



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: PUBLIC WORKS MUNICIPAL
CODE REVISIONS

DATE: September 4, 2019

Approved

Date

9-4-19

REPLACEMENT

REASON FOR REPLACEMENT

The purpose of this replacement memorandum is to provide additional information to the original report under the analysis section.

RECOMMENDATION

- (a) Approve an ordinance amending the San Jose Municipal Code as follows:
- (1) Add a new Title 27, titled "Procurement and Administration of Public Works," that incorporates recent City Charter changes modernizing the construction contract procurement process, makes changes conforming the Code to current City practices, and otherwise updates, streamlines, clarifies and modernizes requirements for the procurement and administration of public works projects;
 - (2) Repeal Chapters 14.04, titled "Public Works," 14.06, titled "Dispute Avoidance and Dispute Resolution Policy," and 14.07, titled "Design-Build Contracts," of Title 14, all of which are replaced by the new Title 27;
 - (3) Repeal Chapter 14.08 of Title 14, titled "Encumbrance of Funds for Construction Contracts," which is outdated and no longer needed;
 - (4) Amend Sections 4.12.055, titled "Services," of Chapter 4.12 of Title 4 to reflect recent City Charter changes clarifying that maintenance services can include repairs, construction, erection, improvement or demolition incidental to such maintenance;
 - (5) Amend Chapter 4.84, entitled "Insurance Requirements for Certain Public Works Contracts and Use or Occupancy of City-Owner Real Property," of Title 4 to eliminate outdated insurance requirements and to allow the Risk Manager to set such requirements; and
 - (6) Amend Section 2.04.1420 of Chapter 2.04 of Title 2, Section 4.08.030 of Chapter 4.08 of Title 4, Section 5.06.390 of Chapter 5.06 of Title 5, Section 11.08.010 of

Chapter 11.08 of Title 11, Section 15.26.120 of Chapter 15.26 of Title 15, and Section 19.32.120 of Chapter 19.32 of Title 19 to change references from Chapter 14.04 to Title 27.”

- (b) Adopt a resolution to repeal the following resolutions, all of which address policies incorporated into the new Title 27:
- (1) Resolution No. 71816, which sets forth the City’s prequalification policy;
 - (2) Resolution No. 71319, which sets forth the City’s contingency policy; and
 - (3) Resolution Nos. 72943, 75230 and 73532, which address the authority of the Director of Public Works to award and execute certain public works contracts for \$1,000,000 or less and establish the contingency for such contracts; and
- (c) Adopt a resolution to amend Council Policy No. 1-18, entitled “Operating Budget and Capital Improvement Program Policy,” to change sections 1.i and 1.j under the Capital Improvement Program portion of the Policy to refer to the appropriate new sections of Title 27.

OUTCOME

Approval of the recommendation will enact recent voter-approved changes to the City Charter related to the modernization of the City’s project delivery process. It would also consolidate under a single, separate title of the Municipal Code all policies and requirements for the administration and procurement of public works projects; it would update provisions to reflect current practices and requirements; and it would streamline, clarify and modernize certain language with the goal of making the Municipal Code easier for staff and the contracting community to understand.

BACKGROUND

A. Implementing Recent Charter Changes.

On November 6, 2018 San Jose voters approved ballot Measure S, which amended Section 1217 of the City Charter to modernize the construction contract procurement process. Measure S made the following changes relevant to this memorandum’s proposed recommendation:

- Increased the minimum bidding threshold from \$100,000 to \$600,000, adjusted annually for inflation;
- Authorized an alternative method of determining the low bidder using a formula based on the bid amount and a qualifications score;
- Lowered the “design-build” contract threshold from \$5,000,000 to \$1,000,000;
- Authorized the use of electronic noticing; and

- Provides flexibility to implement otherwise lawful programs supporting the use of small, local and economically disadvantaged businesses.

The City must amend the San José Municipal Code to implement the changes made by Measure S.

B. Streamlining and Modernization Efforts

Current provisions for the procurement and administration of public works are spread throughout the Municipal Code and various resolutions. Many of these provisions are significantly out of date.

The City adopted Chapter 14.04 of the Municipal Code, which contains the core public works provisions, approximately 48 years ago. It adopted Chapter 14.08, which addresses the encumbrance of funds for construction contracts, approximately 43 years ago. It adopted Chapter 4.84, which sets forth insurance and bond requirements for public works contracts, 37 years ago. Much has changed in the way the City procures and administers public works projects since the City first adopted these provisions. Yet, these public works related provisions have changed little.

