ORDINANCE NO. 1340

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES ENTITLED "FINANCE", UNDER ARTICLE III, ENTITLED "PROCUREMENT CODE", SPECIFICALLY AT SECTION 7-118, ENTITLED "DEFINITIONS", SECTION 7-120, ENTITLED "APPLICATION OF THIS CODE", SECTION 7-121, ENTITLED "EXCEPTIONS", AND A NEW SECTION 7-153, ENTITLED "PURCHASE OR LEASE OF REAL PROPERTY", TO PROVIDE FOR THE INCLUSION AND APPLICABILITY OF THE PROCUREMENT CODE TO ALL REAL PROPERTY PURCHASES AND LEASEHOLD TRANSACTIONS, PURSUANT TO STATUTORY LAWS AND IN ACCORDANCE WITH THE POWERS VESTED TO THE CITY BY THE FLORIDA CONSTITUTION; PROVIDING FOR REPEAL, CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2(b), Florida Constitution, grants municipalities the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, render municipal services, and the right to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, under Section 166.021(8)(c), Florida Statutes, municipal purpose constitutes, among other things, the expenditure of public funds for economic development activities, developing or improving local infrastructure, and leasing or conveying real property; and

WHEREAS, the statutory and constitutional powers granted to the City of North Miami ("City") include the right and the authority to procure goods, services, commodities, real and personal property, and non-fee interests in real property; and

WHEREAS, on October 23, 2007, the Mayor and City Council, in accordance with Florida law, passed and adopted Article III, Chapter 7 of the City Code ("Procurement Code"), to provide the City with an unified and centralized purchasing system to maximize, to the fullest extent practicable, the purchasing power of public funds; and

WHEREAS, the Procurement Code currently excludes a methodology for the purchase of real property, and offers no other procedure to follow when the attainment of real property is necessary to fulfill and serve a greater public purpose; and

WHEREAS, the proposed amendment to the Procurement Code will delineate and clarify the City's responsibilities when the requirement to purchase real property or obtain a leasehold interest is clearly manifested; and

WHEREAS, the proposed amendment to the Procurement Code will ensure fair and equitable treatment of persons conveying real properties, thereby allowing the City to facilitate economic development activities and the development or improvement of municipal infrastructure; and

WHEREAS, the Mayor and City Council of the City of North Miami have determined that the proposed amendment to the Procurement Code, incorporating regulations for the purchase or lease of real property, serves the best interest of the City and improves the safety and welfare of all its residents.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, THAT:

Section 1. The Mayor and City Council of the City of North Miami, Florida, hereby amend Chapter 7 of the Code of Ordinances entitled "Finance", under Article III, entitled "Procurement Code", specifically at Section 7-118, entitled "Definitions", Section 7-120, entitled "Application of this Code", Section 7-121, entitled "Exceptions", and a new section 7-153, entitled "Purchase or Lease of Real Property", to provide for the inclusion and applicability of the Procurement Code to all real property purchases and leasehold transactions, pursuant to statutory laws and in accordance with the powers vested to the City by the Florida Constitution, as follows:

CHAPTER 7. FINANCE

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ARTICLE III. PROCUREMENT CODE

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DIVISION 1. - GENERALLY

Section 7-118. - Definitions.

For the purposes of this code, the following terms, phrases, words and their derivations shall have the meaning given herein. The word "shall" is always mandatory and not merely directory. Words not defined shall be given the meaning provided under their common and ordinary meaning unless the context suggests otherwise.

Addendum means a document that is subsequently issued to add, supplement, delete, modify or clarify information, directions, instructions, specifications, terms or conditions to a solicitation.

Amendment means a modification, deletion, or addition to an executed contract.

Architectural, engineering, landscape architectural, and surveying and mapping services are those professional services within the scope of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by F.S. § 287.055.

Award means the acceptance of a bid, offer, or proposal by the city.

