

## Title 3 - REVENUE AND FINANCE

### Chapter 3.03 - VOTER APPROVAL TO IMPOSE SALES AND USE TAX

#### 3.03.100 - Voter approval to impose sales and use taxes—Time for election.

- A. This section applies to each sales and use tax set forth under this title that requires voter authorization prior to the imposition of the sales and use tax.
- B. An election held to obtain voter authorization to impose a sales and use tax, under this title shall be held at a regular general election conducted in accordance with the procedures and requirements of state law.
- C. Except as provided herein, an election to authorize the imposition of a sales and use tax may not be held on the same date as a municipal general election or any other date prohibited by state law.
- D. Notwithstanding the provisions of this section, an election to authorize the imposition of a sales and use tax may be submitted on the same date as a municipal general election if the ordinance or resolution calling for the election to authorize imposition of a sales and use tax is adopted by a two-thirds majority of all members of the council.

### Chapter 3.04 - LOCAL SALES AND USE TAX

#### 3.04.010 - Title of provisions.

The ordinance codified in this chapter shall be known as "the Local Sales and Use Tax Ordinance of the City of Millcreek.

#### 3.04.020 - Purpose of provisions.

The City Council hereby declares that the ordinance codified in this chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish these purposes:

- A. To adopt a sales and use tax ordinance that complies with the requirements and limitations contained in the Local Sales and Use Tax Law of Utah, Title 59, Chapter 12, Part 2 Utah Code Annotated (1953), as amended;
- B. To adopt a sales and use tax ordinance that incorporates provisions identical to those of Chapters 12 of Title 59, Utah Code Annotated (1953), as amended, insofar as those provisions are not inconsistent with the requirements and limitations contained in said Local Sales and Use Tax Law of Utah;
- C. To adopt a taxing ordinance that levies a City sales and use tax, that provides the measure thereof upon which to impose said tax as permitted by state law, and that meets the statutory requirements and administrative procedures followed by the State Tax Commission in the administration and collection of sales and use taxes in the state;
- D. To adopt a sales and use tax ordinance that can be administered in a manner that will exclude the receipts of particular sales from the measure of the sales tax imposed by this City which have been included in the measure of the sales tax imposed by any other City or any municipality, and avoid imposing a use tax on the storage, use or other consumption of tangible personal property in this City when the gross receipts from the sales of or the use of that property have been subject to a sales or use tax by any other City or municipality of the state of Utah, pursuant to a sales and use tax chapter enacted under the provisions of the Sales and Use Tax Law of Utah.

#### 3.04.030 - Sales tax—Imposed—Amount.

There is hereby levied for collection a tax upon every retail sale of tangible personal property, services and meals made within the City, including the areas contained within the municipalities thereof, which sales tax shall be imposed at the rate of one percent of the purchase price paid or charged on said retail sale. The taxability of any sale or use shall be determined pursuant to the provisions of Utah Code Ann. Title 59, Chapter 12, Part 1.

#### 3.04.040 - Place where sales consummated.

For the purposes of this chapter, all retail sales shall be presumed to have been consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination. In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed and adopted by the State Tax Commission. Public utilities, as defined by Title 54, Utah Code Annotated, shall not be obligated to determine the place or places within any City or municipality where public utilities' services are rendered, but the place of the sale of the sales tax revenues arising from such service allocable to the City shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations prescribed and adopted by it.

#### 3.04.050 - Retailer license and registration.

If a license has been issued by the State Tax Commission pursuant to the provisions of Section 59-12-106, Utah Code Annotated (1953), as amended, to a person in the City who is required to collect a sales tax, said person shall not be required to obtain a similar license from the City because of the provisions of this chapter.

#### 3.04.060 - Exclusions.

There shall be excluded from the purchase price paid or charged by which the tax is measured:

- A. The amount of any sales or use tax imposed by the state upon a retailer or consumer;
- B. Receipts from the sale of tangible personal property upon which a sales or use tax has become due by reason of the same transaction to any other City and any municipality in the state of Utah under a sales or use tax ordinance enacted by that City or municipality in accordance with the Local Sales and Use Tax Law of Utah.

#### 3.04.070 - Use tax—Imposed—Amount.

There is hereby levied for collection a tax upon the storage, use or other consumption in the City, including the areas contained within the municipalities thereof, of tangible personal property purchased from any retailer for storage, use or other consumption in the City. Such use tax shall be imposed at the rate of one percent of the sales price of the property, the storage, use, or consumption of which is subject to the tax.

#### 3.04.080 - Exemptions.

There shall be exempt from the taxes due under this chapter:

- A. The amount of any sales or use tax imposed by the state under Title 59, Chapter 12, Utah Code Annotated (1953), as amended;
- B. The sale, storage, use or other consumption of tangible personal property, the purchase price from the sale of or the cost of which has been subject to the imposition of a sales or use tax under a sales and use tax ordinance enacted in accordance with the provisions of Title 11, Chapter 9, Utah Code Annotated (1953), as amended, by another City or municipality in another City in the state of Utah.

#### 3.04.090 - Statutes adopted—Alternating operability.

- A. 1. Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Local Sales and Use Tax Law of Utah, all of the provisions of Title 59, Chapter 12, Part 1, Utah Code Annotated (1953), are hereby adopted and made a part of this chapter as though fully set forth herein.
2. Wherever and to the extent that in Chapter 12, Part 1 of Title 59, Utah Code Annotated (1953), the state of Utah is named or referred to as the taxing agency, the name of this City shall be substituted therefor. Nothing in this subsection shall be deemed to require substitution of the name of the City for the word "state" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the state, nor shall the name of the City be substituted for that of the state when the result of that substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this chapter.

#### 3.04.100 - Credits for taxes paid to cities and towns.

Any person, as defined in Sections 59-15-2 and 59-16-2, Utah Code Annotated (1953), subject to the payment of sales and use taxes as provided in this chapter, shall be entitled to credit against the amount of taxes due thereunder the amount of any taxes due to a city or town in the City, provided the city or town to which the taxes are due has levied a sales and use tax pursuant to and in accordance with the provisions of Title 59, Chapter 12, Utah Code Annotated (1953), as amended.

#### 3.04.110 - Administration—Contract with State Tax Commission.

Prior to the effective date of the amendatory ordinance codified herein, the City shall contract with the State Tax Commission for the said Commission to perform all functions required and incidental to the administration and operation of this chapter, and collect the taxes levied hereunder. The records of the State Tax Commission, the Commission's performance under the contract, and the records of any taxpayer subject to this tax shall be subject to review and audit as provided in the contract and as by law. The State Tax Commission shall be compensated for its services pursuant to the provisions of Utah Code Ann. § 59-12-206.

#### 3.04.120 - Violation—Penalty.

Any person violating any of the provisions of this chapter shall be deemed guilty of a Class B misdemeanor, and upon conviction thereof shall be punishable as set forth in Chapter 1.12 of this code.

### Chapter 3.05 - OPTIONAL CITY SALES AND USE TAX

#### 3.05.010 - Title of provisions.

The ordinance codified in this chapter shall be known as "the optional City sales and use tax."

#### 3.05.020 - Statutory authority.

The authority for imposing this tax is derived from Title 59, Chapter 12, Part Eleven, Utah Code Annotated (1953).

#### 3.05.030 - Purpose of provisions.

The ordinance codified in this chapter is enacted to provide the City with a source of revenue to allow the City to more effectively carry out its role as a political and legal subdivision of the state and the council directs that the provisions hereof be interpreted and construed to accomplish this stated purpose.

#### 3.05.040 - Imposition—Amount.

In addition to all other taxes imposed under this title, the City does impose and levy for collection a sales and use tax of one-quarter of one percent upon the sales and uses described in Section 59-12-103(I),

subject to the exemptions provided for in Section 59-12-104. This tax is imposed upon all sales and uses made in the City, including sales and uses made within the corporate limits of the cities and towns of the City. Provisions of this chapter shall be subject to the provisions of the sales and use tax laws of Utah to which reference is hereinafter made in this chapter and which are enacted and made a part of this chapter as though fully set forth herein.

#### 3.05.050 - Incorporation of state law.

- A. Except as hereinafter provided and except insofar as they are inconsistent with provisions of the City Option Sales and Use Tax Act, all the provisions of Part I, Chapter 12, Title 59, Utah Code Annotated, 1953, as amended, in force and effect on the effective date of the ordinance codified in this chapter insofar as they relate to the tax imposed by this chapter except Sections 59-12-101 and 59-12-119 thereof, are adopted and made a part of this chapter as though fully set forth herein.
- B. Wherever and unto the extent that in Part I, Chapter 12, Title 59, Utah Code Annotated, 1953, the state is named or referred to as the taxing agency, the name of this City shall be substituted therefor. Nothing in this subparagraph shall be deemed to require substitution of the name of the City for the word "state" when that word is used as part of the title of the State Tax Commission, or the Constitution of the State of Utah, nor shall the name of the City be substituted for that of the state in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this chapter.

#### 3.05.060 - Administration, collection and distribution by state.

- A. Taxes imposed pursuant to this chapter shall be levied at the same time and collected in the same manner as provided for in Title 59, Chapter 12, Section 201, et. seq. 1953, as amended, except that the revenue derived from the tax is not subject to the collection and distribution procedures established pursuant to the provisions of Section 59-12-205(2), Utah Code Annotated 1953, as amended. Revenues collected pursuant to this chapter shall be distributed in accordance with Utah Code Ann. Section 59-12-1102(3) and the rules adopted by the Utah State Tax Commission pursuant to Utah Code Ann. Section 59-12-1102(3)(d). All revenues shall collected shall be revenues of either Millcreek City or of any other City entitled to distribution of the same pursuant to the statute.
- B. Any records, tax returns or other information of any person, corporation, company, or other group or organization subject to the taxes imposed by this chapter which relate to the calculation, collection or remittance to the State Tax Commission of such taxes shall be subject to review, inspection, and auditing by Millcreek City. The records of the State Tax Commission and its performance in the collection and distribution of this tax shall be subject to review and audit as provided in the City's contract with the Commission for the collection and distribution of the local sales and use tax and as provided by law.
- C. The fee charged Millcreek City by the State Tax Commission under Utah Code Ann. Section 59-12-206 (1953, as amended) shall be based on the distribution amount resulting after all the applicable distribution calculations under Utah Code Ann. Section 59-12-1102(3) have been made.

#### 3.05.070 - Exemptions.

The sale, storage, use or other consumption of tangible personal property which is exempt from sales or use taxation pursuant to Section 59-12-104 is exempt from the application of the optional City sales and use tax.

### Chapter 3.06 - ADDITIONAL LOCAL SALES AND USE TAX

#### 3.06.010 - Title of provisions.

The ordinance codified in this chapter shall be known as "the Local Sales and Use Tax Addition for a Low-Fare Public Transportation System."

### 3.06.020 - Statutory authority.

The authority for imposing this tax is derived from Title 59, Chapter 12, Part 5, Utah Code Ann. (1953).

### 3.06.030 - Purpose of provisions.

The ordinance codified in this chapter is enacted to provide the City with a source of revenue specifically for the funding and operation of a low-fare public transportation system, and for the City of the First Class State Highway Projects Fund. The council hereby directs that the provisions hereof be interpreted and construed to accomplish these stated purposes.

### 3.06.040 - Imposition—Amount.

- A. Pursuant to Utah Code Ann. Section 59-12-501 and in addition to the other taxes imposed by this title, the City does impose and levy for collection a 0.30 percent sales and use tax upon the retail sales and uses in the City as such sales and uses are described in Section 59-12-103(1), subject to the exemptions provided for in Section 59-12-104 and the exemption from tax for amounts paid for food and food ingredients. The foregoing tax is imposed and levied for collection on a Citywide basis, including the areas within the corporate limits of the cities and towns of the City. The provisions of this chapter shall be subject to the provisions of the sales and use tax laws of Utah to which reference is hereinafter made in this chapter, and which are enacted and made a part of this chapter as though fully set forth herein. The funds received from the imposition of this tax shall be used and expended as provided for by state statute.
- B. Pursuant to Utah Code Ann. Section 59-12-502 and in addition to the other taxes imposed by this title, the City does impose and levy for collection a quarter of one percent sales and use tax upon the retail sales and uses in the City as such sales and uses are described in Section 59-12-103(1), subject to the exemptions provided for in Section 59-12-104 and the exemption from tax for amounts paid for food and food ingredients. The foregoing tax is imposed and levied for collection on a Citywide basis, including the areas within the corporate limits of the cities and towns of the City. The provisions of this chapter shall be subject to the provisions of the sales and use tax laws of Utah to which reference is hereinafter made in this chapter, and which are enacted and made a part of this chapter as though fully set forth herein. The funds received from the imposition of this tax shall be used and expended as provided for by state statute.

### 3.06.050 - Statutes adopted by reference.

The following requirements and provisions of law are adopted and included in this sales and use tax chapter:

- A. The appropriate provisions of Title 59, Chapter 12, Part 2, Utah Code Annotated (1953), as amended, are enacted and incorporated herein by this reference thereto;
- B. The applicable provisions of Title 59, Chapter 12, Utah Code Annotated (1953), are enacted hereby and included in this chapter insofar as they relate to sales and use tax, except that the name of the City, as the taxing agency, shall be substituted for that of the state wherever necessary, that an additional seller's permit shall not be required if one has been or is issued to the seller, and that any retailer who has registered with the State Tax Commission shall not be required to repeat such registration with the City.

### 3.06.060 - Exemptions.

- A. The sale, storage, use or other consumption of tangible personal property, the purchase price or the cost of which has been subject to sales or use tax under a sales and use tax ordinance and enacted in accordance with Title 59, Chapter 12, Part 2, Utah Code Annotated (1953), as amended, by any other City or municipality in any other City in this state, shall be exempt from the tax due under this chapter.

- B. The amount of any sales or use tax paid under Title 59, Chapter 12, Parts 1 and 2 of Utah Code Annotated (1953), as amended, shall not be included as part of the purchase price paid or charged for a taxable item hereunder.
- C. The sales and uses that are exempt from sales or use tax under State statute shall be exempt from the taxes imposed by this chapter.

3.06.070 - Credits.

Any person subject to the provisions of this sales and use tax chapter shall be entitled to a credit against the payment of taxes due under this chapter such amounts as are authorized by law.

3.06.080 - Collection.

Any records, tax returns or other information of any person, corporation, company or other group or organization subject to the taxes imposed by this chapter which relate to the calculation, collection or remittance to the State Tax Commission of said taxes shall be subject to review, inspection and auditing by Millcreek City.

3.06.090 - Assignment of one-fifth of tax imposed by City Ordinance 3.06.040(B).

Pursuant to Utah Code Ann. § 59-12-502(5)(b), the Utah State Tax Commission shall transfer the proceeds of one-fifth of the one-quarter percent sales and use tax imposed by City Ordinance 3.06.040(B) to the City of the First Class State Highway Projects Fund created by Utah Code Ann. § 72-2-121, to be used for such purposes as are authorized by law.

Chapter 3.07 - LOCAL SALES AND USE TAX TO FUND RECREATIONAL AND ZOOLOGICAL FACILITIES AND BOTANICAL, CULTURAL AND ZOOLOGICAL ORGANIZATIONS - Reserved

Chapter 3.08 - LOCAL SALES AND USE TAX FOR FUNDING CORRIDOR PRESERVATION, CONGESTION MITIGATION, AND THE EXPANSION OF CAPACITY FOR REGIONALLY SIGNIFICANT TRANSPORTATION FACILITIES - Reserved

Chapter 3.10 - TOURISM, RECREATION, CULTURAL AND CONVENTION FACILITIES TAX - Reserved

Chapter 3.12 - TRANSIENT ROOM TAX\*

3.12.010 - Title of provisions.

The ordinance codified in this chapter shall be known as "the Transient Room Tax Ordinance of the City of Millcreek."

3.12.020 - Purpose of provisions.

The council declares that the ordinance codified in this chapter is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish these purposes:

- A. To adopt a transient room tax ordinance that complies with the requirements and limitations contained in Title 17, Chapter 31 and Title 59, Chapter 12, Part 3, Utah Code Annotated, as amended;
- B. To adopt a transient room tax ordinance that incorporates provisions identical to those of Chapter 31 of Title 17 and Title 59, Chapter 12, Part 3, Utah Code Annotated (1953), as amended;
- C. To adopt a transient room tax ordinance that imposes a tax and provide a measure therefor that can be administered and collected by the City or State Tax Commission in a manner that adapts

itself as fully as practical to the existing statutory and administrative procedures followed by the State Tax Commission in administering and collecting the sales and use taxes of the state;

- D. To adopt a transient room tax ordinance that can be administered in a manner that will provide funds for the purposes of establishing, financing and promoting tourism, recreation and convention bureaus and such other purposes as have been authorized by law for the expenditure of transient room taxes and for that purpose create, at the discretion of the City, a reserve fund comprised of any funds collected but not expended during any financial year.

#### 3.12.030 - Statutes adopted by reference.

All applicable provisions of Title 17, Chapter 31, Utah Code Annotated (1953), as amended and Title 59, Chapter 12, Part 3, Utah Code Annotated (1953), are incorporated and made a part of this chapter by this reference thereto.

#### 3.12.040 - Transient defined.

For the purpose of this chapter, the term "transient" means and is defined as any individual who occupies any suite, room or rooms in a motel, hotel, motor court, inn or similar public accommodation for fewer than thirty consecutive days.