Over the years, the City Council has adopted numerous resolutions setting forth policies related to public works: (1) Resolution No. 71816 contains the City's prequalification policy, (2) Resolution No. 71319 contains the City's contingency policy, (3) Resolution No. 72943 sets forth a pilot program that delegated authority to the Director of Public Works to award and execute certain public works construction contracts not exceeding \$1,000,000, (4) Resolution No. 73532 extended the pilot program, and (5) Resolution No. 75230 authorized the Director of Public Works to establish the contingency – consistent with the contingency policy - for contracts the Director awards.

Other chapters of the Municipal Code dealing with public works are Chapters 14.06, addressing dispute avoidance and resolution, and 14.07, addressing design build contracts. City Council Policy No. 1-18 also includes a reference to the contingency policy.

About 5 years ago City staff began the significant effort of modernizing, streamlining and consolidating the various public works provisions and policies into a new Title of the Municipal Code. The efforts included staff reports to the Transportation and Environment Committee, followed by reports to the full Council¹. The proposed ordinance reflects the culmination of staff's efforts and is consistent with previous direction.

¹ 3/24/15 City Council Report – <http://www.sanjoseca.gov/DocumentCenter/View/41516>
3/2/15 T&E Report - <http://sanjoseca.gov/DocumentCenter/View/40475>

ANALYSIS

Staff's recommendation implements Measure S changes approved by the voters. It also modernizes, streamlines, clarifies and consolidates various Municipal Code provisions and resolutions regarding the procurement and administration of public works projects.

A. Measure S Changes

Staff's recommendation would incorporate the Charter changes made by Measure S into the Municipal Code. Proposed Title 27 includes a provision *decreasing* the minimum threshold for design-build contracts from \$5,000,000 to \$1,000,000.

It also includes provisions *increasing* the minimum bidding threshold from \$100,000 to \$600,000 with an annual adjustment for inflation. Consequently, a minor public works contract would be one that is \$600,000 or less; a major public works contract would be one that is over \$600,000.

For major public works contracts, proposed Title 27 includes provisions implementing Measure S's authorization to determine the low bidder using either: (1) the low bid method or (2) a formula based on the bid price and bidder's qualification score (i.e. "best value").

When the City uses best value, proposed Title 27 would require the use of objective criteria to assign each bidder a qualification score. It would require the objective criteria to include, at a minimum, the submission of information regarding a bidder's safety record, past performance, labor compliance, demonstrated management competence, financial condition and relevant experience. It would expressly define "labor compliance" as the contractor's record and ability to comply with, and past performance and compliance with, contract and statutory requirements related to labor, such as laws involving the payment of wages and work hours, qualifications of the workforce and use of apprentices. Additionally, staff intends to incorporate a category of points for a contractor having a skilled and trained workforce. This category is intended to reflect the intent of the definition of a Skilled and Trained Workforce in California Public Contract Code to measure the experience and training of the workers on a project.

Proposed Title 27 also includes provisions implementing Measure S's authorization to notice bids electronically.

B. Streamlining, Consolidation and Modernization

In addition to implementing Measure S, staff's recommendation would consolidate under a single, separate title of the Municipal Code all policies and requirements for the administration and procurement of public works projects. It would update provisions to reflect current practices and requirements. It also would streamline, clarify and modernize certain language with the goal of making the Municipal Code easier for staff and the contracting community to understand.

Attachment A to this memorandum is a detailed summary of the changes that the proposed Title 27 would make. Some of the more significant changes are as follows.

- It adds more detailed procedures for procuring minor public works projects, including alternate procurement methods such as competitively bidding task orders among a pool of prequalified contractors, which is not included in the current code.
- The proposed changes would also provide a preference during the procurement of minor public works contracts for local and local-small businesses. This preference would align with the City's current preference in San Jose Municipal Code Section 4.12.320 for the procurement of goods and services where price is the determinative factor. It would provide a credit of up to 5% of the bid price (2.5% for local and 2.5% for small local) in order to select the winning bidder. For example, if a small local contractor bids \$200,000 and a large non-local contractor bids \$193,000. The process to determine the winning bidder will be as follows:
 - 1) A 5% credit will be deducted from the small local contractors bid so it will become \$190,000;
 - 2) The two bids will be reviewed. Since \$190,000 is less than \$193,000, the small local contractor will be the winning bidder; and
 - 3) The contract will be awarded to the small local contractor, but at their original bid value of \$200,000.

