

ORDINANCE NO. 1685

AN ORDINANCE ADOPTING A PURCHASING AND PROCUREMENT POLICY AND AMENDING THE CODE OF THE CITY OF COLBY, KANSAS, 2017 CHAPTER 1, ARTICLE 10 SECTIONS §1-1001 – 1-1016: REPEALING RESOLUTION NO. 1038 DATED JANUARY 17, 2012.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF COLBY, KANSAS:

SECTION 1. The Code of The City of Colby, Kansas, 2017, Chapter 1, Article 10, §1-1001 – 1-1016 is hereby amended as follows:

§ 1-1001 PURPOSE.

The purpose of this policy, and a goal of the City Manager's office, is to provide for the fair and equitable treatment of all persons involved in public purchasing by the city; to maximize the purchasing value of public funds; to standardize the purchasing procedures and to create a competitive environment through fair opportunity and equitable treatment.

§ 1-1002 APPLICATION.

This policy applies to contracts for the purchasing of all supplies and materials entered into by the city. It shall apply to every expenditure of public funds for supplies and materials by a public department for public purchasing irrespective of the source of the funds. If city staff or resources are used in any manner, this policy shall apply. When the purchase involves the expenditure of federal or state assistance or contract funds, the purchase shall be conducted in accordance with any mandatory applicable federal and/or state law and regulations. The city will make positive efforts to utilize small businesses, minority-owned firms and women's business enterprises, whenever possible. To further this goal, city will: make information available to them and encourage and facilitate their participation; consider whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, disadvantaged business enterprises (DBE) and women's business enterprises (WBE); encourage contracting with a consortium of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of them to handle individually; and use the Chamber of Commerce and the Small Business Administration to identify small businesses, minority-owned firms and women's business enterprises. The city will not make any award or permit any subawards to be debarred or suspended when utilizing grant funds. Nothing in this policy shall prevent any public department from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law. Any agreement for purchases, the duration of which shall exceed one year, shall be subject to annual appropriation.

§ 1-1003 PUBLIC ACCESS TO PURCHASING INFORMATION.

Purchasing information shall be a public record to the extent provided by state statute and shall be available to the public as provided in such statute.

§ 1-1004 DEFINITIONS.

For the purpose of this article, the following definitions apply unless the context clearly indicates or requires a different meaning.

CONTRACT. Any agreement enforceable by law between the city and one or more outside parties, regardless of form or title for the purchase of supplies, materials, services, professional services and construction.

CONTRACT MODIFICATION (BILATERAL CHANGE). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provisions of any contract accomplished by mutual action of the parties to the contract.

INVITATION FOR BIDS. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids.

MODIFICATION. Any written alteration to a provision of any contract accomplished by mutual agreement of the parties to the contract.

PURCHASES. Contracts the value of which is determined by the price to be paid by the city for the item or items then being purchased. For the purpose of determining which, if any, bidding procedure is required, the value of the **PURCHASE** shall be for each individual item. For determining whether a purchase order is required, the value of the **PURCHASE** shall be the sum of the items purchased.

PURCHASING AGENT. According to the municipal code, the City Manager shall, by virtue of his or her own office, be the city's purchasing agent, unless he or she shall appoint some other city officer or employee to perform the duties assigned to such office.

REQUEST FOR PROPOSALS. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

§ 1-1005 OFFICE OF THE PURCHASING AGENT.

(a) *Establishment.* The City Manager shall, by virtue of his or her own office, be the City purchasing agent, unless he or she shall appoint some other city officer or employee to perform the duties assigned to such office. The purchasing agent, pursuant to rules, regulations or ordinance, shall contract for, purchase, store and distribute all supplies, materials, and equipment required by any office, department or agency of the city government.

(b) *Authority and duties.*

(1) The city governing body determines the level of expenditures for each department by adoption of the annual budget. They review disbursements by ordinance. The governing body takes no further action with the exception of awarding bids.

