

**TOWN OF LITTLE ELM, TEXAS**

**ORDINANCE NO. 1238**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, GRANTING AUTHORITY TO THE TOWN MANAGER TO SIGN ALL CONTRACTS AND CHANGE ORDERS NOT TO EXCEED FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00); ADOPTING THE TOWN'S PURCHASING POLICY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Section 8.09 of the Town's Home Rule Charter ("Charter") provides that the Town Council of the Town of Little Elm, Texas ("Town Council"), may, by ordinance, give the Town Manager general authority to contract for expenditures without further approval of the Town Council for all budgeted items not exceeding limits set by the Town Council within such an ordinance; and

**WHEREAS**, Sections 252.048(c) and 271.060(d) of the Texas Local Government Code authorize the Town Council to grant authority to an official or employee of the Town to approve change orders in an amount of \$50,000.00 or less; and

**WHEREAS**, the Town Council has determined that, pursuant to the authority granted in the Charter and state law, the Town Council should grant such authority to the Town Manager to sign all contracts or change orders for amounts not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00); and

**WHEREAS**, the Town Council has determined that various Town purchasing policies should be assembled and adopted into one document ("Purchasing Policy") to guide purchasing functions of the Town in accordance with all applicable laws and Town policies, practices and procedures; and

**WHEREAS**, the Town Council has determined that the adoption and implementation of granting contracting authority to the Town Manager, and adopting the Town's Purchasing Policy, is in the best interest of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF LITTLE ELM, TEXAS, THAT:**

**Section 1. Findings.**

The facts and recitations contained in the preamble of this Ordinance are hereby found and declared to be true and correct legislative findings and are adopted as part of this Ordinance for all purposes.

**Section 2. Town Manager Contracting Authority.**

Pursuant to Section 8.09 of the Charter, and from and after the effective date of this Ordinance, the Town Council hereby grants to the Town Manager the authority to sign all contracts and change orders not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) in amount without first obtaining Town Council approval of each such contract or change order, to the extent only that funds have previously been allocated in the Town's annual budget and are available for the purpose of said contract or change order, and further provided that Town Council approval of said contract or change order is not otherwise required by law.

**Section 3. Adoption of Town Purchasing Policy.**

Pursuant to federal and state law, and the Charter, and from and after the effective date of this Ordinance, the Town Council hereby adopts the Town's Purchasing Policy, attached hereto as **Exhibit A**. This document is on file in the office of the Town Secretary for permanent record and inspection. A copy of this document may also be obtained from the Town's Finance Department.

**Section 4. Repealer Clause.**

All ordinances, orders or resolutions heretofore passed and adopted by the Town Council are hereby repealed to the extent that said ordinances, orders or resolutions, or parts thereof, are in conflict herewith.

**Section 5. Severability Clause.**

If any word, section, article, phrase, paragraph, sentence, clause, or portion of this Ordinance or application thereto to any person or circumstance is held to be invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Ordinance; and the Town Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

**Section 6. Effective Date.**

This Ordinance shall take effect immediately upon its adoption in accordance with and as provided by law and the Town Charter.

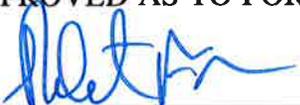
**PASSED AND APPROVED** by the Town Council of the Town of Little Elm, Texas, this the 27<sup>th</sup> day of NOVEMBER, 2014.

  
David Hillock, Mayor

ATTEST:

  
Kathy Phillips, Town Secretary

APPROVED AS TO FORM:

  
Robert F. Brown, Town Attorney

**Exhibit A**  
**Purchasing Policy**



**LITTLE ELM**

# **PURCHASING POLICY**



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1. Procedures

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CHAPTER 1 - Purpose

Purpose

The Purchasing Division will serve as the central procurement office of the Town and will determine which method of procurement provides the best value for the Town, adopt operational procedures consistent with sound business practices and state law which govern the procurement and management of all materials, services and construction to be procured by the Town, and to manage disposal of materials.

The purpose of the Purchasing Policy is to provide the Town with the requisite parameters for purchasing goods and services under applicable state statutes. More specifically, the purposes are:

- Simplify and clarify the laws governing purchasing by the Town;
- Permit the continued development of purchasing policies and practices;
- Provide consistency in the purchasing practices of the Town;
- Increase public confidence in public purchasing;
- Ensure the fair and equitable treatment of all persons who participate in the purchasing process;
- Provide increased economy and efficiency in purchasing activities by avoiding unnecessary, unwarranted, and duplicative purchases;
- Provide safeguards for the maintenance of a purchasing system;
- Ensure that full accounting is available and given for all purchases.

The Purchasing Agent will:

- Provide guidance and assistance for all Town employees regarding the purchasing process;
- Ensure the Town acquires, stores, disburses, utilizes and disposes of goods and services in the best interest of the Town and its citizens;
- Provide the Town with quality products and services at the best possible price;
- Guide all departments in the use and understanding of established purchasing procedures;
- Conduct procurement in fair, open, inclusive, and transparent environment.

Policy

It is the policy of the Town to conduct procurement functions efficiently, effectively, and in full compliance with all federal and state laws, Town Charter, and Town administration policy and procedures. The Town Council's authority to contract for all goods and services and make all sales is delegated to the Town Manager as set forth in this manual and to those employees to whom the Town Manager delegates that responsibility. The Purchasing Agent has been delegated by the Town Manager to contract for the Town in accordance with this manual. Additionally, selected personnel in the Town's requesting departments are authorized to make purchases as provided herein.

Unauthorized personnel who attempt to contract in the name of the Town, or personnel making unauthorized purchases outside of the scope of this manual, may be subject to disciplinary action, legal action, and personal financial liability.

If a person fails to comply with the competitive bidding or competitive proposal procedures required by law, that person may be convicted of a Class B misdemeanor. This includes a situation in which a person knowingly makes or authorizes separate, sequential, or component purchases in an attempt to avoid competitive bidding requirements.

