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ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE 1) ADDING A NEW TITLE 27 OF THE SAN JOSE MUNICIPAL CODE 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) AMENDING SECTION 4.12.055 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ERECTION, IMPROVEMENT OR DEMOLITION INCIDENTAL TO SUCH MAINTENANCE; 3) AMENDING CHAPTER 4.84 OF TITLE 4 TO ELIMINATE OUTDATED INSURANCE REQUIREMENTS AND TO ALLOW THE RISK MANAGER TO SET SUCH REQUIREMENTS; 4) REPEALING CHAPTERS 14.04, 14.06, AND 14.07 OF TITLE 14, TO BE REPLACED BY THE NEW TITLE 27; 5) REPEALING CHAPTER 14.08 OF TITLE 14 WHICH IS OUTDATED AND NO LONGER NEEDED; AND 6) AMENDING SECTION 2.04.1420 OF CHAPTER 2.04 OF TITLE 2, SECTION 4.08.030 OF CHAPTER 4.08 OF TITLE 4, SECTION 5.06.390 OF CHAPTER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

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.04.1420 of Chapter 2.04 of Title 2 of the San José Municipal Code is hereby amended to read as follows:

2.04.1420 Functions, Powers and Duties

In addition to those general functions, powers and duties given to the department head by this Chapter and other provisions of this Code, the Director shall:

A. Manage and supervise the operation of San José International Airport.

B. Make recommendations to the City Manager respecting the betterment of the airport, its operation, and all activities connected or related thereto.

C. Administer and enforce all laws, ordinances and regulations relating to the operation and use of the airport.

D. Design and prepare plans and specifications and contract documents for work done within the San José International Airport, under and pursuant to the public works contracts which the Director of Public Works is authorized to execute and enter into pursuant to Title 27 ~~Chapter 14.04~~ of this Code, and supervise and inspect such work.

E. Perform such other programs or functions related to the airport that the City Council or the City Manager may, from time to time, authorize or request.

SECTION 2. Section 4.08.030 of Chapter 4.08 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.08.030 Contracts Subject to this Chapter

The following types of contracts are subject to this Chapter:

A. Contracts for public works. Any contract for a P~~p~~ublic W~~w~~orks P~~p~~roject~~s~~ that is covered by Title 27 ~~, as defined by Section 14.04.140 of Title 14 of this Code, or a miscellaneous public work, as defined by Section 14.04.100 of Title 14~~ of this Code.

B. Construction consultant contracts. Any contract for preparation by the contractor of plans and specifications for a public works project or miscellaneous public works project or for the making of soil tests or engineering surveys in connection with such works.

C. Purchasing contracts. Any contract for the purchase by city of equipment, supplies and materials.

SECTION 3. Section 4.12.055 of Chapter 4.12 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.12.055 Services

A. "Services" means:

1. Any work performed or services rendered by an independent contractor, with or without the furnishing of materials, to do the following:

   a. Maintenance or nonstructural repair of City buildings, structures or improvements, which does not require engineering plans, specifications or design, including but not limited to unscheduled replacement of broken window panes, fire extinguisher maintenance, minor roof repairs, elevator maintenance, custodial services and pest control;

   b. Repair, modification, and maintenance of City equipment and software;

   c. Cleaning, analysis, testing, moving, removal or disposal (otherwise than by sale) of City materials, supplies and equipment;

   d. Replanting, care, or maintenance of public grounds, including but not limited to trees, shrubbery, flowers and lawns, which does not require engineering plans, specifications or designs;

   e. Provide temporary personnel services;

   f. Provide other miscellaneous services to facilitate department operations;

   g. Perform repair, demolition or other work required to abate nuisances pursuant to this Code;

   h. Install and implement information technology projects; or

   i. Perform technical or professional services.

2. Software licensing and maintenance.

3. Leasing or rental of personal property for use by the City.

B. "Services" shall not include:

1. Any P~~p~~ublic W~~w~~orks P~~p~~roject as defined in Section 1217(a)(1) ~~14.04.140~~ of the San José City Charter~~Municipal Code~~, or any purchases of materials, supplies or equipment;

2. Services performed under a grant agreement between the City and a grantee of a City program;

3. Services for the design, fabrication or installation of a work of art; or

4. Services performed under a concession agreement between the City and a licensee or permittee on City property.

C. Consistent with the definition of Public Works Project in Section 1217(a)(1) of the San José City Charter, Services involving maintenance can include repairs, construction, erection, improvement or demolition incidental to such maintenance. To be "incidental" to such maintenance, the procurement must demonstrate that the repairs, construction, erection, improvement or demolition are:

1. Absolutely necessary to the proper completion of the maintenance; and

2. A minor component of the maintenance considering factors such as the cost and complexity of the maintenance, and the cost and complexity of the repairs, construction, erection, improvement or demolition.

SECTION 4. Chapter 4.84 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

Chapter 4.84
Insurance Requirements For ~~Certain Public Works Contracts And~~ Use or Occupancy of City-Owned Real Property

4.84.010 Purpose ~~Insurance Requirements for Public Works Contracts~~

The purpose of this Chapter 4.84 is to set forth the insurance requirements that must be included in any Use Agreement, as that term is defined herein. ~~Unless otherwise provided by ordinance, resolution or other act of the city council, each person who enters into any "public works contract" as that phrase is defined in Section 14.04.130 shall at his sole cost and expense obtain, pay for, and maintain until completion and acceptance of the work covered by said contract the following insurance, including endorsements thereto.~~

~~The policy or policies shall provide insurance covering each such person with respect to all work performed by, for, or on behalf of each such person on a comprehensive basis~~

~~and provide coverage for omissions and supervisory acts of the named insureds and additional insureds with respect to the work. Coverage for both bodily injury liability and property damage liability shall be on an "occurrence basis."~~

~~The required insurance shall consist of the following minimum types of coverages:~~

~~A. Comprehensive general liability coverage providing coverage for the specific types of operations involved in the work required by the contract.~~

~~B. Comprehensive auto coverage on all owned, leased, nonowned and hired automobiles used in connection with the said work.~~

~~C. Workers' compensation insurance coverage for any and all employees of said persons to the extent required by state law and which meets the requirements of said law.~~

~~The minimum limits of liability for each insurance policy, excluding the workers' compensation policy, shall be no less than one million dollars combined single limit for bodily injury and property damage per occurrence.~~

~~The workers' compensation policy shall carry the statutory limit as established by California state law and a minimum of one hundred thousand dollars limit of liability for employer's liability.~~

~~The risk manager may increase such minimum limits of liability for individual contracts whenever he determines the exposure to the city warrants such increase.~~

~~In addition to the insurance hereinabove required, each such person shall, before commencement of the work or improvements, file with the city clerk a faithful performance bond executed by said person as principal and executed as surety by a corporate surety authorized to be a corporate surety under the laws of the state in the sum of not less than one hundred percent of the total amount payable under the contract, payable to the City of San José conditioned upon the faithful performance of all covenants and provisions of the contract. Each such person shall also, within the hereinabove provided time, file with the city clerk a payment bond executed by said person as principal and executed as surety by a corporate surety authorized to be a corporate surety under the laws of the state in the sum of not less than fifty percent of the amount payable under the terms of the contract, by its terms inuring to the benefit of any persons named in Section 3181 of the Civil Code of the state, so as to give a right of action to such persons so named or their assigns in any suit brought upon the bond and providing that if the original contractor or his subcontractor fails to pay any of the persons named in said Section 3181 for amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, that the surety or sureties will pay for the same in an amount not exceeding the sum specified in~~

~~the bond; and also, in case suit is brought upon the bond, a reasonable attorney's fee to be fixed by the court. Said bond shall otherwise comply with the provisions of Sections 3247 - 3252, inclusive, of the Civil Code of the state.~~

~~The above insurance and bond requirements shall also apply to each person who does any work within any city-owned public street or other city-owned public property pursuant to any permit therefor, except work done by the owner or occupier of property abutting upon such public street of the reasonable value of one hundred dollars or less, pursuant to any permit therefor.~~

4.84.020 Definitions~~Insurance Requirements for Use or Occupancy of City-Owned Real Property~~

For purposes of this Chapter 4.84, the following words have the following meanings.