#### 3.12.050 - Tax imposed.

- A. There is levied on all persons, companies, corporations, or other like and similar persons, groups or organizations doing business in the City as motor courts, motels, inns, or like and similar public accommodations a transient room tax at the rate of four and one quarter percent of the amounts paid or charged for the accommodations and services described in Section 59-12-103(1)(i) on all persons, companies, corporations, or other similar persons, groups or organizations providing such services and accommodations in Millcreek City.
- B. The Utah Sales and Use Tax Act, Utah Code Ann. Sections 59-12-101 et seq., and the Utah Local Sales and Use Tax Act, Utah Code Ann. Sections 59-12-201 et seq., are adopted and made part of this chapter as though fully set forth but only to the extent the provisions of these Acts are relevant and pertinent to the administration and the collection of these taxes by Millcreek City. The adoption and incorporation of these two statutory Acts are further subject to the exceptions set forth in this chapter and are limited to those provisions that are consistent with Utah Code Ann. Sections 17-31-1 et seq.
- C. To the extent that in Chapter 12, Part 1, Title 59, Utah Code Annotated (1953), the state of Utah is named or referred to as the taxing agency, the name of Millcreek City shall be substituted. Nothing in this subsection shall be deemed to require substitution of the name of the City for the word "state" when that word is used to reference the State Tax Commission.
- D. If an annual license has been issued to a retailer under Section 59-12-106, Utah Code Annotated (1953), an additional license shall not be required by reason of this section, but a copy of such license shall be provided to Millcreek City within thirty days after the effective date of the ordinance codified in this chapter.

#### 3.12.060 - Exclusions.

There shall be excluded from the rent paid or charged by which the tax is measured:

- A. The amount of any sales or use tax imposed by the state or by any other governmental agency upon a retailer or consumer;
- B. Receipts from the sale or service charge for any food or beverage or room service charges in conjunction with the occupancy of the suite, room or rooms.

#### 3.12.070 - Convention bureau special reserve fund.

For the purposes authorized by this chapter, there is created a reserve fund, to be known as the "convention bureau special reserve fund," which shall be maintained separate and apart from general and other special funds of the City, and in which shall be deposited any and all funds collected by virtue of the tax imposed but not expended during the fiscal year.

### 3.12.080 - Contributions and donations permitted.

The City executive is authorized to accept, on behalf of the City, funds contributed, donated or supplied by any person, corporation, other governmental agency, or from any other source whatever for the purposes outlined in Section 3.12.020 of this chapter, and, when such funds are received, they shall be deposited and used in the same manner as though they were derived from the tax imposed.

### 3.12.090 - Audits.

Any records or other information of any person, corporation, company, or other group or organization subject to the taxes imposed by this chapter which relate to occupancy and occupancy revenues or to the calculation, collection or remittance to the City of such taxes shall be subject to review and inspection by the City. Audits of such records and information or the supporting records therefor shall be the responsibility of the State Tax Commission. The records of the State Tax Commission relating to the collection of sales and use taxes, or tourism, recreation, and convention center taxes on the same transactions which are the subject of this tax shall be subject to review and audit as provided in the City's contract with the State Tax Commission for the collection of the local sales and use tax and as provided by law. The taxpayer shall also be subject to such audits and reviews by the Utah State Tax Commission as are provided for by law.

### 3.12.100 - Remittance of tax.

The tax shall be remitted as directed by the State Tax Commission or the City and a tax return filed on forms provided or approved by the City at such times and with such frequency as are provided for by state law. All returns filed pursuant hereto shall accurately identify the locations where the transactions occurred and the gross sales upon which the tax for each location is computed.

### 3.12.110 - Penalties and interest.

Any person who fails to file any tax return or information required by this chapter, who fails to pay any tax due hereunder, or who fails to timely pay such tax shall be subject to the imposition of penalties and interest by the City in accordance with Utah Code Annotated Sections 59-1-401 and 59-1-402 or any successor provision thereto.

## Chapter 3.15 - DEFINITIONS

### 3.15.010 - Definitions.

As used in Chapters 3.16 through 3.28:

"Agency" means a separate and distinct unit of City government, which has its own budget. It may also be used to refer to an elected official, department, division or section.

"Approved as to form" means that the City may lawfully enter into the proposed contract.

"Attorney" means the City district attorney and the district attorney's office.

"Award" means the approval for final procurement by the mayor or other authority.

"Best value bid" means the selection process for goods or services based on pre-determined criteria identified by the City in which objective qualitative factors along with price are considered.

"Bidder" means any person submitting a competitive bid in response to a request for bids or request for bids and resulting contract by the City.



"Bid" means an offer submitted by a bidder in response to a request for bids or request for bids and resulting contract by the City.

"Bilateral contract" is a written agreement between the City and a provider of goods or services, which is signed by both parties.

"Cardholder" means the City employee issued a purchasing card or proprietary /charge card. The cardholder's name appears on the card.

"Claim" means (i) a demand presented for money or damages; or (ii) a cause of action presented for money or damages. "Claim" does not mean a routine, uncontested, or regular payment, including a bill, purchase, or payroll.

"Committee" means the RFP selection committee established by City ordinance and policy for the review of proposals.

"Contract" means a legally binding agreement between the City and a supplier to buy or sell goods or services. This may be in the form of a purchase order.

"Cooperative agreement" means an agreement resulting from a competitive solicitation by one or more public purchasing agencies or association of public purchasing agencies that allows other public purchasing agencies, such as the City, to procure goods or services according to the agreement.

"Cooperative procurement" means procurements conducted by, or on behalf of, two or more public purchasing agencies to procure from the same supplier or multiple suppliers using a single solicitation to bid or request for proposal in order to obtain advantages of volume procurement discounts, administrative savings and other benefits.

"Council" means the Millcreek City Council.

"City" means Millcreek City.

"Citywide contract" means a contract available for use by all City agencies for goods or services repeatedly purchased.

"Electronic copy" means a solicitation or document received electronically through the City's designated system.

"Emergency" means there is a threat to public health, welfare, or safety. The existence of such an emergency creates an immediate and serious need for goods or services that precludes full and open competitive procurement.

"Emergency procurement" means a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures, earthquakes, or other reason as proclaimed by the mayor. The existence of such conditions must seriously threaten:

- (1) The functioning of City government;
- (2) The preservation or protection of property; or
- (3) The health or safety of any person.

"Equal, or equal" means a phrase used to indicate the acceptability of goods of similar or superior function, purpose, design, or performance.

"Exigency" means the need for goods or services is of such an unusual and compelling urgency that the City would be seriously injured unless the City is permitted to preclude full and open competitive procurement.

"Exigency procurement" means procurement under an exigency.

"Expedited request for proposals" means a selection pursuant to the expedited procedures in Section 3.22.100. The cost limit for an expedited request for proposals is fifty thousand dollars.

"Formal advertised solicitation" means a solicitation for bids or proposals issued by the City for procurements greater than fifty thousand dollars formally advertised to vendors, service providers, or contractors for their response.

"GRAMA" means the Utah Government Records Access and Management Act, as defined by Utah law.

"Health care preference" means the preference granted to a vendor who currently has and will maintain the following through the term of the contract with the City: a health benefit plan, as defined by Utah law, made available to the vendor's covered employees and their dependents.

"Interlocal agreement" means those agreements authorized by the Interlocal Cooperation Act, as defined by Utah law.

"Local business preference" means the preference granted to a vendor who currently has and will maintain all of the following through the term of the contract with the City:

- (1) A completed and signed local certification form, which includes a street address within the City that is not a post office box; and
- (2) A copy of a current business license issued by the City or any city within the boundaries of the City.

"Master agreement" means a procurement agreement established to permit City agencies to utilize the same underlying state contract or cooperative agreement for repetitive purchases. There is no maximum cost per transaction.

"Mayor" means the elected chief executive officer of the City or designee, unless a designation is prohibited by ordinance or statute.

"Mayor's financial administration (MFA)" means the office of financial administration under the mayor's office, including the divisions within the office of accounting, fixed and controlled assets, and budget.

"Multiple-award contract" means a contract awarded to more than one vendor for similar goods or services.

"Non-capitalized item" means a single asset with a unit cost less than the established capitalized limit.

"Official copy" means the copy of the contract kept in accordance with GRAMA.

"Preference system" means a system that encourages responsible business practices and benefits local businesses by granting preferences in procurement.

"Procurement" means the buying, purchasing, or acquisition of goods or services and all related acquisition processes.

"Proposal" means a response to a request for proposals.

"Proposer" means any person submitting a proposal in response to a request for proposals by the City.

"Purchase orders (PO)" means a binding contract, which is used to accept the offer of a vendor to provide goods or services. The division of contracts and procurement is authorized to issue purchase orders.

"Purchasing agent" means the director of the division of contracts and procurement. The mayor, by executive order, will designate the purchasing agent's signing authority.

"Purchasing card" means a charge card issued to an employee of the City for the purpose of making authorized purchases on behalf of the City.

"Purchasing card program administrator" means the employee assigned to oversee the purchasing card program for the City.

"Quote" means pricing for goods or services informally solicited from a vendor, provider or contractor.

"Request for bids (RFB)" means a solicitation for goods or services where price is the primary consideration.

"Request for bids and resulting contract (RFC)" means a RFB that includes a written description of goods or services required by the City to be purchased repetitively during a specified contract term. This document, with all supporting terms, conditions, and specifications, and signed by the authorized City agent, becomes a written contract.

"Request for proposals (RFP)" means a solicitation for proposals when price is just one of several criteria necessary to make a decision and thus awarding the contract to the lowest responsive and responsible bidder is not necessarily advantageous to the City.

"Request for qualifications (RFQ)" means a solicitation to receive a statement of qualifications.

"Responsible proposer or bidder" means a person or company who has the ability to perform in full the contract requirements, as well as the integrity and reliability that will assure good faith performance.

"Responsive proposer or bidder" means a person or company whose bid or proposal conforms in all material respects to the terms and conditions required by the City in the formal advertised solicitation.

"Sealed bid" means paper bids in sealed envelopes or bids received electronically through the City's designated system.

"Sealed proposal" means paper proposals in sealed envelopes or proposals received electronically through the City's designated system.

"Service contract" means any contract entered into by the City with a vendor for the furnishing of services to or for the City utilizing the vendor's employees to provide the services. A "service contract" may include the purchase of goods along with the providing of services.

"Signing authority" means the authority to sign contracts on behalf of the City as designated by the mayor or set forth in ordinance.

"Small cost blanket" means a purchase order that is issued in response to ongoing purchases made during a specific period of time to a single vendor under which a City agency may release payments for small cost purchases. Without the use of a small cost blanket, those ongoing goods and services would require the issuance of a purchase order for each and every invoice received.

"Small cost purchases" means purchases of goods or services having a cost up to five thousand dollars.

"Sole source procurement" means a procurement where the purchasing agent has justified in writing why a good or service is only reasonably available from a single supplier.

"Solicitation" means any request by the City for vendors to offer bids, quotes, or proposals.

"Specification" means a description of what the purchaser seeks to buy and, consequently, what a bidder or proposer must be responsive to in order to be considered for the award of a contract.

"Standard form contract" means a contract approved by the attorney pursuant to 3.28.020(D).

"Standardization" means the procurement of goods or services by the City to assure consistency of equipment and interchangeability or integration of goods or services which may require procurement without competition pursuant to Section 3.20.030(A)(5).

"State contract" means term contracts established by the state of Utah, for goods or services procured by state agencies and other political subdivisions.

"Tie bids" means the low responsive bids from responsible bidders that are identical in price, delivery, and payment terms.

"Transitional costs" mean the costs of changing from an existing provider of, or type of, a procurement item to another provider of, or type of, procurement item. "Transitional costs" include: training costs; conversion costs; compatibility costs; system downtime; disruption of service; staff time necessary to put the transition into effect; installation costs; and ancillary software, hardware, equipment, or construction

costs. "Transitional costs" do not include: the costs of preparing for or engaging in a procurement process; or contract negotiation or contract drafting costs.

"Vendor" means a person or company selling goods or services.

"Veteran" means a current or former member of the United States Armed Forces who is currently in good standing or has been honorably discharged and meets one of the following criteria:

- (1) Active duty service for at least one hundred eighty (180) consecutive days;
- (2) Reserve service in a campaign or expedition for which a campaign medal has been authorized; or
- (3) Service-related injury or disability incurred in the line of duty.

"Veterans hiring preference" means the preference granted to a vendor who currently has and will maintain all of the following through the term of the contract with the City:

- (1) A completed and signed certificate explaining its program to actively recruit and employ veterans that includes the success rate of its program by listing the percentage of its workforce that qualifies as veterans under this policy;
- (2) A completed and signed certificate verifying that a vendor has employed, and is currently employing, at least one veteran under its recruitment program;
- (3) A drug and alcohol testing policy that applies to all covered individuals employed or hired by the vendor and requires covered individuals to submit to random testing;
- (4) A job training program recognized by a federal, state, or local governmental entity; and
- (5) Job safety program that complies with job safety and health standards of the Occupation and Safety Health Administration (OSHA) or the state standards which are at least as effective as the federal standards.

#### Chapter 3.16 - PURCHASING AGENT\*

##### 3.16.010 - Purpose.

Chapters 3.16 through 3.36 provide for a centralized purchasing authority in City. Purchasing and contracting is the process of acquiring all those goods and services that are deemed necessary by City agencies to provide the public services within the purview of those agencies. The provisions contained herein shall be liberally construed to accomplish this objective.

##### 3.16.030 - Director designated—Supervisory authority.

The director of the division of contracts and procurement shall be the purchasing agent for the City. The purchasing agent shall be a merit employee selected and removed by the mayor subject to the advice and consent of the council and pursuant to the requirements of the City Personnel Management Act. Subject to the direction and supervision of the mayor, the purchasing agent shall perform or direct the performance of all such duties as are required by the provisions of this chapter and state statute.

##### 3.16.040 - Powers and duties.

The purchasing agent shall:

- A. Recommend adoption, promulgation, and from time to time revision, of the rules and regulations and Citywide policies for administration of the purchasing system;
- B. Act as sole agent of the City in contracting for labor, materials or service, or for the purchase, lease or sale of personal property, materials, equipment or supplies, in conformity with the provisions of this chapter and Chapters 3.20 through 3.36; provided, however, that all contracts

and purchase orders must be submitted to the mayor for approval and ratification as required by state statute except as provided in Section 3.16.110;

- C. Open or authorize the opening of all sealed bids;
- D. As an agent for the mayor, determine the lowest or highest responsible bidders, as the case may be, as required by this chapter;
- E. Enforce written specifications describing standards established in conformity with this chapter and Chapters 3.20 through 3.26;
- F. Require such physical, chemical or other tests as may be necessary to ensure conformity to such specifications with respect to quality and materials;
- G. Coordinate the transfer and accountability of personal property to or between the various requisitioning agencies trading in, selling or disposing of such personal property as may become surplus; provided, however, that such disposition complies with the provisions of Chapter 3.36 of this title, enacted under the authority of Section 17-5-48, Utah Code Annotated (1953), (as enacted 1980), notwithstanding anything in this chapter to the contrary;
- H. Assume such related activities as may be assigned from time to time by the mayor;
- I. Keep an accurate and complete record of all purchases and a detailed disposition of the same, as required by Section 17-5-74, Utah Code Annotated (1953);
- J. As an agent for the mayor, waive any minor informality or minor technicality in a bid or proposal which does not materially change the significant elements of the bid or proposal, and accept those bids and proposals deemed to be in the best interest of the City. A written determination of the basis for the waiver shall be included in the purchasing file.

#### 3.16.045 - Contributions exempt from purchasing procedures.

The purchasing agent does not have authority to act for or administer on behalf of the City for services, monetary or nonmonetary assistance, or fee waivers considered contributions under Utah Code Annotated Section 17-50-303 (2006 as amended) and applicable City policies or regulations. Such contributions are exempt from these purchasing procedures.

#### 3.16.050 - Execution of contracts.

No department, office, advisory or policy board, or other agency of City government, nor any officer or employee thereof, shall be empowered to execute any purchase order or contract except as specifically authorized in this chapter and Chapters 3.20 through 3.36. All contracts in violation of this provision are considered void, and may result in the personal obligation and liability of persons at fault for such violations.

#### 3.16.060 - Local improvement project duties.

With respect to public improvements, the purchasing agent or agent's designee shall work with engineers, architects, attorneys, and other professional persons retained by the City to assist in the preparation of plans and specifications, and to discharge other related duties. The professional persons may conduct investigations of lowest responsible bidders, supervise construction work, and perform such other tasks as provided for by their respective contracts or by the mayor.

#### 3.16.070 - Contracts executed in violation of provisions.

Any purchase order or contract executed in violation of this chapter or Chapters 3.20 through 3.36 of this code shall be void as to the City, and if public funds have been expended, the amount expended may be recovered in the name of City in an appropriate action.

#### 3.16.080 - No preferential treatment.

It shall be the policy of City to encourage vendors in all procurement practices and to provide equal opportunities to compete for contracts for construction, provision of professional services, and purchases of equipment and supplies. Upon request, the City will assist vendors by providing them with information in bid specifications, compliance with procurement policy and fulfillment of general bid requirements. Also, upon request, the City will provide information on job performance requirements, procurement opportunities and prerequisites for bidding on City contracts.

### 3.16.090 - Contractors conformance to GRAMA.

Contractors who agree to furnish goods or services to the City shall be required to conform with GRAMA.

### 3.16.100 - Contracts requiring City council approval.

Contracts requiring approval and execution by governing body by state statute, including interlocal agreements required in the Interlocal Cooperation Act, must be approved by the City council as the governing body of the City and executed by the mayor after completing the procurement and approval process established by the ordinance codified in this chapter.