It is anticipated that this small local preference will provide an incentive to ensure that we are building our local construction workforce at the same time as we are building our infrastructure. At this time, staff is not recommending a local or local small preference for bidding on major public works projects. However, this is being reviewed along with other policies that would support disadvantaged business enterprises in a report that will be presented to the City's Community and Economic Development Committee in late 2019.

- The City's existing contingency policy requires: (1) 5% contingency for streets, sidewalks or parks; (2) 10% for utility and building projects; (3) 15% for building renovation projects; or (4) such amount as approved by the city council. Over time, the 5% limitation on streets, sidewalks and parks has been burdensome as there are certain complicated rehabilitation projects that require a higher contingency. For example, a small street improvement project could encounter a relatively minor and inexpensive issue, but due to the limited amount of available contingency, would require returning to City Council to increase the project contingency amount, delaying the project and unnecessarily inconveniencing the neighborhood. Staff currently seeks 10% contingency on most street projects, most recently the Almaden-Vine Safety Improvement project that was awarded at the February 5, 2019 City Council meeting. The proposed change is to eliminate the 5% maximum contingency threshold for streets, sidewalks and parks and to

include the following direction: (1) 10% maximum contingency for all projects except for a 15% maximum contingency on building renovation projects. Staff would still retain the option of presenting an alternative contingency amount on a specific project to the City Council for approval. This change will provide two particular benefits: (1) It will incorporate the contingency policy into the municipal code so it will be easy to find and reference and (2) It will provide flexibility for staff to recommend higher contingencies (up to 10%) for more complicated street or park renovation projects.

- The proposed changes add procedures for (1) posting the notice of intended determination, (2) bid protests and (3) determining if a contractor is not responsible. The added procedures are consistent with current practice but not included in the current code.
- The proposal adds authority for the Director of Public Works to reject all bids without having to seek Council authority to do so. Currently, if the bids come in above the available budget, staff must receive council authorization to reject all bids, revise the documents, and re-advertise for bidding. Providing staff the authority to reject all bids would streamline this process and reduce the turnaround time for procurement. In the past three years the City has rejected six bids due to the bids exceeding the available budget. The most recent example is the recommendation to reject bids for the 2019 Local Streets Resurfacing North Project is scheduled to be presented to Council on June 11, 2019.
- The proposal changes the procedures for procuring design-build contracts to expressly follow State law.
- Makes the decision to prequalify contractors discretionary based on the Public Works Director's weighing of various factors including the project cost, complexity, budget and time constraints, the number and quality of bidders, and economic conditions. This ordinance differs from Resolution No. 71816 as it removes the assumption that all projects with an engineer estimate over \$10,000,000 benefit from prequalifying contractors. Replacing the dollar threshold with the weighing of various factors would reduce the procurement timeline by a minimum of 3 months on projects that are over the \$10,000,000 threshold but do not receive a benefit from prequalifying contractors. This ordinance also removes the requirement that the Director of Public Works provide Council an explanation for not prequalifying contractors on projects with an Engineer Estimate of \$5,000,000 or more as the new ordinance specifies the criteria for the decision to prequalify or not prequalify.
- Consistent with purchasing requirements in San Jose Municipal Code Section 4.12.240, the proposal adds authority for the Public Works Director to require the use of a designated product or material under certain circumstances. Currently, the City follows Public Contract Code Section 3400, which requires all requests for the use of designated products to be approved by City Council. Adopting a municipal code provision granting the Public Works Director this authority would streamline the procurement process,

reduce the time for construction procurements, provide more flexibility regarding the use of designated products and materials, and align the purchasing and public works procurement processes on this issue.

- The proposal updates bond requirements and authorizes insurance requirements in the amounts that the City's Risk Manager determines to be appropriate. This update will allow for more flexibility when setting insurance requirements and could allow for more small contractors to be able to meet the City's bonding and insurance requirements at a lower cost.
- The proposal adds consistent procedures for the compensation of contractors and the closeout of projects. In practice, this has been implemented inconsistently throughout the City, and has created disputes in some instances. This provision aims to clarify those procedures.
- The proposal removes the prohibition of the Public Works Director executing a change order that is over \$100,000 while retaining the limit that the total amount of the change orders executed by the Director can't exceed the contingency. The current requirement to seek Council approval for change orders over \$100,000 often creates delays in the construction of projects, which often results in higher costs. Current practice on most significant projects is to seek a resolution delegating this authority to the Director at the time of award of a large construction contract. Adding this provision to the Municipal Code makes this permanent.