A. "Risk Manager" means the person from the City responsible for reviewing, determining and establishing appropriate insurance coverage and requirements for City contracts.

B. "Use Agreement" means any City license, permit, lease, concession or other agreement that allows a Person to occupy or use any real property of the City or any structures or improvements on such real property.

~~Unless otherwise provided by ordinance, resolution or other action of the city council, each person occupying or using any real property of the city and/or structures or improvements thereon pursuant to a license, permit, lease, concession, or other agreement or contract shall, at his sole cost and expense, obtain, pay for and maintain during the full term of his use or occupancy of such property and/or structures or improvements thereon the following insurance, including endorsements thereto.~~

~~The policy or policies shall provide insurance covering each such person with respect to all use or occupancy of any city-owned real property, structures or improvements thereon on a comprehensive basis and provide fire legal liability coverage. The bodily injury liability, property damage liability, and fire legal liability coverages shall all be on an "occurrence basis."~~

~~The required insurance shall consist of the following minimum types of coverages:~~

~~A. Owners, landlords and tenants coverage with a minimum limit of five hundred thousand dollars combined single limit.~~

~~B. Fire legal liability with a minimum limit of one hundred thousand dollars per occurrence.~~

4.84.030 Insurance ~~Miscellaneous~~ Requirements

The Risk Manager will determine and establish, consistent with this Chapter 4.84, the appropriate insurance requirements, including coverages and coverage amounts, for all Use Agreements. ~~The following provisions shall apply to insurance and/or bonds required by Sections 4.84.010 and 4.84.020.~~

~~The following endorsements shall be attached to and made a part of each insurance policy herein required except for the workers' compensation policy which shall only require endorsement C below. The wording for each endorsement shall be exactly as it appears below:~~

~~The City of San José, its officers, its employees, agents, contractors and invitees are hereby added as additional insureds.~~

~~This policy shall be considered primary insurance as respects any other valid and collectable insurance the City of San José may possess, and any other insurance the city does possess, including any self-insured retention the city may have, shall be considered excess insurance only.~~

~~Thirty days' prior written notice shall be provided to the City of San José in the event of cancellation, nonrenewal or reduction in coverage of any nature. Such notice shall be sent to risk manager, City of San José, 801 North First Street, San José, CA 95110.~~

~~This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.~~

~~The period of coverage on each such policy and/or its renewal shall be not less than the period of time within which the person completes construction of the work required by the contract and acceptance thereof by city or not less than the period of time during which the person uses or occupies city-owned real property, structures, or improvements.~~

~~Proof of each such policy shall be in the form of a completely and properly issued certificate of insurance, together with copies of all required endorsements. Such proof shall be submitted to city's risk manager before commencement of construction or installation of any work under the contract or before commencement of any use or occupancy of city-owned property, structures or improvements. If such person has on file with the city's risk manager such proof of coverage meeting the above insurance requirements except for coverage being extended to the particular contract, agreement, permit, lease, license, or concession in question, the above insurance requirements may be satisfied by appropriately endorsing the existing policy or policies to extend all of its provisions to cover the previously uncovered contract or agreement, permit, lease, license, or concession.~~

~~Each insurance company providing the required insurance shall have a rating from the most current issue of Best's Key Rating Guide of A + XII or higher.~~

~~The insurance and bond requirements hereinabove specified, except for payment bonds which shall be required for all contracts where the compensation paid by city is two thousand five hundred dollars or more, may at any time be altered, modified or waived at the discretion of the city risk manager whenever he finds it to be in the best interest of the city to do so, after having weighed all relevant factors, including the exposure to the city, and the amount of the contract.~~

~~Each such required policy shall be satisfactory as to content, form and insuring company to the city risk manager, who shall indicate such approval in writing.~~

4.84.040 Duration

The Person executing a Use Agreement with the City must maintain the required insurance for the full term of the Use Agreement.

4.84.050 Cost

The Person executing a Use Agreement with the City is solely responsible for all costs and expenses associated with obtaining the insurance required by this Chapter 4.84.

4.84.060 Proof of Insurance

A. The Person executing a Use Agreement with the City must provide proof of insurance in the form of a complete and properly issued certificate of insurance, together with copies of all required endorsements.

B. Proof of insurance must be submitted to, and approved by, the Risk Manager.

4.84.070 Time for Providing Proof of Insurance

No Person can occupy or use any real property of the City or any structures or improvements on such real property pursuant to a Use Agreement until the required proof of insurance has been submitted to, and approved by, the Risk Manager.

4.84.080 Contract Requirement

Appropriate provisions implementing the insurance requirements of this Chapter 4.84 will be placed in all Use Agreements.

4.84.090 Waiver

Only the Council may waive the requirement of insurance for Use Agreements.

SECTION 5. Section 5.06.390 of Chapter 5.06 of Title 5 of the San José Municipal Code is hereby amended to read as follows:

5.06.390 Acquired Properties

A. Notwithstanding the provisions of Section 2.04.4220 of this Code, the Director is authorized to provide management, (including maintenance) and/or to dispose of properties the City has acquired under this Chapter by direct purchase, foreclosure proceedings, or deeds in lieu of foreclosure, and to provide repairs to and replacement of, operating systems in those properties.

B. Notwithstanding ~~the provisions of~~ Section 27.02.050~~14.04.090~~ of this Code, the Director is authorized to expend an amount not to exceed the lesser of fifteen (15) percent of the value of the property, or five hundred thousand dollars ($500,000.00) for any reasonable rehabilitation or improvements of properties acquired under this Chapter by direct purchase, foreclosure proceedings, or deeds in lieu.

C. The Director is authorized to issue requests for proposals or requests for qualifications and to award consultant contracts up to fifty thousand dollars ($50,000.00) associated with (1) predevelopment activities for properties that the City anticipates it will purchase for affordable housing, and (2) for professional services including, but not limited to, accountancy and auditing, in order to administer the federal and other grants programs of the department of housing and to investigate the financial situations of grantees and borrowers of City funds as the need arises.

SECTION 6. Section 11.08.010 of Chapter 11.08 of Title 11 of the San José Municipal Code is hereby amended to read as follows:

11.08.010 City Traffic Engineer - Director, Department of Transportation

For the purposes of this Title 11, the Director of the Department of Transportation shall serve as City Traffic Engineer and shall exercise the powers and duties with respect to traffic as provided in this Title 11; provided, however, that the exercise of said powers and duties shall be subject to the provisions of ~~Chapter 14.04~~Title 27 of this Code.

SECTION 7. Chapter 14.04 of Title 14 of the San José Municipal Code is hereby repealed.

