

Ordinance No. 1553-NS

**AN ORDINANCE REPLACING, IN ITS ENTIRETY,
THE PROVISIONS OF ARTICLES 1, 2, 3, AND 4
AND ADDING ARTICLE 5 OF CHAPTER 10 OF
TITLE 3 (PURCHASING) OF THE THOUSAND
OAKS MUNICIPAL CODE**

The City Council of the City of Thousand Oaks does hereby ordain as follows:

PART 1

Article 1, Article 2, Article 3 and Article 4 of Chapter 10 of Title 3 of the Thousand Oaks Municipal Code are to be replaced in their entirety and Article 5 added and is hereby amended to read as follows:

Article 1. Definitions

Sec. 3-10.101. Purpose.

The purpose of this chapter is to establish an efficient procedure for the purchase of supplies, services, and equipment, and to establish a procedure for performing or contracting for the construction of public works consistent with state law. These procedures shall not be overly time consuming and cumbersome, while allowing the City to obtain the best professional services, and acquire quality supplies, general services, and equipment in an overall economic manner, and also to construct public works at the lowest reasonable cost. The purpose of this ordinance is to emulate best practices in the purchasing procedures.

Sec. 3-10.102. Definitions.

- (a) Bidder's List. "Bidder's List" shall mean a list of responsible prospective vendors capable of providing the items being bid upon.
- (b) Cooperative Bid. "Cooperative Bid" is when several government agencies join together to create one bid document combining all agencies product volume for consideration of the bidder in determining the unit cost.
- (c) Emergency. As determined by the City Council, including, but not limited to, states of emergency defined in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of the operation of services of the

City, or to avoid danger to life or property, repair or replace any public facility without adopting plans, specification, or working details or give notice for bids to let a contract or Public Works Construction Contract.

- (d) **Equipment.** "Equipment" shall mean furnishings, machinery, vehicles, rolling stock, and other personal property used in the City's business.
- (e) **General Services.** "General Services" are services which do not require any unique skill, special background, training, and obtaining such services at the lowest cost should be the single most important factor in selection, as opposed to personal performance. Examples of general services include uniform cleaning and maintenance services.
- (f) **Maintenance Work.** "Maintenance Work" shall mean:
 - (1) Routine, recurring, and usual work for the cleaning, preservation, or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) Resurfacing of streets and highways at less than one inch.
 - (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
 - (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of two hundred thirty thousand (230,000) volts and higher.
- (g) **Multiple Awarded Bid.** When a bid is awarded to more than one vendor for the same or similar products. A multiple awarded bid schedule is usually set up and provides information of product type/brand and vendor who is providing the product.
- (h) **Piggyback.** Use of another public agency's existing contract to purchase the same product(s) as outlined in the awarding bid document.
- (i) **Professional, Management, or Special Services.** "Professional," "Management", or "Special Services" shall mean any work performed by an attorney, doctor, architect, engineer, land surveyor, construction manager, appraiser, expert, accounting firm, consultant or those services such as computer services, golf course

operating services, concession services, parking garage operation services, and transportation/transit operator services. Factors for determining whether professional, management, or special services are needed include but, are not limited to, services which require special performance criteria, specific experience and training, professional judgment, licensing, qualified expertise in a specific area of work, or other unique factors other than simply obtaining the service at the lowest cost to the City. Professional Management, and Special Services are not subject to the informal, formal or competitive bidding requirements of this chapter and may be procured through negotiated contract or Requests for Qualification and/or Proposal process, per Article 4. Section 3-10.401

- (j) **Public Works.** "Public Works" shall mean a type of public construction project subject to the regulation of the State Public Contract Code and State Labor Code and as defined in California Labor Code Division 2, Chapter 1, Article 1, Section 1720 and as further amended. Examples of a Public Works Project include:
 - (1) The erection, construction of, alteration, major painting, repair, or demolition of public buildings, streets, walkways, water and sewer facilities, drainage facilities, or other public facilities, whether owned, leased, or operated by the City.
 - (2) Furnishing supplies or materials for any of the above works or projects.
 - (3) A public work does not include maintenance work as defined in this article.
- (k) **Public Project.** "Public Project" shall have the meaning as set forth in the California Public Contract Code Division 2, Part 3, Chapter 1, Article 4, Section 20161 and Division 2 Part 3, Chapter 2, Article 1, Section 22002, or as hereinafter amended.
- (l) **Purchase.** "Purchase" shall include the renting, leasing, purchasing, licensing, or a trade of equipment or supplies.
- (m) **Purchasing Agent.** The "Purchasing Agent", for the purposes of this Chapter, shall be the Finance Director or his/her designee and is responsible for managing the decentralized purchasing program.
- (n) **Purchasing Officer.** The "Purchasing Officer," for the purposes of this chapter, shall be the City Manager or his/her designated representative.

- (o) Special Equipment/Supplies. "Special Equipment/Supplies" shall mean unique supplies, machinery, computers, or other equipment which are not generally and regularly ordered in bulk by the City and which must perform complex tasks, or integrate efficiently with existing equipment or supplies.
- (p) Supplies. "Supplies" shall mean office supplies, janitorial supplies, materials, goods, tools, or other commodities used in the general conduct of the City's business, excepting supplies or materials for a public work which is regulated under the California Public Contract Code Sections 20160, et seq.
- (q) Uniform Construction Cost Accounting Procedures. "Uniform Construction Cost Accounting Procedures" shall mean those procedures and rules established by the State Uniform Construction Cost Accounting Commission pursuant to Section 22010, et seq. of the California Public Contract Code or as amended.
- (r) Urgency. Urgency shall exist when the service, repair, or replacements are immediately necessary to permit the continued performance of the operations or services of the City, or to avoid the immediate danger to life, health, or property.

Sec. 3-10.103. Purchasing Agent: Powers and Duties.