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CHAPTER 2 – Responsibility & Enforcement

Town Council

The Town Council shall be responsible for authorizing all purchases exceeding \$50,000. Specifically, the Town Council shall also consider and adopt rules for electronic receipt of bids/proposals and approve alternative bidding methods for construction.

Expenditure Authority by Town Council:

- 1. Anticipated expenditures of \$50,000 or more; and
- 2. Change Orders greater than \$50,000.

Town Manager

The Town Manager establishes the rules and regulations for the purchase of all goods and services by means of this manual. The Town Manager has delegated to the Purchasing Agent the authority to procure all goods and services and to dispose of all salvage/surplus and seized property for any department and shall administer the purchasing rules and regulations as established by all federal law, state law, and Town charter and ordinance provisions.

The Town Manager is responsible for ensuring compliance by all departments with the policies and procedures outlined in this manual and to promote and protect governmental purchasing integrity

Expenditure Authority by Town Manager:

- 1. P-Card transactions, Purchase Orders and/or Contracts less than \$50,000.
- 2. Change Orders less than \$50,000.
- 3. Items not budgeted less than \$50,000, subject to Town Council budget approval.
- 4. Executing all contracts/agreements as approved and authorized by Town Council.
  - a. Agreements/contracts obligating Town funds shall not be signed by any Town employee unless authorized by the Town Council.
- 5. Approval of Requisitions less than \$50,000.

Purchasing Agent

The Purchasing Agent performs or oversees compliance with all procurement requirements for goods and services as prescribed in this manual. The Purchasing Agent ensures all procurement activities are conducted with the highest level of ethical standards, provide suppliers a fair opportunity to compete for Town business and protect public funds.

- 1. Solicitations \$50,000 or greater will be managed through the Purchasing division in collaboration with the responsible department.
- 2. Determine which method of procurement provides best value for the Town.
- 3. Approval of required rating for bonds and insurance.
- 4. The Purchasing Agent will determine and implement the most appropriate method of disposal of salvage/surplus and seized property in accordance with applicable laws.
- 5. Collaborate with departments on:
  - a. Solicitation documents and methods ensuring competition.
  - b. Facilitating evaluation and recommendations for award.
  - c. Concurrence with Town Council recommendations.
  - d. Maintenance of vendor list.
- 6. Review and question requisition/solicitation documents.
- 7. Update all procurement forms, templates, policies and procedures and ensure compliance.
- 8. Purchasing may send documents to Town Attorney for review.

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CHAPTER 2 – Responsibility & Enforcement

Purchasing Agent has delegated authority to:

1. Execute all Purchase Orders as have been approved by the Town Council and/or the Town Manager, as appropriate.
2. Execute all Interlocal or Cooperative Purchasing Agreements as have been approved by the Town Council and/or the Town Manager, as appropriate.
3. Purchase budgeted goods or services from a cooperative or off another entities competitively bid contract, as have been approved by the Town Council and/or the Town Manager, as appropriate, without further Council approval.
4. Execute purchases and change orders up to \$50,000.
5. Execute contracts as have been approved by the Town Council and/or the Town Manager, as appropriate.
6. Determine which method of procurement provides the best value for the Town and make recommendation to the Town Manager and/or the Town Council, as appropriate.
7. Reject any and all bids, in concurrence with requesting department, when in the best interest of the Town, and make recommendation to the Town Manager and/or Town Council, as appropriate. Note: Over \$50,000 formal rejection must be approved by the Town Council.

Directors

Directors are responsible for planning purchase requirements in order to allow sufficient time to obtain bids or proposals, to ensure policy compliance within their department, and to promote conduct that fosters public confidence in the integrity of the Town by:

1. Ensuring adequate funds are appropriated. If appropriations are exceeded a budget transfer request must be submitted to Finance before the expenditure is committed to the vendor. Expenditures not included in the budget must have approval of the Town Manager and Finance Director before quotes are obtained and a Purchase Order commitment.
  - a. Evidence of the approval shall be in the form of either:
    - i. A memo or email issued by the Town Manager, or
    - ii. Approval of a memo or email to the Town Manager requesting approval of the expenditure.
2. Manage department P-Card use for purchases under \$3,000.
3. Utilize the electronic bid system and the Purchasing Agent for purchases between \$3,000 and \$50,000 when possible.
  - a. Exception: goods or services requiring vendor insurance/indemnification or a pre-bid conference will be managed and solicited by the Purchasing Agent.
4. Ensuring Historically Underutilized Business (HUB) participation in accordance with the provisions of Texas Local Government Code Chapter 252.
5. Provide specifications for goods or services requested to Purchasing and vendor sources when possible (name & email).
6. Delegate authority as appropriate to prepare requisitions and specifications.
7. Guard against misappropriation of Town funds by safeguarding public funds and ensure fair, open and transparent purchasing processes by providing equal opportunities to all vendors.

Expenditure Authority by Department Directors:

1. P-Card transactions under \$3,000 and expenditures of \$50,000 or less, as authorized by the Town Manager.

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CHAPTER 2 – Responsibility & Enforcement

- Exception: goods or services requiring vendor insurance.
- 2. Initiate and approve by requisition any purchase appropriated by the approved annual adopted Town budget.
- 3. Requisitions as directed by the Town Manager.

Director Delegation of Purchasing Authority:

Directors are responsible for notifying Purchasing of:

1. Names of all departmental individuals authorized to approve requisitions and purchase orders and ensuring the approval process is maintained within the electronic system.
2. Any changes in delegation of such authority.

Permanent authorization will remain in effect until written notification of a change is received by Purchasing.

Department Assistants

Delegated individuals within a department who have been properly trained to prepare and issue requisitions, specifications, solicitations, and manage P-Card reconciliation in accordance with this manual.

1. Provide complete documentation of any vendor's failure to perform as contracted.
2. Maintain records per retention schedule.

Finance Department

The Finance Director is responsible for ensuring the proper expenditures of funds, both budgeted and unbudgeted, and verifying the availability of funds for Town Council recommendations and awards before being placed on the Town Council Agenda.