(2) The City Manager, or his or her designee, shall in all cases establish rules and regulations governing the purchase and procurement of goods and/or services to be required by the city and all such rules shall be binding upon the officers and employees of the city. The City Manager shall also have power and shall be required to:

(A) Establish and enforce specifications with respect to supplies, materials and equipment required by the city government;

(B) Inspect or supervise the inspection of all deliveries of supplies, materials and equipment, and determine their quality, quantity and conformance with specifications;

(C) Have charge of general city storerooms and warehouses;

(D) Transfer to or between offices, departments or agencies or sell surplus, obsolete or unused supplies, material and equipment; and

(E) No officer or employee of the city shall be authorized to create any indebtedness or claim against the city, except as provided in this policy, or as may be authorized by rules and regulations of the City Manager.

(c) *Delegation to other city employees.* The City Manager may delegate authority to purchase certain supplies and materials to other city employees.

§ 1-1006 GENERAL PURCHASE PROCEDURES.

(a) All department requests for purchases must be submitted by the Department Head to the Finance Director on a requisition for purchase form. NO PAYMENT will be made unless these procedures are followed.

(b) Purchases must be made at the most responsible, lowest cost obtainable while maintaining adequate service and quality.

(c) Expenditures under \$3,000.00 may be authorized by the Department Head by a completed requisition for purchase. All purchases over \$3,000.00 must have a completed requisition for purchase from the Department Head approved by the City Manager or Finance Director.

(d) All purchases over \$3,000.00 must have prior approval of the City Manager.

(e) It is necessary to have a minimum of two (2) quotes on any item to be purchased for \$5,000.00 or more and attach such quotes to the requisition. If for any reason it is impossible to obtain the required number of quotes, the reason must be stated on the requisition in the Remarks section.

(f) All non-routine wire transfers and automatic clearing house transactions in excess of \$5,000.00 must be approved on a form signed by three City officials authorized to sign checks and provided to the bank prior to the transfer being made.

(g) Purchases totaling \$25,000 or more in tax levy funds must be submitted for competitive bids. The City Council has the option to authorize a waiver of the competitive bid process and shall determine the method for authorization of the purchase provided the waiver is in accordance with any mandatory federal and/or state laws and regulations. The governing body shall review all bids; after reviewing the recommendation from the city staff, the City Council shall determine what purchase, if any, shall be made. The exception to this procedure is in the case of emergency where gaining prior approval from Council is not practical or the time delay would be more costly to the city. The City Manager will then report to Council at its next regular session all items that were purchased as an emergency as well as other expenses that exceeded \$25,000.

(h) Purchases totaling \$25,000.00 or more in the city's enterprise funds must be submitted for competitive bids. The City Council has the option to authorize a waiver of the competitive bid process and shall determine the method for authorization of the purchase provided the waiver is in accordance with any mandatory federal and/or state laws and regulations. The governing body shall review all bids; after reviewing the recommendation from the city staff, the City Council shall determine what purchase, if any, shall be made. The exception to this procedure is in the case of emergency where gaining prior approval from Council is not practical or the time delay would be more costly to the city. The City Manager will then report to Council at its next regular session all items that were purchased as an emergency as well as other expenses that exceeded \$25,000.00.

(i) Purchases of goods and services in excess of \$25,000.00 in any fund, the Governing Body has the option to authorize whether or not the requirement for competitive bids is waived and shall determine the method for authorization of the purchase. All purchases made through a purchasing cooperative will be considered a competitive bid to approved by Council.

(j) The Governing Body shall review all competitive bids. After reviewing the recommendation from the City Staff, the Governing Body shall make the award.

(k) The City Manager shall determine if a bond is required, and if the bidder fails to meet conditions as outlined in publications or specifications, the bond shall be forfeited. Provided, however, that all contracts for any amount in excess of \$100,000.00 for the purpose of making public improvements, or construction any public building or making repairs on the same require a public works bond pursuant to the terms of K.S.A. 60-1111.

(l) The City Governing Body has the right to refuse all or any part of the bid when it is in the best interest of the City.

(m) All contracts for goods and services which establish a continuing relationship between the City and any vendor or contractor shall include and incorporate into the contract the City Contractual Provisions Attachment.

(n) Each person using a purchase/credit card for City goods and services shall be responsible for returning individual receipts detailing the purchases listed on purchase card or credit card statements. Failure to return receipts will make the individual using the card responsible for payment of the purchase.