The duties of the Purchasing Agent may be combined with those duties of any other officer or position in the City. The Purchasing Agent shall have the authority to:

- (a) Purchase or contract for needed City supplies, general services, equipment, and special equipment/supplies which are not included within a construction contract or proposed specifications for a construction contract of a public work being administered by any other City department;
- (b) Investigate, keep knowledgeable about, negotiate, and recommend on the execution of contracts or the purchasing of supplies, general services, and equipment pursuant to the procedures of this chapter, and such administrative rules and regulations as prescribed by the City Manager;
- (c) Keep informed of current developments concerning purchasing, prices, market conditions, and new products;

- (d) Prescribe and maintain such forms as necessary for the proper operation of this purchasing system;
- (e) Supervise the inspection of all supplies, general services, and equipment purchased under this chapter to assure conformance with City specifications;
- (f) Supervise the transfer of surplus and unused supplies and equipment for sale or disposal of such;
- (g) Maintain up-to-date bidder's list, vendor's catalogs, files, and such other records as needed to perform these duties;
- (h) Ensure that purchasing specifications are written to encourage full competition;
- (i) Perform such other tasks as may be necessary for the proper conduct of purchasing of supplies, services, construction services, and equipment.

Sec. 3-10.104. City Council Authorizes City Manager to Implement Administrative Regulations.

City Council authorizes City Manager to establish and maintain written administrative regulations and standards consistent with Thousand Oaks Municipal Code, Title 3, Chapter 10, which incorporate and implement the City's purchasing and contracting procedures, including an implementation of the purpose, goals and requirements of this ordinance.

Sec. 3-10.105. Purchase Orders.

(a) Except for departmental purchases as authorized in Sec. 3-10.201(a), purchases under Five Thousand and no/100th (\$5,000.00) Dollars and exemptions established in the Purchasing Administrative Regulations Manual, purchases of supplies, services, and special equipment/supplies, shall be made only by purchase orders issued by the Purchasing Agent.

(b) The purpose of a Purchase Order is to ensure compliance with this Purchasing Ordinance. The Purchasing Administrative Regulations Manual allows for exemptions from Purchase Order requirements because the procurement does not fall within this ordinance. Examples of such exemptions include: acquiring land or books, payment that are not for the actual purchase of services, goods or supplies, or payments of debt services.

Sec. 3-10.106. Encumbrance of Funds.

Except in cases of urgency as described in Sections 3-10.205, 3-10.308, and 3-10.401(e), the Purchasing Agent shall not issue any Purchase Order, for purchase of supplies, services or equipment unless there exists an unencumbered appropriation in the fund account against which such purchase is to be charged or City Council has authorized said purchase.

Sec. 3-10.107. Solicitation Exceptions.

- (a) The competitive bid and RFP processes are not applicable to certain purchases. The following are exempt from bid processes of Chapter 10 Article 2 and Article 4 herein.

- (1) Department purchases, as defined in Section 3-10.201(a);
- (2) Travel/expense advances;
- (3) Subscriptions;
- (4) Trade circulars or books;
- (5) Insurance premiums;
- (6) Insurance claims;
- (7) Reimbursement of expenses;
- (8) Petty cash reimbursement;
- (9) Medical payments;
- (10) Newspaper advertisements and notices;
- (11) Dues to approved organizations;
- (12) Payments to other government units;
- (13) Utility service payments, utility connection and/or installation charges;
- (14) Attorney services;
- (15) Postage, courier/delivery messenger services;
- (16) Land;
- (17) Buildings;
- (18) Debt services;
- (19) Grants;
- (20) Claim settlements.

Sec. 3-10.108. Contracts.

- (a) All written contracts shall be approved by City Attorney as to form. Contracts shall be prepared for professional, management, general or special services, and construction for Five Thousand and no/100th (\$5,000.00) Dollars and over. Contracts for an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars and less shall be approved/awarded by the City Manager, following any required selection process outlined in Articles 3 and 4 of this Chapter. Contracts with a dollar amount exceeding Fifty Thousand and

no/100th (\$50,000.00) Dollars shall be approved/awarded by City Council following a selection process outlined in Articles 3 and 4.

(b) The City Manager is authorized to issue Contract Amendments as follows:

- (1) If the contract was originally executed for an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars or less, the City Manager shall have the authority to issue Contract Amendments, provided that the sum of all amendments, plus original contract amount, shall not exceed Fifty Thousand and no/100th (\$50,000.00) Dollars. If the amended contract will exceed Fifty Thousand and no/100th (\$50,000.00) Dollars, City Council shall approve the contract amendment.
- (2) For a contract originally executed for an amount in excess of Fifty Thousand and no/100th (\$50,000.00) Dollars and originally approved by City Council, the City Manager shall have authority to issue contract amendments, provided that the sum of all contract amendments for any single contract shall not exceed the limit approved by City Council. If the amended contract will exceed the limit previously approved by City Council, the contract amendment must be approved by City Council.

(c) Master Professional Services Contracts. For those Professional Services as defined in Government Code Section 4526 (and as otherwise amended), master multi-year contracts with several consultants with a general scope of work may be set up for a total not-to-exceed dollar amount as approved by City Council.

- (1) A formal Request for Qualification process shall be used in accordance with Municipal Code Section 3-10.401(d) and awarded based on qualifications.
- (2) Task Orders shall be issued pursuant to the Master Contract with a specific scope of work and the City Manager shall have authority to execute such Task Order for individual projects for Fifty Thousand and no/100th (\$50,000.00) Dollars or less.
- (3) Any Task Order in an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars will require City Council's approval as pursuant to the terms of the Master Contract.
- (4) Task Orders shall not be issued for an amount exceeding One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars. An individual Request for Qualification process and a new contract awarded by City Council is required.