Enforcement

It shall be the responsibility of the Town Manager and Purchasing Agent to enforce all purchasing procedures.

- A. A violation is defined as an employee's action or omission that indicates an intentional or reckless disregard for purchasing laws, policy or procedures. A violation also may be noted if the employee's action was unintentional but violates federal law, state law, Town charter, ordinance, policies, or procedures.
- B. Violation of purchasing procedures will be noted to the appropriate Director in writing from the Purchasing Agent through a Statement of Non-Compliance form.
- C. Repetitive violations of purchasing procedures by one department or individual will be communicated to the Town Manager in a memorandum from the Purchasing Agent.
- D. Texas Local Government Code §§ 252.062, 252.063 and 271.029 provide criminal penalties for officers and employees who knowingly violate state statutes.

Personal Use Prohibitions and Permissions

- A. If an employee acquires merchandise or services for the employee's personal use from a vendor doing business with the Town, such merchandise or services may not be delivered to the employee or another Town employee unless the acquisition is paid directly to the vendor by the employee. No personal invoices are to be mailed to an

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### CHAPTER 2 – Responsibility & Enforcement

- employee (or another Town employee for or on behalf of the employee) at the employee's (or other employee's) place of work. Employee is responsible for payment of applicable sales tax.
- B. Employees may purchase merchandise or services from a vendor doing business with the Town provided that the price at which the item is purchased is the same price charged to all officers and employees of the Town. Employees cannot use the Town's business accounts for personal purchases. Employees that are involved in contract negotiations should not purchase merchandise or services for personal use with a vendor that is currently working, seeks to work or has worked for the Town.
  - C. Employees shall **NOT** use the Town of Little Elm tax exemption forms for personal use.

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CHAPTER 3 – Statute & Authority

This policy is based on Texas statutory provisions as found in the Texas Government Code, Texas Local Government Code, Texas Insurance Code, and Texas Labor Code, as amended. Although all such provisions apply to the policies and procedures set forth in this manual, selected statutes are provided herein for guidance, as follows:

**Definitions, Texas Local Government Code, §252.001**

1. **“Component Purchases”** – purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
2. **“High Technology Procurement”** – the procurement of equipment, goods, or services of a highly technical nature, including:
  - a. data processing equipment and software and firmware used in conjunction with data processing equipment;
  - b. telecommunications equipment and radio and microwave systems;
  - c. electronic distributed control systems, including building energy management systems; and
  - d. technical services related to those items.
3. **“Separate Purchases”** – purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
4. **“Sequential Purchases”** – purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

**Quotes/bids threshold, Texas Local Government Code, §252.021**

Expenditures of more than \$3,000, but less than \$50,000, require the buyer to obtain a minimum of three quotes. Two of the quotes must be from Historically Underutilized Businesses (HUB).

The Town must competitively bid or accept sealed proposals for any goods/services over \$50,000.

**Payments, Texas Government Code, §2251.021 through 2251.030**

A payment by a governmental entity under a contract executed on or after September 1, 1987, is overdue on the **31st day after the later of:**

- a. the date the governmental entity receives the goods under the contract; or
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

If goods or services are incomplete Town staff must document any issues/shortages and notify the vendor in writing. All deliveries should be verified upon receipt. **Payments are not made until goods and services are accepted.**

Interest on overdue payments accrues at the interest rate established by law.

Departments are encouraged to take advantage of prompt or early payment discounts.

**Payments will only be made to vendors that have a valid purchase order or through use of a procurement card (pcard). Violations will be dealt with as follows:**

1. **A form letter will be sent to the vendor notifying it of policy requirements.**
2. **Employee will be sent a statement of non-compliance form to be completed.**

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CHAPTER 3 – Statute & Authority

Vendors / Contractors must pay subcontractor or supplier who supplies goods/services for which payment is made within ten (10) days after receipt of payment from the Town.

Criminal penalties, Texas Local Government Code, §252.062

- a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.
b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.
c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described in Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Removal / Ineligibility, Texas Local Government Code, §252.063

- a) The final conviction of a municipal officer or employee for an offense under Section 252.062 (a) or (b) results in the immediate removal from office or employment of that person.
b) For four years after that date of the final conviction, the removed officer or employee is ineligible:
1. to be a candidate for or to be appointed or elected to a public office in this state;
2. to be employed by the municipality with which the person served when the offense occurred; and
3. to receive any compensation through a contract with that municipality.

Insurance requirements, Texas Labor Code, §406.096

All contractors and subcontractors shall have insurance coverage including worker's compensation. Proof of coverage must be provided prior to any work beginning. Certificates must be submitted to Purchasing.

Required Insurance: Workers Compensation, General Liability, and Auto Liability.

Other types of insurance may be required depending on the type of work or service requested.

"Building or construction" includes:

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance; or
(B) remodeling, extending, repairing, or demolishing a structure; or
(C) otherwise improving real property or an appurtenance to real property through similar activities.

Public records

Vendors or a member of the public may request a copy of a Bid Tabulation that is compiled when bids are opened in accordance with Chapter 552 of the Texas Government Code.

The Town will not release copies of bids or the bid evaluations until after the contract has been awarded in accordance with §552.104 of the Texas Government Code. This is not a waiver of any exception to the requirements of public disclosure contained in the Texas Public Information

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**CHAPTER 3 – Statute & Authority**

Act including, but not limited to, trade secrets or other commercial or financial information that is made confidential by law.

**QUOTE - PURCHASES LESS THAN \$3000 FOR SUPPLIES**

A onetime purchase or cumulative purchase by a single department or from multiple departments for supplies requires a single written quote. Purchase may be made with the purchasing card or by obtaining a purchase order prior to placing the order.

**QUOTE - PURCHASES MORE THAN \$3000 AND LESS THAN \$50,000 FOR SUPPLIES**

A onetime purchase or cumulative purchase by a single department or from multiple departments for supplies requires three written quotes and two must be from HUB vendors as required by statute. Purchase may be made by obtaining a purchase order prior to placing the order.