~~Chapter 14.04~~
~~Public Works~~
~~Part 1~~
~~Definitions~~

~~14.04.010 Change Order~~

~~As used in this chapter, "change order" means and includes any order made or issued, for and on behalf of the city for any alteration in, deviation from, addition to or omission from any specific public works project or miscellaneous public works for which a city contract shall have been awarded or entered into, including any increase or decrease in the quantity of any item or portion of the work or the omission of any item or portion of the work, and also including such extra work as may be determined by the officer or body authorized to issue such a change order to be required for the proper completion or construction of the whole work contemplated.~~

~~14.04.020 City-Private Developer Contract~~

~~As used in this chapter, "city-private developer contract" means and includes any public works contract made and entered into for and on behalf of the city with any subdivider, developer or owner of real property for the doing by such subdivider, developer or owner, for the city of any work or thing which is included in the definition of "public works project" or "miscellaneous public works," as such terms are defined in this Part 1, where such work is to be done by such subdivider, developer or owner in connection with the subdivision or development by him of any real property, notwithstanding the fact that such may be subject to entire or partial reimbursement from the city; provided and excepting, however, that said type of contract shall not be deemed to include any contract entered into between the city and any subdivider of land whereby the subdivider, as a condition of approval of his subdivision map, is required at his own cost to make certain improvements and, upon completion, to dedicate or otherwise turn them over to the city as public improvements.~~

~~14.04.030 City-Public Utility Contract~~

~~As used in this chapter, "city-public utility contract" means and includes any public works contract made and entered into for and on behalf of the city with any public utility which is either publicly owned or is regulated by the Public Utilities Commission of the state, for the doing by such public utility, for the City of San José, of any work or thing which is included in the definition of "public works project" or "miscellaneous public works," as such terms are defined in this part, where such work involves property of such public utility and is otherwise of direct concern to both the city and such public utility.~~

~~14.04.040 Intergovernmental Contract~~

~~As used in this chapter, "intergovernmental contract" means and includes any public works contract made and entered into for and on behalf of the city with any other public or governmental body or agency, for the doing by such other body or agency, for the city, of any work or thing which is included in the definition of "public works project" or "miscellaneous public works," as such terms are defined in this part.~~

~~14.04.050 Major Emergency Public Works Project Contract~~

~~As used in this chapter, "major emergency public works project contract" means any contract made and entered into for and on behalf of the city with an independent contractor for the doing by such contractor, for the city, of anything included in the definition of "public works project" where the expenditure for such work, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefor, exceeds one hundred thousand dollars and, in addition, such expenditure is found by the council to be of urgent necessity for the preservation of life, health or property and is authorized by the affirmative vote of at least eight members, containing a declaration of the facts constituting the urgency.~~

~~14.04.060 Major Public Works Project Contract For Which Solicitation Of Bids Is An Idle Act~~

~~As used in this chapter, "major public works project contract for which solicitation of bids is an idle act" means any contract made and entered into for and on behalf of the city with any independent contractor for the doing by such contractor, for the city, of anything included in the definition of "public works project" where the expenditure required for the specific public works project with which such contract is concerned, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefor, exceeds one hundred thousand dollars, and, in addition, the council finds that the solicitation of bids for the doing of such work would for any reason be an idle act.~~

~~14.04.070 Major Public Works Project Contract Requiring Special Skills~~

~~As used in this chapter, "major public works project contract requiring special skills" means any contract made and entered into for and on behalf of the city with any person for the doing by such person, for the city, of any public work included in the definition of "public works project," where the expenditure for such work, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefor, exceeds one hundred thousand dollars, and, in addition, the council finds that such work involves highly technical or professional skill and that the peculiar technical or professional skill or ability of the person selected to do such work is an important factor in the selection.~~

~~14.04.080 Maintenance~~

~~As used in this chapter, "maintenance" means the repairing or keeping in good condition of any existing property, improvement or facility to the extent that such is reasonably necessary to compensate for ordinary use, or to restore to previous condition of fitness, or to prevent such property, improvement or facility from deteriorating or falling into an unsafe or dangerous condition, or to correct an inefficient or unsafe or dangerous condition, and shall include replacement or substitution of weakened, defective or worn parts or materials, but shall not include the creating of anything new or not already existing.~~

~~14.04.090 Minor Public Works Project Contract~~

~~As used in this chapter, "minor public works project contract" means and includes any public works contract made and entered into for and on behalf of the city with an independent contractor for the doing by such independent contractor, for the city, or any work or thing which is included in the definition of "public works project," as such term is defined in this part, where the expenditure required for the specific public works project with which such contract is concerned, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefor, is one hundred thousand dollars or less.~~

~~14.04.100 Miscellaneous Public Works~~

~~As used in this chapter, the term "miscellaneous public works" means and includes the following:~~

~~A. The maintenance of any of the properties and facilities mentioned in the definition of "public works project," including any repairs incidental to such maintenance;~~

~~B. The planting, care and maintenance of trees, shrubbery and flowers;~~

~~C. The construction, erection, improvement, alteration, removal, demolition, maintenance or repair of any buildings, structures, improvements, facilities or property, for the doing or accomplishment of which moneys shall have been appropriated to the public works department of the city, or to the head of such department, but excepting any and all work which is included in the definition of "public works project."~~

~~14.04.110 Miscellaneous Public Works Contract~~

~~As used in this chapter, "miscellaneous public works contract" means and includes any public works contract made and entered into for and on behalf of the city with an~~

~~independent contractor for the doing by such independent contractor, for the city, of any work or thing which is included in the definition of "miscellaneous public works" as such term is defined in this part.~~

~~14.04.120 Normal Major Public Works Project Contract~~

~~As used in this chapter, "normal major public works project contract" means and includes any public works contract made and entered into for and on behalf of the city with an independent contractor for the doing by such independent contractor, for the city, of any work or things which is included in the definition of "public works project," as such term is defined in this part, where the expenditure required for the specific public works project with which such contract is concerned, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefor, is more than one hundred thousand dollars; provided and excepting, however, that "normal major public works project contract" shall not be deemed to mean or include an intergovernmental contract, a city-public utility contract, a city-private developer contract, a major public works contract requiring special skills, a major emergency public works project contract, or a major public works project contract for which solicitation of bids is an idle act.~~

~~14.04.130 Public Works Contract~~

~~As used in this chapter, "public works contract" means and includes any contract made and entered into for and on behalf of the city, with any other party or parties, for the doing of any work or thing by such other party or parties, for the city, which is included in the definition of "public works project" or "miscellaneous public works," as such terms are defined in this part.~~

~~14.04.131 Public Works Contract - Unscheduled~~

~~As used in this chapter "unscheduled public works contract" means and includes any miscellaneous public works contract for unscheduled service over a period of not more than one year where each call for service is a separate item, billable at time and material at the completion of each such item and the contract contemplates and includes an indefinite number of such items, to terminate when the compensation provided under the contract is exhausted.~~

~~14.04.140 Public Works Project~~

~~As used in this chapter, the term "public works project" means any project for the construction, erection, improvement or demolition of any public building, street, bridge, drain, ditch, canal, dam, tunnel, sewer, water system, fire alarm system, electrical traffic-control system, street-lighting system, parking lot, park or playground; provided and excepting that such term shall not be deemed to mean or include the maintenance~~

~~of any of such things, or any repairs incidental to such maintenance, or the planting, care or maintenance of trees, shrubbery, or flowers.~~

~~14.04.141 Director Of Public Works~~

~~The term "director of public works" as used in this chapter means:~~

~~A. The director of transportation as to any project not requiring city council approval under the jurisdiction of that department;~~

~~B. The director of environmental services as to any project under the jurisdiction of that department, whether it requires city council approval or not; and~~

~~C. The director of public works as to all other public works contracts.~~

~~Part 2 Council Authority - Bids~~

~~14.04.150 - Miscellaneous public works - Council authority.~~

~~The city council has and shall have the authority, at any and all times, if it finds or believes for any reason or reasons that such is for the best interest of the city, to do any of the following things with respect to miscellaneous public works:~~

~~A. It may authorize or direct the director of public works, subject to such conditions and limitations as it deems advisable, to have all or any or any part of such works done by city employees under his or her direction and control; or~~