- (d) **Master General Services Contract**
 - (1) A Bid or a Request for Proposal/Qualification process may be used to procure General Services and may be awarded based on qualifications plus reasonableness of cost.
- (e) Public Works Contracts shall be established for work in an amount of Five Thousand and no/100th (\$5,000.00) Dollars and over. City Manager may award and execute contracts for individual projects in an amount of One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars or less. Individual projects in an amount exceeding One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars shall be approved by City Council.
- (f) **Change Orders.** A Change Order shall be used to modify the contract documents regarding contract price, schedule of payments, completion date, plans and specifications, expanding scope of work due to change in conditions, and for unit price overruns and under runs, as specified in the Contract. Work description and justification should relate to the original project and should be necessary to achieve original scope of project. After a determination that costs is merited by developments in a specific project, the City Manager is authorized to issue Change Orders up to the contract contingency amount approved by the City Council for the individual contract as follows:
 - (1) Contracts in the amount over Thirty Thousand and no/100th (\$30,000.00) Dollars to an amount of One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars or less:
 - (i) City Manager may approve Change Orders until the contract reaches One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars.
 - (ii) Once the original contract plus all accumulated Change Orders is in an amount that is equal to One Hundred Twenty-five and no/100th (\$125,000.00) Dollars, subsequent Change Orders must be approved by City Council prior to commencing the work.
 - (iii) Any single Change Order exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars must be approved by City Council prior to commencing with the work. In urgency situations where stopping the work will result in severe repair or replacement delays and subject the City to excessive additional costs due to the delay in the project, and City Manager may approve such a

Change Order shall give notice to City Council at the next City Council meeting.

- (2) Contracts in an amount exceeding One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars.
 - (i) City Manager may approve accumulative Project Change Orders up to the contingency established and approved by City Council for each individual contract.
 - (ii) Any single Change Order exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars must be approved by City Council prior to commencing with the work. In urgency situations where stopping the work will result in severe repair or replacement delays and subject the City to excessive additional costs due to the delay in the project, City Manager may approve such Change Order and shall give notice to City Council at the next City Council meeting.

(g) Master Maintenance Service Contracts.

- (1) Request for Qualification process shall be used to establish Master Contracts. The purpose which is to award discrete small projects which in no event exceed Thirty Thousand and no/100th (\$30,000.00) Dollars per task order.
- (2) Master Single or Multi-year Contracts may be set up with several vendors, and will include a general scope of work and will establish an annual not-to-exceed dollar amount as approved by City Council.
- (3) Task Orders shall be issued pursuant to the Master Contract with a specific scope of work and the City Manager shall have authority to execute such Task Order for individual projects for an amount of Thirty Thousand and no/100th (\$30,000.00) Dollars or less.

Article 2. Supplies, General Services and Equipment

Sec. 3-10.201 Bidding procedures

Except as authorized in Section 3-10.202, 3-10.203, or in the case of urgencies as described in Section 3-10.205, the purchase of supplies, equipment and special equipment/supplies, not included in the construction contract or bid specification for a public works project, shall be made as follows:

- (a) Department Purchases. A department may purchase specified and limited supplies, and equipment, special equipment/supplies independently of the Purchasing Agent of a value less than Five Thousand and no/100th (\$5,000.00) Dollars, provided such

department keeps a record of such purchases and exercises reasonable prudence in seeking price quotes when purchasing such items. All such purchases shall be made with funds in an unencumbered appropriation.

- (b) **Direct Purchase Order.** The purchase of supplies, equipment, or special equipment/supplies with the estimated value of Five Thousand and no/100th (\$5,000.00) Dollars but not more than Fifty Thousand and no/100th (\$50,000.00) Dollars shall be made by a written bidding procedure as follows:
- (1) The responsible department shall prepare a written product specification describing the minimum requirements of the purchase.
 - (2) The department shall obtain at least three written responses to the informal request for bid. This requirement may be waived for good cause in writing by the Department Head and Purchasing Agent in consultation with one another.
 - (3) Written responses may be made by mail, fax, or e-mail directly to the department representative requesting the item. Further negotiation with a vendor to negotiate a lower price based on the bid responses received from other vendors is prohibited. A written record and tabulation shall be made at that time the bid response is received and opened. All written responses must be retained by the department for three years.
 - (4) **Bid evaluation procedures.** All bids shall be analyzed by the department for compliance with bid specifications, and the department shall prepare an analysis of the bid process.
 - (i) Award will go to the lowest responsive/responsible bidder.
 - (ii) Quality, quantity, and service being equal, a local preference of five (5%) percent shall be given to local vendors located within the City of Thousand Oaks.
 - (iii) If the Department Head determines that all the bids received are unacceptably high, or specifications were unclear, the department may reject any bids received and the item may be rebid.
 - (5) **No bids received.** In the event no bids are received, the Department Head requesting the purchase shall have the option of any of the following:
 - (i) Abandoning the purchase;
 - (ii) Rebidding the purchase; or
 - (iii) Requesting Purchasing Officer approval to obtain the item, supply, service, or equipment on a direct negotiated contract.

- (6) The department shall prepare a written recommendation to the Purchasing Officer for award or rejection of bids.
 - (7) Award. The Purchasing Officer shall reject all bids or award the purchase contract to the lowest responsive and responsible bidder whose bid or proposal fulfills the purpose intended according to criteria designated in the bid and the contract award amount is within the unencumbered appropriation for that item. Purchasing Officer may waive any minor bid irregularities and shall award informal bids up to Fifty Thousand and no/100th (\$50,000.00) Dollars.
- (c) Formal Bid Procedures. For supplies, equipment, or special equipment/supplies with an estimated value in an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars purchases shall be made in accordance with the following formal written procedures:
- (1) Published Notices. A notice inviting bids shall be published at least fourteen (14) calendar days before the date of the opening of bids. The notice shall be published at least once in a newspaper of general circulation printed and published in the City, and in appropriate trade publications, if any, circulated within the general area and posted on the City's Purchasing website. Such other notice as the Purchasing Agent deems appropriate shall be made.
 - (i) Notices inviting bids. Notices inviting bids shall include a general description of the goods, articles, services, or equipment to be purchased or required, state where bid blanks and specifications may be secured, describe any performance or bid security required, and the time and place for the opening of bids;
 - (ii) Bidder's List. The Purchasing Agent shall maintain a list of responsible bidders for various categories of supplies or equipment. A notice of the solicitation for a bid shall be sent to all responsible prospective contractors or suppliers whose names are on the bidder's list for the category or equipment, supplies or general services subject to the bid request or posted on the City's Purchasing website and distributed through mass e-mail notifications; and
 - (iii) Bulletin Board. The bid invitation shall be posted on a public bulletin board in City Hall.
 - (2) Bidder's Security/Failure to Sign Contract. If the City requires a bidder's bond or other form of security, the bidder's security shall be prescribed in the notice inviting