**QUOTE - PURCHASES LESS THAN \$3000 FOR SERVICE**

A onetime purchase or cumulative purchase by a single department or from multiple departments requires a single written quote. If service is performed on City property, all vendors should be given a copy of the standard insurance requirements and a certificate of insurance obtained. Work should not be started until a purchase order has been issued and a copy of the insurance verified.

**QUOTE - PURCHASES MORE THAN \$3000 AND LESS THAN \$50,000 FOR SERVICE**

A onetime purchase or cumulative purchase by a single department or from multiple departments requires three written quotes and two must be from HUB vendors as required by statute. If service is performed on City property, all vendors should be given a copy of the standard insurance requirements and a certificate of insurance obtained. Work should not be started until a purchase order has been issued and a copy of the insurance verified.

**BID/RFP/RFQ – PURCHASES GREATER THAN \$50,000 FOR SUPPLIES OR SERVICE**

A onetime purchase or cumulative purchase by a single department or for multiple departments must be processed by Purchasing. The appropriate process will be used and a standard contract/purchase order will be issued.

All purchases greater than \$50,000 must include a contract, insurance, bonds (if needed), and purchase order. Town Council approval is required and will be processed by Purchasing.

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CHAPTER 4 - Ethics

Procurement Code of Ethics

A special responsibility is imposed on all Town of Little Elm employees entrusted with the allocation of Town funds. In government procurement, employees are held to the highest degree of integrity, to secure best economic results, and to comply with the procurement process.

It is critical that employees involved in procurement and procurement-related functions remain independent, free of obligation or suspicion, and completely fair and impartial. Credibility and public confidence are vital. A shadow of doubt can be as harmful as the conduct itself. It is with this in mind that the following procedures are set forth. Every person employed by the Town of Little Elm and performing public purchasing and purchasing-related functions shall abide by this code of ethics.

Perception

- Avoid the intent and/or appearance of unethical or compromising practice in relationships, actions, and communications. If a situation is perceived as real, then it is in fact real in its consequences.
• Avoid business relationships with personal friends and relatives. Request a reassignment of responsibility if the situation occurs.
• Avoid noticeable displays of affection, which may give an impression of impropriety.
• Avoid holding business meetings with suppliers outside the office. If such a meeting is necessary, carefully choose the location so there will be no perception by others in the business community or your peers of impropriety.

Responsibility to Your Employer

- Demonstrate loyalty to the Town of Little Elm by adhering to lawful instructions, using reasonable care, and only granted authority.
• Follow the letter and spirit of all laws, policies and procedures. Interpretation of the law should be left to legal counsel.
• Understand the authority granted by the Town of Little Elm.

Conflict of Interest

- Refrain from conducting any private business or professional activity that would result in a conflict of interest between the employee and employer.
o Adhere to Human Resources Policy No. 6.07: CONFLICT OF INTEREST

No employee of the Town may:

- Have any financial or other interest, directly or indirectly, in any proposed or existing contract, purchase, work, sale or service to, for, with or by the Town;
• Use Town employment, authority, or influence in any manner for personal betterment, financial or otherwise;
• Have a financial interest, directly or indirectly, in the sale to the Town of any materials, supplies or services;
• Have discussions or participate in discussions of any Town agency, board, commission or instrumentality if the employee has a personal economic interest or is employed, directly or

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**CHAPTER 4 - Ethics**

indirectly, by the person or entity that is the subject of the discussion or decision, except as noted below (see Town Human Resources Manual);

- Accept other employment or engage in outside activities incompatible with the performance of duties and responsibilities as a Town employee or that might impair independent judgment in the performance of duties to the Town; or
- Accept monetary payment or provide services for compensation, directly or indirectly, to a person or organization requesting an approval, investigation, or determination from the Town.

Violations of this policy may result in disciplinary action up to and including termination of employment and may void any resulting contract.

Town employees and officials must become familiar with the requirements in Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers; and Texas Local Government Code Chapter 171, Regulation of Conflicts of Interest of Officers of Municipalities; and the penalties provided therein.

**Gratuities (Gifts and Entertainment)**

Employees of the Town must:

- Refrain from soliciting and/or accepting gifts of any kind from vendors, actual or potential;
- Never provide special favors or privileges to anyone, either as payment or under any other circumstance;
- Never accept for self, friends, or family any favors or benefits which might be construed as influencing the performance of duties;
- Adhere to Town of Little Elm Code of Ordinance and to the Human Resource Policy regarding ethics/gifts.

**Supplier/Vendor Relations**

Employees of the Town must:

- Promote positive vendor relations through courtesy and impartiality in all phases of the procurement process;
- Handle confidential or proprietary information belonging to the Town, fellow employees, or vendors with care and proper consideration of ethical and legal ramifications, and governmental regulations;
- Never use information gained confidentially in the performance of duties for profit;
- Exhibit a friendly, cooperative and yet objective relationship to all suppliers; this will help avoid the appearance of partiality in business dealings; and
- Actively strive to comply with Town policies and federal and state laws regarding purchases from small businesses and those owned by minorities and other disadvantaged groups.

Town employees must discharge their duties impartially so as to assure fair competitive access to government procurement by responsible suppliers. Town employees must conduct themselves in such a manner as to foster public confidence in the integrity of the Town of Little Elm procurement organization. It is each employee's duty to report any potential violations to the proper authorities.

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CHAPTER 5 – General Information

**Bid Protests**

All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Agent within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Texas Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications.

The 5-day limitation does not apply to protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the Town Council by contacting the Town Secretary PRIOR to Town Council Award.

**Budgeted Funds**

Funds must be available and in the proper account prior to issuance of a purchase order and before the use of a purchasing card.

**Check Request**

Check requests are used for the following purchases:

**Refunds** – Include the reason for request and attach documentation indicating the person or organization name; date of original purchase, contract date or class date; and reason for refund.

**Contract Labor** – Include the reason for request and attach as backup, a copy of the employee contract for a one-time payment, jury duty, or for instructors. Submit proper documentation such as a copy of the instructor contract.