(o) NO PAYMENT will be made from the purchase card or credit card statement without individual receipts detailing the purchases listed on the statements.

(p) All purchase and credit cards shall be maintained and used by the Department Head or designated individual by the Department Head.

(q) Maximum credit limits for each departmental card shall be established at \$3,000.00; maximum credit limits for the City Manager and Mayor shall be established at \$4,000.00. Such limits may be increased or decreased at any time by the Governing Body of the City of Colby.

(r) The petty cash fund may be used for the purchase of miscellaneous small items of supplies or equipment, meals, and mileage, under control and supervision of the Finance Director.

(s) The City is exempt from Federal Excise Taxes and State Sales Tax with the exception of certain items.

(t) All purchase orders should be closed out within 20 business days after the end of the City's business year. Exceptions include those purchase orders written for ongoing capital projects and major capital outlay items. Other exceptions will be handled on an individual basis with final approval by the City Manager. Purchase orders which are not completed within the specified period of time and are not considered to be exceptions will be voided and the vendors notified.

(u) City bills are approved on the first and third Tuesdays of each month. All bills and invoices are due to the Finance Director five business days before this date.

(v) Claims against the City which provide for a discount for early payment or for the assessment of a penalty for late payment may be authorized to be paid in advance of approval in accordance with K.S.A. 12-105b when authorized by the City Manager in advance of its presentation to and approval by the governing body if payment of the amount of such claim is required before the next scheduled regular meeting of the governing body in order for the municipality to benefit from the discount provided for early payment or to avoid assessment of the penalty for late payment. The City Manager shall keep an accurate record of all moneys paid and the purpose for which expended and shall submit the record to the governing body at the next meeting thereof. Payment of claims by an officer or employee of the municipality under authority of this subsection are valid to the same extent as if the claims had been approved and ordered to be paid by the governing body.

(w) Any deviation of this purchasing policy shall be first approved by the City Manager.

(x) *Purchase exceptions to general purchasing procedures and Council action.* The purchases of these items are excepted from bids or quotes or Council action and the use of purchase orders are waived:

- (1) Petty cash reimbursements;
- (2) Utility bills, including the cost of purchased power;
- (3) Maintenance and service contracts (up to \$5,000);
- (4) Interdepartmental transfers or charges;
- (5) Medical expenses;
- (6) Legal notices;
- (7) Postage costs;
- (8) Memberships and dues;
- (9) Mileage, travel, conference reimbursements;
- (10) Fees and taxes of other units of government;
- (11) Health insurance*;

- (12) Worker's compensation insurance*;
- (13) Property and casualty insurance*;
- (14) Auditing services*;
- (15) AV Fuel (Airport Fuel Sales) *;
- (16) City Electric Power Generator Diesel Purchases*.

*At the request of either the City Manager or City Council, these items may go out for competitive bid as the need arises.

§ 1-1007 COMPETITIVE SEALED BIDS.

This procurement procedure may be initiated at the discretion of the City Council and/or the City Manager. It is typically used for all public improvement and construction projects expected to cost more than \$25,000.00 and will be used for all applicable purchases of \$100,000 or more. Under K.S.A. 60-1111, a payment bond is required for construction projects which exceed \$100,000 and all other bonds as required by the City Council.

- (a) *Invitation for bids.* An invitation for bids shall be issued and shall include a purchase description and all contractual terms and conditions applicable to the purchase.
- (b) *Public notice.* Adequate public notice of the invitation for bids shall be given by mailing to as many prospective bidders as reasonable. Such notice at the discretion of the City Manager may be published in the official city newspaper and the City website allowing reasonable time prior to bid opening. If published, the notice shall be filed with the City Clerk and be open to public inspection.
- (c) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and other relevant information, together with the name of each bidder shall be recorded. The record of bids shall be open to public inspection.
- (d) *Correction or withdrawal of bids; cancellation of awards.* Corrections or withdrawals of inadvertent erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted after authorization by the City Council.
- (e) *Award.* The contract shall be awarded or rejected with reasonable promptness. Award will be made to the bidder who submits a responsive bid most advantageous to the city. The city reserves the right to reject any and all bids.

