

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA, AMENDING CHAPTER 16.5 (PROCUREMENT CODE) TO CREATE A COMMERCIAL NONDISCRIMINATION POLICY; PROVIDING FOR MANDATORY NONDISCRIMINATION AND DISCLOSURE CLAUSES TO BE INCLUDED IN CITY CONTRACTS; REQUIRING BIDDERS OR PROPOSERS TO SUBMIT A CERTIFICATION OF NONDISCRIMINATION; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City Council of the City of Riviera Beach finds that in order to avoid becoming a passive participant in private sector commercial discrimination, it is necessary to establish and firmly enforce a clear policy against discrimination in business on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners, and further, that pursuant to such policy, the City shall not contract with business firms that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers; and

WHEREAS, such a commercial non-discrimination policy approach has been favorably commented upon by the United States Supreme Court in *City of Richmond v. J. A. Croson*, 488 U.S. 469, 509510 (1989), and by other federal courts; and

WHEREAS, the City Council further determines that it has a compelling interest in assuring that the public funds that are collected from all of its citizens and then spent in City contracting do not serve to finance private prejudice on the basis of race, gender, religion, national origin, ethnicity, age, disability, or any other form of unlawful discrimination; and

WHEREAS, the City Council further determined that it is in the best interests of the City of Riviera Beach to enhance competition on City projects by promoting equal opportunity and the full participation of all segments of its business community in a robust and inclusive marketplace environment that is free from the effects of discrimination, and, moreover, that the City is likely to benefit from a discrimination – free marketplace through lower prices for the goods and services it purchases, higher revenues through increased employment opportunities for its citizens, increased business-to-business sales, and a more vibrant local economy; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIVIERA BEACH, PALM BEACH COUNTY, FLORIDA THAT:

SECTION 1. The foregoing recitals are ratified and confirmed as being true and correct and are made a specific part of this Ordinance.

SECTION 2 The Code of Ordinances of the City of Riviera Beach, Florida is hereby amended at Chapter _____ to create Sec. _____ to read as follows:

Sec. Commercial Nondiscrimination

a) **Purpose and Intent.** It is the intent of the City Council of the City of Riviera Beach to avoid becoming a passive participant in private sector commercial discrimination by refusing to procure goods, products and services from any business entity that discriminate in the solicitation, selection, hiring, or treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners. Furthermore, the City Council intends to achieve this intended purpose by authorizing the City Attorney and Director of Purchasing to issue administrative procedures, for approval by the City Manager, regarding the receipt, investigation, and resolution of such commercial discrimination complaints that may be filed against business entities engaged (or seeking to be engaged) as parties to city contracts of city solicitations for the purchase of goods, products, and/or services.

For the purposes of this policy, *Discrimination shall mean any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a contractor, vendor, supplier, subcontractor, or commercial customer on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" does not include lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the Relevant Geographic Marketplace.*

b) **Statement of Policy.** It is the policy of the City of Riviera Beach not to accept bids or proposals from, nor to engage in a commercial relationship for the purchase or supply of any goods, products, and/or services with, any business entity that has

discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors or commercial customers on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of regarding the vendor's, supplier's or commercial customer's employees or owners; provided that nothing in this commercial nondiscrimination policy shall prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that has occurred or is occurring in the marketplace.

1. Exclusions. This commercial non-discrimination policy shall not apply to the following:

- a. Settlement of litigation unrelated to the City's purchase of goods or services and/or unrelated to proceedings to enforce this commercial nondiscrimination policy or other civil rights laws that address discrimination in the making or enforcement of contracts.
- b. Settlement of judicial/administrative enforcement proceedings by or on behalf of the city (excluding proceedings to enforce this commercial non-discrimination policy or other civil rights laws that address discrimination in the making and enforcement of contracts).
- c. Agreements concerning standards for locating facilities in a city right of way when a business firm has a statutory right to be in the right of way.

c) Application. This ordinance applies to all business entities and to all City solicitations and commercial contracts for the provision of goods and/or services on behalf of the City of Riviera Beach. Additionally, as to third-party contracts, every contract and other agreement between the City of Riviera Beach and any governmental agency, quasi-governmental agency, corporation, developer, or contractor, under which the agency, corporation, developer, or contractor receives any fiscal assistance from or through the City of Riviera Beach for the purpose of contracting with businesses to perform real estate development, renovation, maintenance, or other services, must require the agency, corporation, developer, or contractor to comply with this ordinance in awarding and administering that contract or agreement.

d) **Implementation.** The Director of Purchasing shall implement this policy by periodically conducting outreach and by distributing educational materials to the City's contracting and vendor community and related trade associations to advise such contractors, vendors and prospective respondents or bidders of this ordinance. The City Attorney and the Director of Purchasing shall promulgate administrative procedures subject to the approval of the City Manager regarding the receipt, investigation, and adjudication of complaints that are filed pursuant to this Policy. In addition, the City Manager, Director of Purchasing and the Office of City Attorney shall ensure that the following commercial nondiscrimination clause language is set forth in, and incorporated into, all the City contracts that result from formal, competitive solicitations:

