ shall follow the same procedures as set forth in section 2.561(3).

(5) *Small purchases.* Purchases of commodities or services with a value of more than $10,000.00 but less than or equal to $50,000.00 require competition. Purchases may not be divided to avoid this monetary threshold. Small purchases will follow the following procedures:

(a) *Quotations.* Quotations shall be obtained from at least three vendors. Small purchases shall be awarded to the lowest responsive and responsible vendor whose quotation provides best value to the city.

(b) *Notice inviting quotations.* Quotations shall be solicited either by written request or orally. Acceptable means include but are not limited to facsimile transmissions, electronic mail, telephone, in person, internet, or through an approved electronic procurement or supplier relationship management system.

(c) *Sealed written quotations.* In the event the procurement manager determines that sealed written quotations are in the best interest of the city, quotations received shall be opened in public at the time and place designated in the notice inviting quotations.

(d) *Award of contract.* Except as otherwise provided in this subdivision, each contract shall be awarded to the lowest responsible and responsive vendor.

(6) *Professional services subject to CCNA.* Professional services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping shall be procured in accordance with F.S. § 287.055, referred to as the Consultants' Competitive Negotiation Act (CCNA).

(a) *Public announcement.* The public notice must include a general description of the project and must indicate how the interested firms may apply for consideration. Publication may be accomplished on the city's website, a newspaper of general circulation, or other means.

(b) *Competitive selection.* The city shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the city shall consider such factors as the ability of professional personnel; past performance; experience; capabilities; whether a firm is a certified minority business enterprise; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the city. The city may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations. If less than three firms respond to the solicitation, and every effort was made to comply with the requirements of F.S. § 287.055, the city may proceed with the evaluation process.

(c) *Competitive negotiations.* The city shall negotiate a contract with the most qualified firm for professional services at compensation which the city determines is fair, competitive, and reasonable. In making such determination, the city shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. Should the city be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the city determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The city shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the city must terminate negotiations. The city shall then undertake negotiations with the third most qualified firm. Should the city be unable to negotiate a satisfactory contract with any of the selected firms, the city shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

The city shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the city determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within one year following the end of the contract.

(d) *Continuing contract.* Nothing in this section shall prohibit a continuing contract, as defined in F.S. § 287.055, between a firm and the city. The city may issue an RFQ to establish a roster of responsive and responsible firms utilized on an as-needed basis, pursuant to F.S. § 287.055.

(7) *Construction management at risk and design-build contracts.* Construction management and design-build services, as defined in F.S. § 255.103 and § 287.055, respectively, shall be procured pursuant to the process defined in the CCNA, unless the purchasing agent or designee elects to bid construction management at risk and design-build contracts through an invitation to bid or request for proposal process, as provided in F.S. § 255.20(1), where price is considered in the award process. Contracts for construction management and design-build services shall follow the same procedures as set forth in section 2.561(6).

(8) *Invitation to negotiate (ITN).* When procurement for commodities or services is not practicable through an ITB or an RFP, competitive sealed replies may be solicited through an ITN. The procurement division must first determine, in writing, why negotiation with one or more vendors may be necessary for the city to achieve specific goals or solve a particular problem and receive best value. Objective factors may include but are not limited to price, quality, design, and workmanship. The ITN must include a purchase description of the commodities or services sought, the time and date for the receipt of replies and of the public meeting, including the criteria to be used in determining the acceptability of the reply. Typically, price is not an evaluation criterion and is not addressed until the negotiation phase of the procurement. Projects utilizing an ITN shall follow the same notice procedures as set forth in section 2.561(3).

(9) *Job order contracting (JOC).* Job order contracting is a project delivery method utilized to get numerous, commonly encountered construction projects done quickly and easily through multi-year contracts for a wide variety of renovation, repair, and minor construction projects. A job order contract is a competitively bid, fixed price, multi-year construction contract based on established or published unit prices from a unit price book or a price list with a multiplier applied to the unit prices. The unit prices are used to price construction tasks associated with the scope of work. The contract is an IDIQ (indefinite delivery indefinite quantity) contract for on-call construction services and serves as an umbrella contract with a potential maximum amount of work over a specified term such as annual or multi-year term. JOC is an appropriate delivery method for any type of repetitive work, especially small renovation jobs. It allows for a longer relationship with the selected vendor. Projects may include, but not be limited to, electrical, mechanical, plumbing, painting, roofing, landscape improvements, data communication, audio visual, signing, flooring, etc. Firms shall

be selected through one of the source selection methods as authorized in sections 2.561(2)—(4).

(10) *Reverse auctions.* Reverse auction is a procurement method wherein bidders are invited to bid on specified commodities or services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders shall only be informed as to whether the bid is in the lead, meaning the lowest priced, or whether the bid is lagging. If a bid is lagging, the bidder is provided a good faith opportunity to modify the bid prices for the duration of the bidding period established at bid opening. Reverse auctions will not be used for construction.

(11) *Public-private partnerships (P3).* Contracts for public-private partnerships (P3) shall follow the same processes and procedures as set forth in F.S. § 255.065, as may be further amended from time to time.

(a) *Initial application fee.* A private entity that submits an unsolicited proposal to the city must concurrently pay an initial application fee of $25,000.00. The city shall follow the remaining procurement procedures as set forth in F.S. § 255.065(3).

(b) *Additional procedures.* The purchasing agent is authorized to approve additional written procedures unless such procedures are inconsistent with F.S. § 255.065 or this Code.

Section 3: Subdivision V - Public-Private Partnerships (P3) of Division 3, Article VI, Chapter 2 of the Code of Ordinances of the City of Clearwater is hereby repealed in its entirety. Sections 2.581, 2.582, 2.583, 2.584, 2.585, 2.586, and 2.587 are hereby repealed.

Section 4: It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Clearwater, that the sections of the Ordinance may be renumbered or relettered to accomplish such intentions; and that the word “Ordinance” shall be changed to “Section” or other appropriate word.

Section 5: If any clause, section, or other part or application of this Ordinance shall be held in any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and shall not affect the validity of the remaining portions or applications which shall remain in full force and effect.

Section 6: All ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 7: This Ordinance shall become effective immediately upon adoption, unless otherwise provided.

PASSED ON FIRST READING ____________________

PASSED ON SECOND AND FINAL READING AND ADOPTED ____________________

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Bruce Rector
Mayor

Approved as to form:

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Owen Kohler
Lead Assistant City Attorney

Attest:

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Rosemarie Call
City Clerk