Bid means a written offer submitted to the city by a prospective offeror to furnish specific services, supplies, or construction in response to an invitation for bid.

Bid bond means a sum of money, which could be in a form of a cashier's check, irrevocable letter of credit, money order or a bond issued by a surety, deposited with a bid or proposal guaranteeing the bidder or offeror will not withdraw the bid or proposal for a specific period of time, will furnish bonds as required, and will accept a contract, if awarded, or forfeit the bid bond.

Bid waiver means a process, whereby supplies or services may be procured without a formal competitive bidding process when determined to be in the best interest of the city.

Blanket purchase order means a purchase order under which a party agrees to provide supplies or services to the city on a demand basis. The blanket purchase order generally establishes a maximum dollar limit, prices, terms, conditions, and the period covered, with no specified quantities. Shipments are to be made as required by the city. Acceptance of a blanket purchase order by a supplier or service provider shall constitute a contract.

Business means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, professional association or any other private legal entity operated for profit or nonprofit.

Change order means a written alteration to a contract or purchase order in accordance with the terms of the contract, which revises the quantities or scope of services, and may include an extension of time to complete the contract.

Competitive sealed proposal means a method for acquiring supplies or services that permits discussions and negotiations with responsible offerors, changes and modifications to proposals, and judgmental factors to be used to evaluate the relative merits of competing proposals.

Cone of silence means a prohibition on any communications between a potential offeror, bidder, service provider, lobbyist, or consultant and certain members of city staff regarding a particular request for proposal (RFP), request for qualifications (RFO), invitations for bids (IFB), or any other advertised solicitation from the time a solicitation is advertised to contract award or recommendation and does not include written communications on file with the city clerk.

Contract means a legally binding written promise enforceable by law between two (2) or more competent parties to perform or not to perform a specific act or acts. Contract means all types of city agreements, regardless of what they may be called, for the procurement of supplies, services, or construction.

Contract modification means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

Contractual services includes, but shall not be limited to, all gas, water, electric light and power services; uniform and cleaning (janitorial) services; pest control, security guard, tree trimming, ground landscaping and maintenance services; and the leasing, rental, repair or maintenance of equipment, supplies, machinery and other city-owned property.

Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvement of any kind to any public real property. It does not include routine repair, operation, or maintenance of existing real property.

Cooperative purchasing means:

(1) Procurement conducted on behalf of two (2) or more governmental entities; or
(2) The combining of requirements of two (2) or more governmental entities in order to obtain the benefits of volume or bulk purchasing and/or reduction in administrative expenses.

Debarment means the exclusion of a person or business from participating in a procurement activity for an extended period of time, as specified by law, because of an illegal or irresponsible action.

Director of the purchasing department means the person holding the position as director of the purchasing department of the purchasing department of the city.

Electronic posting means the posting of solicitations, determinations and other matters related to procurement on a centralized internet website designated by the city for this purpose.

Emergency procurement means a purchase made to alleviate a circumstance threatening the health, welfare, or safety of city residents under contain conditions defined as an emergency by the city which would not allow time for the competitive bidding process.

Energy efficient product means a product in the upper twenty-five (25) percent of efficiency for all similar products, or if there is applicable federal appliance or equipment efficiency standards, a product that is at least ten (10) percent more efficient than the minimum federal standard.

Environmentally preferable products means products that have fewer or reduced negative impacts on human health or the environment compared to competing products that serve the same purpose. This composition may consider raw materials acquisition, production, manufacturing, packaging, distribution, operation, maintenance, reuse and disposal of the product.

Environmentally preferable services means services that have a more beneficial or less adverse impact on human health and the environment when compared with competing services.

Governmental agencies means any agency or association of agencies of federal, state or local government, any public authority which has the power to tax, any other public entity created by statute and any other entity which expends public funds for the procurement of supplies, services or construction.

Informal quotation means an informal price quotation by an offeror to the city to furnish specific supplies or services at a stated price that will not require a sealed bid, public opening, or public reading of bids.