bids in an amount equal to ten (10%) percent of the amount bid. Bidder's security shall be either a cash deposit with the City, a cashier's or certified check payable to the City, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of his/her bid security, as may be determined by the City Council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the City Council may award the contract to the next lowest responsive and responsible bidder.

- (3) Bid Opening Procedure. Sealed bids shall be submitted to the City Clerk Department and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by City staff in public at the time and place stated in the notice inviting bids. A written record and tabulation shall be made at the time of all bids received.
- (4) Bid Evaluation Procedures. Quality and service being equal, a local preference of five (5%) percent but not more than Five Thousand and no/100th (\$5,000.00) Dollars shall be given to local vendors located within the City of Thousand Oaks. All bids shall be analyzed by the Purchasing Agent and the department for compliance with bid specifications. The department shall prepare a recommendation for award or rejection to the City Council.
- (5) Rejection of Bids. If the City Council determines that bids are excessively high or that specifications were unclear, or if no bids are received, the City Council may reject all bids presented and use whatever method it deems appropriate, such as rebid, abandon acquisition, or negotiate a contract to complete the purchase.
- (6) Award of Contracts. Contracts shall be awarded by the City Council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended according to the criteria designated in the solicitation, and provided the award amount is within the unencumbered appropriation for that item. The City Council may waive any minor bid irregularities.
- (7) Tie Bids. If two (2) or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the City Council may accept either bid

or accept the lowest bid made by negotiation with the tied bidders.

- (8) Performance Bonds. The City may require a performance bond in such amount as it shall find reasonably necessary to protect the public interest. If the City requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids.

Sec. 3-10.202. Special Equipment/Supplies; Sole Source Purchases.

- (a) Special Equipment/Supplies. In purchasing any special equipment or supplies needed to be compatible with existing equipment, or to perform complex or unique functions, the Purchasing Agent and Department Head in consultation with one another may:
 - (1) Limit bidding to a specific product type, or a brand name product; or
 - (2) Utilize a request for proposal approach where warranties, service and/or maintenance obligations, and product performance will be evaluated in addition to the price of the product. The award of the contract should be to the proposer staff deems is in the best public interest.
- (b) Sole Source Purchases. Unique commodities or services that can be obtained from only one vendor, or one distributor authorized to sell in this area, with singular characteristics or performance capabilities or which have specific compatibility components with existing City products are exempt from the competitive bidding requirements in Section 3-10.201 and are deemed sole source purchases. Sole source purchases may include proprietary items sold direct from the manufacturer.
 - (1) All sole source purchases shall be supported by written documentation indicating the facts and nature supporting the determination of a sole source, signed by the Department Head and forwarded to the Purchasing Agent. The Purchasing Officer shall approve sole source acquisitions in an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars or less.
 - (2) Approval of any sole source acquisition shall be obtained from City Council for an award of a contract for an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars.

Sec. 3-10.203 Cooperative, Piggyback, and Multiple Awarded Bid Purchasing With Other Agencies.

Approval and award of cooperative, "piggy-back" or multiple awarded purchases shall be obtained from the Purchasing Officer for an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars or less and by the City Council for purchases in an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars.

- (a) **Cooperative Purchasing.** The bidding requirements of Section 3-10.201 shall not apply to the purchasing of any equipment or supplies which the Purchasing Agent determines to be in the best interest of the City to obtain through a cooperative competitive bidding procedure being prepared by and processed through another local, state, or federal governmental agency.
- (b) **Piggyback.** If the Purchasing Agent determines it to be in the best interest of the City, the Purchasing Agent is authorized to "piggy-back" onto or join into an existing written purchase contract obtained through a competitive bidding process prepared by and awarded by another local, state or federal government agency.
- (c) **Multiple Awarded Bids.** Multiple awarded bids are generally conducted by larger government agencies. A competitive bidding process is conducted for a specified product. Several vendors whose product meets the specification are awarded the contract. Maximum item price and contract terms are established. If the Purchasing Agent determines it to be in the City's best interest, the Purchasing Agent is authorized to use federal, state, or other governmental agency multiple awarded contracts. Staff must obtain quotes from at least three vendors on the awarded contract list and award the bid to the lowest responsive and responsible bidder.

Sec. 3-10.204. Recycled Supply Products Specification.

If in procuring supplies, a recycled product can achieve the necessary City performance standard, and if such recycled product is readily available, specifications should, if economically feasible, require products made with recycled materials be bid. If the Department Head determines that (1) a recycled product lacks performance capabilities or needed quality levels, or (2) a sufficient amount of said recycled or reusable product is not currently available in the market, then a reduced percentage can be required, or the supply specification can be limited to non-recycled or virgin materials. When recycled products are required, reasonable efforts shall be made to label the products as containing recycled materials. As used in this section, recycled products does not mean

used products, but is limited to new products made with materials which have been recycled.

Sec. 3-10.205. Urgencies.