§ 1-1008 NON-COMPETITIVE SELECTION.

This procurement procedure is to award a supply, service or construction item without competition as determined under the following circumstances.

(a) *Sole source purchases.*

(1) A contract may be awarded or a purchase made without competition when, after conducting a good faith review of available sources, it is determined that there is only one source for the required product. The City Manager may then conduct negotiations, as appropriate, as to price, delivery and terms. Circumstances that require a sole source purchase may include, but are not limited to:

(A) No competitive product or availability from only one supplier;

(B) The purchase of a component or replacement part for which there is no commercially available product, and which can be obtained only from the manufacturer;

(C) The purchase of an item where compatibility is the overriding consideration, such as to maintain standardization or compatibility or to match materials already in use to produce visual harmony;

(D) The purchase of a used item; and

(E) The purchase of a product for trial or testing.

(F) The purchase of a product is through a contract. i.e. aviation fuel.

(2) Sole source can refer to the supplier, as well as a product or service. Thus, the ability to meet a delivery date or to provide on-call repairs can create a sole supplier condition. Justification for a sole source purchase depends on a needed item being available from only a single supplier under the prevailing conditions. If the item may be obtained from more than one source, price competition may be solicited.

(b) *Emergency purchases.* An emergency condition exists when there is a threat to public health, welfare, or safety such as may arise by reason of storms, floods, epidemics, equipment failure and the like. The condition must create an immediate and serious need for supplies, equipment, materials and/or services that cannot be met through normal procurement methods and the lack of which would threaten the function of city government or its programs. Any department may make emergency purchases when an emergency arises, however with such competition as is possible under the circumstances. Purchases shall be limited to only the quantity necessary to meet the emergency, and in no event shall the contract price exceed commercially reasonable prices. If the emergency arises after normal working hours, the appropriate department shall notify the City Manager as soon as possible and no later than the next working day.

(c) *Cooperative bidding and state bid awards.* It is sometimes beneficial to group the city's requirements with the like requirements of other cities, counties or agencies. This results in lower costs to all parties while maintaining the integrity of each entity's bidding requirements. The state bids many common requirements and makes the award results available to any governmental agency. State bid awards enable government agencies to purchase goods and services at a reduced

price due to quantity discounts and do not require the bidding process by individual agencies. State bids are considered to meet the sealed bid requirements of the city's procurement policy. The director of purchases may participate in, sponsor, conduct, or administer a cooperative purchasing agreement or consortium for purchases of supplies, materials, equipment, and contractual services with federal agencies or agencies of other states or local units of government. Cooperative purchasing agreements entered into under this subsection shall not be subject to; (K.S.A. 75-3739 through 75-3740a, and amendments thereto).

§ 1-1009 COMPETITIVE NEGOTIATION.

(a) This procurement procedure is initiated by making public request for proposals (RFP) or request for qualifications (RFQ). The RFP will be used when price is a factor in selection; the RFQ will be used when price is considered after selection (this is usually applicable only for architectural and engineering services).

(b) Competitive negotiations may be used if conditions are not appropriate for the use of competitive sealed bids.

(1) In both the RFP and RFQ, the services to be procured are clearly defined, as are the factors to be used in evaluation and selection. A written basis of selection must be prepared.

(2) All proposals received are to be reviewed according to the written criteria given to prospective bidders and the review should be in writing, basis of selection must be documented.

(3) For RFQs, an invitation is made to one or more respondents to negotiate a price or fee.

(4) Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

(5) All unsuccessful bidders must be notified in writing.

§ 1-1010 PURCHASE/CREDIT CARD POLICY.

The purchase/credit card is a tool designed to complement the city's purchasing and payable processes. Issuance of a purchase/credit card is a privilege and every reasonable effort must be made to ensure that funds are used responsibly. This card can be used for conference registration; hotel (lodging), airfare, purchase of small items of city goods and services, and purchases of goods and services on the Internet. The credit card is subject to a limit of \$3,000 for department heads and \$4,000 for the Mayor and City Manager.