Invitation for bids (IFB) means all documents, whether attached or incorporated by reference, utilized for soliciting competitive bids. The IFB is used when the purchasing department is capable of specifically defining the scope of work of a service that is required or the precise specifications defining the supply or commodities required.

Irregularity means a minor or immaterial defect in a bid that is matter of form rather than substance. A variation of a bid or proposal from the exact requirements of the solicitation, which can be corrected or waived without being prejudicial to other bidders, and has no material effect on the price, quality, quantity or delivery schedule for the supplies or services.

Liquidated damages mean a specific sum stated in the contract to be paid by the party who is in default, or who breaches the contract, to the other party in settlement for damages.

Lowest responsible bidder means the bidder that submitted a responsive bid at the lowest price of all the responsive bids submitted, and whose past performance, reputation, and financial capability is deemed acceptable.

Payment bond means a bond issued by a surety guaranteeing payments to all persons supplying labor or material for the completion of work under contract by the successful bidder or offeror. A payment bond is also referred to as a labor and material bond.

Performance bond means a bond issued by a surety to a successful bidder or offeror, to protect the city from loss to due to the bidder's or offeror's inability to complete and fulfill the contract requirements as agreed.

Pre-bid conference/pre-proposal conference means a meeting held with prospective bidders or offerors prior to their submittal of bids or proposals, to clarify any ambiguities, answer non-technical questions, and ensure all bidders or offerors have a common basis of understanding regarding the supplies or services required.

Preference means when two (2) products or services are equal in performance characteristics and price, the city, in making purchasing decisions, will favor the more environmentally preferable product or service or the more energy efficient product.

Post-consumer recovered materials means a finished material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. Examples of post-consumer recovered materials include, but are not limited to: old newspapers, office paper yard waste, steel and/or aluminum cans, glass, plastic bottles, oil, asphalt, concrete, and tires.

Procurement means the buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services for public purposes. It includes, but is not limited to, all functions which pertain to the obtaining of supplies, services, materials, equipment, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Professional services means services rendered by members of a recognized profession or persons possessing a specialized skill. Such services are generally acquired to obtain advice, information, instruction, training, or direct assistance. Professional services shall include, but not be limited to, services customarily rendered by architects, engineers, surveyors, auditors, software and systems applications, planning, consultants, appraisers, and medical-related providers. Professional services include those services procured pursuant to F.S. § 287.055.

Proposal means an executed document submitted by an offeror to the city in response to a request for proposals or request for qualifications to be used as a basis for negotiations for entering into a contract.

Public notice means the dissemination of information to interested parties using methods that are reasonably available, prior to the date and time of the event. Such methods may include a publication in a newspaper of general circulation in the city, electronic or paper mailing lists, and internet site(s) designated by the city and maintained for that purpose.

Purchase order means the city's official document to formalize and authorize a purchase transaction with a contractor. It should contain a description of supplies and/or services ordered, encumbered funds from specific budget code, applicable terms as to payment, discounts if any, date of delivery or performance, insurance and other factors or conditions relating to the transaction. Acceptance of a purchase order by a contractor shall constitute a contract.

Real estate or real property means land and anything growing on, attached to, or erected on it, including any leasehold interest.

Recycled product means a product manufactured with the maximum practicable amount of recovered material for new, reused, or reconstituted products that meet the quality standards to be used in the marketplace.

Request for proposals (RFP) means all documents, whether attached or incorporated by reference, utilized for soliciting competitive sealed proposals.

Request for qualifications (RFO) means all documents, whether attached or incorporated by reference, utilized for obtaining qualification and performance data, including but not limited to financial capability, reputation, experience, and competency.

Responsible bidder or offeror means a bidder or offeror who has the capability, as determined by the city, to perform fully the contract requirements with the experience, integrity, capacity, facilities, equipment, and reliability which will assure good faith performance.

Responsive bidder means a person who has submitted a bid that conforms in all material respects to the invitation for bids.