### 3.16.110 - Conflict of interest prohibited.

- A. Except as provided for in Section 3.16.120(B) below, no officer, employee, agent, representative or member of any council, board, committee or commission of the City shall have a financial interest in any contract, bid, or proposal; receive any compensation or gift from any offeror; or have any other conflict of interest, as defined by these ordinances, the Utah Public Officer's and Employee's Ethics Act, Title 67, Chapter 16, Utah Code Annotated (1953), as amended, or by the City Officers and Employees Disclosure Act, Title 17, Chapter 16a, Utah Code Annotated (1953), as amended. Contracts entered in violation of this section are voidable and, if payments have been made, may be subject to action by the City to recover funds. Violation of this section is a Class B misdemeanor and any violator is subject to disciplinary action and criminal penalty.
- B. An officer, employee, agent, representative or member of any council, committee, board or commission of the City may have an interest in any contract, bid, or proposal to provide goods or services to the City upon compliance with the following conditions:
  1. The officer, employee, agent, representative or member of the council, board, committee or commission of the City shall not participate in the procurement process;
  2. The officer, employee, agent, representative or member of the council, board, committee or commission shall fully disclose the individual's interests or conflicts at the time of submitting the bid or proposal to the City;
  3. The officer, employee, agent, representative or member of the council, board, committee or commission of the City shall also make and file the disclosures required by the Utah Public Officer's and Employee's Ethics Act, Title 67, Chapter 16, Utah Code Annotated (1953), as amended, the City Officers and Employees Disclosure Act, Title 17, Chapter 16a, Utah Code Annotated (1953), as amended and Section 2.80.100, Millcreek City Code of Ordinances, 2001;
  4. The purchasing agent shall certify that the award is in the best interest of the City and that the award is:
    - a. To the lowest or highest (as appropriate) responsive and responsible bidder; or
    - b. That the selection process was in accordance with City ordinance; or
    - c. In the event no competitive process was followed, that the acquisition was not susceptible to award by competitive bidding pursuant to Section 3.20.030.
- C. Notwithstanding subsection B of this section, no public officer or employee shall have personal investments in any business entity which will create a substantial conflict between his or her private interest and his or her public duties.

## Chapter 3.20 - PURCHASING PROCEDURES\*

### 3.20.010 - Requisition agent authority.

- A. Each City agency will request access from Mayor's Financial Administration and the purchasing agent who will act jointly for those employees requiring authorization by their agency to make requests for purchases or other access to the financial and purchasing systems. This request will be made by the agency's division director or designee.
- B. No procurement shall be split into parts for the purpose of avoiding the provisions of this chapter.

### 3.20.020 - Competitive bid requirements.

- A. All procurements shall be made on a competitive basis to the maximum practicable extent, unless an exception applies under Millcreek City Ordinance.
- B. Except as otherwise herein provided, all City procurements, for labor or services, or for the purchase, lease or sale of personal property, materials, equipment or supplies, shall be let by formal advertised solicitation to the lowest responsible and responsive bidder, best value bidder, or in the appropriate instance, to the highest responsible and responsive bidder.
- C. All procurements less than the minimum amount for formal advertised solicitation and in excess of the small cost purchase limit, shall be procured in a manner calculated to ensure the best interests of the public, and after solicitation of written quotes. All quotes shall be in writing. The purchasing agent or designee shall obtain quotes, if possible, from at least three qualified vendors. The purchasing agent must comply with the requirements specified in applicable federal or state statute or regulation.
- D. Small cost purchases may be approved by the purchasing agent as small cost blanket orders.
- E. Repetitive purchases may be set up as master agreement orders. These master agreement orders require the same reviews and approvals as specified by ordinance or by purchasing policies. If there is a current underlying state contract or cooperative agreement that sets forth the terms and conditions of the contract, a master agreement order may be utilized to formalize the purchasing by the City under this subsection.
- F. Best value bid—Conditions for Use. When a City agency determines that the use of competitive sealed bidding is either not practicable or advantageous to the City, the agency may utilize best value bid if approved by the purchasing agent or designee. The agency or a properly designated buyer shall provide written justification supporting the use of best value bid.
- G. Reverse Auction bidding—Conditions for Use. Reverse auction bidding may be used if the purchasing agent determines that reverse auction bidding will provide the best value to the City. Reverse auction bidding is appropriate to use when there are multiple qualified providers of a procurement item.

### 3.20.030 - Procurements not requiring competitive procurement.

- A. All procurements shall be made by a request for bids, quotes or proposals, as provided in these ordinances, except the following circumstances do not require competitive procurement:
  - 1. For purchases of goods and services under current contracts made available by governmental entities including federal, state, and local governmental entities, or by associations of governmental entities, where the goods or services were competitively procured by the governmental entity or the association in a manner substantially compliant with the provision of these ordinances, and the vendor is willing to extend the City the same or more favorable prices, terms, or conditions as established in, and within the scope of, the underlying agreement;
  - 2. For real property, goods, or services related to construction of a public improvement project; which have been solicited via a formal advertised request for bids, but which the Purchasing Agent determines the bid prices are not reasonable and exceed the estimated construction cost by an unacceptable amount.

3. Exigency will not tolerate the delay incident to the formal advertising for a request for bids;
4. The aggregate amount involved does not exceed the small cost limit;
5. For a sole source procurement.
  - a. The determination as to whether a procurement shall be made as a sole source shall be made by the Purchasing Agent. Any agency request for a procurement to be restricted to one vendor shall be made in writing and accompanied by a sole source justification. The Purchasing Agent may specify the application of the determination and its duration. In cases of reasonable doubt, competition shall be solicited. Examples of circumstances which may necessitate sole source procurement are:
    - i. Where the most important consideration in obtaining a procurement item is the standardization or compatibility of equipment, materials, technology, software, accessories, replacement parts, or service;
    - ii. Where transitional costs are unreasonable or cost prohibitive;
    - iii. Where a procurement item is needed for trial use or testing;
  - b. Public notice for sole source procurements exceeding the formal advertised solicitation limit shall be given by the Purchasing Agent. The notice shall be published at least seven calendar days in advance of when responses must be received. The notice shall contain a brief statement of the proposed procurement, the proposed sole source supplier and the sole source justification. The notice shall invite comments regarding the proposed sole source and provide for a closing date for comments. The Purchasing Agent shall consider the comments received before proceeding with the sole source procurement.
6. Procurements that by their nature are not adapted to award by competitive procurement, such as:
  - a. Legal services or expert witnesses requested by the mayor, the council or the attorney or when the services of a medical doctor or dentist are requested by the attorney in conjunction with criminal or civil litigation, or requested by the sheriff or the human services department director, but the acquisition of legal services shall be governed by Chapter 2.09 of these ordinances;
  - b. The publication of legal notices, ordinances, resolutions, and other legal advertising;
  - c. The private placement of bonds, tax anticipation notes, or other instruments of indebtedness;
  - d. Utility services such as water, electricity, heat, and telephone, except when alternative supplies or services are available;
  - e. The purchase of non-software subscriptions, media advertisement, magazines, books, trade journals, reference works, periodicals, examination or testing materials, and similar articles of an educational, informational or instructional nature. This subsection does not apply to right to use software and right to use licenses that some providers may describe as a software subscription;
  - f. Goods, materials, supplies and services utilized by the City clerk for purposes of performing the duties of the City clerk with regards to elections;
  - g. Medicines or medical supplies, which are not generic in nature;
  - h. Goods and supplies purchased for authorized resale;
  - i. Perishable or nonperishable subsistence supplies;
  - j. The purchase of law enforcement service animals specially trained to assist law enforcement officers in the performance of law enforcement duties;
  - k. The procurement of a person or entity to provide a speech, lecture, or performance;



- I. Engaging the services of recreational program instructors resulting in recreational program agreements executed pursuant to City Ordinance Sec. 3.28.020(E) provided that the Division of Parks and Recreation adopt and follow a policy and procedure by which the recreational program instructors are selected.
  7. Personal property or services, other than those outlined in subsection (A)(6), as the mayor may, upon the recommendation of the purchasing agent, determine to be, by their nature, not adapted to competitive procurement provided that these procurements be publicly noticed as set forth in 3.20.030(A)(5)(b).
  8. Otherwise procurements authorized or prescribed by law.
- B. In negotiating purchase orders and other contracts for the above-referenced categories of personal property or services, the Purchasing Agent, using agencies or such other person or committee as may be designated by the Mayor, shall ensure that:
1. All aspects of the business transaction are fully resolved, to include price, delivery date, delivery terms, acceptance period, warranties, funding terms, and such other terms and conditions as are appropriate;
  2. The file reflects price or cost analysis or such other evidence of reasonable pricing and other information concerning contract or award matters as will reasonably support entering into a contract with a vendor;
  3. All files relating to the award of a contract based upon public exigency reflect that the need was compelling and of unusual urgency, as when the City would be seriously injured, financially or otherwise, if the personal property or services to be purchased or contracted for were not furnished by a certain time, and when they could not be procured by that time by means of formal advertising. This applies irrespective of whether that urgency could or should have been foreseen;
  4. The purchasing agent must justify in writing why the award of a contract based upon sole source is appropriate; and
  5. Prior to submission of a bilateral contract to the Mayor or designee for execution, the contract shall be reviewed and approved by the agency acquiring the personal property or services and by such other agencies as may be specified by ordinance, and approved as to form by the Attorney.
- C. Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the Purchasing Agent is responsible not only for ensuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurement.
- D. In the event bids for a construction project exceed available funds and the low responsive and responsible bid does not exceed such funds by more than twenty-five percent, the Purchasing Agent or agent's designee is authorized in situations where time or economic considerations preclude re-solicitation of work of a reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder, in order to bring the bid within the amount of available funds, not to exceed a final contract amount of two hundred thousand dollars.
- E. This chapter shall not apply to the acquisition of personnel pursuant to the provisions of the City Personnel Management Act, as defined by Utah law, nor shall this chapter be applicable to the granting or issuance, pursuant to powers conferred by laws, ordinances or resolutions, of franchises, licenses, permits or other authorizations by the council, or by other agencies of the City. This chapter shall not be construed as authorizing the waiver of competitive bidding when such bidding is required by the provisions of any federal or state grant or relevant federal or state statute or regulation.
- F. No purchase order or other contract greater than the Purchasing Agent's limit may be awarded pursuant to this section except by the Mayor or designee, unless it arises pursuant to the provisions of subsection (A)(7) of this section, in which event the Purchasing Agent may award the purchase order or other contract subject to the ratification of the Mayor. The Purchasing Agent will maintain in a

file a document explaining in detail why a purchase order or contract has not been bid and identifying the specific provision of this section which exempts the purchase order or other contract from the bidding requirement. Any procurement without competitive acquisition shall also include a statement from the acquiring agency explaining the recommendation for acquisition.

#### 3.20.040 - Emergency procurements.

- A. Notwithstanding any other provision of this chapter, the purchasing agent or designee, may make or authorize others to make emergency procurements when there exists a threat to public health, welfare or safety under emergency conditions, as hereinafter set forth, provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.
- B. An "emergency condition" is a situation which creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures, earthquakes, or such other reason as may be proclaimed by the mayor. The existence of such conditions creates an immediate and serious need for supplies, services or construction that cannot be met through normal procurement methods, and the lack of which would seriously threaten:
  - 1. The functioning of City government;
  - 2. The preservation or protection of property; or
  - 3. The health or safety of any person.
- C. Emergency procurement shall be limited to those supplies, services or construction items necessary to meet the emergency. The purchasing agent, or agent's designee, or any agency of the City authorized in writing by the purchasing agent, may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practicable, approval by the purchasing agent or the mayor shall be obtained prior to the procurement. When prior approval is not reasonably obtainable, the mayor must consider the procurement at the earliest possible time and either approve or disapprove of the procurement. Procurement pursuant to an emergency not yet formally declared should follow the procedures outlined in the City emergency plan.
- D. The purchasing agent shall select a procurement method sufficient to assure that the required supplies, services or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained by the purchasing agent.
- E. The purchasing agent shall make a written determination stating the basis for an emergency procurement and for the selection of a particular contractor. Such determination, together with a copy of the purchase requisitions for the materials, supplies, equipment or construction items which were purchased, shall be sent promptly to the mayor. Additionally, the purchasing agent, as soon as practicable, shall prepare a record the emergency procurement, which shall set forth:
  - 1. The contractor's name;
  - 2. The amount and type of the contract; and
  - 3. A listing of the supplies, services or construction procured under the contract. Copies of such records shall be promptly submitted to the mayor.

#### 3.20.050 - Advertisements for solicitations.

- A. Formal advertised solicitations shall be announced, on the website of the Contracts and Procurement Division, by publication of a general announcement at least once in a newspaper of general circulation published in the City, or any other lawful form of announcement or manner otherwise proscribed by law. Nothing contained in this section shall be construed to prohibit the purchasing agent from placing additional announcements in recognized trade journals. Advertisements shall describe the method to obtain a solicitation.

### 3.20.060 - Deposit requirements.

Cash, a cashier's check, or other acceptable form specified in the solicitation document, as a deposit of good faith, in a reasonable amount, but not in excess of ten percent of the bid amount, may be required of each bidder by the purchasing agent on all bids involving amounts in excess of twenty-five thousand dollars.

### 3.20.070 - Collusion among bidders and advance disclosures prohibited.

- A. Any agreement or collusion among bidders or prospective bidders to bid a fixed price or limit competition shall render the bids of such bidders void and such conduct shall be unlawful and subject to criminal sanction.
- B. Any disclosure made or permitted by the purchasing agent or others in advance of the opening of bids, of the terms of the bids submitted in response to an advertisement, shall render the entire proceeding void and shall require re-advertisement and re-soliciting bids.
- C. All contracts with the City shall be deemed to contain a clause under which all vendors/suppliers of goods and/or services shall certify that neither they nor their agents or employees have restrained free and competitive bidding for the contract by conspiring with any other person to fix bids for, or compensation under, the contract; by obtaining information from any City agent or employee, in advance of the public opening of bids or proposals for the contract, concerning the contents of competitor's bids or proposals; by discouraging or eliminating competition by any means; or by taking any action while seeking the contract which violates law or City purchasing policies. A violation of the clause shall entitle the mayor to immediately cancel the contract for material breach thereof and City shall thereafter be entitled to seek damages as allowed by law for breach of contract.

### 3.20.080 - Opening of bids.

All sealed bids shall be publicly opened by the purchasing agent or agent's designee who is duly authorized in writing by the purchasing agent to open such bids.

### 3.20.090 - Rejection of bids.

Any or all bids may be rejected by the City if the bid is deemed not responsive, if the bidder is not deemed responsible, the character or quality of the services, supplies, materials, equipment or labor does not conform to requirements, or if in the best interest of the City. The City shall have absolute discretion to determine if the bidder is responsible and the bid is responsive.

### 3.20.100 - Bonds of bidders.

- A. **Permissive Bonds.** As determined by contracts and procurement, bonds written upon a corporate surety qualified to do business in the state and in an amount approved by the mayor may be required for the following purposes:
  - 1. To insure performance of the contract or purchase order in the time and manner prescribed therein; and
  - 2. To save, indemnify and hold the City harmless from and against losses, damages, claims, liabilities, judgments, costs and expenses which may accrue in consequence of contractor's actions, or failures to act, in performance of the contract or purchase order.
- B. **Required Bonds.** Before any contract for the construction, alteration or repair of any public building, public work or public improvement of the City is awarded to any person, that person shall furnish to the City such bonds as are required by the City.

### 3.20.110 - Awarding of contracts.

- A. All purchase orders or other contracts involving amounts within the purchasing agent's limit shall be awarded by the purchasing agent to the lowest or, in the appropriate instances the highest responsive, responsible bidders, as provided in this chapter, and shall be signed by the purchasing agent.
- B. The award of any contract involving amounts greater than the purchasing agent's limit shall be made by the mayor to the lowest, or, in the appropriate instances to the highest, responsive, responsible bidders meeting specifications.
- C. Each bid, with the name of the bidder, shall be entered on a record, which record, with the name of the successful bidder indicated thereon, shall after award of the contract or purchase order, be open to public inspection in the office of the purchasing agent.
- D. Prior to advertising for bids or proposals for any goods or services, the purchasing agent or designee, or agencies should have the attorney review the request for bids or request for proposals. In cases of bids or proposals in excess of one hundred thousand dollars annually, the agency shall, prior to advertising, provide a copy of the bid or request for proposal and the required contract terms to the attorney.
- E. An official copy of each awarded purchase order or other contract, together with all necessary attachments, including assignments and written consents of the purchasing agent, shall be retained by the purchasing agent in an appropriate file open to the public for such period of time as set by retention schedule approved pursuant to the GRAMA. After such period, purchase orders, other contracts and attachments may be destroyed by direction of the purchasing agent. (Section 63-2-101 et seq., Utah Code Annotated.)
- F. Change orders shall be approved according to state law.

#### 3.20.120 - Responsibility of bidders—Determination.

In determining the responsibility of any bidder, the City may take into account other factors in addition to financial responsibility, such as past records or transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specified time limit, and other pertinent considerations.

#### 3.20.130 - Assignment of contracts.

No contract awarded to the lowest responsible bidder, highest responsible bidder, or best value bidder as the case may be, shall be assignable by the successful bidder without the written consent of the City. In no event, shall a contract, or any part thereof, be assigned to a bidder who is declared not to be a responsible bidder in the consideration of bids submitted in response to advertisement of the particular contract or purchase order.

#### 3.20.140 - Disposal of certain City property.

The mandatory provisions of this chapter relating to public advertisement for sealed bids shall not apply to the disposal of personal or real property held by the City, unless disposal is by sale through public advertisement or sealed bids.

#### 3.20.150 - Protests.

Persons who are aggrieved over a request for bids, quotes, or proposals may protest to the purchasing agent. A protest in regard to the specification of requests for bids, quotes or proposals shall be submitted in writing prior to the closing date for bids, quotes, or proposals. All other protests shall be submitted in writing within five business days after notification of the award is posted on the City's bid notification system. A protestor may amend and/or supplement its protest during the five business days after notification of the award is posted on the City's bid notification system, but shall not amend and/or supplement its protest after the expiration of that time period. A protestor may file only one protest after the closing date for bids, quotes, or proposals.