(a) *Approvals.* Each transaction must be approved for appropriateness and policy compliance and must be consistent with the city's purchasing policy. Each person using a purchase/credit card for city goods and services shall be responsible for returning individual receipts detailing the purchases listed on the statements. Failure to return receipts will make the individual using the card responsible for payment of the purchase.

(b) *Card security.* Purchase/credit cards must always be stored in a secure place. Persons with access to the cards or any documentation containing the card numbers should recognize the importance of protecting the account number.

(c) *Documentation required*

(1) *Purchase of goods.* Purchases must be documented and supported by the original itemized receipts. A copy of the order confirmation itemizing all costs is required for Internet purchases. If the required documentation for the purchase is not available, an explanation must be recorded on the transaction form. In addition to the documentation above, additional information is required for business meals and departmental business functions. IRS rules require recording the time, date, place, business purpose and attendees for all business meal purchases. The itemized business meal receipt must include the specific items ordered (indicating “food and beverage” is not acceptable). Purchases for food and supplies for a departmental business function must include a description of the attending group. Alcohol and tobacco products cannot be purchased under any circumstances. If an item is returned to the supplier, a credit must be applied to the account. Cash or a due bill cannot be accepted for a returned item.

(2) *Travel.* Purchases must be listed on a travel voucher and supported by the following documentation.

(3) *Conference registration.* A copy of the registration materials that itemizes all conference costs.

(4) *Airline tickets.* The receipt or e-ticket summary that itemizes all costs.

(5) *Hotel.* An original hotel receipt/portfolio that itemizes all costs.

(6) *Rental cars.* An original car rental agency bill that itemizes all costs.

(d) *Explanation.* If the required documentation for the purchase is not available, an explanation must be recorded on the travel form.

(e) *Sales tax.* Except for the Electric Department, the city does not pay sales tax or use tax in Kansas and other states that have a sales tax exemption. A blanket certificate of tax exemption is available from the Finance Director.

(f) *Disputes.* It is the responsibility of the purchaser and/or Finance Director to seek resolution with the supplier regarding unauthorized charges. The city reserves the right to seek legal or other remedies for disputed transactions that cannot be resolved with the supplier.

(g) *Lost or stolen cards.* It is the responsibility of the person issued a purchase/credit card to notify the Finance Director immediately if a card is lost or stolen.

(h) *Cancellation of purchasing cards.* If a department chooses to cancel a purchase/credit card, the cut-up card must be sent to the Finance Director. This cancellation process should not begin until all outstanding expenses have been reallocated.

(i) *Statements.* Each month the bank issues a statement to the name associated with the account, if transactions were made within that month. Each card holder shall reconcile all transactions on their statement and ensure proper documentation is attached. In addition, a control account statement for all purchase/credit card activity is issued and shall be reviewed and reconciled by the Finance Director before being sent to accounts payable.

(j) *Record retention requirements.* Required documentation and the card statements are the official record for purchase/credit card transactions and must be retained by the Finance Department.

(k) *Misuse of card.* Fraudulent use of the purchase/credit card will result in immediate revocation of the card and may result in corrective action up to and including termination and/or criminal action. In addition, the city will seek restitution for any inappropriate charge.

(l) *Restricted purchases.* The following purchases cannot be made with a purchasing card:

(1) Advertising (except classified ads under \$1,000);

(2) Internet connectivity (and associated Internet expenses), except while on travel status;

(3) Cash advances or ATMs;

(4) Alcohol and tobacco products; and

(5) Personal expenses.

§ 1-1011 BONDS AND CONTRACT CLAUSES.

(a) *Bid, performance and payment bonds.* When deemed necessary by the purchasing agent, bid bonds, performance bonds, payment bonds or other equivalent security shall be required to protect the city's interests. Any such bonding requirements shall be set forth in the solicitation. Bid or performance bonds shall not be used as a substitute for a determination of a bidder or offeror's responsibility. Bonds shall be provided by a surety company authorized to do business in Kansas, or the equivalent in cash, or otherwise supplied in a form satisfactory to the city. Unsuccessful bidders or offerors shall be entitled to the return of any cash deposit. Unless a specific extension is granted in writing, a successful bidder or offeror shall forfeit any bid bond or equivalent security required by the purchasing agent or this section upon its failure to enter into a contract within a reasonable amount of time after the award.