The bidding procedures of Section 3-10.201 or solicitation procedures in Section 3-10.401 may be dispensed with in the case of urgency. An urgency shall exist when the service, repair, or replacements are immediately necessary to permit the continued performance of essential operations or services of the City, or result in excessive costs if not immediately remedied, or to avoid the immediate danger to life, health, or property. The City Council delegates authority to the City Manager to declare a public urgency. If the purchase is Fifty Thousand and no/100th (\$50,000.00) Dollars and over, the City Manager shall give notice of the purchase process to the City Council.

Sec. 3-10.206. Local Preference.

To promote economic development and maintain a healthy economic base in the City of Thousand Oaks, as well as encourage businesses to move into the City's jurisdiction, the City supports employment and local business opportunities which in turn promote the City's economic growth. As such, the City has determined it is in its best interest to provide a preference to local businesses.

- (a) **Local Preference in Purchasing.** In the bidding of, or contracting for procurement of supplies, materials, and equipment as provided in these sections, the Purchasing Officer may give a preference to responsive, responsible, local businesses located in the City of Thousand Oaks in an amount not-to-exceed Five (5%) Percent of the local business' total net bid price, or Five Thousand and no/100th (\$5,000.00) Dollars, whichever is lower. The granting of this local preference shall be approved or not based on a determination by the Purchasing Officer/Agent that quantity and quality of the local product is equal to that of the next lowest bidder. In order for a local business to be eligible to claim the preference, the business must provide a copy of its current business tax certificate issued by the City. This local preference is not applicable to: (1) bids for public projects as defined by Public Contracts Code Sections 20161 and 22002, (2) bids funded by grants which prohibit its use, and (3) contracts for professional, management, general, and special services.

Sec. 3-10.207. Staging of Purchases Prohibited.

Purchases and public Works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive formal or informal bidding requirements of this chapter.

Sec. 3-10.208. Inspection and Tests.

The Purchasing Agent or department requesting the item shall inspect all deliveries of supplies and equipment to assure conformance with the contract or order specifications. The Purchasing Agent, at his/her discretion, may require chemical and physical tests of samples or supplies and equipment as he/she deems necessary to determine the quality in conformance with those specifications.

Sec. 3-10.209. General Services.

- (a) General services as defined in Article 1, Section 3-10.102(e) shall be procured either through the bid process outlined in Article 2, Section 3-10.201 with the emphasis on awarding to the "lowest responsive responsible bidder" or through the Request for Proposal process outlined in Article 4, Section 3-10.401 with emphasis on factors other than price.
- (b) Factors to Consider. If it is determined by the department in consultation with the Purchasing Agent that all vendors providing a service classification can equally provide the service satisfactorily, a bid process would be appropriate. However, if factors other than price need to be considered in awarding the contract, the Request for Proposal (RFP) process may be used. Examples of areas other than price that may be important in awarding the contract include: experience level, competence, resources/equipment, staffing levels, services available/time factors, and other qualifications determined by each City department responsible for recommending the service contract that may be important to consider.
- (c) Master General Services Single or Multi-year Contracts may be awarded to multiple service providers following a formal Request for Proposal/Qualification process using the procedures set forth in Section 3-10.401. Award of master contracts and negotiating task orders should follow the procedure set out in Section 3-10.108.

Article 3. Public Work Projects

Sec. 3-10.301. Uniform Construction Cost Accounting Procedures.

The City Council has elected to become subject to the Uniform Construction Cost Accounting Procedures as established by the California Uniform Construction Cost Accounting Commission.

Sec. 3-10.302. Bidding Procedures for Various Project Amounts.

- (a) A public project of Thirty Thousand and no/100^{ths} (\$30,000.00) Dollars or less may be performed by City employees by force account, by negotiated contract, or by Purchase Order.
- (b) A public project of an estimated amount exceeding Thirty Thousand and no/100^{ths} (\$30,000.00) Dollars but not more than One Hundred Twenty-five Thousand and no/100^{ths} (\$125,000.00) Dollars may be let to contract by informal bid procedures as set forth in this article.
- (c) A public project in an amount exceeding One Hundred Twenty-five Thousand and no/100^{ths} (\$125,000.00) Dollars shall, except as otherwise provided in this article, be let to contract by formal bidding procedures.

The described project cost limits of (a) through (c) in this section shall be increased automatically as authorized pursuant to the adjustments made by the California Uniform Construction Cost Accounting Commission under Section 22020 of the Public Contract Code.

Sec. 3-10.303. Adoption of Plans.

The City Council shall approve and adopt the plans, specifications, and working details, as well as authorize the bid request for all Public Works projects for an amount exceeding One Hundred Twenty-five Thousand and no/100^{ths} (\$125,000.00) Dollars. The City Engineer is delegated authority to approve and adopt the plans, specifications, and working details for all Public Works projects less than One Hundred Twenty-five Thousand and no/100^{ths} (\$125,000.00) Dollars.

Sec. 3-10.304. Negotiate Contract or Purchase Order Procedures.

For those projects qualifying under subsection (a) of Section 3-10.302, the project manager shall obtain a cost estimate from the project engineer or architect prior to issuing a Purchase Order or negotiating a contract with a responsible contractor. For any City force account work, the project manager shall first comply with the guidelines established by the California Uniform

Construction Cost Accounting Commission in determining the cost of the public project.

The City Manager shall have the authority to award and to execute any contract for the public project qualifying under subsection (a) and (b) of Section 3-10.302.

Sec. 3-10.305. Informal Bidding Procedures.