Signature means a manual or electronic identifier or the electronic result of an authentication technique attached to or logically associated with a record that is intended by the person using it to have the same full force and effect as manual signature, pursuant to state law.

Small purchase means any purchase made by the director of the purchasing department not exceeding five thousand dollars ($5,000.00) with the use of informal quotations and without the use competitive bids or proposals.

Sole source means the award for supplies or services to the only known capable supplier, occasioned by the unique nature of the supplies or services, the city's particular requirement, the supplier's capability or market conditions.

Solicitation means an invitation for bids, request for proposals, request for quotations or any document used to obtain bids or proposals for the purpose of entering into a contract.

Specification means a description of the physical or functional characteristics, or of the nature of a supply, service, or construction item; the requirements to be satisfied by a product, material, or process indicating, if appropriate, the procedures to determine whether the requirements are satisfied.

Supplies mean all property, including but not limited to equipment, materials, and printing, excluding services and real property.

Surety means an insurer authorized to do business in this state which is legally liable for the debt, default, or failure of a bidder, offeror or contractor to satisfy the obligations of a contract.

Surplus property means any tangible property no longer having any use to the city. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

Tabulation of bids means the charting of bids and bidding data, listing items offered, prices, and delivery schedules, submitted in response to a solicitation.

Termination for convenience means an action by which the city, in accordance with contract provisions, unilaterally cancels all or part of the contract in the best interest of the city, and with no reflection on the contractor's performance.

Termination for default means an action by which the city, in accordance with contract provisions, unilaterally cancels all or part of the contract work due to the contractor's failure to perform in accordance with the terms and conditions of the contract.

Using agency is any department, division, board, committee or other sub-agency of city government using supplies or procuring contractual services as provided for in this code.

Section 7-120. - Application of this code.

(a) *Application to procurement.* This code shall apply to every purchase of supplies, services, real property and construction services obtained by the city council, the city manager, the city clerk, the city attorney and all city departments regardless of the source of funds, including state, federal, county assistance monies, except for the purchase of real or lease properties governed by the Housing Program Guidelines and as otherwise specified by law. Nothing in this code or in the regulations promulgated hereunder shall prevent the city from complying with terms and conditions of any grant, gift, bequest, or cooperative agreement.

(b) *Authority of city council.* The city council shall award contracts as it deems necessary in the best interests of the city, and may waive any conditions imposed by the provisions of this code upon a four-fifths-vote where it finds such waiver to be necessary in order to proceed with the issuance of a contract, proposal or bid which is in the best interests of the city.

Section 7-121. - Exemptions.

Unless otherwise ordered by administrative regulation, the following supplies and services are exempted from this code and may or may not, be procured through the purchasing department, but shall nevertheless be procured, whenever possible, in accordance with the requirements of this code:

(1) Dues and memberships in trade or professional organizations;

(2) Registration fees for trade and career fairs;

(3) Subscriptions for periodicals and newspapers;

(4) Advertisements;

(5) Postage;

(6) Expert witnesses, legal services, special magistrates, mediator services, paralegal services;

(7) Real ~~property, real~~ estate brokerage and appraising, options of title or abstracts of titles for real property;

(8) Title insurance for real property~~, and other related costs of acquisition or sale of real property~~;

(9) Public utility services from regulated utilities, including but not limited to electric, water and sewer;

(10) Copyrighted materials or patented materials including but not limited to technical pamphlets, published books, maps, testing or instructional materials;

(11) Fees and costs of job-related seminars and training;

(12) Lectures by individuals;

(13) Meeting rooms;

(14) Works of art for public places, and art design and conservation services;

(15) Hotel accommodations and travel services on city business;

(16) Purchase of public transportation services;

(17) Purchase of tickets for special events, tourist attractions and amusement parks;

(18) City sponsored events as authorized in the yearly city budget;

(19) Entertainment services (including banquets and similar food services) and, artistic services for city sponsored events; and

(20) Purchases of motor vehicle license plates from a government regulated entity or a government agency.