EVALUATION AND FOLLOW-UP

No additional follow-up is anticipated.

PUBLIC OUTREACH

This memorandum will be placed on the City's agenda website for September 10, 2019 and significant outreach was performed and received on the major changes in this memorandum as part of the Measure S ballot initiative approved by the voters in November 2018.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the changes in the municipal code were reviewed with the Airport Department, Environmental Services Department, Finance Department, Department of Parks, Recreation & Neighborhood Services and the Department of Transportation.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/
MATT CANO
Director of Public Works

For questions, please contact Matt Cano, Director of Public Works, at (408) 535-8300.

Attachment A – Table of Municipal Code Changes

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

Chapter 27.02 – Definitions	
27.02.010 <u>Definitions</u>	<ul style="list-style-type: none"> • Updates, modernizes, simplifies definitions. • Definition of “Director” substantively the same • Definitions of “minor” and “major” public works projects incorporate new Charter limits.
27.02.020 <u>Business Day</u>	
27.02.030 <u>Calendar Day</u>	
27.02.040 <u>Contractor</u>	
27.02.050 <u>Director</u>	
27.02.060 <u>Design-Build Contract</u>	
27.02.070 <u>Major Public Works Contract</u>	
26.72.080 <u>Minor Public Works Contract</u>	
26.02.090 <u>Public Bidding</u>	
27.02.100 <u>Public Property</u>	
27.02.110 <u>Public Works Contract</u>	
27.02.120 <u>Public Works Project</u>	
Chapter 27.04 - Administrative	
27.04.010 <u>Relationship with State Law</u>	<p>This is a completely new section with a number of miscellaneous elements including:</p> <ul style="list-style-type: none"> • Clarifies Director’s authority to sign certain project-related permits, • Makes clear authority of Director of Public Works to develop procedures and forms to implement, and • Incorporates the contingency policy with modification.
27.04.020 <u>Administrative Implementation</u>	
27.04.030 <u>Subdivision Improvement Agreements</u>	
27.04.040 <u>Permit/Utility Work Authority</u>	
27.04.050 <u>Contingency Amount</u>	
27.04.060 <u>Award Authority</u>	
27.04.070 <u>Design Approval Authority</u>	
27.04.080 <u>Calculating Time</u>	
27.04.090 <u>Computer Mapping Program Licenses</u>	
Chapter 27.06 - Minor Public Works Contracts	
27.06.010 <u>Application of Chapter</u>	<p>Significantly modifies existing provisions, which only discuss one procurement method, including:</p> <ul style="list-style-type: none"> • Authorizing “competitive work order” and “on-call contract” procurements, • Allowing no competitive procurement for contracts under \$10,000 • Incorporating local preference requirements into the procurement process. • Makes the Charter exceptions for competitive procurements applicable to minor public works contracts.
27.06.020 <u>Definition</u>	
27.06.030 <u>Funding</u>	
27.06.040 <u>City Employees</u>	
27.06.050 <u>Request for Quotes</u>	
27.06.060 <u>Competitive Work Orders</u>	
27.06.070 <u>On-Call Contracts</u>	
27.06.080 <u>Micro Contracts</u>	
27.06.090 <u>Exceptions</u>	
27.06.100 <u>Contract Requirements</u>	
27.06.110 <u>Contingency</u>	
27.06.130 <u>Alternative Procurements</u>	
27.06.130 <u>Director’s Authority</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