**Reimbursements** – Include copy of detailed invoice or receipt.

**Debriefing**

A debriefing is a review of the vendor's quote, bid, or proposal. It is normally provided to unsuccessful vendors. Debriefings are normally requested during the proposal process, but may be done for any type of solicitation that evaluates factors other than price. The process may be formal (face-to-face) or informal (over the phone/email).

Outline the vendor's strengths and weaknesses. This provides detailed information for the vendor to learn from and to better prepare for future proposals.

Do not discuss competing proposals.

**Freight Charges and Fees**

Include freight costs and fees in the total cost when obtaining quotes. Note: freight and fees must be considered in determining the award.

All freight should be requested as FOB Destination (delivery address) freight pre-paid and allowed.

**Information Technology Purchases**

All IT-related purchases/contracts, including software, hardware, copier and printer purchases, rentals, and leases, must be initiated by the Information Services Department to ensure proper security controls are met.

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CHAPTER 5 – General Information

New Vendors

The authorized purchaser should provide the vendor with a new vendor packet. The packet will be included with all items processed by Purchasing.

Authorized users should encourage all potential vendors to register as a supplier at [www.littleelm.org/purchasing](http://www.littleelm.org/purchasing).

Placing Orders

When placing orders, provide the vendor with a hard copy of the Purchase Order, name of person placing the order, department name, and the Town’s billing address.

Billing Address: Town of Little Elm
Accounts Payable
100 W. Eldorado Parkway
Little Elm, TX 75068
Billing Email: Accounts.Payable@littleelm.org

Instruct vendors to clearly display the name of the person placing the order, the department, and the Purchase Order Number on all invoices, delivery slips, cases, cartons, boxes, packing slips and bills of lading.

Receiving of Materials

The authorized purchaser is responsible for verifying that all materials/services are received in working order and meet specifications. Once materials/services have been received and verified to be correct, indicate receipt of materials on the invoice by noting “received in full” or “received partial” for each line item on the Purchase Order.

If the quantity received does not agree with the vendor's packing slip or the material does not conform to specification, the vendor must be notified immediately.

Sales Tax Exemption

The Town is exempt from sales, excise and use taxes under Texas Tax Code, § 151.309. The Town is NOT exempt from food-related purchases for employee meals during travel or hotel/motel tax.

Tie Bids

If all factors and conditions relating to the bids are equal, then the tie bid will be awarded to the local vendor. If more than one vendor is local or none are local, then a coin toss will be conducted by the Purchasing Agent with at least one witness.

Non-Discrimination Policy

- A. It is the policy of the Town of Little Elm to afford all suppliers an equal opportunity to bid on any contract being issued by the Town.
B. The Town of Little Elm has a policy that prohibits discrimination against any person because of race, color, sex, religious affiliation, age, disability or national origin, in the award or performance of any contract.
C. The Town of Little Elm will require its officers, employees, agents, and contractors to adhere to this Policy.
D. The Town of Little Elm encourages participation by Historically Underutilized Businesses (HUB’s) to bid on Town contracts. The Town of Little Elm works to notify these businesses of bidding opportunities.

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CHAPTER 6 - Bonds, Insurance, and Indemnification

Bond Policy

- A. Bidders may be required to provide certain bonds for Public Works Contracts. This ensures, e.g., that if the bidder attempts to withdraw after the bid is accepted, the Town will not suffer loss. The Town will only accept corporate sureties duly qualified and authorized. Personal sureties will not be accepted. All required bonds must be approved by the Purchasing Agent prior to contractors or vendors commencing work.
- B. The Town may require bonding on other projects to mitigate risk such as large software implementation.
- C. The Town of Little Elm requires payment, performance, and maintenance bonding to be provided on Town approved forms.

Types of Bonds

- A. **Bid Bonds** –The Bid Bond minimum limit is five percent (5%) of the total amount bid and would typically apply to construction contracts. It is the Town’s option whether or not to require bidders to provide a Bid Bond. Certified or cashier’s checks will NOT be accepted in lieu of a Bid Bond. Bid Bonds are provided on surety forms. Bid Bonds will be returned to the issuing vendor upon request.
- B. **Payment Bonds** are required for Public Works Contracts in excess of fifty thousand dollars (\$50,000) and must be written for one hundred percent (100%) of the total bid price. The Payment Bond is for the protection of those performing work as subcontractors or suppliers for the prime vendor/contractor. See Texas Government Code § 2253.021
- C. **Performance Bonds** are required for all Public Works Contracts when the vendor’s bid exceeds one hundred thousand (\$100,000), and they must be written for one hundred percent (100%) of the total bid price. These bonds are solely for the protection of the Town in the event of a contractor/vendor default under Contract terms and conditions. See Texas Government Code § 2253.021
- D. **Maintenance Bonds** can be written for a term of twelve (12) to twenty-four (24) months. The coverage provided by a Maintenance Bond is to guarantee against defective workmanship and materials.

Insurance and Indemnification Policy

- A. Contractors performing work on Town property or public right-of-way shall provide indemnification and certificates of insurance or a copy of their insurance policy(s) including a copy of the endorsements necessary to meet contract requirements, and hold harmless and defense clauses. The required language is inserted in solicitation documents by the Purchasing division or owner of the specifications.
- B. Contractual agreements must contain a provision that transfers the risk of the project from the Town to the contractor. Because the contractor may not have the financial resources to handle the risks that are transferred in the contract, the Town requires that insurance be purchased and maintained by the contractor for financial security.
- C. Workers’ Compensation Insurance – By state law, contractors and subcontractors hired for building and construction projects must provide Workers’ Compensation Insurance for their employees regardless of the project’s cost. See Texas Labor Code, § 406.096.
- D. Purchasing must verify and approve all insurance documents prior to the contract, purchase order, or commencement of work to be performed.

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CHAPTER 7 - Contracts

A contract is a written, legally binding document or obligation to do or abstain from doing some act.

A **Purchase Order is a contract**. Purchase orders are written and approved before goods or services are ordered and received. This ensures purchases are approved and within budget. A Purchase Order or Contract is **required** when insurance and indemnification is required.