For those projects which qualify under subsection (b) of Section 3-10.302 for informal bidding, the following procedures shall be used:

- (a) Bidder List. The City shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors' list shall be consistent with the California Uniform Construction Cost Accounting rules.
- (b) Notice. Unless the product or service is proprietary, all contractors on the City's list for the category of work being bid shall be mailed a notice inviting informal bids, or an announcement/advertisement shall be placed in all construction trade journals specified in this section, or both such mailing and advertising. The trade journals shall be those identified by the California Uniform Construction Cost Accounting Commission as appropriate for this area. In addition, notice shall be posted on the City's Purchasing website.
- (c) Bidder's Security/Failure to Sign Contract. Bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten (10%) percent of the amount bid. Bidder's security shall be either a cash deposit with the City, a cashier's or certified check payable to the City, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of his/her bid security, as may be determined by the City Council, upon the bidder's refusal or failure to execute the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the City Council may award the contract to the next lowest responsive and responsible bidder.
- (d) Minimum Time Period. All mailing of notices to contractors and announcements/advertisements published in the construction trade journals pursuant to subdivision (b) shall be completed not less than ten (10) calendar days before bids are due.

- (e) **Notice Contents.** The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.
- (f) **Performance/Labor/Materials Bonds.** A labor and materials bond, plus a performance bond shall be required, from a surety company licensed to do business in California and acceptable to the City, in amounts equivalent to the total contract amount.
- (g) **Bid Opening Procedure.** Sealed bids shall be submitted to the City Clerk Department and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by the City Clerk's staff in public at the time and place stated in the notice inviting bids. At that time, a written record and tabulation shall be made of all bids received, and shall be open for public inspection during regular business hours for a period of one year after the bid opening. The project manager shall make an analysis of the bids for compliance with bid specifications, and thereafter, make a recommendation for award or rejection.
- (h) **Award.** The City Manager shall award the contract or reject the bids. The Purchasing Officer may waive minor bid irregularities.
- (i) **Change Orders.** A Change Order shall be used to modify the contract documents regarding contract price, schedule of payments, completion date, plans and specifications, and for unit price overruns and under runs, as specified in the Contract. Work description and justification must relate to the original project and must be work necessary to achieve original scope of project. After a determination that costs are merited by developments in a specific project, the City Manager is authorized to issue Contract Amendments or Change Orders up to the contract contingency approved by the City Council as awarded for the individual contract as follows:
 - (1) City Manager may approve Project Change Orders until the contract reaches One Hundred Twenty-five and no/100th \$125,000.00) Dollars.
 - (2) Once the original contract plus all accumulated Change Orders are in an amount that is equal to One Hundred Twenty-five and no/100th (\$125,000.00) Dollars, the contract and subsequent Change Orders must be approved by City Council prior to commencing with the work.

- (3) Any single Change Order exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars must be approved by City Council prior to commencing with the work. In urgency situations, where stopping the work will result in severe repair or replacement delays and subject the City to excessive additional costs due to the delay in the project, City Manager may approve such Change Order and shall give notice to City Council at the next City Council meeting.
- (j) Bids in Excess of Statutory Amount. If all bids received are in excess of One Hundred Twenty-five Thousand and no/100ths (\$125,000.00) Dollars, the City Council may, by passage of a resolution by a four-fifths (4/5) vote, award the contract up to One Hundred Thirty-seven Thousand Five Hundred and no/100ths (\$137,500.00) Dollars or less to the lowest responsive and responsible bidder if it determines the cost estimate of the City was reasonable.

Sec. 3-10.306. Formal Bidding Procedures.

For those projects requiring formal bidding under Section 3-10.302(c), the following procedures shall be used:

- (a) Publication. A notice shall be published, at least once, fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation printed and published in the jurisdiction of the City. The notice inviting formal bids shall also be mailed to all construction trade journals specified by the California Uniform Construction Cost Accounting Commission as appropriate for the area. The notice shall be mailed at least thirty (30) calendar days before the date of opening the bids. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. In addition to notice required by this section, the City may give such other notice as it deems proper.
- (b) Bidder's Security/Failure to Sign Contract. Bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten (10%) Percent of the amount bid. Bidder's security shall be either a cash deposit with the City, a cashier's or certified check payable to the City, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty (60) days of the date of the award. However, the lowest responsive and responsible bidder shall forfeit all or part of his/her bid security, as may be determined by the City Council, upon the bidder's refusal or failure to execute

the contract within ten (10) days after the date of the award of the contract. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the City Council may award the contract to the next lowest responsive and responsible bidder. All bids must be signed by person authorized to bind company to bid terms.

- (c) Bid opening Procedure. Sealed bids shall be submitted to the City Clerk's Office and shall be identified as to bidder, project, and "Bid" on the envelope. Bids shall be opened by the City Clerk's staff in public at the time and place stated in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received, and shall be open for public inspection during regular business hours for a period of one year after the bid opening. The project manager shall make an analysis of the bids for compliance with bid specifications and, thereafter, make a recommendation for award or rejection.
- (d) Award of Contracts/Minor Irregularities. Contracts shall be awarded by the City Council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation, and provided the award amount is within the unencumbered appropriation for that item. The City Council may waive minor bid irregularities.
- (e) Change Orders. A "Change Order" shall be used to modify the contract documents regarding contract price, schedule of payments, completion date, plans and specifications, and for unit price overruns and under runs, as specified in the Contract. Work description and justification must relate to the original project and must be work necessary to achieve original scope of project. After a determination that costs are merited by developments in a specific project, the City Manager is authorized to issue Contract Amendments or Change Orders up to the contract contingency approved by the City Council as awarded for the individual contract as follows:
 - (1) City Manager may approve accumulative Project Change Orders up to the contingency established and approved by City Council for each individual contract.
 - (2) Any single Change Order exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars must be approved by City Council prior to commencing with the work. In urgency situations where stopping the work will result in severe repair or replacement delays and subject the City to excessive additional costs due to the delay in the project, City Manager

may approve such Change Order and shall give notice to the City Council at the next City Council meeting.