~~B. It may authorize or direct the director of public works, subject to such conditions and limitations as it deems advisable, to award, enter into or execute miscellaneous public works contracts for all or any or any part of such works; or~~

~~C. It may itself award or authorize the execution of specific contracts for all or any or any part of such works.~~

~~14.04.160 Public Works Projects Costing One Million Dollars Or Less~~

~~When the expenditures required for any specific public works project, excluding the cost of any materials, supplies or equipment which the city may have acquired or may separately acquire therefore, is one million dollars or less, the city council has, and shall have the same authority with respect to such specific public works project as it has with respect to miscellaneous public works.~~

~~14.04.170 Public Works Projects Costing More Than One Million Dollars~~

~~Where the expenditure required for any specific public works project, excluding the cost of any supplies, materials or equipment which the city may have acquired or may separately acquire therefore, exceeds one million dollars, such specific public works project shall be contracted for and let by the city council to the lowest responsible bidder after notice; provided and excepting, however, that:~~

~~A. Intergovernmental contracts for the doing of any of said work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the council, or by the director of public works if and to the extent that director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this section;~~

~~B. City-public utility contracts for the doing of any of such work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the council, or by the director of public works if and to the extent that the director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this section;~~

~~C. City-private developer contracts for the doing of any such work need not be awarded to the lowest responsible bidder after notice, but may be authorized or awarded by the council, or by the director of public works if and to the extent that the director has been authorized to award, enter into or execute such contracts, without compliance with the above provisions of this Section;~~

~~D. If the work involves highly technical or professional skills and the particular technical or professional skill or ability of the person selected to do such work is an important factor in the selection, the council may award a major public works project requiring special skills to such person, or may authorize such a contract; or, if the possessor of such special skills is the director of public works or a city employee or employees in the department of public works, may authorize said director and said employee or employees to do such work, without compliance with the above provisions of this section;~~

~~E. If the work, and the expenditure required therefore, are deemed by the council to be of urgent necessity for the preservation of life, health or property, and such is authorized by resolution of the council adopted by the affirmative vote of at least eight (8) members of the council and containing a declaration of the facts constituting the urgency, the council may award a major emergency public works project contract for such work, or authorize such a contract, or authorize the director of public works to have such work done by city employees under the direction and control of the director, without compliance with the above provisions of this section;~~

~~F. In situations where solicitation of bids would for any reason be an idle act, the council may award a major public works project contract for which solicitation of bids is an idle act, or authorize such a contract for such work, or may authorize the director of public works to have such work done by city employees under his or her direction and control, without compliance with the above provisions of this section;~~

~~G. Such other exceptions may be made as may be authorized by any of the following sections of this Part 2.~~

~~14.04.180 Notice To Bidders~~

~~A. Whenever a normal major public works project contract is to be awarded, a notice inviting sealed bids shall be published at least once, at least ten days before the date set for opening of bids, in a newspaper of general circulation in the city.~~

~~B. The notice shall specify the time on or before which bids will be received, where and with whom bids shall be filed; the date, time and place when and where bids will be publicly opened, and the aggregate bid of each bidder declared.~~

~~14.04.190 Bids - Presentation - Security Requirements~~

~~Whenever bids are invited for a normal major public works project contract, all bids, including such bidders' security as may be required, shall be presented under sealed cover. If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of the security required, if any, may be declared forfeited to the city and may be collected and paid into its general fund, and all bonds so forfeited may be prosecuted and the amount thereof collected and paid into such fund. Unsuccessful bidders shall be entitled to return of their bid security. The form and amount of such security shall be described in the notice inviting bids or in the specifications referred to therein.~~

~~14.04.200 Bids - Opening And Declaration~~

~~Whenever bids have been received for a normal major public works project contract, all bids received in response to the notice inviting bids shall be publicly opened, and the aggregate bid of each bidder declared, at the date, time and place specified in the notice inviting bids or in the specifications referred to therein.~~

~~14.04.210 Bids - Council Action Following Receipt~~

~~Whenever bids have been invited and received for a normal major public works project contract the council may take the following action or actions:~~

~~A. In its discretion, for any reason or reasons, the council may reject any and all bids presented;~~

~~B. If it rejects all bids, the council, if it wishes to so do, may readvertise for new bids;~~

~~C. If two or more bids are the same and the lowest, the council may accept whichever one it desires;~~

~~D. If no bids are received, the council may readvertise for bids, or may have the public works project for which no bids were received done without further complying with the contract or bid requirements of this part;~~

~~E. If, after rejecting all bids for any specific public works project, and after readvertising for new bids, the council finds and declares that the bids are excessive, it may have such public works project done by city employees without further complying with the contract and bid requirements of this part.~~

~~14.04.220 Irregularities In Bids~~

~~In considering bids for any public works contracts, the council may waive, if it wishes to do so, minor defects or irregularities in the bids.~~

~~14.04.230 Performance Bonds~~

~~The provisions of Section 14.04.440 of this Code, relating to faithful performance bonds required in connection with public works contracts awarded, entered into or executed by the director of public works, shall apply also to all public works contracts awarded or specifically authorized by the council; provided and excepting, however, that the council may waive such bond or reduce the amount thereof, with respect to any specific contract or contracts. Performance bonds required hereunder shall be approved by the city attorney.~~

~~14.04.240 Payment Bonds~~

~~The provisions of Section 14.04.460 of this Code, relating to payment bonds required in connection with public works contracts awarded, entered into or executed by the director of public works, shall apply also to all public works contracts awarded or specifically authorized by the council; provided and excepting, however, that the council may waive such bond, or reduce the amount thereof, with respect to any specific contract or contracts involving an expenditure of twenty-five thousand dollars or less. Payment bonds required hereunder shall be approved by the city attorney.~~

~~14.04.250 Contracts - Provisions, Terms And Conditions~~

~~All specific contracts awarded or authorized by the council shall contain such terms, conditions and provisions as the council may approve or direct. The council may, from time to time, by resolution or other act of the council, specify what shall be included in all or any of the contracts which it may award or specifically authorize, or which it may authorize the director of public works to award.~~

~~14.04.260 Change Orders - Issuance Authorized When~~

~~The city council may, from time to time, issue or authorize change orders respecting any work to be done for the city under any public works contract awarded by or executed on behalf of the city whenever in its opinion such change order or change orders is or are necessary for the proper completion or construction of the whole work contemplated by said public works contract, and in such case bids for such change orders need not be solicited for the work included in such change orders.~~

~~14.04.270 Payments~~

~~The provisions of Section 14.04.480 of this Code, relating to payments in connection with public works contracts awarded, entered into, or executed by the director of public works, shall apply also to all public works contracts awarded or specifically authorized by the council.~~

~~Part 3 - Authority Of Director Of Public Works~~

~~14.04.300 Council May Grant Additional Authority When~~

~~To the extent that such does not conflict with the Charter of the city, the council may, from time to time by resolution or other act of the council give the director of public works authority to award or execute contracts, or to have work done by city employees, in excess of and in addition to the authority given to him or her by the provisions of this Part 3.~~

~~14.04.310 Intergovernmental Contracts - Director Authority~~

~~Subject to such conditions and limitations as are set forth in this section or in Sections 14.04.380 through 14.04.510 of this part, or as may from time to time be imposed by resolution or other action of the council, the director of public works is authorized to enter into and execute, for and on behalf of the city, any intergovernmental public works contract or contracts whenever in his or her opinion the work to be done for the city under such contract or contracts by the other public or governmental body or agency can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public, or be more inexpensively performed by such other public or governmental body or agency than by others.~~