- A. If a protest is received, the City may proceed with its procurement process, but shall not sign the contract until the protest is withdrawn by protestor or denied by the mayor, unless the purchasing agent, makes a written determination that the signing of the contract is necessary to protect the interests of the City.
- B. Protest letters should specifically completely state the facts that constitute error in the specifications of the request for bids, quotes or proposals or the award and the desired remedy. The purchasing agent will immediately notify the attorney of all protests and may refer the protest to appropriate City staff or the attorney to investigate and make a recommendation. An informal meeting may be scheduled if more information is needed. After review of the protest, the purchasing agent shall make a recommendation to the mayor who shall make a final determination on the protest.

## Chapter 3.22 - COMPETITIVE SEALED PROPOSALS

### 3.22.010 - Conditions for use.

When the purchasing agent or mayor determines that the use of competitive sealed bidding is either not practicable or not advantageous to the City. These requirements do not apply to deposit and investment related transactions which are subject to the State Money Management Act, Utah Code Ann. §§ 51-7-1 to 51-7-24 or to the issuance, retirement or refund of City debt which is subject to the Local Government Bonding Act, Utah Code Ann. §§ 11-14-101 to 11-14-501.

### 3.22.020 - Request for proposals (RFP).

Proposals shall be solicited through a request for proposals. Request for proposals shall be prepared by the requesting agency with the assistance of the purchasing agent or designee. The attorney may assist with the preparation of a request for proposals. In cases of proposals in excess of one hundred thousand dollars annually, the agency shall, prior to advertising, provide a copy of the RFP and the required contract terms to the attorney.

- A. The purchasing agent or designee shall establish a selection committee for review of the proposals. The purchasing agent or designee shall serve as the chair.
- B. The actions of individual selection committee members are governed by the provisions of Chapter 2.07, and the Unlawful Conduct and Penalties Part of the Utah Procurement Code, (Utah Code Ann. § 63G-6a-2401 et seq.).

### 3.22.030 - Public notice.

Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 3.20.050.

### 3.22.040 - Material communications with proposers.

Once an individual is appointed to a selection committee, or becomes aware of a reasonable likelihood that he or she will be appointed to a selection committee, the individual shall not have material communications with any prospective or actual proposers concerning the procurement, outside the official process, except as requested in writing by the selection committee chair. "Material communications" is defined for this section as communications that could reasonably provide, or could reasonably create the appearance of providing, a competitive advantage in the procurement process.

### 3.22.050 - Disclosure of proposals.

Proposals shall be disclosed pursuant to GRAMA and other applicable laws.

### 3.22.060 - Evaluation factors.

The request for proposals shall state the relative importance of price and other evaluation factors.

3.22.070 - Discussion with responsible proposers and revisions to proposals.

As provided in the request for proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirement. Proposers shall be accorded fair and equal treatment with respect to any opportunity for negotiation, discussion, and revision of proposals and such revisions may be permitted after submissions and prior to award.

3.22.080 - Award.

An award shall be made by the proper signing authority to the proposal that is determined to be the most advantageous to the City, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made. The proper signing authority within 14 calendar days thereafter shall approve the selection committee's recommendation for contract negotiations with the recommended proposer; or reject the recommendation of the selection committee and request one of the remaining proposers be submitted. Upon selection of a proposer, a contract shall be prepared and approved by the proper signing authority in accordance with City contract procedures.

3.22.090 - Request for qualifications.

When services are required on an intermittent but ongoing basis, the selection committee shall pre-qualify persons and entities interested in providing such services and shall establish eligibility lists from which City agencies may select from. With the approval of the purchasing agent a request for qualifications process may precede any other form of procurement unless prohibited by law. This process may be used to establish a list of qualified vendors or providers from which further bids or proposals may be sought. Being chosen as a qualified vendor does not require or guarantee that any specific contract or project shall be awarded. The request for qualifications process shall follow the procedures required in the request for proposals process and these ordinances.

3.22.100 - Expedited requests for proposals.

A. The expedited RFP procedure set forth in this section shall apply in the following instances:

1. When grant funds are used to procure goods or services pursuant to the terms and conditions of the grant and the standard RFP procedure would prevent the City from timely compliance with the terms of the grant. The expedited RFP cost limit does not apply when grant funds are used to procure goods or services pursuant to the terms and conditions of the grant;
2. When a partner is needed for a grant application and the standard RFP procedure would prevent the City from timely submitting the grant application. The expedited RFP cost limit does not apply when a partner is needed for a grant application;
3. When an agency requires goods or services over the small cost purchase limit and under the expedited RFP cost limit. The resulting contract shall be prepared with a not to exceed amount stated in the contract.

B. Expedited RFP Procedure:

1. An expedited request for proposals shall be prepared by the requesting agency and issued by the division of contracts and procurement. The division of contracts and procurement shall establish a format to be used for the expedited request for proposals. The requesting agency shall establish a selection committee to review and score the proposals received;
2. Once the requesting agency has evaluated the proposals received, the agency shall make a written request to the purchasing agent or designee detailing the recommendation for a certain

proposer. The request shall reflect the cost of the services and verify the cost is within the requesting agency's budget;

3. The purchasing agent or designee shall review the request. Following this review, the purchasing agent or designee may approve the request. In the event the purchasing agent disagrees with the recommendation of the agency and the disagreement cannot be mutually resolved, the matter shall be referred to the mayor;
4. Upon approval of the selected proposer, a contract shall be signed by the proper signing authority;
5. The attorney may prepare a standard form expedited contract. The aggregate of the agreement and any amendments or renewals shall not exceed the expedited RFP limit.

#### Chapter 3.24 - PREFERENCE SYSTEM IN PROCUREMENT OF GOODS AND SERVICES

##### 3.24.010 - Policy of the City.

It is the policy of the City to award contracts for goods or services based upon a preference system that encourages responsible business practices and that benefits local businesses.

##### 3.24.020 - Preference system.

- (A) The City shall grant the following preferences as provided by this chapter and by Citywide policies and procedures:
  - (1) The health care preference;
  - (2) The local business preference; and
  - (3) The veterans hiring preference.
- (B) The purchasing agent shall determine if the vendor qualifies for the preference(s). The burden is on the vendor to demonstrate that it qualifies for the preference(s).

##### 3.24.030 - Exceptions to preference system.

The following procurements are exempt from the preference system:

- (A) Procurements where federal law or regulations would prohibit application of this preference;
- (B) Procurements regarding construction to the extent they are governed by Utah state law;
- (C) Procurements partially or fully funded by donations and/or gifts to the City to the extent the provisions would conflict with any special condition attached to the gifts and/or donations;
- (D) Procurements not requiring competitive procurement, as listed in Section 3.20.030;
- (E) Procurements with private citizens. If any contract is bid upon by a private citizen, in their capacity as a private citizen, the lowest responsive bid shall be determined without the consideration of preference for any of the bidders.

#### Chapter 3.25 - REQUEST FOR APPLICATIONS

##### 3.25.010 - Conditions for use.

A request for applications (RFA) process may be used when a City agency administers a grant or funding program that requires applications in order to participate in the program and the City is not the direct recipient of, or directly procuring, goods or services.

##### 3.25.020 - Request for applications (RFA).

Request for applications shall be prepared by the requesting agency. The agency shall establish a format to be used for the request for applications. The attorney may assist with the preparation of a request for applications. Prior to advertising, the agency shall obtain approval as to form of any required contract terms by the attorney.

The requesting agency shall establish an application review committee for review of the applications.

- A. All review committee members shall impartially review the submitted applications.
- B. The actions of individual review committee members are governed by the provisions of the Millcreek City Ethics Ordinance, Chapter 2.07, and the Unlawful Conduct and Penalties Part of the Utah Procurement Code, (Utah Code Ann. § 63G-61-2401 et seq.).

#### 3.25.030 - Evaluation factors.

The request for applications shall state the relative importance of evaluation factors. The City's preference system in procurement of goods and services, Chapter 3.24, does not apply to the request for applications process.

#### 3.25.040 - Public notice.

At a minimum, adequate public notice of the request for applications shall be given on the City's website. Notice may also be given by publication of general announcement in a newspaper of general circulation published in the City, or any other lawful form of announcement or manner otherwise proscribed by law. Nothing in the section shall be construed to prohibit placing additional announcements or advertising.

#### 3.25.050 - Disclosure of applications.

Applications shall be disclosed pursuant to GRAMA and other applicable laws. The program administrator shall keep public records and process applicable GRAMA requests.

#### 3.25.060 - Discussion with applicants and revisions to applications.

As provided in the request for applications, discussions may be conducted with applicants who submit applications determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the application requirements. Applicants shall be accorded fair and equal treatment with respect to any opportunity for submission, clarification, discussion, and revision of applications and such revisions may be permitted after submissions and prior to award.

#### 3.25.070 - Application award.

The application review committee shall recommend a contract or grant to applicants whose applications are the most responsive or advantageous, taking into consideration the evaluation factors set forth in the request for applications. The administering agency shall keep a file of the applications and award recommendations. The file shall contain the basis on which the award is made. The mayor or proper administering authority shall approve or reject the review committee's recommendation. Upon selection of approved applicant(s), a contract may be prepared and approved by the mayor or designee in accordance with City contracting procedures.

#### 3.25.080 - Application appeals.

Persons who are aggrieved over a request for applications award may appeal to the program administrator. All appeals shall be submitted in writing within seven calendar days after notification of the award is posted on the City's website or delivered to the applicants. An appeal may be amended and/or supplemented during the seven calendar days after notification of the award is posted, but shall not amend



and/or supplement its appeal after the expiration of that time period. An aggrieved applicant may file only one appeal after the closing date for applications.

If an appeal is received, the City may proceed with its application process, but shall not execute the contract until the appeal is withdrawn by the applicant or denied by the mayor, unless the program administrator, makes a written determination that the execution of the contract is necessary to protect the interests of the City.

Appeal letters should specifically and completely state the facts that constitute the error in the applications process or the award and the desired remedy. The program administrator will immediately notify the attorney of all appeals and may refer the appeal to appropriate City staff or the attorney to investigate and make a recommendation. An informal meeting may be scheduled if more information is needed. After review of the appeal, the program administrator shall make a recommendation to the mayor who shall make a final determination on the appeal.

#### Chapter 3.28 - CONTRACT PROCESSING AND PAYMENTS

##### 3.28.010 - Contracts required—Exceptions.

Whenever the City acquires, pursuant to Chapters 3.16 to 3.22, 3.32, and 3.36 of this code, labor or services, materials, equipment, supplies or other personal or real property, whether by purchase or lease, a contract shall be prepared formalizing such acquisition. The contract may take the form of a properly completed purchase order. Small cost purchases and approved charges against statutory and general accounts, as defined by policies adopted by the council are exempt from these requirements. Contracts shall also be required and processed as provided in this chapter for all grants and contributions as provided for in Citywide policies.

##### 3.28.020 - Contracts management—Powers and duties.

- A. The division of contracts and procurement shall act as a repository for all City contracts and purchase orders.
- B. Upon receipt of a contract preparation package the purchasing agent will:
  1. Ensure that the contract is approved as to form by the attorney's office;
  2. Ensure that the contract is reviewed and approved by the requisitioning agency; and
  3. Ensure that Mayor's Financial Administration has reviewed the availability of funds prior to the contract being executed by either the purchasing agent or the mayor.
- C. After the contract has been approved and executed by the mayor or proper signing authority, the purchasing agent will make available a fully executed copy of the contract to the appropriate agencies and to the vendor or contractor. Additionally, a copy of the fully executed contract, the contract preparation package, and any other documents or correspondence relating to the acquisition will be maintained by the contracts and procurement division.
- D. Under circumstances approved by the purchasing agent and the attorney, standard form contracts may be used. Contracts using a standard format prepared by the attorney's office do not need to be individually approved as to form. The designation, "Standard Form Contract," form number, and date the standard form was approved shall be included in the contract title. Any alteration of the standard form language without approval of the attorney shall render the agreement void and without effect which will be stated in an appropriate part of the contract. The attorney shall approve as to form any changes to the boilerplate language in standard form contracts.
- E. The mayor or designee may execute the following agreements, provided they are approved as to form by the attorney, without processing through the division of contracts and procurement:
  1. Promoter's and facility or equipment rental agreements, and contracts for providing utility services, to exhibitors at the Salt Palace, South Towne Center, and Center for the Arts facilities;

2. Planetarium show distribution, and rental of equipment and facility rental contracts;
  3. Recreation facility and equipment rental agreements, recreation facility license agreements, and recreational program agreements; and
  4. Library facility and equipment rental agreements.
- F. Agreements under the Interlocal Cooperation Act shall be executed as provided therein.
- G. Each agency will administer the operation of its contracts.

#### 3.28.030 - Purchase orders.

- A. A purchase order may be used whenever goods or services are to be acquired by outright purchase, with payment to be made after the goods or services have been delivered or performed and accepted, and where the delivery of all items or the performance of all services is expected to occur at the same time, or as otherwise specified in the purchase order. All purchase orders shall specify the nature of the goods or services to be acquired, the purchase price thereof, freight charges, prompt payment discounts, the delivery date, the person or entity from whom the same is being acquired, the agency for whom the acquisition is being made, and such other provisions as may be appropriate or required. The purchase order shall incorporate by reference all the terms, conditions and specifications, if any, contained in the request for bids. Purchase orders may be approved as standard form contracts.
- B. The purchase order shall be signed by the proper signing authority.
- C. The purchase order shall not be submitted to the proper signing authority, until after it has been approved for encumbrance by Mayor's Financial Administration.

#### 3.28.040 - Bilateral contracts.

- A. A bilateral contract and not a purchase order, is required:
1. Whenever property is acquired by means of lease, rental, or installment purchase, where the total cost is greater than the formal advertised solicitation limit;
  2. Whenever personal property is required where the exact quantity of goods, or the specific date when the goods will be needed, are unknown;
  3. Whenever services are required by the City where the total cost is greater than the formal advertised solicitation limit;
  4. Whenever goods or services are to be acquired through the expedited request for proposals process where the cost is greater than the small cost purchase limit;
  5. Whenever real property or any interest therein is to be acquired, except:
    - a. When acquired pursuant to the power of eminent domain and entry of a decree by a court;
    - b. When acquired as the result of the filing and recording of a map or plat as required by law;
    - c. When acquired as a condition of the issuance of a building permit;
    - d. When acquired as the result of the prior owner's failure to pay property taxes when due; or
    - e. When acquired by gift;
  6. Whenever the requesting agency, the contracts and procurement division or the mayor shall otherwise so specify;
  7. Whenever the vendor requires that a contract, other than a purchase order, is signed by the City;
  8. Whenever required by Citywide policy on contribution agreements and grants; or
  9. Whenever otherwise required by law.

#### 3.28.045 - Amended contracts.

- A. Contracts shall only be amended pursuant to the provisions of the original agreement. Any amendment to the contract must be authorized and processed according to the requirements of this chapter. The total cost of both the original and amended contract must be used to determine the appropriate procurement and contracting method.
- B. The amendment must be in writing, and in the same form as the original agreement, and expressly specify all terms and conditions amended and which terms remain unchanged. The same parties that signed the original agreement must sign the amended agreement unless an authorized assignment is part of the amendment.
- C. Contract amendments shall not be used to procure a new product, project or service that is not within the scope of the original agreement. Amendments including change orders should be used to procure goods or services that are compatible with the terms and conditions of the original agreement but were unforeseen at the time of contracting.

#### 3.28.050 - Purchase orders—Preparation and documentation.

Where a purchase order will serve as the contract:

- A. The purchasing agent shall ensure that all purchase orders contain, at a minimum, the information set forth in subsection A of Section 3.28.030.
- B. The purchasing agent will retain on file, by hard copy or on-line computer system storage, all original requisitions, request for bids or proposals, all bids or proposals submitted, evidence of publication showing that there has been advertisement for bids or proposals, and any other documents or correspondence relating to the acquisition.
- C. Requisitions and purchase order records are to be kept on file or in computer storage for such time as prescribed in retention schedule adopted pursuant to GRAMA.

#### 3.28.060 - Bilateral contracts—Preparation and documentation.

Where a bilateral contract will serve as the contract:

- A. Whenever the purchasing agent is responsible for acquiring goods or services where a bilateral contract is required by this chapter, the purchasing agent will obtain a contract. The purchasing agent may prepare a contract preparation package for the attorney. The contract package, if prepared, shall contain those documents and materials that the purchasing agent deems necessary to assist the attorney in preparing the contract. The attorney may request additional documents from the purchasing agent as necessary to prepare a contract. The purchasing agent will retain on file, by hard copy or computer system storage, the original requisition, request for bids or proposals, the evidence of publication, all bids or proposals submitted, a copy of any contract which is prepared and approved, and any other documents or correspondence relating to the acquisition as prescribed in retention schedule adopted pursuant GRAMA.
- B. The attorney will draft the contract and approve it as to form in accordance with this chapter. The purchasing agent will ensure that the contract is reviewed and approved by the requesting agency, and will have the contract executed by the vendor.
- C. Whenever goods or services are to be acquired by the City pursuant to a request for proposals, the chair of the selection committee shall ensure that a contract preparation package is assembled and forwarded to the attorney's office for approval as to form. When a standard form contract is used without any alteration as provided in this chapter, no further approval is necessary. The package shall include a copy of the request for proposals, a copy of the successful proposal, and a copy of the proper signing authority's action. The Division of Contracts and Procurement will retain on file the original agency document requesting services, the request for proposals, all proposals submitted, resulting contract and any other documents or correspondence relating to the acquisition as prescribed in retention schedule adopted pursuant to GRAMA.