The contractor must perform and meet the requirements of the contract. All guidance provided to a contractor must be within the scope of the contract.

**Contracts Greater than \$10,000**

All purchases greater than \$10,000 must include a standard contract, insurance, and a purchase order.

All purchases greater than \$50,000 must include a contract, insurance, bonds (if needed), and purchase order. Town Attorney review and Town Council approval is required and will be processed by Purchasing.

**Annual/Term Contracts**

Annual/Term Contracts. The Town may use an annual fixed price contract to obtain required goods or services from a chosen vendor for a specified time period. These contracts eliminate the necessity of bidding commodities each time they are needed. Annual contracts require a bid solicitation, award process, and purchase order.

A. Purchases of items or services may be readily quantified (such as a fixed hourly rate or a fixed price per linear foot) will be awarded on a competitive sealed bid or competitive sealed proposal (CSP) basis and approved according to expenditure authority.

B. Once an annual contract has been awarded and approved, the responsible department(s) will create an annual or term contract Purchase Order and release the items or services under the Purchase Order number generated from the system. Once approved, no further approvals are needed for purchases against the contract.

Requested items should be detailed by description and unit cost on the P.O. or an attached document, with the remarks section stating that the items are under contract to the specified vendor. Releases will then be reconciled with invoices.

C. Annual contracts for the purchase of items or services where the price and quantity does not change from one month to another is initiated by issuing one annual/term purchase order, if the system in place permits such activity.

**CAUTION:** Items or a service purchased from a vendor other than the vendor awarded the work is a direct violation of purchasing policy unless such purchase is an emergency purchase. An emergency is defined in Chapter 14 of this manual, entitled "Emergency Purchases," and includes items that cannot be readily furnished by the contractor awarded the annual contract.

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CHAPTER 8 – Contract Management

CONTRACT MANGEMENT

The Town has purchased contract management software to assist in the management of all Town contracts. The software shall be used by all departments to manage all Town-related contracts. Failure to manage and control changes can result in an unintentional attempted modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls, and diminished contractor accountability.

Purchasing Responsibility

Purchasing will be responsible for setting up all contracts that are issued through a formal solicitation. The following documents will be added to the electronic file.

- Bid related documents
- Insurance
- General Terms & Conditions
- Bonds
- The Contract
- Notice to Proceed
- Blank Forms: Payment Request, Change Order Request, Release of Liens, etc.
- Payment requests
- Change Orders
- Lien Releases
- Correspondence Relating to the Contract

Town Staff Responsibility

Town staff will be responsible for uploading all documents relating to the following:

- |   |                        |
|---|------------------------|
| Monitoring                              | Meetings Minutes/Notes |
| Reporting                               | Request for Payments   |
| Correspondence                          | Inspection /Testing    |
| Acceptance                              | Site Visit Schedules   |
| Correspondence Relating to the Contract | Change Orders          |
| Lien Releases                           | Bonds                  |
| The Contract                            | Notice to Proceed      |

Staff will have access and the responsibility to set up and maintain all contracts that are not processed by Purchasing.

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**CHAPTER 9 – Disposal of Surplus Property**

Surplus property is property owned by the Town that is no longer needed. There are multiple formats for the disposal process such as: auction, trade-in, recycling, and destruction. All methods require written approval.

- Departments should contact the Purchasing Agent prior to disposal of any property over \$5,000.
- Any item that is still operable and has a potential value at auction, please hold for auction.
- Disposition forms / Fixed Asset Forms are available from Finance or on the Town web site.

After approval by the Purchasing Agent, equipment should be stored until the property can be removed for auction.

**Personal Use Prohibitions and Permissions**

Town employees may purchase items from the online auction with the exception of items from their department/division.

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**CHAPTER 10 – Vendor Performance**

Vendors play a crucial role in the Town’s day-to-day operations. As such, maintaining communication during the vendor obligation period is important. Both Town staff and the vendor should provide open communication on project status, current issues, and potential issues.

**Non-Performing Vendors**

When a vendor fails to perform according to the Agreement (Purchase Order, Annual Agreement, Contract, and/or Specification), the Department Director or designee will:

1. Document the issues in writing to the vendor and to Purchasing.
2. Schedule a meeting to discuss the issues.
3. Document the resolution to the issue, as agreed upon by the department and the vendor. Documentation shall be in writing and signed by the department and the vendor and a copy forwarded to the Purchasing Agent.

If a vendor’s performance remains non-compliant or otherwise unsatisfactory, the department will notify the Purchasing Agent who will attempt to facilitate a resolution. If Purchasing cannot resolve the issues, the Purchasing Agent and the Department Director will make a joint determination to cancel the contract per its terms and conditions. Purchasing will then work with the department to obtain a substitute vendor or issue a new solicitation in accordance with purchasing policy.

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CHAPTER 11 – Public Works Projects

Public Works projects are those projects that require the construction, repair, or renovation of a structure, building, street, highway, bridge, park, water and wastewater distribution facility, airport runway or taxiway, drainage project, or other improvement or addition to real property.

Bid Type

Texas Government Code Chapter 2269 requires the Town Council to determine which method of procurement provides the best value for the Town.

Prevailing Wage Rates

A. Texas Government Code Chapter 2258 mandates the any Public Work contract awarded by the Town include the requirement to pay prevailing wage rates. The statute requires the payment of a prevailing wage rate for laborers and mechanics and applies to both contractors and subcontractors. Wages for workers on construction projects shall not be paid less than the schedule of general prevailing rates of per diem wages as mandated.

The Town has adopted the U.S. Department of Labor's Wage Determinations for Denton County, Texas, for use in all Public Works projects. Rates may be accessed at: <http://www.wdol.gov/dba.aspx>.

B. The prevailing wage rate or a link to the wage rates with the date shall be included in public works projects.

C. Rates shall be verified by the Purchasing Agent.

Bonding Requirements

Bonds shall be in accordance with Texas Government Code Chapter 2253.

A. The bond must be executed by a corporate surety in accordance with the policies and an approved Town of Little Elm form.