~~14.04.315 U.S. Army Corps Of Engineers Permits~~

~~The director of public works is hereby authorized to execute, on behalf of the city, any permit, or other authorization necessary for construction of any public work, which is issued to the city by the U.S. Army Corps of Engineers pursuant to federal law.~~

~~14.04.320 City-Public Utility Contracts~~

~~Subject to such conditions and limitation as are set forth in this section or in Sections 14.04.380 through 14.04.510 of this part, or as may from time to time be imposed by resolution or other action of the council, the director of public works is authorized to enter into and execute, on behalf of the city, any city-public utility contract or contracts whenever the work to be done for the city under such contract or contracts involves property of the public utility and is otherwise of direct concern to both the city and the public utility and, in addition, in his or her opinion, can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public, or be more inexpensively performed, or be more safely performed, by the public utility than by others.~~

~~14.04.325 License Agreements; Computer Mapping Program~~

~~A. The director is authorized to negotiate and execute all license agreements for any computer mapping program or system developed by the city. The license agreements shall, at a minimum, include the following terms and conditions:~~

~~1. The initial term of each license agreement shall be one year, renewable for additional periods of one year. The city shall have the right to terminate the agreement with thirty days notice to the licensee.~~

~~2. If the license agreement authorizes the transfer, resale, or relicense of the system or any portion thereof, it shall provide for royalty payment to the city.~~

~~B. The director of public works is authorized to execute agreements with other public agencies for the use by the other public agency of the computer mapping system. The agreements shall contain the provision set forth in subsection A. of this section, as applicable. The director may authorize the use of the computer mapping system by a public agency without payment of any fees or charges, other than reimbursement to the city for direct costs incurred in providing the system to the public agency, if the director finds that the use furthers a joint project between the city and the public agency or that the use will otherwise benefit the city.~~

~~14.04.330 City-Private Developer Contracts~~

~~A. Subject to such conditions and limitations which are set forth in this section or in Sections 14.040380 through 14.04.510 of this Part 3, the director of public works is authorized to enter into and execute, on behalf of the city, any contract between the city and a private developer, whenever:~~

~~1. The work to be done for the city under such contract or contracts is to be done by the contracting subdivider, developer or owner in connection with the subdivision or development of any real property; and~~

~~2. In the opinion of the director such work can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public by such subdivider, developer or owner than by the city or its contractor; and~~

~~3. In the opinion of the director, the cost to the city of having the work done by such subdivider, developer or owner will not be greater than what would have been the cost if the work was done by the city or its contractor.~~

~~B. Subject to such conditions and limitations as are set forth in Sections 14.04.380 through 14.04.510 of this Part 3, the director of public works is authorized to enter into and execute, on behalf of the city, any contract with a private developer which provides for payment of a fee in lieu of construction of public improvements required as a condition of any development permit issued by the city.~~

~~14.04.335 Refunds Of Fees~~

~~A. The director of public works may refund any fee or portion thereof paid as a condition of a development approval if the director determines that:~~

~~1. The fee or portion thereof was collected in error;~~

~~2. The condition of development approval requiring payment of the fee is amended after payment of the fee to provide that the fee is not required or the amount thereof is reduced;~~

~~3. The development approval expires or is revoked and no development thereunder has commenced.~~

~~B. For the purposes of this section, "development approval" means:~~

~~1. Approval of any residential subdivision for which a parcel map or final map is required under Title 19 of the Municipal Code; and~~

2. ~~Approval of any development permit pursuant to Chapter 20.100 of the Municipal Code.~~

~~14.04.340 Minor Public Works Project Contracts~~

~~Subject to such conditions and limitations as are set forth in this section or in Sections 14.04.380 through 14.04.510 of this Part 3, or as may from time to time be imposed by resolution or other action of the council, the director of public works is authorized to enter into and execute, for and on behalf of the city, any minor public works contract or contracts, whenever in his opinion the work to be done for the city under such contract can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public, or more inexpensively performed, under and pursuant to such a contract or contracts than otherwise.~~

~~14.04.350 Miscellaneous Public Works Contracts~~

~~Subject to such conditions and limitations as are set forth in this section or in Sections 14.04.380 through 14.04.510 of this Part 3, or as may from time to time be imposed by resolution or other action of the council, the director of public works is authorized to enter into and execute, for and on behalf of the city, any miscellaneous public works contract or contracts, whenever in his or her opinion the work to be done for the city under such contract can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public, or more inexpensively performed, under and pursuant to such a contract or contracts than otherwise.~~

~~14.04.355 Installation Of Modular Units~~

~~A. Notwithstanding any other provision of this Code to the contrary, with respect to the acquisition and installation of modular units, the director of public works shall have the power to waive the application of any requirements of this Code, except for those mandated by the city Charter, where the director determines that the nature of the project does not warrant the application of the particular requirement, including but not limited to requirements for architectural, structural, permitting and inspection services by the department of public works.~~

~~B. Any waiver by the director as authorized by subsection A. shall be in writing and shall contain the reasons for such waiver.~~

~~C. With respect to each such waiver the director shall have the additional authority to delegate to the director of general services the authority to procure the installation of the modular unit as a public works project or minor public works project, with such instructions and waivers as may be appropriate.~~

~~14.04.360 Change Orders - Issuance Conditions~~

~~Subject to such conditions and limitations as are set forth in this section or in Sections 14.04.380 through 14.04.510 of this Part 3, or as may from time to time be imposed by resolution or other action of the council, the director of public works is authorized to execute and issue a change order or orders respecting any work to be done for the city under any public works contract awarded by or executed by the city, whenever in his or her opinion such change order or orders are necessary for the proper completion or construction of the whole work contemplated by said public works contract; provided, however, that in so doing he or she shall comply with all applicable provisions of said contract and shall not exceed such authority as the city may have under such contract.~~

~~14.04.370 Authority To Have Public Work Done By City Employees~~

~~Subject to such conditions and limitations as may be imposed from time to time by resolution or other act of the council, the director of public works is hereby authorized to have performed and done by city employees under his control and supervision, if and when he or she believes such can be better or more expeditiously or more inexpensively performed or done by such city employees, any of the following public work:~~

~~A. Any public work for which he or she is authorized to award or execute a minor public works project contract;~~

~~B. Any work for which he or she is authorized to award or execute a miscellaneous public works contract;~~

~~C. Any public works for which the council may award a major public works project contract requiring special skills, if the council finds that said director and employees possess such special skills and for such reason directs that such work be done by said director and the said employees;~~

~~D. Any public work for which the council may award a major emergency public works project contract, if the council finds that the expenditure required for such work is of urgent necessity for the preservation of life, health or property, and the doing of such work by said director and said city employees is authorized by resolution of the council adopted by the affirmative vote of at least five members and containing a declaration of the facts constituting the urgency;~~

~~E. Any public work for which the council may award a major public works project contract for which solicitation of bids is an idle act, if the council, after finding that the soliciting of bids for such work would be an idle act, specifically authorizes the director and said employees to do such work;~~

~~F. Any public work for which the council may award a normal major public works project contract if, after soliciting bids for such a contract, no bids are received for such contract and the council then directs said director to have such work done by city employees;~~

~~G. Any public work for which the council may award a normal major public works project contract if, after receiving and rejecting all bids for such contract and after readvertising for and receiving new bids or no bids therefor, the council finds and declares that the bids are excessive and, for such reason, directs the director to have such work done by city employees.~~

~~14.04.380 Contracts And Change Orders - Form~~

~~All contracts and change orders entered into, executed or issued by the director of public works pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part shall be in writing, shall be executed in the name of the City of San José, and shall be signed for and on behalf of the city by the director or in his name by a deputy authorized to do so.~~

