

This supersedes Ordinance No: 98-003

**TOWN PURCHASES**

**.010 DEFINITIONS:**

1. "Contractual Services" shall include all telephone, telegraph, postal, electric light and power service, and water, towel and soap service.
2. The term "Town" as used in this chapter shall be deemed to mean department, office, board, commission, bureau, institution, or any other agency of the Town of Loma Linda.
3. The term "Purchase" as used in this chapter shall include the rental or leasing of any equipment, articles or things.
4. The term "Supplies" used in this chapter shall be deemed to mean supplies, materials, equipment, contractual services and any and all articles or things, except as in this chapter otherwise provided.

**.030 SHALL PURCHASE ALL SUPPLIES AND LANDS:**

The Board of Trustees of the Town of Loma Linda shall purchase all supplies, except as in this chapter otherwise provided. The Board of Trustees of the Town of Loma Linda shall negotiate all leases and purchase all lands.

**.031 RECYCLED PRODUCTS, PREFERENCE FOR PRODUCTS MADE FROM SOLID WASTE-ELIMINATION OF PURCHASE OF PRODUCTS MADE FROM POLYSTYRENE FOAM-BOARD OF TRUSTEES OF THE TOWN OF LOMA LINDA, DUTIES-REPORT:**

1. The Board of Trustees of the Town of Loma Linda, in consultation with the environmental improvement and energy resources authority of the department of natural resources, shall give full consideration to the purchase of products made from materials recovered from solid waste and to the reduction and ultimate elimination of purchases of products manufactured in whole or in part of thermo formed or other extruded polystyrene foam manufactured using any fully halogenated chlorofluorocarbon (CFC). Products that utilize recovered materials of a price and quality comparable to products made from virgin materials shall be sought and purchased, with particular emphasis on recycled oil, retread tires, compost materials and recycled paper products. The Board of Trustees of the Town of Loma Linda shall exercise a preference for such products if their use is technically feasible and their price is competitive. For the purpose of this section, "competitive" means where a bid is required a bid price within ten percent (10%) of the price of items which are manufactured or produced from virgin materials. Products that would

be inferior violate safety standards or violate product warranties if the provisions of this section are followed may be excluded from the provisions of this section.

2. THE BOARD OF TRUSTEES SHALL:

- Review the procurement specifications in order to eliminate discrimination against the procurement of recycled products;
- Review and modify the contract specifications for paper products and increase the minimum required percentage of recycled paper in each product as follows:
  - (a) Forty percent (40%) recovered materials for newsprint;
  - (b) Eighty percent (80%) recovered materials for paperboard;
  - (c) Fifty percent (50%) waste paper in high grade printing and writing paper;
  - (d) Five to forty percent (5%-40%) in tissue products;
- Support federal incentives and policy guidelines designed to promote these goals;
- Develop and implement a cooperative procurement policy to facilitate bulk order purchases and to increase the availability of recycled products.

.040 PURCHASES TO BE MADE ON COMPETITIVE BIDS, WHEN, HOW-STANDARD SPECIFICATIONS, WHEN:

All purchases shall be based on competitive bids, except that the Board of Trustees may make purchases of less than One Thousand Dollars (\$1,000.00) in value on the open market. On any purchase where the estimated expenditure shall be Twenty-five Thousand dollars (\$25,000.00) or over, the Board of Trustees shall advertise for bids in one (1) publication in only one (1) daily or weekly newspaper most likely to reach prospective bidders, at least five (5) days before bids for such purchases are to be opened, as determined by the Board of Trustees on a case by case basis on expenditures estimated to be Twenty-five Thousand Dollars and No Cents (\$25,000.00) or more plus such other forms and modes of notifying prospective bidders as may be determined by the Board of Trustees on a case by case basis. On purchases where the estimated expenditure is less than Twenty-five Thousand Dollars (\$25,000.00), bids shall be secured without advertising. In all cases, the Board of Trustees shall post a notice of the proposed purchase on a bulletin board in the Town office. The Board shall also, on all purchases estimated to exceed Twenty-five Thousand Dollars (\$25,000.00) solicit bids by mail from prospective suppliers. All bids for such supplies shall be mailed or delivered to the Board of Trustees so as to reach such office before the time set for opening bids. THE CONTRACT SHALL BE LET TO THE LOWEST AND BEST BIDDER. The Board of Trustees shall have the right to reject any or all bids and advertise for new bids or purchase the required supplies on the open market if they can be so purchased at a better price. All bids shall be based on standard specifications wherever such specifications have been prepared by the Board of Trustees. If the Board of Trustees does not specify the newspaper or modes of publication the Town Clerk shall decide the newspaper and mode of notifying prospective bidders. The Board of Trustees shall make rules governing the delivery, inspection, storage and distribution of all supplies so purchased and governing the manner in which all claims of supplies delivered shall be

submitted, examined, approved and paid. The Board of Trustees shall determine the amount of bond or deposit and the character thereof which shall accompany bids.