Section 7-153. Purchase or lease of real property.

(a) The purchase or donation of any interest in real property, including any leasehold interest in real property, shall be made in the manner set forth in this section.

(b) If real property is annually leased or conveyed to the city for no consideration, i.e. by donation or for an amount not exceeding $200,000, no council approval is necessary.

(c) The proposed purchase of real property exceeding a fee simple sales-price amount of $200,000 will require city council approval by a majority of votes.

(d) The proposed lease of real property exceeding an annual rent amount of $200,000 will require city council approval by a majority of votes.

(e) Whenever the city proposes to purchase or lease real property, whether as lessor or lessee, and the fee simple sales-price amount or the annual value of the real property being leased is between $200,000, and $500,000, the city shall prior to consummating the purchase or lease, obtain at least one appraisal. For each proposed purchase or lease in excess of $500,000, the city shall obtain at least two appraisals. The city council shall be informed of each appraisal prior to the city council's approval or disapproval of the transaction. All appraisals shall be conducted by a state approved independent real estate appraiser, in accordance with Section 253.025, Florida Statutes.

(1) Upon the written recommendation of the city manager, the city council may proceed to purchase or lease the real property for an amount greater than the highest value shown on the appraisal, or on the average of appraisals taken, if it finds it to be in the best interest of the city to do so.

(2) Every appraisal, purchase contract, lease, offer and counter offer must be in writing. Such appraisals, purchase contracts, leases, offers and counter offers are not available for public disclosure or inspection and are exempt from the provisions of Section 119.07(1), Florida Statutes, until a purchase contract or lease is executed or otherwise approved by the city council. In the event a purchase contract or lease is not executed or otherwise not approved by city council, the exemption from Section 119.07(1), Florida Statutes, will

expire 30 days after the termination of negotiations of such proposed purchase or lease.

(f) All transactions involving the purchase or lease of real property by the city shall comply with Section 112.313, Florida Statutes, as amended, and with Section 2-310 of the city's Conflict of Interest and Code of Ethics Ordinance, as amended from time to time.

(g) The city attorney shall serve as the legal advisor to the city on all real property transactions under this section, and shall be the final authority regarding the applicability of the city's Land Development Regulations to all properties purchased by the city.

(h) Notwithstanding the foregoing, this article shall not apply to the purchase or lease of real property where the use of federal or state funding sources including, but not limited to, the U.S. Department of Housing and Urban Development (HUD), Community Development Block Grant (CDBG), Home Investment Partnership Grant (HOME), Neighborhood Stabilization Program Funds, and the State Housing Initiative Program Fund (SHIP), would mandate otherwise.

~~Secs. 7-153~~ Secs. 7-154 — 7-157. - Reserved.

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Section 2. **Repeal.** All ordinances or parts of ordinances in conflict or inconsistent are hereby repealed.

Section 3. **Conflicts.** All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 4. **Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Codification.** The provisions of this Ordinance may become and be made a part of the Code of Ordinances of the City of North Miami, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article" or any other appropriate word.

Section 6. **Effective Date.** This Ordinance shall become effective immediately upon adoption on second reading.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, on first reading this 28 day of August, 2012.

PASSED AND ADOPTED by a 3-2 vote of the Mayor and City Council of the City of North Miami, Florida, on second reading this 11 day of September, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ATTORNEY

Moved by: Mayor Pierre

Seconded by: Vice Mayor Steril

Vote:

Mayor Andre D. Pierre, Esq.	x	(Yes)		(No)
Vice Mayor Marie Erlande Steril	x	(Yes)		(No)
Councilperson Michael R. Blynn, Esq.		(Yes)	x	(No)
Councilperson Scott Galvin		(Yes)	x	(No)
Councilperson Jean R. Marcellus	x	(Yes)		(No)

Additions shown by underlining. Deletions shown by ~~overstriking~~.