- D. Whenever grant or service provider funds are being allocated to qualified recipient agencies, the director of the requesting agency shall ensure that a contract preparation package is submitted to the division of contracts and procurement. The package will include the request for proposals, the approved successful proposal, and a cover letter specifying any matters which need to be covered in the contract that may not be specified in the above documents. The director of the requesting agency will retain on file the request for proposals, the affidavit of publication, all proposals submitted, a copy of any contract which is prepared, and any other documents or correspondence relating to the acquisition of services or grant of funds.
- E. Whenever public funds are to be expended for the construction of any public work or facility, the contracts and procurement division will ensure that a contract preparation package is assembled. The construction package will include the approved successful bid and a cover letter specifying any known matters which need to be covered in the contract that may not otherwise be set forth in the contract preparation documents. The contract package shall be forwarded to the attorney's office for approval as to form unless an attorney-approved standard form contract is used without any alteration as provided in this chapter. Standard form bid, general and special conditions, and contract forms may be used if prepared as provided in Section 3.28.020. The division of contracts and procurement will retain on file a copy of the request for the construction services, the original request for bids, all bids submitted, a copy of any contract that is prepared, and any other documents or correspondence relating to the acquisition as prescribed in retention schedule adopted pursuant to GRAMA.
- F. All awards shall be subject to the execution of a satisfactory contract.

#### 3.28.070 - Contract and purchase order register.

The purchasing agent, in compliance with this chapter and Chapters 3.16 to 3.22, 3.32, and 3.36 of this title, shall deliver at least monthly to the mayor for approval and ratification a register of all purchase orders or other contracts. The register shall reflect the purchase order or contract number, the vendor or contractor to whom the award has been made, the goods or services to be acquired, the agency for which the same is being acquired, and the price for such goods or services. At the end of the register the purchasing agent shall certify to the mayor that (1) he has reviewed the register, (2) the selection process was made as provided in this chapter, and (3) request that the award of the contracts be approved and ratified by the mayor. Small cost purchases do not require prior approval by the purchasing agent.

#### 3.28.080 - Approval of contracts as to form.

- A. All contracts and contract amendments, except standard form contracts, shall reflect on each page to be signed that the same has been "approved as to form" by the attorney prior to submission to the proper signing authority for execution.

#### 3.28.090 - Determination of amount of expenditures.

All City officers and employees, when deciding whether the acquisition is one which will result in the expenditure of moneys in excess of any specified dollar amount set forth in this chapter and Chapters 3.16, 3.32, and 3.36 of this title, shall make such determination after adding together all amounts to be paid annually including shipping charges, maintenance which is part of the contract, and any other costs or expenses to be borne by the City in connection with the acquisition. No contract, project, or order shall be amended or split into parts by any agency so as to produce lesser amounts for the purpose of avoiding the provisions of this chapter and Chapters 3.16 through 3.28, 3.32 and 3.36 of this title.

#### 3.28.100 - Availability of funds.

Certification of the availability of funds shall be the approvals as entered in the City's electronic procurement system by the agencies for all contracts. Availability of funds must be certified prior to execution of the contract.

#### 3.28.110 - Contracts required prior to performance—Emergencies and exigencies.

A contract, whether a purchase order or a bilateral contract, must be properly completed and executed as set forth in this chapter prior to the delivery of any goods or the performance of any services by a vendor, or the acceptance thereof by the City, except when the public exigency will not tolerate the delay or when the acquisition is an emergency procurement. However, the contract must be executed prior to any payment by the City.

#### 3.28.120 - Payment procedures—Purchase orders.

The purchase order shall serve as the basis for payment only where it is the sole contract relating to the acquisition of such goods or services and, then, only if the acquisition is one which should be made by means of a purchase order instead of a bilateral contract, except where there is an underlying bilateral contract which provides for acquisitions by means of a purchase order. Payment requests against purchase orders shall be processed by Mayor's Financial Administration in the manner described in Section 3.28.130.

#### 3.28.130 - Payment procedures—Bilateral contracts.

- A. Whenever a bilateral contract exists or, in accordance with this chapter, should exist, payments shall be initiated by means of a written request for payment from the authorized agency representative directed to Mayor's Financial Administration. Contract payments shall reference the contract number, and payment shall be made as a release against that contract, or as a reduction of the encumbered amount.
- B. No payments shall be made for the acquisition of any goods or services acquired, except for small cost purchases with prior payment required as part of the terms and conditions of the underlying contract, unless Mayor's Financial Administration:
  - 1. Has determined there are funds available both in existing appropriations and within the limits of the contract amount specified in the automated system;
  - 2. Has determined the amount will be charged against the appropriate budgetary unit, and is classified in the appropriate general ledger account;
  - 3. Has received a properly authorized request from the requisitioning agency that payments are made under the terms and conditions of the contract;
  - 4. Has matched the payment request against a valid invoice or an appropriate substitute form of original billing from the vendor/payee, or has otherwise determined the billing to be proper, and has resolved any and all pricing and quantity differences; and
  - 5. Has reviewed the request and determined compliance with existing payment procedures, and recommends approval.

### Chapter 3.29 - CLAIMS PROCEDURES

#### 3.29.010 - Claims processing.

- A. Whenever payment is requested from Millcreek City that is not provided for by contract, purchase order or other process under this Title, the payment will be processed as a claim under the procedures of this chapter.
- B. The mayor may delegate any duty required to be performed by the mayor to the deputy mayor or other designee of the mayor.

#### 3.29.020 - Claims for goods and services.

- A. The mayor shall review all claims for goods and services not otherwise provided for by these ordinances. The mayor shall approve the claim if it appears to be just, lawful and properly due and owing, and meets the requirements of Title 17, Chapter 50, Part 4, U.C.A., otherwise the mayor shall disapprove it.

- B. A review for lawfulness shall be done by the attorney at the request of the mayor. The request and the response shall be in writing.
- C. All claims except those by a member of the council for their own expense shall be forwarded to the auditor for review and recommendation. The response shall be in writing.
- D. All claims for goods and services must contain the following: itemization including names, dates, goods provided, and services rendered; if for service of process, character of process served, upon whom served, number of days or trips to serve, and number of miles traveled; be substantiated as to the correctness and that it is justly due; if for materials, to whom materials furnished, by whom ordered, and quantity and price agreed upon.
- E. All claims must be presented to the mayor within one year of the last item of account or service or credit accrued. If the mayor rejects the claim because it is not properly made out, the mayor shall give written notice to the claimant or agent and allow a reasonable time for clarification or further itemization or substantiation. Further time allowed herein shall toll the one-year limitation but not to exceed thirty days from the mayor's written notice.

3.29.030 - Claims for liability or governmental immunity.

- A. All claims against the City, elected officials, employees or approved volunteers of the City caused by an act or omission that occurs during the performance of duties, within the scope of employment or under color of authority, shall be filed pursuant to the provisions of the Utah Governmental Immunity Act. Claims for no-fault sheriff's office liability are processed in accordance with the provisions of Chapter 3.29A.
- B. The City clerk is designated as the records custodian of all notice of claims and shall, upon receipt of a notice of claim, maintain a record of the date, time and manner of delivery to the clerk, together with the name of the claimant and the parties claimed against. The City clerk shall, upon receipt of a notice of claim, deliver copies of the notice of claim to the mayor and the attorney identifying the date and time the claim was received by the City clerk. The attorney shall respond to the mayor in writing within seventy-five days of receipt of the claim from the clerk's office. For claims which may qualify as no-fault sheriff's office claims, the attorney shall direct the processing of such claims in accordance with Chapter 3.29A of this title, by referring the matter to the sheriff's office for investigation and by further processing the no-fault claim and making a recommendation to the mayor, as provided in Chapter 3.29A. All notices of claim are barred unless filed in strict compliance with the provisions of the Act. The attorney or his or her designated deputy and the mayor or his or her designated representative, shall review and make recommendations on all claims and no claim may be settled by the attorney without the concurrence or delegation of the mayor.

3.29.040 - Defense of officers, employees and approved volunteers—Liability and settlement.

- A. The City, through the office of the mayor, will provide defense and indemnification of the City parties including individual officers, employees and approved volunteers under the requirements of the Act. The mayor will control the direction, defense and settlement of all actions where the City is a party and where the mayor has directed that the City assume the defense and indemnification of the individual officer, employee or approved volunteer after consultation with the attorney. The attorney will prosecute or defend actions involving the City or City parties under the Act and pursuant to policies of the attorney and make decisions on the proper legal methods or means to implement the mayor's directions. The mayor may hire counsel either to assist the attorney, when requested by the attorney, or when there is a legal conflict of interest precluding the attorney from conducting the defense. In cases where an officer, employee or approved volunteer is sued in his or her representative, official, individual or personal capacity, he or she shall be consulted prior to settlement or resolution of the case.
- B. Individual officers, employees and approved volunteers will direct a written request for defense to the mayor pursuant to the act within ten days of being served with process. The mayor will forward the request to the attorney for recommendation. After consultation with the attorney the mayor will notify

the employee, within ten days of the written request for defense, in writing of the decision regarding the defense including the reasons if defense is denied and any reservation or limitation regarding the defense. The mayor will keep a record of all requests for defense including dates and times received and forwarded. Failure to make a written request to the mayor may result in denial of a defense. Officers, employees and approved volunteers and their supervisors must fully cooperate with the mayor and attorney in conducting the defense.

### 3.29.050 - Claims of the City council and mayor.

A claim presented by a member of the City council or mayor for the member's or mayor's own expense for service rendered shall be itemized as provided in this chapter and shall be presented to the attorney. The attorney shall endorse in writing his opinion about the legality of the claim and if rejected the reasons for the rejection. If approved, the claim and opinion will be forwarded to the auditor for payment. Council members shall follow the financial requirements of the City concerning expenditures and claims.

### 3.29.060 - Advocating claims.

No officer or elected official shall present or advocate a claim made for any other person, except a City officer may forward to the mayor a request for payment by another person. A City officer may forward to the mayor a request for payment or relief from payment and may endorse on the claim the officer's recommendation.

### 3.29.070 - Attorney opposition to unauthorized payments or claims.

Pursuant to Section 17-53-103, Utah Code Ann., the attorney may refer for investigation by a City or district attorney from another City any payment paid or warrant drawn or payment requested without authority of law or lawful count purpose. The requested investigation may proceed without approval by the mayor or the City council.

## Chapter 3.29A - NO-FAULT SHERIFF'S OFFICE CLAIMS - Reserved

## Chapter 3.30 - ACQUISITION OF REAL PROPERTY

### 3.30.010 - Title of provisions.

This chapter shall be known as the "Acquisition of Real Property."

### 3.30.020 - Purpose of provisions.

It is the intent of the council in adopting the ordinance codified in this chapter to provide for the manner in which real property is acquired by Millcreek City.

### 3.30.030 - Authority for provisions.

Millcreek City is authorized by state statute to acquire real property for City purposes. The state statute requires the Council, as the City legislative body, to provide by ordinance, resolution, rule or regulation for the manner in which the City acquires real property.

### 3.30.040 - Real property acquisition.

The Council authorizes the Mayor/Executive to acquire real property and any interest in real property on behalf of the City by the Council's approval of a specific capital construction project requiring real property acquisition through appropriation of designated funding to acquire the real property in the budget process or pursuant to individual Council resolution.

### 3.30.050 - Consideration for acquisition of real property.

The consideration paid or given for all acquisitions of real property or any interest in real property acquired on behalf of the City shall be subject to the laws of the State of Utah and the ordinances of Millcreek City.

### 3.30.060 - Bilateral contract.

A bilateral contract, in accordance with Chapter 3.28.040(A)(5) of these ordinances, shall be required.

## Chapter 3.32 - LIBRARY SYSTEM PURCHASES - Reserved

## Chapter 3.36 - PROPERTY DISPOSAL

### 3.36.010 - Purpose of provisions—Statutory authority.

In enacting the ordinance codified in this chapter, it is the purpose of the council to provide for the manner of disposal of surplus property held by the City.

### 3.36.020 - Disposal of property authorized when—Procedures.

Except as modified by other provisions of this chapter, the mayor may dispose of, or control the disposition of any City property, including lost or abandoned property, or any legal or equitable interest in property, the disposition of which is determined to be in the public interest and in accordance with good property management. The disposition of property, or any interest therein, may be by public or private sale, exchange, exchange and sale, option to purchase, lease, lease with an option to purchase, rental, trade-in, public auction, public advertisement for sealed bids, or any other lawful manner or means. Such disposition shall not be for less than a full and adequate consideration unless otherwise permitted by law, and such consideration may be other than monetary. Any sale or other disposition by public advertisement for sealed bids shall be conducted in accordance with the provisions of Chapter 3.20 of this title.

### 3.36.030 - Personal property.

- A. The power to dispose of surplus, obsolete or unusable personal property held by the City is vested in the City purchasing agent, and such disposition may be made in any manner authorized in Section 3.36.020 of this chapter.
- B. The fleet management board may declare as surplus personal property those public safety vehicles with public safety equipment installed in and on the vehicles, whether marked or unmarked police vehicles, upon the advice of the director of the City fleet management division and authorize the fleet director to sell the surplus vehicles to other local government public safety organizations for fair and adequate consideration without advertisement or sealed bid. The City mayor must ratify the sales of all surplus public safety vehicles prior to finalization of the sale. If the fleet director cannot sell the surplus public safety vehicles as public safety vehicles to any other governmental entity, then the public safety equipment will be removed and the surplus vehicles will be sold through the City's surplus sales.

### 3.36.040 - Real property.

- A. The disposition of real property shall be made only with the approval of the council. Real property that is in public use with a value in excess of fifty thousand dollars and real property not in public use with a value in excess of one-hundred thousand dollars are deemed significant parcels of real property and shall be disposed of only after a public hearing and notice thereof. For purposes of this section easements are not deemed significant parcels of real property.
  1. Real property in public use is that including, but not limited to, realty and improvements thereon in actual current use as governmental offices or other public buildings, courthouses, jails, police stations, fire stations, developed parks or other recreational or entertainment facilities, libraries, schools or other educational facilities, utilities, cemeteries, animal control facilities, hospitals or



other health facilities, facilities for the welfare of the indigent, sanitary landfills, or any other realty or improvement thereon, public roads or public rights-of-way, held for the benefit or advantage of the general public and not confined to use by privileged or particular individuals, without regard to whether that use may be classified as governmental or proprietary.

2. Realty not in public use is that including, but not limited to, realty or improvements thereon existing as vacant lands; real property with vacant or unused buildings, structures or other improvements thereon; buildings used as maintenance or repair facilities and not open to the general public; buildings rented or leased by the City to private entities; or any other realty or improvements thereon not held for the benefit or advantages of the public nor open to the general public or to a substantial portion thereof.
- B. The real estate section shall have discretion over the disposition and manner of disposition of surplus real property subject to this section, and in accordance with the best interests of City government, the protection of the people of the City, and good property-management techniques; provided, however, no such disposition shall be finalized without the approval of the council.
- C. An organization may request in writing to the division that certain real property be disposed of. The request shall be forwarded to the council for approval along with the division's recommendation.

#### 3.36.050 - Public hearings.

When required by this chapter, the council shall call and hold a public hearing concerning dispositions of realty, which hearing may be at any special or regularly scheduled meeting of the council at which hearing all interested persons may appear and be heard. Public notice shall be given of the hearing, which shall contain the date, time and place thereof, a statement of the purpose of the hearing, and a description of the property or the interest therein to be disposed of. Such notice shall be published at least once prior to the hearing in a newspaper of general circulation in the City, and the hearing shall be held not sooner than fourteen days after the publication of the notice thereof.

#### 3.36.060 - Recordkeeping.

The real estate section shall maintain permanent public records reflecting a description of the property sold or otherwise conveyed, an appraisal of the property, the manner of disposition, the consideration received by the City, the identity of the person to whom such property was sold or otherwise disposed of, the date of disposition, the date of approval by the council, and the nature of the City's use of the property prior to disposition. The division shall notify the auditor of disposal of property carried on the City fixed asset inventory.

#### 3.36.070 - Applicability of provisions—Credits for certain agencies.

The provisions of this chapter shall be applicable to all boards, commissions, authorities, councils or other bodies within the jurisdiction of the City owning or holding real or personal property. When real or personal property is disposed of under the provisions of this chapter and such property was purchased by a City agency or other body that has an independent revenue base or that has a fund separate from the general fund, and the procedure established by the auditor have been properly followed, that agency's fund shall be credited with the amount realized from the disposition. For net proceeds less than one thousand dollars per separate sale, the amount will be credited to the general fund. If the City receives something other than monetary consideration for the disposition, distribution of that consideration shall be in accordance with the direction of the mayor.

#### 3.36.080 - Public library system materials - reserved.

#### 3.36.090 - Purchase of property—Fee required.

Any person requesting to purchase surplus real property from the City, other than at a public auction or in response to a solicitation from the City, shall pay to the City a fee in the amount of one hundred dollars

at the time such request is made. Such fee shall be nonrefundable, but shall be a credit against the sale price of such property in the event the sale is completed.

#### Chapter 3.42 - CHARGES AND FEES\*

##### 3.42.010 - Purpose.

The purpose of this chapter is to provide guidance to all City offices in determining fees and charges to users for services, information or materials provided by the City.