(b) *Types of contracts.*

(1) *General authority.* Subject to the limitations of this section, any type of contract which is appropriate to the procurement and which will promote the best interests of the city may be used; provided that, the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the city than any other type or that it is impracticable to obtain the supply, service or construction item required, except under such a contract.

(2) *Multi-term contracts.*

(A) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time deemed to be in the best interests of the city; provided, the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting.

(B) Multi-term contracts shall be expressly contingent upon the annual budgeting and appropriation of sufficient funds on an annual basis.

(C) When funds are not appropriated or otherwise made available to support the continuation of the city's performance in a subsequent fiscal period, the contract shall be cancelled.

(3) *Multiple source contracting.* A multiple source award may be made when an award to two or more bidders or offerors for similar supplies or services is necessary for adequate delivery, service or product compatibility.

(c) *Contract administration.* A contract administration system shall be maintained that is designed to ensure that a contractor is performing in accordance with the solicitation, terms and conditions under which the contract was awarded.

(d) *City purchasing records.*

(1) *Contract file.* All contracts shall be maintained for the city in a file by the City Clerk.

(2) *Retention of purchasing records.* All purchasing records shall be retained and disposed of by the city in accordance with records retention guidelines and schedules as required by Kansas statutes.

(e) *Local business preferences.* It is the policy to solicit bids from local suppliers whenever local sources exist.

§ 1-1012 APPEALS AND REMEDIES.

(a) *Right to protests.* Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the City Council. A protest with respect to an invitation for bids or request for proposals shall be submitted in writing prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. The protest shall be submitted within seven calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) *Stay of purchase during protests.* In the event of a timely protest under division (a) above, the City Manager, or his or her designee, shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or a determination has been made, in writing, that the award of a contract without delay is necessary to protect substantial interest of the city.

§ 1-1013 ETHICS IN PUBLIC CONTRACTING.

(a) *Criminal penalties.* To the extent that violations of the requirements set forth in this article constitute violations of state statutes, they shall be punishable as provided therein. Such penalties shall be in addition to the civil sanctions set forth in this article. Criminal, civil and administrative sanctions against employees or non-employees, which are in existence on the effective date of this policy, shall not be affected.

(b) *Employee conflict of interest.* Public employment is a public trust. It is the policy of the city to promote and balance the objective of protecting governmental integrity and the objective of facilitating the recruitment and retention of personnel needed by the city. Such policy is implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public service. Public employees must discharge their duties impartially so as to assure fair competitive access to governmental purchasing by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the city purchasing organization. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

(c) *Gratuities and kickbacks.*

(1) *Gratuities.* It shall be unethical for any person to offer, give or agree to give any city employee or former city employee, or for any city employee or former city employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or purchasing standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

(2) *Kickbacks.* It shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(d) *Prohibition against contingent fees.* It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a city contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(e) *Use of confidential information.* It shall be unethical for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

(f) *Sanctions.*

(1) *Employees.* Employees found to have violated one or more of the ethical standards in this article shall be subject to the disciplinary sanctions prescribed in the "City of Colby Personnel Handbook".

(2) *Non-employees.* The City Manager may impose any one or more of the following sanctions on a non-employee for violations of the ethical standards:

(A) Written warnings or reprimands;

(B) Termination of contracts, not entered into by the City Council; or

(C) Debarment or suspension.

(3) *City Council contracts.* The City Council may impose any one or more of the following sanctions on a non-employee for violations of ethical standards:

(A) Written warnings or reprimands;

(B) Termination of contracts; or

(C) Debarment or suspension.

(g) *Recovery of value transferred or received in breach of ethical standards.*

(1) *General provisions.* The value of anything transferred or received in breach of the ethical standards of this article by a city employee or a non-employee may be recovered from both city employee and non-employee.

(2) *Recovery of kickbacks by the city.* Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the city and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties.

§ 1-1014 DISPOSAL OF CITY PROPERTY.