1. **Mandatory Nondiscrimination Contract Clause.** Every city contract and subcontract shall contain a commercial nondiscrimination clause that reads substantially as follows:

As a condition of entering into this agreement, the contractor/company represents and warrant that it will fully comply with the city's commercial nondiscrimination policy, as described in Sec. _____ of the City Code and related regulations. As part of such compliance, the contractor/company shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's or commercial customer's employees or owners in its solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. Moreover, the contractor/company shall not retaliate against any person or entity for reporting instances of such discrimination. The contractor/company shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace. The contractor/company understands and agrees that a violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the contractor/company from participating in city contracts or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

2. **Contract Solicitation Requirements.** All competitive solicitations, including but not limited to requests for bids, proposals, or qualifications and

invitations to bid or negotiate, shall include a certification to be completed by the bidder or proposer in substantially the following form:

The undersigned bidder, offeror, or proposer hereby certifies and agrees that the following information is correct:

- a. In preparing its enclosed bid, offer, or proposal, the bidder, offeror, or proposer has considered all bids, offers, and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined below.
- b. For purposes of this section, *Discrimination* shall mean any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a contractor, vendor, supplier, subcontractor, or commercial customer on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information, or on the basis of any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. Without limiting the foregoing, *Discrimination* also includes retaliating against any person or other entity for reporting any incident of discrimination.
- c. Without limiting any other remedies that the city may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the city to reject the bid or proposal submitted with this certification, and terminate any contract awarded based on such bid or proposal. It shall also constitute a violation of the city's commercial non-discrimination ordinance and shall subject the bidder, offeror, or proposer to any remedies allowed thereunder, including possible disqualification from participating in city contracts or bid processes for up to two years.
- d. As a condition of contracting with the city, the bidder, offeror or proposer agrees to promptly provide to the city all information and documentation that may be requested by the city from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information shall constitute grounds for the city to reject the bid or proposal and to any contract awarded on such bid or proposal. It shall also constitute a violation of the city's commercial non-discrimination ordinance, and shall subject the bidder, offeror or proposer to any remedies that are allowed thereunder.
- e. As part of the its bid, offer or proposal, the bidder, offeror or proposer shall provide to the city a list of all instances within the past four (4) years where a complaint was filed or pending against bidder, offeror or proposer in a legal or administrative proceeding

alleging that bidder, offeror or proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.

- f. As a condition of submitting a bid, offer or proposal to the city the bidder or proposer agrees to comply with the city's commercial nondiscrimination policy as described herein.

3. **Contract Disclosure Requirements.** Every contract that the city enters into shall include a clause that reads substantially as follows:

As a condition of entering into this agreement, the contractor/company agrees to:

(a) Promptly provide to the city all information and documentation that may be requested by the city from time to time regarding the solicitation, selection, treatment and payment of subcontractors in connection with this agreement; and

(b) If requested, provide to the city within sixty days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that contractor/company has used on city contracts in the past five years, including the total dollar amount paid by contractor on each subcontract or supply contract. The contractor/company further agrees to fully cooperate in any investigation conducted by the city pursuant to the city's commercial non-discrimination policy, to provide any documents relevant to such investigation that are requested by the city, and to be bound by the award of any arbitration conducted under such policy. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification of the company from participating in city contracts and other sanctions.

SECTION 2: That all sections or parts of sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions or parts of Resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

SECTION 3: If any portion of this Ordinance is determined by any Court to be invalid, the invalid portion shall be stricken, and such striking shall not affect the validity of the remainder of the Ordinance. If any Court determines that this Ordinance, or any portion hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies), or circumstances(s), such determination shall not affect the applicability hereof to any other individual, group, entity, property, or circumstance.

SECTION 4: Specific authority is hereby granted to codify this Ordinance.

SECTION 5: This Ordinance shall be in full force and effect immediately upon its final passage and adoption.

PASSED AND APPROVED on the first reading this ____ day of _____, 2021.

PASSED AND ADOPTED on the second and final reading this ____ day of _____ 2021.

APPROVED:

RONNIE L. FELDER
MAYOR

JULIA A. BOTEL, Ed.D.
CHAIRPERSON

ATTEST:

CLAUDENE L. ANTHONY, CMC
CITY CLERK

DOUGLAS A. LAWSON
CHAIR PRO TEM

TRADRICK MCCOY
COUNCILPERSON

KASHAMBA MILLER-ANDERSON
COUNCILPERSON

SHIRLEY D. LANIER
COUNCILPERSON

MOTIONED BY: _____

SECONDED BY: _____

J. BOTEL: _____

D. LAWSON: _____

T. McCOY: _____

K. MILLER-ANDERSON: _____

S. LANIER: _____

REVIEWED AS TO LEGAL SUFFICIENCY

DAWN S. WYNN, CITY ATTORNEY

DATE: _____