B. The corporate surety must be licensed by the State of Texas to issue surety bonds and appear on the U.S. Treasury List of acceptable sureties.

C. A Power of Attorney must be included.

D. Bonding shall be verified by the Purchasing Agent prior to award.

Insurance and Indemnification Requirements

A. The minimum insurance required will be specified by the Town of Little Elm.

B. For construction-related projects, all contractors and sub-contractors, including those delivering equipment or materials or performing a service shall provide workers' compensation for all employees. General contractors are responsible for ensuring that sub-contractors carry the same or higher insurance amounts as those required.

C. All contractors shall provide proof of coverage satisfactory to the Town. Contractors shall post required signs at job site(s) informing all workers of their right to workers' compensation coverage. Texas Labor Code § 406.096

Award of Contract/Agenda Item

A. Staff in conjunction with Purchasing will review and prepare a recommendation for award. Purchasing will write and submit the agenda item information.

B. Contracts will be processed by Purchasing and added to the contract management software.

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CHAPTER 12 – Professional Services

Purpose of Policy

The following policies are designed to assist the Town’s staff in the selection of individuals or firms to perform professional services. The desire is to establish fairness and consistency in the selection process while obtaining the best value (quality services at a reasonable price) for the Town in accordance with applicable legal requirements.

Departments are asked to seek proposals or qualifications for professional services at least every five years to help ensure the greatest and fairest competition in the selection of professional services by the Town of Little Elm.

Definition of Professional Services

- A. Professional services generally refer to those services performed by an individual or group of individuals where education, degrees, certification, license and/or registration is required for qualification to perform the service. The term “professional services” includes labor and skill that is predominantly mental or intellectual, rather than physical or manual, in nature. (See Texas Attorney General Opinion No. JM-940, at p. 3 (1988)).
B. Certain professions are specifically named in the Professional Services Procurement Act (ACT), Texas Government Code Chapter 2254, Subchapter A. This includes services within the scope of the practice, as defined by state law, of:
1. accounting
2. architecture
3. landscape architecture
4. land surveying
5. medicine
6. optometry
7. professional engineering
8. real estate appraising
9. professional nursing
C. If a department is not sure if a service is a “professional service,” the department should contact the Purchasing Agent before securing such services.

Procurement of Architectural, Engineering, or Land Surveying Services

When procuring architectural, engineering or land surveying services, the Town shall use a two-step selection process (see Texas Government Code § 2254.004):

- A. First, the Town shall select, through the RFQ process, the most highly qualified provider of those services on the basis of demonstrated competence and qualifications; and
B. Second, attempt to negotiate with that provider a contract at a fair and reasonable price. Negotiations will be facilitated by Purchasing as lead for a team of stakeholders.

If the Town is unable to negotiate a satisfactory contract with the most highly qualified provider of architectural, engineering or land surveying services:

- A. First, the Town shall formally end negotiations with that provider;
B. Second, select the next most highly qualified provider; and
C. Third, attempt to negotiate a contract with that provider at a fair and reasonable price. The Town must continue this process until a contract is entered into.
D. A purchase order must be issued upon award of contract.

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**CHAPTER 12 – Professional Services**

**Fees Estimated to be under \$50,000 per Year**

- A. The Department and/or Purchasing Agent may solicit proposals from qualified professionals. Proposals will be ranked based on the demonstrated competence and qualifications of the individual or company. Negotiations may be entered into with the most highly qualified according to rank. Selection will follow the procedures established by the Professional Services Procurement Act.
- B. A Purchase Order is required.

**Fees Estimated to be \$50,000 or Greater per Year**

- A. The solicitation process will be managed by the Purchasing Agent.
- B. The process shall contain sufficient information to inform potential Professional service vendors as to the type of project, scope of services to be performed, the selection criteria to be used and weighting assigned to each of the criteria.
- C. After the evaluation of submitted Requests for Proposals, it may be necessary (as determined by the Purchasing Agent) to interview several of the firms and further evaluate them on the basis of the interview or a presentation, narrowing the field until one firm is selected for negotiations. Negotiations will be facilitated by the Purchasing Agent as lead for a team of stakeholders.
- D. When negotiations are concluded, a recommendation will be made to the Town Council.
- E. A Purchase Order is required.

**Procurement of Other Professional Services**

- A. Professional services may be contracted through the use of Request for Proposals (RFP) or Competitive Sealed Proposal (CSP) and selection should be made as listed above, however, cost is an additional criterion.
- B. Services with fees under \$50,000 per year may be solicited, evaluated, and awarded by the using department’s director and/or the Purchasing Agent.
- C. Over \$50,000, the solicitation process will be managed by the Purchasing Agent. The solicitation may be advertised in one edition of the newspaper to run at least one week prior to the due date for RFP or CSP.
- D. The selection process will be similar to that used for professional engineers, architects, and land surveyors, and after negotiations are successfully concluded the Town Council shall be asked to award a contract.
- E. To determine the best solicitation process to use when procuring “other” professional services or if the service is considered “members of disciplines requiring special knowledge or attainment and a high order of learning, skill and intelligence” contact the Purchasing Agent.
- F. A Purchase Order is required.

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CHAPTER 13 – Change Order Policy

A change order is the written documentation and approval process that must be performed when changes in the scope of a project are proposed after the performance of a contract has begun. Such changes may include a significant change in the quantity of work to be performed, the cost of work to be performed, or of the materials, equipment, or supplies to be furnished. A change order is usually written for a construction contract but may be necessary in other types of contracts.

Refer to Texas Local Government Code Chapters 252 and 271.

Threshold for Change Orders

A “threshold” is defined as a financial limit on the amount of expenditures which can be authorized by the Town Manager on a construction project before requiring Town Council approval. See Texas Local Government Code Chapters 252 and 271.