- (f) Tie Bids. If two or more bids received are for the same total amount or unit price, quality and service being equal, and if the public interest will not permit the delay or readvertising for bids, the City Council may accept either bid.
- (g) Performance/Labor/materials Bonds. A labor and materials bond, plus a performance bond shall be required, from an acceptable surety, in such amounts and in such a form as the City finds reasonably necessary to protect the public interest.
- (h) No Bids. If no bids are received, the project may be performed by City employees by force account, or by informal bidding procedures without further complying with this article.

Sec. 3-10-307. Rejection of Bids.

- (a) In its discretion, the City Council may reject any bids presented. If after the first invitation for bids all bids are rejected, the City shall state the reasons for the rejection, and after reevaluating its cost estimates of the project, the City shall have the option of either of the following:
 - (1) Abandoning the project or readvertising for bids in the manner described by this article.
 - (2) By passage of a resolution by a four-fifths (4/5) vote of the City Council declaring that the project can be performed more economically by City employees, may have the project done by force account without further complying with this article.

Sec. 3-10.308. Emergencies; Procedure.

In cases of great emergency as determined by the City Council, including, but not limited to, states of emergency defined in Section 8558 of the Government Code, when repair or replacements are necessary to permit the continued conduct of the operation of services of the City, or to avoid danger to life or property, the City Council, by majority vote, may proceed at once to replace or repair any public facility without adopting plans, specification, or working details, or give notice for bids to let a contracts. The work may be done by City forces, by contract, or by a combination of the two (2). The City Council delegates to the City Manager, the authority to declare a public emergency subject to confirmation by the City Council by a four-fifths (4/5) vote, at its next meeting.

Section 3-10.309. Staging of Public Works.

Public Works contracts shall not be knowingly staged or separated into smaller units or segments solely for the purpose of evading the competitive bidding requirements of this chapter.

Sec. 3-10.310. Bid Protests.

Any interested party may file a protest regarding the procurement decisions authorized under this chapter.

- (a) **Notice of Decision.** After a decision regarding a procurement having a value over Thirty Thousand and no/100th (\$30,000.00) Dollars has been made, the Department Head or designee shall notify all persons who submitted a response to a City solicitation of intended award. If a bidder is rejected because the bid is found non-responsive or because the bidder is deemed not-responsible, the City will give written notice to said bidder of evidence reflecting such decision.
- (b) **Time to File Protest.** All protests must be filed in writing and received by the Department Head within five (5) business days of the date on the notice of intended award.
- (c) **Form of Protest.** All protests shall be in writing, state the grounds for the protest, state the facts relevant to the protest, and all evidentiary support to rebut adverse evidence that it or another bidder was either non-responsive or not responsible. All protests have to be filed in accordance with the instructions contained in the solicitation which is the subject of the protest.
- (d) **City Manager Review.** The City Manager or designee shall review the protest and issue a written decision on the protest. The City Manager or designee may base the decision on the written protest alone or may informally gather evidence from the person(s) filing the protest or any other person having relevant information. For procurements having a value of One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars or less, the City Manager's or designee's decision shall be final.
- (e) **Hearing on Protest.** If a bid was rejected on the grounds that the bidder was not a "responsible" bidder, the protesting party must submit materials set forth in subdivision (c) above for consideration. A hearing will be set within a reasonable time to provide a decision before final approval of the selected low bid. For procurements having a value of One Hundred Twenty-five Thousand and no/100th

(\$125,000.00) Dollars or less, the City Manager's or designee's decision shall be final.

- (f) Appeal of City Manager's Decision to City Council. For procurements having a value exceeding One Hundred Twenty-five Thousand and no/100th (\$125,000.00) Dollars, an appeal of the City Manager's decision may be filed with the City Council. All such appeals must be in writing, and shall be filed with the City Clerk within five (5) business days from the date of the City Manager's decision.
- (g) Failure to Timely Appeal. An interested party who fails to file a protest within the times set forth in this section waives any right to protest the issue further. No appeal to either the City Manager or City Council of any decision to award a bid under Chapter 10 may occur once the contract has been awarded.

Article 4. Professional, Management, General or Special Services

Sec. 3-10.401. Award of professional, Management, General or Special Services Contracts Based Upon Competence.

Factors to Consider. In contracting for professional services listed in Government Code Section 4526, selection shall be based on demonstrated competence and on professional qualifications necessary for the satisfactory performance of the services and solicited through a Request for Qualification process.

In contracting for professional services (other than those professions listed in Government Code Section 4526), management, general or special services contracts should only be awarded to firms or persons who have demonstrated "adequate competence" meaning: an adequate level of experience, competence, training, credentials, character, integrity, reputation, financial responsibility, resources, equipment, staffing, and other professional qualifications necessary for more than a satisfactory performance of the services required in the time period needed and price. The cost of the service may be considered, however, the lowest cost may not be the sole factor in deciding which firm or who shall be awarded the contract. It may be in the City's best interest to award the contract to a higher priced contractor based on the scope of services, availability, unique skills, staffing levels, timing, prior experience, familiarity with the City and other factors required by the department. The information needed for determining that level of competence other qualifications and the procedure for selecting such services shall be determined by the City department responsible for recommending the service contract.