Chapter 27.08 - Procuring Major Public Works Contracts	
27.08.010 <u>Application of Chapter</u>	No significant substantive change.
27.08.020 <u>Competitive Procurement</u>	
27.08.030 <u>Prohibition</u>	
26.08.040 <u>Competitive Procurement Exceptions</u>	
27.08.050 <u>State/Federal Funding</u>	
Chapter 27.10 - Public Bidding	
27.10.010 <u>Application of Chapter</u>	
Part 1 - Electronic Media	New provisions allowing the use of electronic media.
27.10.020 <u>Scope of Part</u>	
27.10.030 <u>Use</u>	
27.10.040 <u>Requirements</u>	
Part 2 - Bid Documents	
27.10.050 <u>Scope of Part</u>	Mostly technical information about bidding. To the extent any provisions are new, they are intended to generally reflect current practice.
27.10.060 <u>Bid Security</u>	
27.10.070 <u>Additional Requirements</u>	
27.10.080 <u>Review and Approval</u>	
Part 3 - Soliciting Bids	
27.10.090 <u>Scope of Part</u>	
27.10.100 <u>Notice Inviting Bids</u>	
27.10.110 <u>Publication</u>	
Part 4 - Submission and Opening of Bids	
27.10.120 <u>Scope of Part</u>	
27.10.130 <u>Sealed Bids</u>	
27.10.140 <u>Bid Opening</u>	
27.10.150 <u>Availability of Bids</u>	
27.10.160 <u>No Bids Received</u>	
Part 5 - Notice of Intended Determination	
27.10.170 <u>Scope of Part</u>	New. Intended to reflect current practice.
27.10.180 <u>Notice Requirement</u>	
27.10.190 <u>Notice of Action</u>	
27.10.200 <u>Notice Contents</u>	
Part 6 - Bid Protests	
27.10.210 <u>Scope of Part</u>	New. But generally intended to reflect current practice.
27.10.220 <u>Exclusive Remedy</u>	
27.10.230 <u>Waiver of Rights</u>	
27.10.240 <u>Rejection of Bids</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.10.250	<u>Standing</u>	
27.10.260	<u>Timely Submission</u>	
27.10.270	<u>No Additional Protest Period</u>	
27.10.280	<u>Written Protest</u>	
27.10.290	<u>Protest Contents</u>	
Part 7 - Responding to a Bid Protest		
27.10.300	<u>Scope of Part</u>	New. Intended generally to reflect current practice or to set forth clear procedures.
27.10.310	<u>Exclusive Remedy</u>	
27.10.320	<u>Waiver of Rights</u>	
27.10.330	<u>Written Response</u>	
27.10.340	<u>Timely Response</u>	
27.10.350	<u>Response Contents</u>	
Part 8 - Resolution of Protests		
27.10.360	<u>Scope of Part</u>	New. Intended generally to reflect current practice or to set forth clear procedures.
27.10.370	<u>Final Decision</u>	
27.10.380	<u>Director's Recommendation</u>	
27.10.390	<u>Additional Information</u>	
27.10.400	<u>Basis of Recommendation</u>	
27.10.410	<u>No Hearing Required</u>	
Part 9 - Responsible Bidder		
27.10.420	<u>Scope of Part</u>	New. Intended generally to reflect current practice or to set forth clear procedures.
27.10.430	<u>Final Decision</u>	
27.10.440	<u>Director's Recommendation</u>	
27.10.450	<u>Relevant Information</u>	
27.10.460	<u>Notice of Non-Responsibility</u>	
27.10.470	<u>Hearing Request</u>	
27.10.480	<u>Timing of Hearing Request</u>	
27.10.490	<u>Untimely Request</u>	
27.10.500	<u>Responsibility Hearing</u>	
27.10.510	<u>Hearing Procedures</u>	
Part 10 - Disposition of Bids		
27.10.520	<u>Scope of Part</u>	Mix of old and new provisions. New provisions intended generally to reflect current practice or to set forth clear procedures.
27.10.530	<u>Reject all Bids</u>	
27.10.540	<u>Award</u>	
27.10.550	<u>Award Authority - Council</u>	
27.10.560	<u>Award Authority - Director</u>	
27.10.570	<u>Minor Irregularities</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.10.580	<u>Identical Bids</u>	