~~14.04.390 Contracts And Change Orders - Work To Be Authorized By Council~~

~~The director of public works shall not enter into, execute or issue any contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part unless the public work to be performed thereunder for the city is included in city's budget of the fiscal year in which the contract is executed, or unless such work is mentioned in an appropriation ordinance approved by the city council in such fiscal year.~~

~~14.04.400 Contracts And Change Orders - Availability Of Unencumbered Balance Of Appropriation~~

~~The director of public works shall not enter into, execute or issue any contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part unless the city council shall have appropriated moneys for the public work to be performed for the city under such contract or change order, and unless there remains and is available an unexpended and unencumbered balance of such appropriation sufficient to pay for all expenditures required of the city by said contract or change order.~~

~~14.04.410 Authority To Enter Into Contracts~~

~~A. The director of public works may enter into contracts on behalf of the city, pursuant to Sections 14.04.310 through 14.04.370, inclusive, if the consideration~~

~~to be paid by the city under such contract does not exceed one hundred thousand dollars.~~

~~B. For purposes of this section, the term "consideration" means money to be paid by the city as compensation for services or other obligations to be performed by the other party to the contract. The term "consideration" does not include any materials, supplies or equipment which the city may furnish for such work, nor administrative, engineering, inspection, or related services to be provided by the city for such work.~~

~~14.04.415 Authority To Issue Change Orders~~

~~A. The director of public works may issue a change order in work being done pursuant to a public works contract subject to the limitations in this section.~~

~~B. Contracts in an Original Amount Not Exceeding One Hundred Thousand Dollars. For contracts in an original amount not exceeding one hundred thousand dollars, the aggregate of all such change orders for a single contract shall not exceed ten thousand dollars.~~

~~C. Contracts in an Original Amount Exceeding One Hundred Thousand Dollars. For contracts in an original amount exceeding one hundred thousand dollars:~~

~~1. The amount of any single change order shall not exceed one hundred thousand dollars; and~~

~~2. The aggregate of all such change orders for a single contract shall not exceed the contingency amount approved by the city council.~~

~~D. Airport Master Plan Contracts in an Original Amount Exceeding One Hundred Thousand Dollars.~~

~~1. Notwithstanding the other provisions of this section, the director of public works may issue a change order in work being done pursuant to a public works contract for an airport master plan project, in which the original amount exceeds one hundred thousand dollars subject to the conditions set forth below.~~

~~a. The amount of any single change order shall not exceed the greater of: (1) one percent of the original contract amount; or (2) one hundred thousand dollars; and~~

~~b. The aggregate of all such change orders for a single contract shall not exceed the contingency amount approved by the city council.~~

2. ~~Notwithstanding the other provisions of this section, the director of public works may issue change orders to reduce the compensation for airport master plan public works contracts in any amount, subject to the conditions set forth below.~~

3. ~~The director of public works shall report to council within sixty days of execution of any change order by the director under this Subsection D. Such report shall include a description of the scope of the change order, the dollar amount of the change order, and the reason for the change order.~~

4. ~~For purposes of this Subsection D., an airport master plan project is any capital improvement project that is consistent with and implements the 1997 Airport Master Plan, adopted by the city council by Resolution No. 67381 on June 10, 1997, as it may be modified or amended from time to time in accordance with Chapter 25.02 of this Code.~~

~~14.04.420 Time Within Which Work Is To Be Completed~~

~~Except as may from time to time be otherwise authorized by resolution or other act of the council, the director of public works shall not enter into, execute or issue any contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part unless the time within which the work to be done for the city under the contract or change order, excluding time lost because of strikes, adverse weather conditions or acts of God, does not extend beyond the following time:~~

A. ~~In the case of an intergovernmental contract, not more than three years; and~~

B. ~~In the case of a city-public utility contract, not more than three years; and~~

C. ~~In the case of city-private developer contract, not more than three years; and~~

D. ~~In the case of a minor public works project contract, not more than one year; and~~

E. ~~In the case of a miscellaneous public works contract, not more than one year; and~~

F. ~~In the case of a change order, not more than one hundred eighty days from and after the date of completion specified in the basic contract, or such later date of completion as may have been specified by the council, whichever is applicable.~~

~~14.04.430 Plans And Specifications~~

~~Except as may from time to time be otherwise authorized by resolution or other act of the council, the director of public works shall not enter into, execute or issue any contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part unless the plans and specifications pursuant to which any work is to be done thereunder for the city have been or are to be approved by the director before commencement of such work and the contract provides that the work shall be performed and completed in accordance with such plans and specifications and to his or her satisfaction. Notwithstanding anything herein to the contrary, the director of public works may, with respect to a public works contract which is not required to go to bid under this chapter and which such director is authorized to execute under this chapter, without prior approval of the city council, waive the requirement of plans and specifications for such contract if he or she finds the complexity, magnitude and nature of the work embraced thereby do not warrant such plans and specifications.~~

~~14.04.440 - Waiver of faithful performance bond requirements.~~

~~A. Except as expressly set forth in this section, the director of public works shall not enter into any public works contract pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part, unless at the time of execution of such contract, and before commencement of performance of any work thereunder, the contractor to whom such contract is awarded or issued files with the director a faithful performance bond, approved by the director. Such bond shall be executed by said contractor as principal, and executed as surety by a corporate surety authorized under the laws of the state of California. The bond shall be in the sum of not less than one hundred percent of the total amount payable under the contract, and shall be payable to the city.~~

~~B. The director, in his or her discretion, may waive the requirement specified in subsection A. of this section in the following situations:~~

~~1. In the case of an intergovernmental contract or a city-public utility contract, as defined in Section 14.04.030 of this Code, where the other government agency or public utility agrees in such contract that before commencement of any work it will require any and all contractors to whom it awards contracts for the performance of any of the work to provide faithful performance bonds in a form and amount satisfactory to the director. Such bonds shall name the city as a payee and shall comply with the requirements of subsection A. of this Section 14.04.440.~~

~~2. In the case of a public works contract, where the total consideration to be paid by the city under such contract does not exceed one hundred thousand dollars.~~

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~~3. In the case of an unscheduled public works contract, as defined in Section 14.04.131 of this Code.~~

~~14.04.450 Cleanup Deposit~~

~~A. In addition to any faithful performance bond as may be required under the provisions of Section 14.04.440, and subject to the exceptions set forth in this section, the director shall not enter into, execute or issue any city-private developer contract or any city-public utility contract pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part, for any work of improvement, unless at the time of execution of such contract and before commencement of performance of any work thereunder, the private developer or public utility with whom such contract is to be entered into first deposits with the director a sum of money equal to five percent of the first one hundred thousand dollars of the estimated construction costs of the public improvements to be constructed, reconstructed, altered, removed, installed or replaced by the private developer or utility under the terms of the contract, two and one-half percent of the next four hundred thousand dollars of the estimated construction costs of said improvements, and one percent of the estimated construction costs of the said improvements exceeding five hundred thousand dollars; provided, however, that no deposit shall be required where the terms of such contract provide that the city is to pay for the work, or any part thereof, to be performed thereunder. In the event that such private developer or public utility refuses or fails for any reason to faithfully perform all the covenants and conditions of the contract, the director may, at his or her option, either recommend to council any pursuit of city's remedies under the faithful performance bond, or else correct, or cause the correction of such defective performance at the city's expense and then reimburse the city its costs incurred thereby by withdrawing from such deposit a sum of money equal to such costs thus incurred by the city.~~

~~B. Upon the acceptance of the public improvements either constructed, reconstructed, altered, removed, installed or replaced by the private developer or public utility, as corrected or completed, if necessary by the director on the city's behalf, the unexpended portion of such deposit shall be returned to the private developer or public utility.~~