- (a) Request for Proposal/Qualifications. The acquiring of services shall be procured through negotiated contract following a Request for Proposal/ Qualifications process. Contracting for services is decentralized and shall be the responsibility of the Department Head requesting the service. The Purchasing Agent may be contacted to assist in the formal Request for Proposal/Qualification (RFP/Q) process.
- (b) Contracts, not within (a) above, for an amount less than Five Thousand and no/100th (\$5,000.00) Dollars. A Department Head may award contracts up to Five Thousand and no/100th (\$5,000.00) Dollars with qualified consultants/firms.
- (c) Contracts for an amount exceeding Five Thousand and no/100th (\$5,000.00) Dollars but not more than Fifty Thousand and no/100th (\$50,000.00) Dollars. The requesting department shall meet the following requirement unless an urgency exists pursuant to Section 3-10.205 above:
 - (1) Selection Process. Prepare an informal written document and contact as many companies as necessary to receive a minimum of three (3) written responses from consultants/firms. This requirement may be waived for good cause in writing by the Department Head and Purchasing Agent in consultation with one another.
 - (2) Award. The Department Head shall prepare a written recommendation to the Purchasing Officer for the firm or person to be awarded the contract. The Purchasing Officer shall award the contract.
 - (3) Contract Document. A written contract must be established and the City Manager or designee must sign/approve any service contract in an amount exceeding Five Thousand and no/100th (\$5,000.00) Dollars but not more than Fifty Thousand and no/100ths (\$50,000.00) Dollars.
- (d) Contracts for an amount exceeding Fifty Thousand and no/100ths (\$50,000.00) Dollars and over. Departments shall utilize a Sealed Request for Proposal process essentially meeting the following requirements unless an urgency exists pursuant in Section 3-10.205 above:
 - (1) Request for Proposal/Qualification (RFP/Q) solicitation process. A formal Sealed Request for Proposal/Qualification (herein "RFP/Q") document shall be developed for solicitation of professional, management, or general and

- special services contracts for an amount exceeding Fifty Thousand and no/100ths (\$50,000.00) Dollars
- (2) Advertisement. The department shall advertise in appropriate publications and/or use the Professional Services Listings, as available, and post on the City's purchasing website, during the solicitation process.
 - (3) Fourteen (14) Day Notice. Notice inviting RFP/Q's shall be posted at City Hall at least fourteen (14) calendar days before the due date of submission of the RFP/Q.
 - (4) Notice Contents. The notice shall include a description of general type of service needed, how the RFP/Q minimum Scope of Work can be obtained, any pre-proposal conferences anticipated, the requirement of a written sealed proposal, state the closing date, and place and time for submission of the RFP/Q.
 - (5) Solicitation Procedure. Sealed Request for Proposals/Qualifications should be submitted to the department. RFP/Q's need not be opened publicly. All proposals shall be analyzed by the department for compliance with RFP/Q requirements, value of the total scope of services. Follow-up interviews of the most qualified of those submitting a proposal should be held.
 - (6) Award. Professional, Management, General, and Special Services contracts of an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars should be awarded by City Council.
 - (7) Contract Amendments. The City Manager is authorized to issue Contract Amendments as set forth:
 - (i) If the contract was originally executed for an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars or less, the City Manager shall have the authority to issue Contract Amendments, provided that the sum of all amendments, plus original contract amount, shall not exceed Fifty Thousand and no/100th (\$50,000.00) Dollars. If the amended contract will exceed Fifty Thousand and no/100th (\$50,000.00) Dollars, the City Council shall make a finding that it is in the best interest of the City to waive the normal selection process and approve the amendment to the contract.
 - (ii) For a contract originally executed for an amount of Fifty Thousand and no/100th (\$50,000.00) Dollars and over and originally approved by City Council, the City Manager shall have authority to issue contract amendments, provided that the sum of all contract amendments for any single contract shall not exceed the amount approved by City Council. If the amended

contract will exceed the amount previously approved by City Council, the contract amendment must be approved by City Council.

- (8) **Master Professional Services Contracts.** For those professional services as defined in Government Code Section 4526, master single or multi-year contracts with several consultants with a general scope of work may be set up for a total not-to-exceed dollar amount as approved by City Council.
- (i) A formal Request for Qualification process shall be used in accordance with Municipal Code Section 3-10.401(d) and awarded based on qualifications plus reasonableness of cost.
 - (ii) Task Orders shall be issued pursuant to the Master Contract with a specific scope of work and the City Manager shall have authority to execute such Task Order for individual projects for Fifty Thousand and no/100th (\$50,000.00) Dollars or less.
 - (iii) Any Task Orders in an amount exceeding Fifty Thousand and no/100th (\$50,000.00) Dollars will require City Council's approval pursuant to the terms of the Master Contract.

Article 5. Waiving of Purchasing Procedures

Sec. 3-10.501. Waiving of Purchasing Procedures

In its discretion, the City Council may at any time, without amending this chapter, waive the purchasing procedures or alter these proceedings to fit a specific purchase or contract, when such waiver is not in violation of state or federal law. A request for waiver should occur only when unforeseen circumstances arise that justify an exception to following the provisions of this ordinance and is in the best interest of the City.

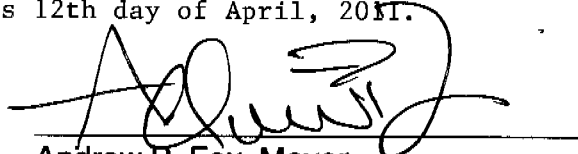
Part 2
(Uncodified)

Severability

If any section, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The City Council hereby declares that it would have passed this ordinance, and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.


This ordinance shall take effect on May 13, 2011.

PASSED AND ADOPTED this 12th day of April, 2011.



Andrew P. Fox, Mayor
City of Thousand Oaks, California

ATTEST:



Linda D. Lawrence, City Clerk

APPROVED AS TO FORM:



Amy Albano, City Attorney

APPROVED AS TO ADMINISTRATION:



Scott Mitnick, City Manager

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.
CITY OF THOUSAND OAKS)

I, LINDA D. LAWRENCE, City Clerk of the City of Thousand Oaks, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Ordinance No. 1553-NS, that was introduced by said City Council at a regular meeting held March 22, 2011, and adopted by said City Council at a regular meeting held on April 12, 2011 by the following vote:


AYES: Councilmembers Gillette, Bill-de la Peña, Glancy, Irwin and Mayor Fox

NOES: None

ABSENT: None

I further certify that said Ordinance No. 1553-NS was published as required by law in the THOUSAND OAKS STAR, a newspaper of general circulation printed and published in said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Thousand Oaks, California.



Linda D. Lawrence, City Clerk
City of Thousand Oaks, California