.042 COMPETITIVE BIDDING MAY BE WAIVED—WHEN:

The Board of Trustees may waive the requirement of competitive bids for the purchase of food items when special temporary market conditions exist and the food items can be purchased for at least ten percent (10%) less than the most current bid price for the same food items.

.050 TO MAKE REGULATIONS FOR PURCHASE OF SUPPLIES:

The Board of Trustees shall make and adopt such rules and regulations, not contrary to the provisions of this Ordinance, for the purchase of supplies and prescribing the purchasing policy of the Town as may be necessary. The Board shall classify the requirements of the Town for supplies; adopt as standards the minimum number of qualities, sizes and varieties of such supplies as is consistent with the successful operation of the Town; and prepare, adopt, promulgate, and enforce written specifications describing such standards. In the preparation of such rules, regulations, classifications, standards and specifications, the Board of Trustees shall consult with and have the assistance of a committee to be appointed by the Board of Trustees.

.057 PUBLIC WORKS CONTRACTS—PROMPT PAYMENT BY TOWN OF LOMA LINDA TO CONTRACTOR—PROMPT PAYMENT BY CONTRACTOR TO SUBCONTRACTOR—PROGRESS PAYMENTS—RETAINAGE—LATE PAYMENT CHARGES—WITHHOLDING OF PAYMENTS:

1. Unless contrary to any federal funding requirements or unless funds from a state grant are not timely received by the Town of Loma Linda, but notwithstanding any other law to the contrary, all public works contracts made and awarded by the Town of Loma Linda, for construction, reconstruction or alteration of any public work project, shall provide for prompt payment by the Town of Loma Linda to the contractor and prompt payment by the contractor to the subcontractor and material supplier in accordance with the following:

- (1) The Town of Loma Linda shall make progress payments to the contractor on at least a monthly basis as the work progresses, or, on a lump sum basis according to the terms of the lump sum contract. Except in the case of lump sum contracts, payments shall be based upon estimates prepared at least monthly of work performed and material delivered, as determined by the project architect or engineer. Retainage withheld on public works projects shall not exceed five percent (5%) of the value of the contract or subcontract unless the Town of Loma Linda and the architect or engineer determine that a higher rate of retainage is required to ensure performance of the contract. Retainage, however, shall not exceed ten percent (10%) of the value of the contract or subcontract. Except as provided in subsection 4 of this section, the Town of Loma Linda shall pay the contractor the amount due, less a retainage not to exceed ten percent (10%), within thirty (30) days following the latter of the following:

- (a) The date of delivery of materials or construction services purchases;
- (b) The date, as designated by the Town of Loma Linda, upon which the invoice is duly delivered to the person or place designated by the Town of Loma Linda;
- or
- (c) In those instances in which the contractor approves the Town of Loma Linda's estimate, the date upon which such notice of approval is duly delivered to the person or place designated by the Town of Loma Linda;

(2) Payments shall be considered received within the context of this section when they are duly posted with the United States Postal Service or other agreed upon delivery service or when they are hand-delivered to an authorized person or place as agreed to by the contracting parties;

(3) If, in the discretion of the Town of Loma Linda and the project architect or engineer and the contractor, it is determined that a subcontractor's performance has been completed and the subcontractor can be released prior to substantial completion of the public works contract without risk to the Town of Loma Linda, the contractor shall request such adjustment in retainage, if any, from the Town of Loma Linda as necessary to enable the contractor to pay the subcontractor in full. The Town of Loma Linda may reduce or eliminate retainage on any contract payment if, in the Town of Loma Linda's opinion, the work is proceeding satisfactorily. If retainage is released and there are any remaining minor items to be completed, in amount equal to Two Hundred percent (200%) of the value of each item as determined by the Town of Loma Linda's duly authorized representative shall be withheld until such item or items are completed;

(4) The Town of Loma Linda shall pay the retainage less any offsets or deductions authorized in the contract or otherwise authorized by law, to the contractor after substantial completion of the contract work and acceptance by the Town of Loma Linda's authorized contract representative, or as may otherwise be provided by the contract specifications for road or bridge projects administered by the Town of Loma Linda. Such payment shall be made within thirty (30) days after acceptance, and the invoice and all other appropriate documentation and certifications in complete and acceptable form are provided, as may be required by the contract documents. If at that time there are any remaining minor items to be completed, an amount equal to Two Hundred percent (200%) of the value of each item as determined by the Town of Loma Linda's representative shall be withheld until such items are completed;

(5) All estimates or invoices for supplies and services purchased, approved and processed, or final payments, shall be paid promptly.