(a) Disposal of goods shall follow these requirements:

(1) Goods with an expected value of less than \$750 may be disposed of in the most appropriate manner with the authorization of the City Manager;

(2) Upon approval of the City Council, goods with an expected value of over \$750 may be disposed of by either a trade-in, public auction, sealed bids or by solicitation in the city newspaper and the City website;

(3) All items which might be donated to another town or non-profit organization shall require approval of the City Council;

(4) All interests in real property, both leasehold and fee interest, will require approval of City Council.

(b) Sale proceeds resulting from the disposal of city property shall be placed in the appropriate fund.

(c) Each department shall establish a procedure for maintaining an up-to-date property and inventory record of all equipment, except expendables, held by the city and for the disposal of obsolete surplus or non-usable materials, supplies and equipment. Finance must be advised of the disposition in order that insurance records may be maintained.

§ 1-1015 CONTRACTS FOR SERVICES.

(a) *Determination of need.* Equipment owned by the city shall be available for use under a contract for service by the public only when such equipment is not available from private enterprise in the city or the county or in case of an emergency which threatens life or property.

(b) *Authorization of contract for service.* All contracts for service using equipment owned by the city shall be authorized and approved by the department head or the City Manager.

(c) *Operation of city equipment.* When city equipment is used under a contract for service by the public, such equipment shall be under the care, custody and control of a city employee at all times and such employee shall be paid the appropriate rate of pay as detailed in the "City of Colby Personnel Policies Handbook".

(d) *Fees for contracts for service using city equipment or facilities.* Charges for use of city equipment shall be based on the Public Works fee list. Labor charges for city employees shall be the actual hourly wage, plus 40% for benefits.

(e) *Opting out of state statute.* K.S.A. 14-440 as adopted by the Kansas legislature is not uniformly applicable to all cities. The City of Colby, Kansas, a city of the second class, by virtue of its home rule power vested in it by Article 12, Section 5 of the Constitution of the State of Kansas, hereby elects to exempt and does exempt itself from and make inapplicable to it K.S.A. 14-440.

In lieu of K.S.A. 14-440, the Governing Body of the City of Colby, Kansas, hereby adopts the following substitute provision:

Before the city council shall make any contract for building bridges or sidewalks or for any work on streets, or for any other work or improvement exceeding the sum of twenty-five thousand dollars (\$25,000.00), an estimate of the cost thereof shall be made by the city engineer or licensed professional engineer and submitted to the council; and no contract shall be entered into for any work or improvement at a price exceeding one hundred and ten percent (110%) of such estimate.

§ 1-1016 REQUIRED PROCUREMENT POLICIES WHEN USING STATE OR FEDERAL FUNDS

(a) CERTIFICATION OF COMPANY NOT CURRENTLY ENGAGED IN A BOYCOTT OF GOODS or SERVICES FROM ISRAEL

In accordance with HB 2482, 2018 Legislative Session, the State of Kansas shall not enter into a contract with a Company to acquire or dispose of goods or services with an aggregate price of more than \$100,000, unless such Company submits a written certification that such Company is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State.

As a Contractor entering into a contract with the State of Kansas, it is hereby certified that the Company listed below is not currently engaged in a boycott of Israel as set forth in HB 2482, 2018 Legislature.

(b) Policy Regarding Sexual Harassment

WHEREAS, sexual harassment and retaliation for sexual harassment claims are unacceptable forms of discrimination that must not be tolerated in the workplace; and

WHEREAS, state and federal employment discrimination laws prohibit sexual harassment and retaliation in the workplace; and

WHEREAS, officers and employees of the State of Kansas are entitled to working conditions that are free from sexual harassment, discrimination, and retaliation; and

WHEREAS, the Governor and all officers and employees of the State of Kansas should seek to foster a culture that does not tolerate sexual harassment, retaliation, and unlawful discrimination.