27.10.590	<u>Second Lowest Bidder</u>	
27.10.600	<u>Relief of Bidder</u>	
Chapter 26.12 - Best Value		
27.12.010	<u>Application of Chapter</u>	New provisions incorporating revised Charter authorization.
27.12.020	<u>Definition</u>	
27.12.030	<u>Public Bidding</u>	
27.12.040	<u>Low Bidder</u>	
27.12.050	<u>Qualification Score</u>	
27.12.060	<u>Evaluation Timing</u>	
27.12.070	<u>Evaluation Panel</u>	
27.12.080	<u>Bid Prices</u>	
Chapter 27.14 - Design Build		
27.14.010	<u>Application of Chapter</u>	Revised provisions that: <ul style="list-style-type: none"> • Reflect lower threshold resulting from Charter changes, and • Incorporating State – law procurement process.
27.14.020	<u>Award Authority</u>	
27.14.030	<u>Requirements</u>	
27.14.040	<u>State Law Procedures</u>	
27.14.050	<u>Prohibited Conflict</u>	
27.14.060	<u>Single Proposal</u>	
27.14.070	<u>Permissible Communications</u>	
27.14.090	<u>Disqualification</u>	
Chapter 27.16 - Prequalification		
27.16.010	<u>Application of Chapter</u>	<ul style="list-style-type: none"> • Moves policy from resolution to SJMC. • Provides flexibility on when to use. • Incorporates State prequalification process.
27.16.020	<u>Decision to Prequalify</u>	
27.16.030	<u>Requirements</u>	
Chapter 27.18 - Environmental Mitigation Monitoring and Reporting		
27.18.010	<u>Application of Chapter</u>	No substantive changes.
27.18.020	<u>Incorporating Mitigations</u>	
27.18.030	<u>Confirming Completion</u>	
27.18.040	<u>Procurement Documents</u>	
Chapter 27.20 - Designating a Material, Product, Service or Business		
27.20.010	<u>Application of Chapter</u>	New provision with the intent of: <ul style="list-style-type: none"> • Clarifying City’s procedures and aligning procedures with Purchasing requirements, and • Establishing conflict with State law.
27.20.020	<u>Conflict</u>	
Part 1 - “Or Equal” Requirement		
27.20.030	<u>Requirement</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.20.040	<u>Substitution Request</u>	
27.20.050	<u>Equivalency</u>	
27.20.060	<u>Timing of Request</u>	
27.20.070	<u>Untimely Requests</u>	
27.20.080	<u>Director's Decision</u>	
27.20.090	<u>Substitution Costs</u>	
Part 2 - Exceptions to "Or Equal" Requirement		
27.20.100	<u>Exceptions</u>	
27.20.110	<u>Written Findings</u>	
27.20.120	<u>Procurement Documents</u>	
Chapter 27.22 - Prevailing Wage Requirements		
27.22.010	Requirement	No change.
Chapter 27.24 - Bonds, Insurance and Indemnity		
27.24.010	<u>Application of Chapter</u>	
Part 1 - Bonds		
27.24.020	<u>Payment Bonds</u>	
27.24.030	<u>Payment Bond Requirements</u>	
27.24.040	<u>Performance Bonds</u>	
27.24.050	<u>Work on Public Property</u>	
27.24.060	<u>Director's Discretion</u>	
27.24.070	<u>Multiple Sureties</u>	
27.24.080	<u>Other Bonds</u>	
27.24.090	<u>Alternative Security</u>	
27.24.100	<u>Cost of Bonds</u>	No substantive changes from SJMC or current practice. Intent is to update, modernize, and clarify requirements.
Part 2 - Insurance		
27.24.110	<u>Risk Manager Defined</u>	
27.24.120	<u>Insurance Requirements</u>	
27.24.130	<u>Contract Requirements</u>	
27.24.140	<u>Proof of Insurance</u>	
27.24.150	Time for Providing Proof of Insurance	
Part 3 - Indemnification		
27.24.190	<u>General Requirement</u>	
27.24.200	<u>Waiver</u>	
Chapter 27.26 - Compensation		
27.26.010	<u>Application of Chapter</u>	
27.26.020	<u>Conflict</u>	New provisions intended to generally reflect current practice. Intended to provide further clarity to practices