(6) When a contractor receives any payment, the contractor shall pay each subcontractor and material supplier in proportion to the work completed by each subcontractor and material supplier his application less any retention not to exceed ten (10%) percent. If the contractor receives less than the full payment due under the public construction contract, the contractor shall be obligated to disburse on a pro rata basis those funds received, with the contractor, subcontractors and material suppliers each receiving a prorated portion based on the amount of payment. When, however,

the Town of Loma Linda does not release the full payment due under the contract because he has otherwise determined such areas are not rejecting or because he has otherwise determined such areas are not suitable for payment then those specific subcontractors or suppliers involved shall not be paid for that portion of the work rejected or deemed not suitable for payment and all other subcontractors and suppliers shall be paid in full;

(7) The Town of Loma Linda shall make final payment of all moneys owed to the contractor, less any offsets or deductions authorized in the contract or otherwise authorized by law, within thirty (30) days of the due date. Final payment shall be considered due upon the earliest of the following events:

- (a) Completion of the project and filing with the owner of all required documentation and certifications, in complete and acceptable form, in accordance with the terms and conditions of the contract;
- (b) The project is certified by the architect or engineer authorized to make such certification on behalf of the owner as having been completed, including the filing of all documentation and certifications required by the contract, in complete and acceptable form, or;
- (c) The project is certified by the contracting authority as having been completed, including the filing of all documentation and certifications required by the contract, in complete and acceptable form.

2. Nothing in this section shall prevent the contractor or subcontractor, at the time of application or certification to the Town of Loma Linda or contractor, from withholding such applications or certifications to the Town of Loma Linda or contractor for payment to the subcontractor or material supplier. Amounts intended to be withheld shall not be included in such applications or certifications to the Town of Loma Linda or contractor. Reasons for withholding such applications or certifications shall include, but not be limited to, the following:

Unsatisfactory job progress; defective construction work or material not remedied; disputed work; failure to comply with other material provisions of the contract; third party claims filed or reasonable evidence that a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment and materials; damage to a contractor or another subcontractor or material supplier; reasonable evidence that the contract can not be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention, not to exceed the initial percentage retained by the Town.

3. Should the contractor determine, after application or certification has been made and after payment has been received from the Town of Loma Linda, or after payment has been received by a contractor based upon the Town of Loma Linda's estimate of materials in place and work performed as provided by contract, that all or a portion of the moneys need to be withheld from a specific subcontractor or material supplier for any of the reasons enumerated in this section, and such moneys are withheld from such subcontractor or material supplier, then such undistributed amounts shall be specifically identified in writing and deducted from the next application or certification made to the Town of Loma Linda of payment due the contractor,

until a resolution of the matter has been achieved. Disputes shall be resolved in accordance with the terms of the contract documents. Upon such resolution the amounts withheld by the contractor from the subcontractor or material supplier shall be included in the next application or certification made to the Town of Loma Linda or the next estimate by the Town of Loma Linda and shall be paid promptly in accordance with the provisions of this section. This subsection shall also apply to applications or certifications made by subcontractors or material suppliers to the contractor and throughout the various tiers of the contraction chain.

4. The contracts which provide for payments to the contractor based upon the Town of Loma Linda's estimate of materials in place and work performed rather than applications or certifications submitted by the contractor, the Town of Loma Linda shall pay the contractor within thirty (30) days following the date upon which the estimate is required by contract to be completed by the Town of Loma Linda, the amount due less a retainage not to exceed five (5%) percent. All such estimates by the Town of Loma Linda shall be paid promptly.

5. Nothing in this section shall prevent the owner from withholding payment or final payment from the contractor, or a subcontractor or material supplier. Reasons for withholding payment or final payment shall include, but not limited to, the following:

Liquidated damages; unsatisfactory job progress; defective construction work or material not remedied; disputed work; failure to comply with any material provision of the contract; third party claims filed or reasonable evidence that a claim will be filed; failure to make timely payments for labor, equipment or materials; damage to a contractor, subcontractor or material supplier; reasonable evidence that a subcontractor or material supplier cannot be fully compensated under its contract with the contractor for the unpaid balance of the contract sum; or citation by the enforcing authority for acts of the contractor or subcontractor which do not comply with any material provision of the contract an which result in a violation of any federal, state or local law, regulation or ordinance applicable to that project causing additional costs or damages to the owner.