~~14.04.460 Payment Bond~~

~~A. Subject to the exceptions set forth in this section, the director shall not enter into, execute or issue any public works contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part, for any work or improvement, unless, at the time of execution of the contract or change order and before commencement of any work thereunder, the contractor to whom the contract is awarded or issued files with the director a payment bond, approved~~

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~~by the director. The bond shall be executed by the contractor as principal, and executed as surety by a corporate surety authorized to be a corporate surety under the laws of the state of California. The bond shall be in the sum of not less than fifty percent of the amount payable under the terms of the contract, and shall by its terms inure to the benefit of any persons named in Section 3181 of the Civil Code of the state of California so as to give a right of action to such persons or their assigns in any suit brought upon the bond. The bond shall also provide that if the original contractor or its subcontractor fails to pay any of the persons named in said Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, that the surety or sureties will pay for the same, in an amount not exceeding the sum specified in the bond. The bond shall also provide that, in case suit is brought upon the bond for payment of a reasonable attorney's fee, to be fixed by the court. Said bond shall otherwise comply with the provisions of Sections 3247 to 3252, inclusive, of the Civil Code of the state of California.~~

~~B. Notwithstanding the above, the director may waive the above requirement in the following situations:~~

~~1. Where the contract is with a governmental agency or a public utility and the contracting governmental agency or public utility agrees in such contract that, if and to the extent that all work is not to be done by its own employees, it will require any and all contractors to whom it awards contracts for the performance of any of the work to provide and file, before commencement of the work, payment bonds, satisfactory to the director, complying with the provisions of Sections 3247 to 3252, inclusive, of the California Civil Code.~~

~~2. In the case of a change order, where performance of the work to be done thereunder is already secured by a payment bond furnished in connection with the underlying contract which is affected by the change order, or where the basic contract is with a governmental agency or a public utility contract executed in compliance with subsection B.1.~~

~~3. Where the total original public works contract is in the amount of twenty-five thousand dollars or less.~~

~~14.04.470 Insurance Requirements~~

~~A. Except as may be hereafter otherwise provided by resolution or other act of the council, and subject to the exceptions set forth in this section, the director of public works shall not enter into, execute or issue any public works contract or change order pursuant to the provisions of Sections 14.04.300 through 14.04.370 of this part unless, by terms of the contract the contracting party to~~

~~whom the director awards a contract agrees to provide the insurance, including endorsements thereto, required by Sections 4.84.010 and 4.84.030.~~

~~B. Notwithstanding the above, the director in his or her discretion may waive the above insurance requirement in the following situations:~~

~~1. When the contract is an intergovernmental contract or a city-public utility contract, and the public governmental body or agency, or the public utility, to whom the contract is awarded agrees:~~

~~a. That it will have all the work done by a contractor or contractors to whom it will award a contract or contracts, and will require such contractor or contractors to provide such insurance before commencement of the work; or~~

~~2. The public or governmental body or agency, or public utility, as the case may be, agrees that it will indemnify and hold harmless the city, its officers and employees, from all public liability because of bodily injury or property damage arising or resulting from the performance of the work by, for or on behalf of such public or governmental body or agency or public utility or arising or resulting from any omission or supervisory acts of the city, its officers or employees.~~

~~3. In the case of change orders, where liability risks created thereby are already insured against by an insurance policy or policies furnished in connection with the basic contract which is affected by the change order; or where the basic contract is an intergovernmental contract or a city-public utility contract executed in compliance with the immediately preceding subsection B.1.~~

~~C. Notwithstanding the foregoing, the director of public works may on the written recommendation of the risk manager of the city waive the above requirement with respect to a public works contract which is not required to go to bid under this chapter and which such director is authorized to execute under this chapter without prior approval of the city council, when such risk manager believes the benefits to be derived by insurance are not warranted in view of the amount of the contract and exposure to city thereunder.~~

~~14.04.480 Payments By City~~

~~A. The director of public works may, in such public works contracts as he or she may consider appropriate and which he or she is authorized to execute, provide for payment to be made by the city in the form of progress payments. If the public works contract so provides for progress payments to be made by the city,~~

~~the director of public works shall cause an estimate in writing to be made at regular intervals of the total estimated value at the time of such estimate of the work done, and of the acceptable materials furnished and incorporated into the public works project, by or on behalf of the contractor to whom the contract for the public work was awarded. Unless otherwise authorized by resolution or other act of the council, the director of finance shall retain no less than ten percent of such total estimated value and shall pay the balance not retained, after deducting therefrom all previous payments and all sums previously retained or withheld, or deducted under any legal right or duty, to the contractor to whom the contract for the public work was awarded or to his or her assignee, whether voluntary or by operation of law. The percentage thus retained shall not be paid prior to the expiration of thirty-five days from and after the completion of the public works project and acceptance of the same by the director of public works.~~

~~B. Except as hereinafter provided or as otherwise authorized by resolution or other act of the council, public works contracts which do not provide for progress payments to be made by the city shall provide for payment by the city of no more than ninety percent of the contract price at the time of acceptance of the public work by the director of public works and payment of the balance not prior to thirty-five days after said acceptance. Notwithstanding the above, the director of public works is hereby authorized to make payment in advance of the full amount of any intergovernmental contract or any city-public utility contract specified in subsections A. and B. respectively of Section 14.04.410 of this Code. Also notwithstanding the above, the director of public works is authorized to make payment in full at the time of acceptance of the work done pursuant to the provisions of any contract that he or she is authorized to execute where the expenditure required for such work with which such contract is concerned, excluding the cost of any materials, supplies, or equipment which the city may have acquired or may separately acquire therefor, is one thousand dollars or less.~~

~~C. Notwithstanding anything herein to the contrary, the director of public works is authorized upon completion of each separate item of service under an unscheduled public works contract which he or she is authorized to execute to make payment in full for each such completed item of service.~~

~~14.04.500 Informal Bidding For Certain Contracts~~

~~A. Before entering into or executing any minor public works project contract or any miscellaneous public works contract, the director of public works shall solicit informal bids for the performance of the work to be done thereunder from at least three responsible contractors, or, if he or she cannot obtain bids from three such contractors, from as many under three as he or she can obtain. In so doing, he or she shall discourage identical bidding and endeavor to obtain as full and open~~

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~~competition as possible. Unless otherwise authorized by resolution or other act of council, the contract shall not be awarded except to the lowest responsible informal bidder. The director, in his or her discretion, may reject any and all bids; and, subsequently, if he or she should so desire, solicit new bids. In the event two or more bids are identical and the lowest bids received, the director may accept whichever one he desires and reject the others.~~

~~B. A statement setting forth the names of the bidders, the amounts bid by them, and the director's action with respect to such bids, shall be filed by the director of public works with the director of finance at the time he or she files a copy of the contract with the director of finance.~~

~~14.04.510 Public Report~~

~~A. The director of public works shall report to the public upon the city's official website, on a bi-annual basis, a report setting forth all contracts and change orders awarded or issued by the director during the preceding quarter pursuant to the provisions of Section 14.04.300 through 14.04.370 of this Part, together with the amounts paid or payable by the city under each such contract or change order.~~

~~B. The director of public works shall report to the public upon the city's official website, on a bi-annual basis, a report setting forth all federal permits executed by the director pursuant to Section 14.04.315 of this Part during the preceding quarter.~~

~~14.04.520 Subcontractor Substitutions~~

~~The director of public works is authorized to consent to the substitution of another person as a subcontractor where the listed subcontractor does not object to the substitution in any of the following situations:~~

~~A. When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract, based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.~~

~~B. When the listed subcontractor becomes bankrupt or insolvent.~~

~~C. When the listed subcontractor fails or refuses to perform his or her subcontract.~~

~~D. When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.~~

~~E. When the prime contractor demonstrates that the name of the subcontractor was listed as the result of an inadvertent clerical error.~~

~~F. When the listed subcontractor is not licensed pursuant to the contractor's license law.~~

~~G. When the director determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the progress of the work.~~

~~H. When the listed subcontractor is ineligible to work on a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.~~

~~I. When the city council has made a determination that a listed subcontractor is not a responsible contractor.~~

~~J. Any other circumstance authorized by Section 4107 of the Public Contract Code as it may be amended from time to time.~~

~~The director shall comply with all procedures set forth in the city standard specifications regarding substitution of subcontractors. In the event the listed subcontractor files written objections to the substitution within the time periods specified in the standard specifications the matter shall be heard by the city council.~~

SECTION 8. Chapter 14.06 of Title 14 of the San José Municipal Code is hereby repealed.