##### 3.42.020 - Definitions and categories.

- A. "Elected officials" means the elected City Council and Mayor.
- B. The categories of fees and charges relating to services shall include, but not be limited to:
  - 1. Statutory Fines, Fees and Charges. Fines, fees and charges set out by state statute shall be imposed at the amount so set.
  - 2. Nonstatutory Fines, Fees and Charges. For fees and charges not set out by statute, the level of cost recovery should be established at the full cost of the service, including overhead.
  - 3. Services Performed through Interlocal Agreements. All charges for services performed by the City through interlocal agreement should be charged at full cost.
  - 4. Services Provided to Public or Private Agencies. Services provided to any public or private agencies, for their sole use, should be charged at full cost. Services or information provided to any public or private agency for resale should be charged at fair market value.
  - 5. Interfund or Intrafund Services. Services provided by a fund, agency or organization for or on behalf of another fund, agency or organization should be charged at full cost.

##### 3.42.030 - Fees by statute, by policy and by schedule.

- A. In any case where the process or authority for adopting fees or specific fees are set in statute, these fees shall be adopted or imposed by the affected City office, board, or entity in accordance with the governing statute.
- B. In the case of fees regarding records, records duplication and related subjects, fees shall be imposed as provided in Citywide records policies, adopted in accordance with Section 2.82.090.
- C. In the case of fees not set in statute and not covered by records policies, fees shall be imposed as provided by law or this ordinance.

##### 3.42.040 - Adopting and amending fee schedules.

- A. Millcreek City fee schedules shall be adopted according to the following process:
  - 1. Unless otherwise authorized by statute for adoption by a separate board or entity, nonstatutory fees to be charged by a City office or agency shall be proposed by the office or agency each year as part of the annual budget processes or at such other time(s) as the council shall provide for by resolution.
  - 2. Fees shall be separately listed for each office or agency and shall be compiled and separately set forth by the auditor in the tentative budget.
  - 3. Upon review and approval of fees by the City council, the fee schedule shall be placed on file with the City clerk.
  - 4. Each office and agency shall post its approved fee schedule and shall additionally post a listing of statutory fees it is authorized by law to charge and collect.

5. a. New fees may be adopted and existing fees may be amended or repealed at any time by resolution of the council.
- b. Fees adopted or amended pursuant to this subsection shall become effective on the date specified in the resolution.

#### 3.42.050 - Debt collection fees.

- A. Millcreek City may, by following the procedures and requirements of this chapter, establish a fee to cover the administrative costs of debt collection on accounts administered by the district attorney's office.
- B. In addition to the fee to cover the administrative costs of collection on accounts administered by the district attorney's office, there is also imposed the following:
  1. A late penalty fee of ten percent of the account receivable on accounts administered by the district attorney's office; and
  2. An interest charge that is:
    - a. two percent above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered; and
    - b. the post-judgment interest rate established by Utah Code Ann. § 15-1-4 for judgments established by the courts.
  3. Reasonable attorney's fees.

#### 3.42.060 - Setting rates for services.

Nonstatutory fees or charges for services provided by the City shall be set by the council, based upon its review of the full costs of providing such services. Such rates shall be reviewed annually each June. In the setting of rates, the council may take into account circumstances where the charge or fee would create an economic hardship that precludes the use of a basic service or would diminish use of or participation in a service below the level deemed desirable.

#### 3.42.070 - Determining full cost.

The methodology of determining full costs of City services shall be the responsibility of the City auditor, who shall maintain and disseminate forms and review procedures as necessary for the determination of the full costs of City services. The procedures and methodology for cost allocation shall be set forth in Citywide policies and procedures.

#### 3.42.080 - Fees for recorder, sheriff and constables.

The recorder, sheriff and constables shall adopt, amend, publish and post fees according to statute. Fees adopted by the recorder, sheriff and constables and fees authorized for adoption by a separate board or entity shall be included in the tentative budget and posted in accordance with Section 3.42.040 of this chapter.

#### 3.42.085 - Surveyors "Public Land Corner Preservation Fund."

- A. Pursuant to the provisions of Utah Code Annotated Section 17-23-19, the council establishes a Public Land Corner Preservation Fund. Moneys generated for the fund shall be used only to pay expenses incurred and authorized by the City surveyor in the establishment, reestablishment, and maintenance of corners of government surveys pursuant to the powers and duties provided under Title 17, Chapter 23, and Title 57, Chapter 10, of the Utah Code Ann. 1953.
- B. The council establishes a fee schedule for filing maps in the City surveyor's office of surveys filed under Section 17-23-17, subdivisions, road dedication plats, and other property plats. All moneys

collected under this subsection shall be deposited with the City treasurer to be credited to the Public Land Corner Preservation Fund.

3.42.090 - Center for the Arts reserved.

#### Chapter 3.44 - DISPOSITION OF STOLEN PROPERTY

3.44.010 - Stolen property defined.

For purposes of this chapter, "stolen property" means all property held by the sheriff as part of a criminal investigation into the theft or robbery of goods, or related offenses.

3.44.020 - Investigation and seizure of goods reported stolen.

The sheriff shall investigate all goods reported stolen by theft or deception and may seize the same pending the completion of the criminal investigation.

3.44.030 - Return and other disposal of property.

- A. All property seized by the sheriff as part of a criminal investigation shall be returned in accordance with any court orders governing the disposition of the goods in the criminal proceeding.
- B. If the case is not prosecuted or there is no court order governing the disposition of the property, the property will be disposed of as follows:
  - 1. All property stolen or wrongfully taken from an owner without any form of consent or acquiescence on his part shall be returned to the owner, provided that the owner can establish his right to possess such property and the attorney has authorized it.
  - 2. All property involved in theft by fraud or deceit, where the owner may have consented or acquiesced in the taking of property by the thief, shall not be returned to the owner until the case file is reviewed by the attorney to insure that any intervening interests that may have inured to a bona fide purchaser or pledgor of goods having a voidable title under the Uniform Commercial Code, Section 70A-1-101, et seq., Utah Code Annotated (1953), as amended, are protected. In the case of goods transferred with a voidable title, the sheriff shall dispose of this property in accordance with the instructions of the attorney. After returning the property, the sheriff shall notify all parties who may have an interest in the goods as to the disposition of the property. However, it is expressly understood that firearms seized by the sheriff shall be returned to the owner only if the owner is entitled to possess the firearms under state and federal law.

#### Chapter 3.48 - ENGINEERING FEES

3.48.010 - Right-of-way improvement permit fees.

Before any permit is issued pursuant to the provisions of Section 14.36.010 of this code, the applicant shall pay to the planning and development services division the following fees:

- A. Where there is no existing curb and gutter (there may or may not be a sidewalk), and the design, staking and inspection is done by City forces:
  - 1. Curb, gutter, sidewalk and drive approaches, two hundred dollars plus two dollars per foot;
  - 2. Curb, gutter and drive approaches, two hundred dollars plus two dollars per foot;
  - 3. Sidewalks only, two hundred dollars plus two dollars per foot;
  - 4. Drive approaches only, one hundred thirty dollars plus two dollars per foot.
- B. Where there is no existing curb and gutter (there may or may not be a sidewalk), and the design and staking are done by private engineers with checking and inspection done by City forces:

1. Curb, gutter, sidewalk and drive approaches, one hundred fifty dollars plus one dollar per foot;
  2. Curb, gutter and drive approaches, one hundred fifty dollars plus one dollar per foot;
  3. Sidewalks only, one hundred dollars plus one dollar per foot;
  4. Drive approaches only, one hundred dollars plus fifty cents per foot.
- C. Where curb and gutter is existing and checking and inspection are done by City forces:
1. Sidewalks with drive approaches, twenty dollars plus one dollar per foot;
  2. Drive approaches only, twenty dollars plus one dollar per foot.
- D. For replacement of existing improvements, no charge.
- E. Restaking fee: In the event a developer elects to have the City complete staking pursuant to subsection A of this section, and the stakes are destroyed or removed, and restaking is required, the developer shall pay a restaking fee based upon the cost to the City to complete the restaking. The maximum restaking fee shall not exceed seventy-five percent of the original staking fee. The minimum restaking fee shall be one hundred dollars.

3.48.020 - Plat filing and engineering checking fees.

Any and all persons filing plats with the City recorder shall first have paid all fees required in Chapter 3.52. In addition, persons filing plats shall pay to the planning and development services division an engineering checking fee of 6.0 percent of the performance bond amount in accordance with the following schedule:

- A. Thirty-five percent of the total engineering checking fee shall be paid prior to the engineer review, which consists of a technical review of the subdivision plat, a field boundary check in accordance with policies prepared by the planning and development services division and the City surveyor, and construction plan approval. If the total engineering fee cannot be estimated prior to the engineering review, the portion of the total fee paid at such time shall be ninety dollars per lot, with a minimum of one hundred eighty dollars.
- B. The remaining portion of the engineering checking fee which, when added to the portion of the fee paid pursuant to subsection A of this section, will total 6.0 percent of the performance bond amount, shall be paid for administration of the performance bond and construction inspection prior to the recording of the plat or the installation of any proposed improvement. Construction inspection shall consist of a survey check of proposed improvement grades, a survey check of monuments, and inspection of improvement construction.

3.48.025 - Engineering checking fee for subdivisions where no plat must be recorded.

Any person proposing to subdivide a parcel of land where no plat must be recorded (a nonregular subdivision) shall pay to the planning and development services division an engineering checking fee in the amount of two hundred dollars.

3.48.030 - Engineering checking fees for nonsubdivision development.

Any person proposing to develop a parcel of land, either as a permitted use, conditional use or planned unit development, other than a subdivision, shall pay to the planning and development services division an engineering checking fee in an amount equal to 4.5 percent of the total performance bond amount for required landscaping, off-site storm drainage and on-site storm drainage improvements. The minimum fee shall be one hundred fifty dollars which must be paid prior to the engineering review. Any remaining portion of the fee shall be paid prior to approval by the planning and development services division of the development or installation of any of the improvements.

3.48.040 - Road dedication fees for nonsubdivision development.

Any person proposing to develop a parcel of land, either as a permitted use, conditional use or planned unit development, other than a subdivision, where dedication is required for street widening and improvements in accordance with Chapter 15.28 shall pay to the planning and development services division a fee equal to one hundred fifty dollars for document review, preparation and processing.

Chapter 3.52 - SUBDIVISION AND ZONING FEES\*

3.52.010 - Land use hearing officer application fees.

The fee for all applications under the authority of the Land Use Hearing Officer shall be as follows:

Residential	\$1,000.00
Nonresidential	\$1,000.00

NOTE: Double fee for post-construction or after the fact requests unless specifically and in writing is modified or waived by the division director.

3.52.020 - Subdivision application fees.

The fees for subdivisions shall be as follows:

A. Pre-submittal review meeting (attributable to total fees if subdivision application is filed. Nonrefundable otherwise.)	\$550.00
B. Minor subdivision (less than 10 lots)	\$1,000.00 base fee plus \$100.00/lot
C. Major subdivision (10 lots or more)	\$2,000.00 base fee plus \$100.00/lot
D. PUD subdivision	\$2,000.00 base fee plus \$110.00/lot
E. Condominium plat and all other procedures subject to 57.8, Condominium Ownership Act, Utah Code	\$250.00
F. Records check (documentation of prior subdivision)	\$50.00 per hour plus \$50.00/hour after first hour

G. Vacating or changing a recorded plat, lot consolidation, lot line adjustment (applicant-initiated) and all other procedures subject to 17.27a-608, Utah Code (608 hearing)	\$500.00 base fee plus \$100.00/lot
H. Road dedication (plat approval)	\$500.00
I. Street vacation	\$300.00
J. Exception to roadway improvement standards	
with original application	\$250.00
independently filed	\$500.00
K. Lot line adjustment (when no 608 hearing or planning commission review is required)	\$450.00

3.52.030 - Zoning map amendment application fees.

The fees for applications to amend the zoning map shall be one thousand dollars base fee plus ninety-five dollars per acre (or portion) for all zone designations.

3.52.040 - Conditional use permit application fees.

The fees for conditional use permit applications shall be as follows:

A. Pre-submittal review meeting (attributable to total fees if conditional use application is filed. Nonrefundable otherwise.)	\$550.00
B. Planning commission review and approval	\$1,300.00 base fee plus
Planned unit development	\$50.00/ dwelling unit
Multiple-family residential	\$25.00/ dwelling unit
Hotel, motel or other lodging	\$35.00/unit

Commercial	\$35.00/ 1,000 sq. ft. gross floor area
Office	\$35.00/ 1,000 sq. ft. gross floor area
Industrial	\$35.00/ 1,000 sq. ft. gross floor area
C. Residential (non-FCOZ) four or less dwelling units	\$300.00
D. Minor site plan additions or enlargements (amended site plan)—or change of conditions of approval (applicant initiated)	50% base fee
E. Change of use	\$400.00

3.52.050 - General plan amendment application fees.

The applicant shall pay the fees for an application to amend the general plan within ten days after a decision has been made to consider such amendment. Whenever the planning commission or City council requires that a general plan amendment hearing be advertised to a greater extent than required by law because the amendment will likely generate broad public interest or concern, the applicant shall pay the additional advertising costs. General plan amendment fees are as follows:

Amendment to land use designation (includes zoning map amendment)	\$1,500.00 plus \$150.00/acre
Amendment to text	\$300.00

3.52.060 - Permitted use (site plan review) application fees.

The fees for an application for site plan review for a permitted use shall be as follows:

A. FCOZ pre-submittal review meeting (attributable to total fees if FCOZ permitted use application is filed. Nonrefundable otherwise.)	\$250.00
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B. Residential (non-FCOZ) four or less dwelling units	\$300.00
C. Residential (non-FCOZ)	\$850.00
D. Nonresidential (non-FCOZ)	\$1,150.00
E. Residential (FCOZ)	\$850.00
F. Nonresidential (FCOZ)	\$1,150.00
G. Minor site plan additions or enlargements (amended site plan) (applicant-initiated)	50% base fee
H. Over-the-counter review and approval	\$50.00 (fee is assessed with the building permit)

3.52.070 - Temporary use and mobile store permit application fees.

The fees for an application for a temporary use and mobile store permit shall be as follows:

A. Commercial/for profit	\$300.00
B. Nonprofit/community service	\$300.00

3.52.080 - Home business application fees.

The fees for an application for a home business use shall be fifty dollars.

3.52.090 - Home day care/pre-school application fees.

The fees for an application for a home day care/pre-school use shall be as follows:

A. Permitted use review	\$ 375.00
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B. Conditional use review	1,200.00
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3.52.100 - Administrative determination application fees.

The fee for an administrative determination shall be five hundred dollars.

3.52.110 - Waiver and modification application fees.

The fees for a waiver or modification request shall be as follows:

A. Director review and approval (per staff assessment and recommendation)	\$300.00
B. Planning commission review and approval	
Residential	900.00
Nonresidential	900.00

3.52.120 - Sign permit application fees.

The fees for a sign permit review shall be as follows:

A. Wall/flat sign	\$100.00
B. Ground-mounted (pole/monument)	250.00
C. Billboard (off-premises sign)	500.00
D. Sign that requires conditional use approval	750.00
E. Comprehensive sign plan	300.00
Amendment to previous approval	50% base fee

3.52.130 - Development agreement application fees.

The fee for review and recommendation on a development agreement shall be one thousand dollars.

3.52.140 - Time extension application fees.

The fee for a request for an extension of a time-restricted approval shall be fifty percent of the base fee applicable to the type of action previously approved.

3.52.150 - Fire and health department review application fees.

The fees for a fire department review or health department review shall be as follows:

A. Fire review	\$75.00
B. Health review	25.00

3.52.160 - Geology/natural hazards review application fees.

The fees for a geology or natural hazards review shall be as follows:

A. Initial site assessment	\$ 75.00
B. Review of technical reports	
Minor report review (single-family dwelling)	450.00
Major report review (multiple single-family dwellings, commercial and industrial)	900.00

3.52.170 - Traffic impact review application fees.

The fee for traffic impact assessment and review of technical reports shall be as follows:

A. Initial site assessment—minor report review	\$300.00
B. Major report review	500.00

3.52.180 - Analysis of takings claims application fees.

The fee for takings claims under the provisions and procedures of Chapter 19.93 of this code shall be one thousand five hundred dollars.

3.52.190 - Zoning and land use research fees.

The fee for zoning and land use research that may include, but is not limited to, GRAMA requests, review of historic records, reference to archived documents, documented nonconforming status of use or noncompliance of structures, or zoning endorsement letters shall reflect Millcreek Citywide Policy 2060 GRAMA Fees for Duplication of Records.

Per Utah Code § 63G-2-203 Fees (8) Zoning and Land Use Research that may include, but is not limited to research requests as described above:

- (a) may require payment of past fees and future estimated fees before beginning to process a request if:
  - (i) fees are expected to exceed \$50; or
  - (ii) the requester has not paid fees from previous requests.
- (b) Any prepaid amount in excess of fees due shall be returned to the requester.

#### Chapter 3.54 - BOND ISSUANCE

##### 3.54.100 - Bond issuance—Legislative intent—Ballot language.

- A. The council may issue a bond proposition to the voters by approving a resolution submitting the question of the issuance of the bonds to the voters in the time and manner provided for by state law.
- B. If the council approves a resolution to submit a bond proposition to the voters, it shall require the City clerk to prepare and submit a ballot, in the form and including the content required by state law.
- C. In addition to the requirements of state law and to the extent applicable, bond propositions relating to capital facilities that will be owned and maintained by the City shall include the following:
  - 1. In addition to the bond payment costs as outlined above, the average annual combined net operational and maintenance costs for this facility during its first ten years of operation is projected to require additional annual expenditures of \$\_\_\_\_\_. If approved, the City will determine during its next budget cycle whether additional operational and maintenance costs may or may not require any additional funds from budget cuts or a tax increase.
  - 2. Property Tax Cost of Bonds. A general obligation bond is a debt owed by government. The government uses tax revenue to pay for the debt. If the bonds are issued as planned, an annual property tax to pay debt service on the bonds will be required over a period of \_\_\_\_\_ years in the estimated amount of \$\_\_\_\_\_ on a [insert the average value of a residence in the taxing entity rounded to the nearest thousand dollars] residence and in the estimated amount of \$\_\_\_\_\_ on a business property having the same value.