NOW THEREFORE, pursuant to the authority vested in me as Governor of the State of Kansas, I hereby order as follows:

1. All Executive Branch department and agency heads shall have available, and shall regularly review and update at least every three years or more frequently as necessary, their sexual harassment, discrimination, and retaliation policies. Such policies shall include components for confidentiality and anonymous reporting, applicability to intern positions, and training policies.
2. All Executive Branch department and agency heads shall ensure that their employees, interns, and contractors have been notified of the state's policy against sexual harassment, discrimination, or retaliation, and shall further ensure that such persons are aware of the procedures for submitting a complaint of sexual harassment, discrimination, or retaliation, including an anonymous complaint.
3. Executive Branch departments and agencies shall annually require training seminars regarding the policy against sexual harassment, discrimination, or retaliation. All employees shall complete their initial training session pursuant to this order by the end of the current fiscal year.
4. Within ninety (90) days of this order, all Executive Branch employees, interns, and contractors under the jurisdiction of the Office of the Governor shall be provided a written copy of the policy against sexual harassment, discrimination, and retaliation, and they shall execute a document agreeing and acknowledging that they are aware of and will comply with the policy against sexual harassment, discrimination, and retaliation.
5. Matters involving any elected official, department or agency head, or any appointee of the Governor may be investigated by independent legal counsel.
6. The Office of the Governor will require annual mandatory training seminars for all staff, employees, and interns in the office regarding the policy against sexual harassment, discrimination, and retaliation, and shall maintain a record of attendance.
7. Allegations of sexual harassment, discrimination, or retaliation within the Office of the Governor will be investigated promptly, and violations of law or policy shall constitute grounds for disciplinary action, including dismissal.
8. This Order is intended to supplement existing laws and regulations concerning sexual harassment and discrimination, and shall not be interpreted to in any way diminish such laws and regulations. The Order provides conduct requirements for covered persons, and is not intended to create any new right or benefit enforceable against the State of Kansas.

9. Persons seeking to report violations of this Order, or guidance regarding the application or interpretation of this Order, may contact the Office of the Governor regarding such matters.

Agreement to Comply with the Policy Against Sexual Harassment, Discrimination, and Retaliation.

I hereby acknowledge that I have received a copy of the State of Kansas Policy Against Sexual Harassment, Discrimination, and Retaliation established by Executive Order 18-04 and agree to comply with the provisions of this policy.

(c) CERTIFICATION OF COMPANY NOT CURRENTLY ENGAGED IN THE PROCUREMENT OR OBTAINMENT OF CERTAIN EQUIPMENT, SERVICES, OR SYSTEMS

WHEREAS, pursuant to Public Law 115-232, Section 889 of the John S. McCain National Defense Authorization Act of 2019, “covered telecommunications equipment or services” is defined as:

- (1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (2) Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, and Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (3) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

WHEREAS, a “covered foreign country” means any of the following: (1) The People’s Republic of China, (2) The Russian Federation, or (3) any country that is a state sponsor of terrorism.

WHEREAS, foreign adversaries are increasingly creating and exploiting vulnerabilities in covered telecommunications equipment which store and communicate vast amounts of sensitive information and support infrastructure and emergency services, in order to commit malicious cyber-enabled actions;

WHEREAS, the unrestricted acquisition or use in the State of Kansas of covered telecommunications equipment designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries augments the ability of foreign adversaries to create and exploit vulnerabilities in technological equipment, services, or systems; and

WHEREAS, the State of Kansas has an interest in protecting itself against threats related to foreign adversary’s exploitation of vulnerabilities in covered telecommunications equipment.

THEREFORE, Contractor certifies that it shall not provide or procure to the State of Kansas or any agency thereof any covered telecommunications equipment either in whole or in part of any product or during the commission of any service.

FURTHERMORE, and notwithstanding any other contracts or agreements with Contractor, if Contractor has violated, misrepresented, or otherwise fails to comply with this certification document as determined by the State, the State may terminate any contract without penalty with Contractor immediately.

By signing below, Contractor acknowledges and agrees to comply with the provisions of this policy.

SECTION 2. REPEALER. Resolution No. 1038, dated January 17, 2012, is hereby repealed.

SECTION 3. The Code of The City of Colby, Kansas, 2017, Chapter 1, Article 10 §1-1001 – 1-1016 is hereby amended.

SECTION 4. This Ordinance shall be in full force and effect from and after its publication in the official city paper as provided by law.

PASSED by the Governing Body and approved by the mayor this 4th day of February, 2025.

Lee Leiker, Mayor

ATTEST:

Joni L. Ketchum, City Clerk

Seal