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

Part 1 - Progress Payments	and, regarding some provisions, create a conflict with State law.
27.26.030 <u>Payment Application</u>	
27.26.040 <u>Release of Claims</u>	
27.26.050 <u>Deductions</u>	
27.26.060 <u>Timing</u>	
27.26.070 <u>Extra Compensation</u>	
Part 2 - Retention	
27.26.080 <u>Retention Amount</u>	
27.26.090 <u>Decreasing Retention Amount</u>	
27.26.100 <u>Securities/Escrow</u>	
27.26.110 <u>Release of Retention</u>	
27.26.120 <u>Interest/Attorney's Fees</u>	
Part 3 - Proposed Final Accounting	
27.26.130 <u>Requirement</u>	
27.26.140 <u>Contents</u>	
27.26.150 <u>Timing</u>	
27.26.160 <u>Permissible Withholds</u>	
27.26.170 <u>Response</u>	
Part 4 - Final Accounting	
27.26.180 <u>Final Accounting</u>	
27.26.190 <u>Contents</u>	
27.26.200 <u>Timing</u>	
27.26.210 <u>Undisputed Amounts</u>	
27.26.220 <u>Disputes</u>	
Chapter 27.28 - Dispute Resolution	Based on existing dispute resolution provisions in SJMC.
Part 1 - Application	
27.28.010 <u>Application of Chapter</u>	
27.28.020 <u>Alternative Resolution Procedures</u>	
27.28.030 <u>Conflict</u>	
Part 2 - Definitions	
27.28.040 <u>Definitions</u>	
27.28.050 <u>Claim</u>	
27.28.060 <u>Dispute Review Board</u>	
27.28.070 <u>Facilitated Dispute Resolution</u>	
27.28.080 <u>Notice of Potential Claim</u>	
27.28.090 <u>Partnering</u>	
27.28.100 <u>Statement of Claims</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

Part 3 - Partnering		
27.28.110	<u>General Practice</u>	
27.28.120	<u>Partnering Workshop</u>	
27.28.130	<u>Facilitated Partnering</u>	
27.28.140	<u>Additional Partnering Workshops</u>	
27.28.150	<u>Selecting a Facilitator</u>	
27.28.160	<u>Costs</u>	
Part 4 - Notice of Potential Claim		
27.28.170	<u>Early Resolution</u>	New provisions generally intended to reflect and clarify current practices, and address long standing problems.
27.28.180	<u>Notice of Potential Claim</u>	
27.28.190	<u>Contents</u>	
27.28.200	<u>Pass-Through Claims</u>	
27.28.210	<u>Failure to Submit</u>	
27.28.220	<u>Response</u>	
27.28.230	<u>Additional Dispute Resolution</u>	
Part 5 - Statement of Claims		
27.28.240	<u>Statement of Claims</u>	New provisions generally intended to reflect and clarify current practices, and address long standing problems.
27.28.250	<u>Contents</u>	
27.28.260	<u>Precluded Claims</u>	
27.28.270	<u>Response to Statement of Claims</u>	
27.28.280	<u>Dispute Resolution Process</u>	
Part 6 - Settlement Conference		
27.28.290	<u>Settlement Conference</u>	
27.28.300	<u>Timing</u>	
27.28.310	<u>Documents</u>	
27.28.320	<u>Procedures</u>	
Part 7 - Facilitated Dispute Resolution		
27.28.330	<u>Facilitated Dispute Resolution</u>	Provisions based on existing dispute resolution provisions in the SJMC.
27.28.340	<u>Informal Process</u>	
27.26.350	<u>Selection and Scheduling</u>	
27.26.360	<u>Costs</u>	
Part 8 - Dispute Review Board		
27.28.370	<u>Purpose</u>	
27.28.380	<u>Requirement</u>	
27.28.390	<u>Selection of Board Members</u>	
27.28.400	<u>Board Member Impartiality</u>	
27.28.410	<u>Non-Binding</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.28.420	<u>Costs</u>	
Chapter 27.30 - Changes		
27.30.010	<u>Application of Chapter</u>	
Part 1 - Definitions		
27.30.020	<u>Definitions</u>	
27.30.030	<u>Change Order</u>	
27.30.040	<u>Directed Change Order</u>	
27.30.050	<u>Emergency Change Order</u>	
Part 2 - Authority to Execute		
27.30.060	<u>Council Authority</u>	
27.30.070	<u>Delegation of Authority</u>	
27.30.080	<u>Director's Authority</u>	
27.30.090	<u>Emergency Change Order</u>	
Part 3 - General Requirements		
27.30.100	<u>Change Orders</u>	
27.30.110	<u>Directed Change Orders</u>	
27.30.120	<u>Emergency Change Order</u>	
27.30.130	<u>Calculating Amount</u>	
27.30.140	<u>Compensation Reduction</u>	
Chapter 27.32 - Subcontractors		
27.32.010	<u>Application of Chapter</u>	
27.32.020	<u>State Law</u>	
27.32.030	<u>Subcontractor Substitutions</u>	
27.30.040	<u>Voluntary Assignment</u>	
27.30.050	<u>Inadvertent Listing Error</u>	
27.32.060	<u>No Subcontractor Listed</u>	
Chapter 27.34 - Intergovernmental Contracts		
27.34.010	<u>Application of Chapter</u>	
27.34.020	<u>Definition</u>	
27.34.030	<u>Charter Exception</u>	
27.34.040	<u>Council Authority</u>	
27.34.050	<u>Contract Requirements</u>	
Chapter 27.36 - City-Public Utility Contract		
27.36.010	<u>Application of Chapter</u>	
27.36.020	<u>Definition</u>	
27.36.030	<u>Charter Exception</u>	
27.36.040	<u>Council Authority</u>	