[If applicable] If there are other outstanding bonds, an otherwise scheduled tax decrease may not occur if these bonds are issued.

- D. The mayor's fiscal staff as validated by the City debt review committee and approved by the City council shall determine the annual combined net operational and maintenance costs for each facility subject to a bond proposition.
- E. For purposes of this chapter, "net operational and maintenance costs" is defined as gross operating and maintenance expenses less the following:
  - 1. Existing operating and maintenance costs if the new project replaces an existing project;
  - 2. Lease payments that cease as a result of the new project; and
  - 3. New revenue that results directly from the project.

##### 3.54.200 - Bond proposition—Time for election.

- A. All elections for a bond proposition shall be conducted and administered in accordance with the provisions of state law. A bond election may be held, and the proposition for the issuance of bonds may be submitted, on the same date as any general election held in Millcreek City or at a special election as permitted by state law. A bond election may not be held on the same date as a municipal election or any other date prohibited by state law.

- B. Notwithstanding the provisions of subsection A. a bond election may be held, and the proposition for the issuance of bonds may be submitted, on the same date as any municipal election if:
1. The ordinance or resolution calling for a bond election is adopted by a two-thirds majority of all members of the council: or
  2. The Mayor has declared a local emergency proclamation under state law and the Council approves an ordinance or resolution in which it:
    - (a) Determines that it is necessary to submit a bond proposition in response to the local emergency: and
    - (b) Identifies specifically the nature of the local emergency and the reasons for holding the bond election on a municipal election date.

## Chapter 3.56 - PUBLIC WORKS BONDS

### 3.56.010 - Bonding office—Establishment.

A bond office is established for the City public works department in order to coordinate the bonding requirements of the various divisions within the public works department. The bond office shall be the responsibility of the planning and development services division of the public works department.

### 3.56.020 - Bonding office—Bond processing duties.

The bond office shall complete and process all bonds that must be filed with the City by developers or other persons to guarantee installation of improvements required under the City highway, flood control, building inspection, zoning, fire protection or subdivision ordinances. The public works director may direct that the bonding office complete and process any additional bonds required by the public works department.

### 3.56.030 - Bond review and approval requirements.

The completed bond shall be forwarded by the bonding office to the attorney's office for review as to form, sufficiency and manner of execution. The attorney's office shall then forward the bond to the mayor or designee for acceptance. Upon favorable action by the mayor or designee, the bond shall be returned to the bond office for monitoring.

### 3.56.040 - Monitoring of construction progress.

The bond office shall monitor the progress of construction of the required improvements in order to insure that the construction schedule and sequence established for the completion of the improvements is followed. It shall be the responsibility of the developer or his authorized agent to call for all required inspections. The City may require all work on the project to stop if construction of the bonding improvements deviates in any way from the approved plan. Any deviation from the approved plan must be approved in writing by all the divisions of the public works department affected by the deviation.

### 3.56.050 - Release of bonds.

The bond office shall, upon receiving written notice from the appropriate City divisions certifying that the improvements have been satisfactorily completed in accordance with City standards, recommend that the mayor or designee release the bond amount represented by the improvements, except that twenty-five percent of the total bond amount for public improvements such as curb, gutter, sidewalks, road surfacing, flood control and fire hydrants shall be retained for a period of one year after completion of the improvements to guarantee against defects in the installed public improvements, and may be utilized by the City to correct any defects occurring within the year. If there are no defects in the improvements at the end of the one-year period, the retained percentage of the bond shall be released.

### 3.56.060 - Bond administration fee.

Any person filing a performance bond with the City to guarantee completion of improvements for a conditional use, a permitted use, a subdivision where no plat must be recorded (a nonregular subdivision), a road dedication, or Chapter 70 of the building code, shall pay a fee of one hundred dollars for the administration of such bond. The fee shall be paid to the bond office prior to acceptance of any such bond by the City.

3.56.070 - Fee for partial bond release.

Any person requesting that the City inspect improvements for the purpose of a reduction in the bond amount (a partial bond release) shall pay a fee of one hundred dollars to the bond office for such inspection. Partial releases of improvement bonds shall be subject to the policies of the planning and development services division.

3.56.080 - Fee for reinspections.

In the event a developer requests final inspection for the purpose of obtaining a release of an improvement bond and the City inspector determines the improvements have not been satisfactorily completed, the developer shall pay a fee of one hundred dollars for each reinspection which must be scheduled by the City.

#### Chapter 3.60 - SERVICE CHARGE ON DISHONORED CHECKS

3.60.010 - Service fee for bad checks charged when—Debt collection procedures.

Any person, firm, corporation, partnership or business entity that tenders a check or other negotiable instrument to the City in consideration for any service, tax, fee, assessment, chattle, or property of any kind whatsoever, that is not honored by payor's bank when it is presented for payment, shall be charged the maximum service fee allowed pursuant to Section 7-15-1, Utah Code Annotated, 1953, for the additional handling of the dishonored instrument.

This provision shall be applicable in those instances where the collection of the sum is handled through extrajudicial means. In the event the City seeks to collect the debt represented by the dishonored instrument through judicial means, the provisions of the state code governing collection of bad checks shall govern and supersede this section.

3.60.020 - Identification required for certain checks.

When the drawer of a check personally presents a check to the City for payment, the check may not be accepted by the City, unless the drawer presents a valid form of identification. This section shall not apply to checks drawn upon commercial checking accounts, checks presented to the treasurer's office in payment of real property taxes and assessments or checks presented to the assessor's office.

3.60.030 - Definition.

"Valid form of identification" means the following forms with a current expiration date: driver's license, Utah identification card or check guarantee card.

#### Chapter 3.64 - MANAGEMENT OF PUBLIC FUNDS

3.64.010 - Establishment of fund management system.

In order to comply with state law, provide consistency of procedure, maximize the investment income from public funds, and provide appropriate physical and procedural safeguards for public funds the City council finds it to be in the best public interest to establish Citywide policies for all City employees charged with receiving or handling public funds.

3.64.020 - Definitions.

For purposes this chapter, the following definitions shall apply:

"Cashier" means an employee of the City who receives money from the public or the City, or is authorized to receive, advance or disburse funds.

"Employee" means all employees of the City, whether or not they are of merit status. For purposes of this chapter, "employee" shall also include volunteers, and all other persons, whether compensated or not, serving on any City special, regular full-time committee, agency or board.

"Public funds" and "public monies" means money and other funds and accounts, regardless of the source from which these funds and accounts are derived, which are owned, held or administered by the City, its employees, or any of its offices, boards, commissions, departments, divisions, agencies or other similar instrumentalities. "Public monies" also includes monies, funds or accounts that have been transferred to a private contract provider of programs or services. Those monies, funds or accounts maintain the nature of public monies while in the possession of the private entity that has contracted with the City to provide programs or services.

#### 3.64.030 - Policies and procedures.

The operation of the fund management system, the duties of cashier, and all other matters, including physical security, designation of cashiers and accountability for the receipt, deposit, transmittal or disbursement of funds not otherwise specified by state statute, shall be regulated by Citywide policies and procedures adopted by the City council. Unless specifically authorized by the City council, such Citywide policies shall supersede any departmental or division policy relating to the same subject.

#### 3.64.040 - Fund management policy committee.

There is hereby created a fund management policy committee consisting of the auditor, the attorney, the assessor, the treasurer and one representative selected by the mayor. The committee shall be chaired by the treasurer. The auditor, attorney, assessor and treasurer may designate a representative to serve on the committee. The committee shall meet as needed and shall have responsibility for developing, reviewing and making recommendations to the City council on any proposed fund management policy or procedure or amendment thereto. The committee, through its chair, shall be responsible for providing clarification and guidance with respect to the interpretations of fund management policies.

#### 3.64.050 - Public funds and public monies—Review and examination.

- A. Public funds or monies held by any employee are subject to the same statutory controls and restrictions as public funds or monies held in the direct custody of the treasurer.
- B. To ensure compliance with state law, ordinances and City wide policies, the treasurer may review cash handling practices, books, papers and accounts of any agency or private contract provider of programs or services to which public monies, funds or accounts have been transferred and may recommend revision of procedures to strengthen controls, improve processes or simplify procedures. Public funds or monies are subject to the order of the treasurer, including the requirement to pay over amounts held, when the treasurer deems such action necessary and appropriate to protect public funds or monies from loss or misuse.

### Chapter 3.65 - TAX SALE PROCEDURES

#### 3.65.010 - Authority and purpose.

In accordance with the authority granted by Utah Code Annotated Section 59-2-1331 and to facilitate the sale of properties certified for Final Tax Sale and provide consistency of procedure, when, pursuant to Utah Code Annotated Section 59-2-1351.1, the City auditor conducts the final tax sale, the sale shall be conducted in accordance with this part and Chapter 3.66, where applicable.

#### 3.65.020 - Bidder registration procedures.

- A. At the time specified in the Notice of Final Tax Sale as prescribed under Section 59-2-1351 of the Utah Code Annotated (1953), as amended, the City auditor shall offer for sale and sell all such real estate for which an acceptable bid is made.
- B. Any party wishing to bid on property offered for sale must register in advance and may be required to submit a written, sealed first bid accompanied by certified funds for an amount of not less than the tax, penalty, interest and costs as determined by the City treasurer. In the event that more than one bid is received prior to the time of sale of the property, the property will be offered and, upon completion of the bidding, will be awarded to the successful bidder. Certified funds must be deposited with the City treasurer in the amount equal to the bid price at the time the bid is accepted.
  - 1. If a bidder is the record owner of the property, or an agent of the record owner, or a contract buyer, no competitive bidding will be permitted. An agent shall include a personal representative or administrator, mortgage holder or trustee under a trust deed. In the event that a bid is made by such person, the property will be redeemed in the name of the record owner.

#### 3.65.030 - Redemption rights and procedures.

- A. Property certified for sale may be redeemed on behalf of the record owner by any person at any time prior to the final tax sale.
- B. A person redeeming property must pay to the City treasurer all delinquent taxes, interest, penalties and administrative costs that have accrued on the property.
- C. If two or more persons own a piece of property on which a delinquency exists, any owner may redeem the owner's interest in the property upon payment of that portion of the taxes, interest, penalties and administrative costs which the owner's interest bears to the whole, as determined by the council.
- D. If any property is redeemed, the City treasurer shall make the proper entry in the record of tax sales filed in the treasurer's office and issue a certificate of redemption, which is prima facie evidence of the redemption, and may be recorded in the office of the City recorder without acknowledgment.
- E. Where the record owner is deceased, the property may be redeemed by and all documents issued in the name of the personal representative or administrator of the estate. If the estate of the deceased owner has not yet been probated, the delinquent taxes may be paid in the name of the deceased record owner. No redemption certificate will be issued until a personal representative or administrator for the estate has been appointed.

#### 3.65.040 - Prohibition of collusive bidding.

Collusive bidding is prohibited. Collusive bidding is defined as any agreement or understanding reached by two or more parties that changes the bids the parties would otherwise offer absent the agreement or understanding.

#### 3.65.050 - Conflict of interest prohibitions and disclosure requirements.

- A. No officer or employee of any City office connected with the tax sale may bid on or benefit from the purchase of property offered for sale, directly or indirectly, except where the officer or employee is the record owner, an heir or personal representative of a deceased record owner or an abutting property owner.
- B. When an officer or employee of an office involved in the conduct of the tax sales knows that a relative or business associate desires to participate in the tax sale, the officer or employee shall make complete written disclosure of the relationship prior to the sale.

#### 3.65.060 - Criteria for accepting or rejecting bids.

- A. At Final Tax Sale, only the highest bid amount for the entire parcel of property may be accepted. A bid may not be accepted for an amount which is insufficient to pay the taxes, penalties, interest and administrative costs.



B. The council may find that none of the bids are acceptable.

3.65.070 - Criteria for granting bidder preference.

Parcels meeting the following criteria shall be sold without competitive bidding as an entire parcel only:

- A. The parcel that has been determined not to be an economically viable unit of property to other than a preferential interest based upon consideration of such characteristics as size, shape, access, zoning, or other factors that may affect the economic value and use of the parcel.
- B. A non-preference sale of the parcel would create a nuisance and/or cloud upon an existing interest in the property and could unreasonably diminish the value of such an interest.
- C. Priority of Preference.
  - 1. First priority is given to any possessory interest;
  - 2. If no possessory interest exists, priority is given to abutting property owners;
  - 3. If there is a conflict between two or more possessory interests or two or more abutting property owners, the auditor may direct that the property be bid as between the two conflicting possessory interests.

3.65.080 - Sale ratification procedures.

All accepted bids will be submitted to the council for ratification.

3.65.090 - Procedures for recording tax deeds.

- A. Upon payment, the City treasurer will issue a temporary receipt. Within sixty days of the date of the sale and after approval of all sales by the council, the City auditor will issue and record the tax deed, and mail the recorded deed to the name and address listed on the bid sheet and bidder registration form. Deeds issued by the City auditor shall recite the following:
  - 1. The total amount of all the delinquent taxes, penalties, interest and administrative costs which were paid for the execution and delivery of the deed;
  - 2. The year for which the property was assessed, the year the property became delinquent, and the year the property was subject to tax sale;
  - 3. A full description of the property; and
  - 4. The name of the grantee.
- B. When the deed is executed and delivered by the auditor, it shall be prima facie evidence of the regularity of all proceedings subsequent to the date the taxes initially became delinquent and of the conveyance of the property to the grantee in fee simple.
- C. The deed issued by the City auditor under this section shall be recorded by the City recorder.
- D. The fee for the recording shall be included in the administrative costs of the sale.

3.65.100 - Payment methods and procedures.

- A. For redemptions after the date of certification for sale, all amounts must be paid in cash or with funds acceptable to the treasurer. For post-certification redemptions, an administrative fee is added to delinquencies.
- B. Property will be auctioned by class. When property has been bid and sold, purchasers must remit the full amount bid for the purchase in cash or certified funds. In the event that a bidder is unable to produce the total amount at that time, his/her bid shall be considered null and void and the property shall be resold by the City auditor.

### 3.65.110 - Procedures for contesting bids and sales.

Any person wishing to contest any action taken in conjunction with the tax sale must file a written protest containing all relevant information and arguments with the council within ten days after the date of the tax sale. The council need not grant hearings for purposes of reviewing a contested bid or sale, but may render a decision based upon all information within the possession of the City following a review of submissions. The council may award the property to one of the bidders, reject all bids and order it re-offered for sale, or, upon a finding that it is in the best public interest, withdraw the property from the sale.

### 3.65.120 - Criteria for striking properties to the City.

- A. Any property offered for sale for which there is no purchaser and which it is not in the public interest to withdraw and recertify to a subsequent sale, shall be struck off to the City by the City auditor, who shall then:
  - 1. Publicly declare substantially as follows: "All property here offered for sale which has not been struck off to a private purchaser is hereby struck off and sold to the City of Millcreek, and I hereby declare the fee simple title of the property to be vested in the City."
  - 2. Make an endorsement opposite each of the entries in the delinquency tax sale record described in Section 59-2-1338, Utah Code Annotated, substantially as follows: "The fee simple title in the property described in this entry in the year of \_\_\_\_\_ sold and conveyed to the City of Millcreek in payment of general taxes charged to the property"; and
  - 3. Sign the auditor's name to the record.
- B. The fee simple title shall then vest in the City.

### 3.65.130 - Procedures for disclosing properties withdrawn from the sale for reasons other than redemption.

The City auditor, with the approval of the council, may withdraw from the sale property having title, description or other deficiencies, or property which is found to be in the best interest of the public to withdraw from sale. Property so withdrawn from such sale may be recertified to a subsequent sale if the cause of the original withdrawal has been remedied. Recertification must be approved or ratified by the council.

### 3.65.140 - Disclaimers by the City with respect to sale procedures and actions.

Properties sold during the tax sale shall be conveyed by tax deed. This form of deed is not a warranty deed. The City makes no representations as to the title conveyed, nor as to the purchaser's right of possession of the property. Similarly, the City makes no warranties or representations as to whether the property is buildable or developable, nor does the City make any representations regarding whether the property complies with applicable zoning regulations. The City does not warrant or represent that any property purchased during the tax sale is habitable or in any particular condition. The City also makes no warranties or representations regarding the accuracy of the assessment of the property or the accuracy of the description of the real estate or improvements therein.

## Chapter 3.66 - TAX SALE OF CONTAMINATED PROPERTIES

### 3.66.010 - Purpose.

The purpose of this policy is to set out the circumstances under which the council deems it in the best interest of the public for the City auditor to withdraw environmentally contaminated property scheduled for final tax sale from that sale and to designate appropriate procedures governing the sale of such properties.

### 3.66.020 - Legislative findings.

The council makes the following findings with respect to the sale of environmentally contaminated properties and the ability of the City to manage, control, and direct the sale of those properties and the management of any properties which might come into City ownership.

- A. The City finds that it has insufficient resources to manage properties impacted by environmental contamination which might be struck to the City at a final tax sale.
- B. The City lacks the resources to coordinate or perform either the remediation of contaminated properties or litigation directed to establishing responsible parties and pro rata contribution by those parties.
- C. The involuntary acquisition of such properties by Millcreek City and the ongoing responsibility for their management at public expense is not in the public interest.
- D. The effective solicitation of bids for properties with environmental contamination requires specialized advertising and bidding procedures not generally applicable to other tax sale properties.
- E. The best public interest requires that the properties with environmental contamination be withdrawn from the final tax sale when either further information is required with respect to the subject property or no acceptable bids are received either prior to or at the sale.