**.058 PUBLIC WORKS CONTRACT, DEFINED:**

As used in this section, the term "Public Works Contract" means a contract of the Town of Loma Linda for the construction alteration, repair, or maintenance of any building, structure, highway, bridge, viaduct, pipeline, public works, or any other works dealing with construction, which shall include, but need not be limited to, moving, demolition, or excavation performed in conjunction with such work.

**.060 REQUESTS FOR BIDS ON SUPPLIES AND MATERIALS TO BE IN GENERAL TERMS – TO RECITE PREFERENCE FOR MISSOURI PRODUCTS:**

All requests hereafter made for bids and proposals for materials, products, supplies, provisions and other needed articles to be purchased at public expense, shall be made in general terms and by general specifications and not by brand, trade name or other individual mark, provided

such article to be purchased can be definitely described without the designation of such brand, trade name or other individual mark. All such requests and bids shall contain therein a paragraph in easily legible print, reading as follows:

“By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the state of Missouri.”

.065 REQUESTS FOR BIDS MADE IN ROTATION, WHEN:

Where, because of the large number of possible bidders for a particular purchase, it is impractical to submit a request for a bid to all possible bidders each time a bid is requested, request shall be made in rotation pursuant to the regulation of the Town of Loma Linda so as ultimately to include all the possible bidders, except that recognized competitive bidders shall be solicited in each instance.

.070 PREFERENCE TO MISSOURI PRODUCTS AND FIRMS:

In making purchases, the Town of Loma Linda shall give preference to all commodities manufactured, mined, produced or grown within the state of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals, when quality is equal or better and delivered price is the same or less.

.073 MISSOURI BUSINESS, PERFORMANCE OF JOBS, SERVICE, PREFERENCE, WHEN:

In letting contracts for the performance of any job or service, the Town of Loma Linda shall give preference to all firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when the quality of performance promised is equal or better and the price quoted is the same or less.

.076 MISSOURI CONTRACTORS, PUBLIC WORKS, PREFERENCE, WHEN, EXCEPTIONS:

1. To the extent permitted by federal laws and regulations, whenever the Town of Loma Linda shall let for bid any contract to a contractor for any public works or product, the contractor or bidder domiciled outside the boundaries of the state of Missouri shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor or bidder domiciled in Missouri as would be required for such a Missouri domiciled contractor or bidder to succeed over the bidding contractor or bidder domiciled outside Missouri on a like contract or bid being let in his domiciliary state and, further, the contractor or bidder domiciled outside the boundaries of Missouri shall be required to submit an audited financial statement as would be required of a Missouri domiciled contractor or bidder on a like contract or bid being let in the domiciliary state of that contractor or bidder.

2. Subsection 1 of this section shall not apply to any public works or product transportation where the bid is less than Five Hundred (\$500.00) Dollars.

.100 DIRECT PURCHASES AND EMERGENCY PURCHASES, WHEN AUTHORIZED, PROCEDURE:

1. The Board of Trustees shall have power to purchase direct any supplies which in their judgment can best be purchased direct. The Board of Trustees shall prescribe rules under which such direct purchases shall be made; provided, however, that all such direct purchases shall be based upon competitive bids as otherwise required by this chapter. The Board of Trustees in promulgating such rules may establish a procedure for a waiver of competitive bids where the bids received are not acceptable or where a minimum number of bids was not received and may allow for rebidding.
2. The Board of Trustees shall have power to make or to authorize emergency purchases not to exceed the cost of Ten Thousand (\$10,000.00) Dollars to be made directly by the Board of Trustees, upon an affirmative vote of the majority of the Board of Trustees, provided a quorum is present.



**BILL NO. 21-004**

**ORDINANCE NO. 06-001**

That the Town of Loma Linda, Missouri shall opt out of the sales tax holiday on the back to school items as provided in Section 144.049 RSMo for the three (3) days beginning at 12:01 a.m. on the first (1<sup>st</sup>) Friday in August and ending at midnight on the following Sunday and this ordinance shall commence and apply to the aforesaid 2006 sales tax holiday. The Town Clerk shall notify the Taxation Bureau of the Department of Revenue, State of Missouri by mailing a certified copy to P.O. Box 3380, Jefferson City, Missouri 65105-3380 at least forty-five (45) days prior to June 20<sup>th</sup>, 2006. This ordinance shall be effective immediately upon passage of the Board of Trustees of the Town of Loma Linda, Missouri.