Most of these provisions are new, although they generally reflect current practices with the following exceptions:

- Would allow the Director to sign change orders in any amount provided they don't exceed the contingency, versus the current limit of \$100,000, and
- Would relax the legal requirements for what kind of construction changes could be accomplished through use of a change order.

Clarifies and modernizes provisions related to the use of these types of contracts.

Clarifies and modernizes provisions related to the use of these types of contracts.

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.36.050 <u>Contract Requirements</u>	
Chapter 27.38 - City-Developer Contract	
27.38.010 <u>Application of Chapter</u>	Clarifies and modernizes provisions related to the use of these types of contracts.
27.38.020 <u>Definition</u>	
27.38.030 <u>Charter Exception</u>	
27.38.040 <u>Council Authority</u>	
27.38.050 <u>Director's Authority</u>	
27.38.060 <u>Plan Review</u>	
27.38.070 <u>Reimbursement</u>	
27.38.080 <u>No Contingency</u>	
27.38.090 <u>Payment Bond</u>	
27.38.100 <u>Performance Bond</u>	
27.38.110 <u>Warranty Bond</u>	
27.38.120 <u>Other Bonds</u>	
27.38.130 <u>Miscellaneous Bond Requirements</u>	
27.38.140 <u>Completion/Clean-Up Deposit</u>	
27.38.150 <u>Insurance</u>	
27.38.160 <u>Indemnity</u>	
27.38.170 <u>Environmental Mitigation, Monitoring and Reporting</u>	
27.38.180 <u>In-Lieu Fees</u>	
27.38.190 <u>Refund of Fees</u>	
27.38.150	
Chapter 27.40 - Specialty Work	
27.40.010 <u>Application of Chapter</u>	Clarifies and modernizes provisions related to the use of these types of contracts.
27.40.020 <u>Definition</u>	
27.40.030 <u>Charter Exception</u>	
27.40.040 <u>Council Authority</u>	
27.40.050 <u>Contract Requirements</u>	
Chapter 27.42 - Work of Urgent Necessity	
27.42.010 <u>Application of Chapter</u>	Clarifies and modernizes provisions related to the use of these types of contracts.
27.42.020 <u>Definition</u>	
27.42.030 <u>Charter Exception</u>	
27.42.040 <u>Council Authority</u>	
27.42.050 <u>Contract Requirements</u>	
Chapter 27.44 - Emergency Public Works Contract	
27.44.010 <u>Application of Chapter</u>	

NEW TITLE 27 SECTION

CHANGES FROM EXISTING CODE

27.44.020 <u>Requirement</u>	New provision incorporating this situation into the Public Works provisions of the SJMC.
27.44.030 <u>Public Bidding Exception</u>	
27.44.040 <u>Contract Requirements</u>	
Chapter 27.46 - Idle Act	
27.46.010 <u>Application of Chapter</u>	Clarifies and modernizes provisions related to the use of these types of contracts.
27.46.020 <u>Definition</u>	
27.46.030 <u>Public Bidding Exception</u>	
27.46.040 <u>Council Authority</u>	
27.46.050 <u>Contract Requirements</u>	
Chapter 27.48 - City Employees Constructing Public Works	
27.48.010 <u>Application of Chapter</u>	An existing provision
27.48.020 <u>Authority</u>	
27.48.030 <u>Minor Public Works</u>	
27.48.040 <u>Specialty Work</u>	
27.48.050 <u>Work of Urgent Necessity</u>	
27.48.060 <u>No Bids</u>	
27.48.070 <u>High Bids</u>	
Chapter 27.50 - Public Reporting	
27.50.010 <u>Application of Chapter</u>	Clarifies/modernizes and existing provision
27.50.020 <u>Director's Report</u>	
27.50.030 <u>City Manager Report</u>	