#### 3.66.030 - Research and disclosure.

- A. In the first year a property is subject to final tax sale and environmental concerns are alleged or discovered, the property will be withdrawn from the sale unless the City can comply with the balance of the policy and procedures set out in this chapter.
- B. After initial withdrawal, the City auditor may acquire and place on file information which is readily available from public sources relating to the alleged contamination. Such information may include sites in Utah listed on the Nation Priorities List ("NPL"), the Comprehensive Environmental Response, Compensation and Liability Information System ("CERCLIS"), and the Leaking Underground Storage Tank ("LUST") list. Such information will be made available in the offices of the City auditor for inspection by any member of the public. The City makes no representation that the information on file is accurate, exhaustive or complete. Potential bidders are encouraged to conduct such other research consistent with ASTM Standard E-1527-93 (Standard Practice for Environmental Site Assessments) as they deem necessary or appropriate. Information maintained with respect to any parcel may be supplemented by the City or any other party at any time prior to the sale.

#### 3.66.040 - Sale procedures.

- A. Notice.
  - 1. Notice of the potential sale shall be given as required by law to all interests of record.
  - 2. Public notice shall be given by advertising at such times and frequency as are provided for by law. Properties alleged to be affected by environmental contamination shall be segregated in the final tax sale notice with a designation that environmental contamination has been alleged with respect to the properties.
- B. Diminution of Original Parcel Not Allowed.
  - 1. The council determines that it is not in the public interest to allow the environmentally affected portions of any parcel to be severed from the balance of the property and accordingly will not accept bids for diminishing portions of the property. Full parcels only will be sold to the bidder offering the highest amount in excess of the taxes, penalties, interest and costs.
  - 2. Aggregation of Parcels. Two or more contiguous parcels owned by the same owner may be combined when:
    - a. The parcels are a single economic or functional unit;

- b. The combined sale will best protect the financial interest of the delinquent property owner; and
  - c. Separate sales will reduce the economic value of the unit by reducing the likelihood of remediation or the likelihood that the contaminated parcel or portion of any parcel will be sold.
- C. Registration. Any party wishing to bid on environmentally affected property offered for sale must register in advance and submit a written, sealed bid accompanied by certified funds for an amount of not less than the tax, penalty, interest and costs as determined by the City treasurer; and submit in conjunction with the submission of its sealed bid, an executed indemnification and release agreement and an executed environmental covenant, copies of which are available from the City auditor at least twenty calendar days prior to the day of the tax sale. The successful bidder must agree to the recordation of the environmental covenant, if in the opinion of the City it is deemed necessary. In the event one or more bids are received prior to the time of sale of the property, the property will be offered and, upon completion of the bidding, will be awarded to the highest bidder. Certified funds must be on deposit with the City treasurer in the amount equal to the bid price at the time the bid is offered and accepted. If no qualifying bid is received, the auditor shall cause the property to be withdrawn from sale and recertified to a subsequent sale or subject to City council approval, may if no qualifying bid is received, strike the property to the City.
- D. Excess Receipts. Any amount in excess of the taxes, penalty, interest and costs will be transferred to the State Treasurer as required by statute. For purposes of this chapter, costs shall include not only the standard administrative fee established by the council for all properties offered at final tax sale, but also any additional expenses incurred by the City in acquiring and making available for inspection evidence related to alleged contamination and any additional advertising costs incurred as a result of complying with this chapter.

#### Chapter 3.67 - WAIVER OF PROPERTY TAX RELATED INTEREST, PENALTIES AND FEES

##### 3.67.010 - Uniform policies established.

In order to provide consistency of procedure and uniformity of application in the processing of requests for reductions, waivers, or refunds of certain property tax related fees, penalties or interest, the council finds it to be in the best interests of the public welfare to establish uniform standards and policies governing property tax related penalties, interest and fees.

##### 3.67.020 - Processing of requests for waivers, reductions or refunds.

- A. Except for routine requests pursuant to 3.67.020(d), requests for refunds, reductions, or waivers of property tax related penalties, fees or interest pursuant to this chapter shall be by written application and shall set out the specific basis and evidence supporting the request.
- B. Except as specifically authorized by the council, all requests for refunds, reductions, or waivers of property tax related penalties, fees, or interest shall be referred to the property tax committee established pursuant to Policy 3001. The chair of the committee may refer the request to involved offices for recommendations. Recommendations shall be submitted to the property tax committee for review and transmittal to the council.
- C. Requests which may be submitted directly to an individual office may be referred with recommendations consistent with City policy directly to the council or, in the event the request involves significant policy issues affecting other offices or departments of the City, to the property tax committee. Recommendations or requests made directly by an individual office to the council shall be subject to review by the office of tax administration prior to action by the council.
- D. Routine requests involving nominal amounts may be granted directly by an individual office pursuant to policies adopted by the council which shall contain such limits, conditions and reporting requirements as are established by the council. Full documentation with respect to each request shall be maintained in the office granting the relief.

3.67.030 - Final tax sale administrative fee.

Subject to approval by the council the final tax sale administrative fee may be waived for those properties either individually or by class where the following conditions exist: (a) the property is of nominal value and the fee exceeds the amount of the delinquent taxes, penalties and interest; or (b) there is evidence that the imposition of the fee discourages or has discouraged retention of the property in private ownership; or (c) the property is to be sold to an abutting property owner and included with that property in a consolidated legal description and the present and future benefit to the City from such consolidation exceeds the amount of the fee; or (d) in conjunction with a settlement or deferral of special district charges by the district governing body and property taxes pursuant to Utah Code Annotated Section 59-2-1347, the best human interest and the interests of the state and City are served by the waiver of or reduction in the fee.

3.67.040 - Penalties, interest and fees imposed on delinquent property taxes or greenbelt rollback taxes.

- A. Upon submitting an appropriate application within sixty days after the date of delinquency for property taxes, interest and penalties imposed as a result of the failure of a property owner to make timely payment of property taxes may be waived or reduced upon demonstration of the following factors: (a) failure to receive notice of the assessment or of the taxes due based upon an error by the City when it is clear from the City records that such error arose solely as a result of the failure of the City to implement information contained in its records; or (b) medical circumstances which precluded the taxpayer from both making a timely payment and appointing an agent for such matters.
- B. Upon submitting an appropriate application within sixty days after the date the greenbelt rollback penalty was imposed, interest and penalties imposed as a result of the failure of a property owner to make timely payment of greenbelt rollback taxes may be waived or reduced upon demonstration of the following factors: failure to receive notice of the taxes due based upon an error by the City when it is clear from the City records that such error arose solely as a result of the failure of the City to implement information contained in its records.

3.67.050 - Penalties imposed for failure to file property affidavits or signed statements.

The penalty imposed for the failure to file a signed and completed affidavit or signed statement pursuant to Utah Code Annotated Section 59-2-307 may be waived, reduced, or refunded upon evidence of the following: (a) failure to receive the affidavit form or statement based upon an error by the City when it is clear from the City records that such error arose solely as a result of the failure of the City to implement information contained in the records; (b) medical circumstances which precluded the taxpayer from both filing a timely affidavit or statement and appointing an agent for such matters; (c) the failure to file the affidavit or statement arose out of a change of ownership with respect to the organization or property and the purchaser of the property reasonably believed, based upon the seller's representations, either that all taxes had been paid or that no assessment or request for a statement pursuant to Utah Code Annotated Section 59-2-306 had been made. No waiver or reduction may be granted where a change in ownership exists and the failure of the buyer to receive notice occurs solely as a result of the buyer's failure to notify the assessor of the change in ownership.

3.67.060 - Penalties imposed for wilful concealment or misrepresentation.

Penalties imposed pursuant to Utah Code Annotated Section 59-2-309(2) may not be reduced or waived absent a written application made under oath setting forth all justification for the taxpayer's or agent's actions and a finding by the City that the owner or agent acted without the intent to evade taxation. Concealment shall include the deliberate refusal to identify and report property after receipt of a written request by the assessor or board of equalization. It shall be no defense to the imposition of the penalty that the taxpayer believed the property to be exempt from taxation. In such cases, the property must be identified and the basis for the claim for exemption specifically set forth.

3.67.070 - Refunds/setoff.

Refunds or adjustments will be made only to parties who have actually paid or are legally obligated to pay the taxes, penalties, or interest. Refunds or adjustments shall first be applied to any known existing delinquencies for that property. Any refund granted to a current property owner may be applied to any known existing delinquency on property in the name of that owner.

#### Chapter 3.69 - RESIDENTIAL PROPERTY TAX EXEMPTIONS

##### 3.69.010 - Authority and purpose.

The Utah Constitution, article XIII, sec. 2(8) and Utah Code Ann. § 59-2-102(22) and 103(2) (2001) provides that a residential exemption from property tax of forty-five percent is available for "primary residences, and the Utah Legislature enacted Utah Code Ann. § 59-2-103.5 (2002) establishing procedures to obtain an exemption for residential property and authorizing the City legislative body to adopt an ordinance for the allowance of a residential exemption for residential property.

##### 3.69.020 - Procedure.

- A. All owners of residential property as defined in Utah Code Ann. § 59-2-102(27) (2001) shall submit an application to the City Board of Equalization for exemption from property taxes for residential property used as a primary residence no later than March 1 of the current tax year. The application shall include the following information:
  1. Property parcel number and location address;
  2. Name of the applicant;
  3. Basis of the applicants' knowledge of the use of the property;
  4. Description of the use of the property;
  5. Evidence of domicile of the inhabitant(s) of the property;
  6. Signature of all owners of the property and a certification that the property is residential property.
- B. In the event that an application is not timely filed, an exemption may be granted by the Board of Equalization on an individual appeal basis for the current tax year only. Applicants for exemption shall be accepted for the current year only.
- C. Except for those properties receiving a partial residential exemption, which are required to file an application each year, the City Board of Equalization may require an owner of the residential property to file the application described in 3.69.020A only if:
  1. that residential property was ineligible for the residential exemption authorized under Section 59-2-103 during the calendar year immediately preceding the calendar year for which the owner is seeking to claim the residential exemption for that residential property; or
  2. the City Board of Equalization determines that there is reason to believe that the property no longer qualifies for the residential exemption in accordance with Utah Code Ann. § 59-2-103.
- D. The City Board of Equalization or Assessor may request or collect information sufficient to verify the primary residence status and make the determination if the property is entitled to the residential exemption.
- E. If an applicant requests a property be designated as a primary residence, the residential exemption shall not be granted without clear and convincing evidence that the property serves as the primary residence. The burden of proof shall remain at all times with the applicant.

##### 3.69.030 - Criteria.

- A. A primary residence means the location where domicile has been established. "Domicile" means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place he has (whenever he is absent) the intention of returning. It is the place in which a person has

voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home. After domicile has been established, two things are necessary to create a new domicile: first, an abandonment of the old domicile; and second, the intention and establishment of a new domicile. The mere intention to abandon a domicile once established is not of itself sufficient to create a new domicile; for before a person can be said to have changed his domicile, a new domicile must be shown. Factors or objective evidence determinative of domicile are set forth in Utah Code Admin. Rule R884-24P-52(E).

- B. To qualify for the residential exemption, a property need not be owner occupied. Apartments and other rental housing used as a primary residence of the occupant(s) qualify for the residential exemption in accordance with Section 3.69.020 above. A primary residence does not include property used for transient residential use, or condominiums used in rental pools. In addition to other evidence of domicile, only the primary residence which is occupied more than six months out of the year qualifies for the residential exemption. The residential exemption is limited to up to one acre of land per residential dwelling unit on a single property description.
- C. A partial exemption may be applied against the property taxes of mixed commercial and residential property but it is presumed that the entire property is commercial. This presumption may be rebutted by the filing of the application referred to in Section 3.69.020(A) every year, which includes evidence of domicile of each qualifying resident. The assessor may require additional information as necessary to make a determination of the percentage of the property qualifying for the residential exemption.
- D. A partial exemption may be applied against the property taxes of qualifying nursing homes. In addition to the information required in Section 3.69.020(A), the affidavit, which must be filed every year, shall include the number of residents living at the facility and the number that have established their primary residence at the facility; the total square footage of the facility and the total non-residential square footage. The assessor may require additional information as necessary in order to determine the percentage of eligibility of the property for the exemption.

#### 3.69.040 - Grandfather provision.

As of the effective date of this ordinance, owner-occupied residential property, apartments and other rental property being used as the primary residence of the occupants, where the property is currently listed by the City assessor as having a residential exemption shall not be required to file an application to continue its status. Owner occupied residential property, apartments and other rental property being used as the primary residence of the occupants where the property is subsequently listed by the City assessor as having a residential exemption constructed after the effective date of this ordinance, shall not be required to file the application required by Section 3.69.020(A). However, should use change from primary residence, the property shall no longer be considered exempt and an application under the provision of this ordinance shall be required.

#### 3.69.050 - Conflict.

In the event of any conflict between this ordinance and state or federal law, the provisions of the latter shall be controlling.

#### 3.69.060 - Incorporation provision.

This ordinance shall incorporate the provisions of Utah Code Admin. Rule 884-24P-52: Criteria for Determining Primary Residence pursuant to Utah Code Annotated Sections 59-2-102 and 59-2-103; and, Property Tax Standard 2.13 Primary Residential Exemption.

#### 3.69.070 - Savings clause.

In the event one or more of the provisions of this ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable laws, such enforceability or invalidity shall not affect any other provision; and in such an event, this ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

## Chapter 3.70 - LOCAL OPTION TRANSPORTATION CORRIDOR FUNDING

### 3.70.010 - Local option motor vehicle registration fee.

- A. There is adopted in Millcreek City a local option motor vehicle registration fee, in the amount of ten dollars for annual registration of all motor vehicles in Millcreek City.
- B. Funds derived from the fee established in this chapter shall be devoted to such purposes as are authorized by the provisions of Utah Code Annotated Section 41-1a-1222, Section 72-2-117.5, and Section 72-2-121 relating to this fee.
- C. Funds derived from this motor vehicle registration fee shall be administered by the Utah Department of Transportation, in accordance with state statute.

## Chapter 3.71 - CITY PARTICIPATION IN AND APPROPRIATION TO A PRIVATE ENTERPRISE PROJECT

### 3.71.010 - Title.

The ordinance codified in this chapter shall be known as the "City Participation in and Appropriation to a Private Enterprise Project" ordinance.

### 3.71.020 - Statutory authority.

The authority for this chapter is Utah Code Ann. § 17-50-303.

### 3.71.030 - Purpose of provisions.

- A. The ordinance codified in this chapter is enacted to provide the City with a mechanism to:
  - 1. Appropriate City funds or resources in aid of a private enterprise project if, in the judgment of the City council, the aid contributes to the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of City residents.
- B. The City may appropriate City funds or resources to a private enterprise project from the City's own funds or resources, or from funds or resources the City receives from the state or any other source.

### 3.71.040 - Definitions.

As used in this chapter:

"Net value" shall be measured by the City for funds or resources appropriated by the City to a private entity on a project-by-project basis over the life of the project.

"Private enterprise" means a person or entity that engages in an activity for profit.

"Project" means an activity engaged in by a private enterprise.

"Study" means an inquiry conducted or commissioned by the City into the proposed private enterprise project, and the written report of the results of the study.

"Value" means tangible and intangible benefits the City receives from a private enterprise project.

### 3.71.050 - Procedures.

- A. The City may appropriate funds or resources in aid of a private enterprise project if:
  - 1. The City receives value in return for the funds or resources appropriated. The City shall measure the net value received by the City for funds or resources appropriated by the City to a private entity on a project-by-project basis over the life of the project; and



2. In the judgment of the City council, the private enterprise project enhances the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the City residents.
- B. Before the City council may appropriate funds or resources in aid of a private enterprise project, the City council shall:
1. Adopt by resolution a determination of the value the City will receive in return for funds or resources appropriated based on the following criteria:
    - a. Expenditures saved; or
    - b. Expenses forgone; or
    - c. Intangible benefits received by the City; or
    - d. Intangible benefits received by City residents; or
    - e. Other conveniences or comforts to the City residents.
  2. Conduct and make available to the public at least fourteen days immediately prior to the scheduled day of the public hearing described in Subsection 3, below, a study on the proposed appropriation and private enterprise project. The study shall consider:
    - a. Any value the City will receive in return for funds or resources appropriated to a private entity;
    - b. The City's stated purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the City residents; and
    - c. Whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the City in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures, analyzing and improving City government structure or property, or any other public purpose.
  3. Post notice and hold a public hearing on the proposed appropriation and the private enterprise project. The City shall publish notice of the public hearing:
    - a. In a newspaper of general circulation at least fourteen days before the date of the hearing, or if there is no newspaper in general circulation, by posting notice in at least three conspicuous places within the City for the same time period; and
    - b. On the Utah Public Notice Website created in Utah Code Ann. § 63F-1-701, at least fourteen days before the date of the hearing.
- C. The City council may direct and the mayor may request that the provisions of this chapter be used to process any collaboration between the City and a private entity in which decisions regarding the proposed collaboration would be improved by conducting a study and public hearing in accordance with this chapter.
- D. A person may appeal the decision of the City council to appropriate funds or resources under this chapter as follows:
1. A person shall file an appeal with the Third District Court within thirty days after the date on which the City council approves a budget to appropriate funds or resources.
  2. The court shall:
    - a. Presume that an appropriation made under this chapter is valid; and
    - b. Determine only whether the appropriation is arbitrary, capricious, or illegal.
  3. A determination of illegality requires a determination that the appropriation violates a law, statute, or ordinance in effect at the time the appropriation was made.
  4. The district court's review is limited to:

- a. A review of the resolution adopted by the City council;
- b. The record created by the City council at the public hearing;
- c. The record created by the City in preparation of the study and the study itself;
- d. If there is no record, the court may call witnesses and take evidence.

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