- A. **Change Orders Greater than \$50,000** – If the change order is greater than \$50,000 it must be approved by the Town Council.
- B. **Change Orders Less than \$50,000** – If the change order is less than \$50,000 it may be approved by the Town Manager.
- C. Once the total of all approved change orders on a project (including the contingency amount) totals more than \$50,000, all subsequent change orders must be approved by the Town Council.
- D. The original contract price may not be decreased by more than 25% without the consent of the contractor.
- E. Change order forms must be used to document each change.
- F. Change orders shall be listed in number sequence on the Purchase Order.

Approval for Change Orders

- A. If a change order is greater than \$50,000 and is extremely time sensitive and qualifies as an emergency, the Town Manager may approve such a change order prior to Town Council approval; however, such change order still must be brought to the Town Council as soon as possible for approval. Emergency conditions are defined in this manual.

Contingency Funds

The Town Council may establish a contingency fund for a construction project at the time of award of a bid to be used during the course of a project. A contingency fund can be established at any dollar amount above the bid award provided that is reasonable and prudent.

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CHAPTER 14 – Emergency Purchases

EMERGENCY PURCHASES, Texas Local Government Code §252.022

An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of the Town or the protection of property or the health or safety of any person.

Emergency purchases are for critical, unforeseen government need. Because the Town's ability to serve the public would be impaired if purchases are not made immediately, emergency purchases are exempt from standard purchasing procedures.

True emergencies almost always occur as a result of parts and labor needed for unforeseen repairs to equipment that must be kept operational. When an emergency occurs, the need for quotes will be eliminated; however, written explanation must be indicated on the Statement of Compliance for Irregular Purchases.

- 1. If the product or services is over \$3,000 and under \$50,000, obtain the Town Manager's authorization. Once authorization has been received, submit a requisition to Purchasing and obtain a purchase order, call the vendor to initiate repair services or order the needed materials. Immediately or as soon as feasible, submit a copy of the invoice, delivery ticket and the irregular purchase form to Purchasing.
2. In the event the emergency expenditure exceeds \$50,000, follow the same procedures outlined in item 1 above, and prepare an agenda item and/or resolution for Town Council approval prior to payment for the products or services purchased.

In extreme cases involving a disaster, an emergency declaration will be made by the Mayor. All purchases must be documented through proper state & federal forms and emergency purchase orders issued.

Emergency purchase orders are maintained at Town Hall and at the Emergency Operations Center (EOC).

An emergency created through neglect will not be processed as an emergency.

Typical examples of such neglect are:

- a. Depletion of stock due to lack of planning.
b. Building or equipment needing repairs for some time, suddenly becoming an emergency overnight.
c. Orders of materials for projects most of which must be planned weeks or months ahead of time, and requested just before desired use.

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CHAPTER 15 – Sole Source Purchases

SOLE SOURCE PURCHASES

Sole source purchases are goods and services available from only one supplier. There may be one vendor because of patents, copyrights or simply because the vendor is the only one which supplies the good or service.

Examples: Patented products, monopolized items, rare books, captive replacement part or component for equipment, and software with exclusive distribution rights.

**Items that are only available from one manufacturer are not a sole source, if the items can be purchased from distributors. Similarly, books available from multiple sources are not sole source.**

The Town is responsible for obtaining and retaining documentation from the vendor that clearly states the reasons the purchase must be made on a "sole source" basis.

Written Justification

All sole source purchases require written justification in the form of an affidavit which must be completed by the vendor and notarized. This form must be submitted and approved by the Purchasing Agent prior to the purchase being made.

Be sure that the function the user department is asking for is a "need" and not a "want." For example, only one vendor sells equipment with the special function. Other vendors have a similar function but not exactly the same. Ask the question: do we need the specific function and why would a similar function not work.

Notice of Intent to Award a Sole Source Procurement

All purchases in excess of \$50,000 shall be made in conjunction with the Purchasing Agent who will post a Notice of Intent to purchase a sole source item in the e-pro system.

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**CHAPTER 16 – Cooperative Purchases**

**COOPERATIVE PURCHASES**

Texas Government Code, Chapter 791, and Texas Local Government Code, Chapter 271, authorize the use of cooperative purchasing programs. These chapters authorize the Town to use (or, piggyback onto) another entity’s bid and likewise allow another entity to use the Town’s contracts. Additionally, the statutes allow the Town to use a cooperative contract issued by an established cooperative agency.

The following must be included and established in order for the Town to utilize a cooperative contract.

1. The bid specifications / contract must have cooperative language.
2. The awarded vendor must have agreed to the language (term).
3. An interlocal agreement must be in place.

The Town has established memberships and interlocal agreements in place and promotes participation in cooperative purchasing programs. Current Interlocal Agreements and Contracts are available on the e-procurement website at [www.littleelm.org/purchasing](http://www.littleelm.org/purchasing).

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**Finance**  
Dawn Berry, Purchasing Agent  
214-975-0411  
dberry@littleelm.org

# TOWN COUNCIL AGENDA

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## BACKGROUND

Discussion and action: consider Ordinance # 1238 authorizing the Town Manager to sign all contracts and change orders up to \$50,000 and adopting a purchasing policy. The ordinance sets guidelines for contracting authority as allowed in the Town’s Charter, Section 8.09.

Additionally, the policy recommended policy provides guidance to Town employees in accordance with State of Texas procurement statutes.

It is beneficial to the Town to expedite authorization of such agreements, particularly those related to the procurement of goods and services by delegating authority to the Town Manager. Likewise, adoption of a procurement policy will provide a set of standard rules for staff and the Purchasing Agent.

Upon adoption, staff will attend mandatory training on the policy and related procurement software.

## FISCAL IMPACT

There is no financial impact to the Town.

## RECOMMENDED ACTION

Staff recommends adopting the policy by ordinance.

## ATTACHMENTS

- Ordinance 1238
- Exhibit A-Purchasing Policy

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Initial:  
 Town Manager  \_\_\_ Finance  \_\_\_ Library  \_\_\_ HR  \_\_\_ Public Works  \_\_\_  
 Town Secretary  \_\_\_ Police  \_\_\_ Parks  \_\_\_ Fire  \_\_\_ Development Services  \_\_\_

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APPROVED  DENIED  TABLED  WITHDRAWN