~~Chapter 14.06~~
~~Dispute Avoidance And Dispute Resolution Policy~~

~~Part 1~~
~~Intent~~

~~14.06.100 Purpose~~

~~A. The intent of the city council in enacting this chapter is to minimize disputes arising during the construction of public improvements undertaken by the city. To accomplish this purpose, the city council desires to establish a policy that fosters the city and contractor on a particular public works project developing a successful partnering relationship in which they agree upon joint goals, establish a cooperative rather than adversarial relationship, and work toward effective and equitable solutions to project problems. The intent of the city council in~~

~~establishing such a policy is to facilitate effective completion of a project on schedule, within budget and in accordance with the contract documents.~~

~~B. The city council recognizes that even with the existence of a successful partnering relationship, it may be unavoidable for disputes to arise during the construction of a public improvement. Accordingly, by adopting this chapter the city council also intends to establish a general policy to encourage the city and the contractor on a particular public works project to agree upon a timely and effective resolution of a dispute without the need for costly and time consuming litigation. The intent of the city council in establishing such a general policy is to further reduce project costs and meet the objective of completing a project on schedule.~~

~~14.06.110 General Policy~~

~~The city council recognizes that in adopting this chapter it is setting forth the general policy with regard to dispute avoidance and dispute resolution. The city council intends for the city's administration to adopt rules, regulations, contract provisions and administrative procedures to fully implement the general policy requirements set forth in this chapter. The city council further intends that all city contracts for the construction of public improvements comply with the applicable provisions of the policy set forth in this chapter.~~

~~Part 2~~
~~Definitions~~

~~14.06.200 Definitions~~

~~The definitions set forth in this part shall govern the application and interpretation of this chapter.~~

~~14.06.210 Director~~

~~"Director" means the director of the city department primarily responsible for the design, construction and administration of city public works projects.~~

~~14.06.220 Contractor~~

~~"Contractor" means the person, persons, firm, partnership, corporation, or combination thereof, private or municipal, who have entered into a contract with the city for the construction of a public works project.~~

~~14.06.230 Dispute~~

~~"Dispute" means a disagreement between the city and the contractor over time or money or the performance of work shown or contemplated in the contract for the construction of a particular public works project.~~

~~14.06.240 Dispute Review Board~~

~~"Dispute review board" means a panel of three independent individuals established for the purpose of providing non-binding recommendations regarding the resolution of a dispute arising from a particular public works project.~~

~~14.06.250 Facilitated Dispute Resolution~~

~~"Facilitated dispute resolution" means the city and contractor meeting with a trained, neutral facilitator in an effort to reach a mutually agreeable resolution to a dispute. It is an informal, non-binding dispute resolution process in which each side has an opportunity to present its position and supporting information.~~

~~14.06.260 Formal Partnering~~

~~"Formal partnering" means the city and the contractor implementing partnering through at least one pre-construction workshop conducted by an independent facilitator. The purpose of the initial pre-construction workshop is to mutually develop a strategy for forming a successful partnering relationship. The city and contractor may participate in additional facilitated workshops during the life of the public work construction project as they decide is necessary and appropriate.~~

~~14.06.270 - Informal partnering.~~

~~"Informal partnering" means the city and the contractor implementing partnering through a pre-construction meeting that is not conducted by an independent facilitator.~~

~~14.06.280 - Large public works project.~~

~~"Large public works project" means a public works project in which the engineer's estimate for the entire project prior to advertising for bids is ten million dollars or above.~~

~~14.06.290 Medium Public Works Project~~

~~"Medium public works project" means a public works project in which the engineer's estimate for the entire project prior to advertising for bids is one million dollars or above, but less than ten million dollars.~~

~~14.06.300 Partnering~~

~~"Partnering" is the development of team-based relationships between the contractor and city in which: (1) trust and open communications are encouraged and expected from participants, (2) parties address and resolve issues and problems promptly and at the lowest possible level, (3) parties seek to develop solutions that are agreeable and meet the needs of everyone involved, (4) all parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values, and (5) parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership. The term is not intended to have any legal significance or to be construed as denoting a legal relationship of agency, partnership, or joint venture between the city and contractor.~~

~~14.06.310 Public Works Project~~

~~"Public Works Project" shall have the same meaning as set forth in Part 1 of Chapter 14.04.~~

~~14.06.320 Small Public Works Project~~

~~"Small public works project" means a public works project in which the engineer's estimate for the entire project prior to advertising for bids is below one million dollars.~~

~~Part 3~~
~~Partnering~~

~~14.06.400 General~~

~~It is the policy of the city to incorporate partnering techniques in every city contract for the construction of a public works project to the extent set forth in this Part 3.~~

~~14.06.410 Partnering On Large Projects~~

~~A. Formal partnering is mandatory for all large public works projects.~~

~~B. The scheduling of the pre-construction workshop to implement formal partnering and the selection of a person to facilitate the workshop will be agreed upon by the city and contractor. Both the pre-construction workshop and the selection of the person to facilitate the workshop shall occur as soon as reasonably possible following award of the construction contract for a public works project.~~

~~C. All costs associated with formal partnering will be shared equally by the city and contractor.~~

~~14.06.420 Partnering On Medium Projects~~

~~A. The contractor has the option of electing to participate with the city in formal partnering or informal partnering on all medium public works projects.~~

~~B. If a contractor performing a medium public works project elects formal partnering, the following conditions shall apply:~~

~~1. The scheduling of the workshop to implement partnering and the selection of a person to facilitate the workshop will be agreed upon by the city and contractor. Both the workshop and the selection of the person to facilitate the workshop shall occur as soon as reasonably possible following the election of the contractor to participate in formal partnering.~~

~~2. All costs associated with formal partnering will be shared equally by the city and contractor.~~

~~C. If a contractor does not elect formal partnering, then informal partnering shall be incorporated into the medium public works project.~~

~~14.06.430 Small Public Works Projects~~

~~The city will incorporate partnering techniques, values and practices into small public works projects. There is no specific requirement on small public works projects for formal partnering or informal partnering.~~

~~14.06.440 Implementation By Director~~

~~The director shall establish those rules, regulations, contract provisions and administrative procedures necessary and appropriate to implement the policy of partnering set forth in this Part 3. No such rules, regulations, contract provisions or administrative procedures established by the director shall be inconsistent with the policy of partnering set forth in this Part 3.~~

~~Part 4~~
~~Dispute Resolution~~

~~14.06.500 General~~

~~It is the policy of the city to encourage the city and contractor to reach a mutually agreeable resolution of a dispute that cannot be resolved with the use of partnering techniques. This dispute resolution policy involves a three-tiered approach to encouraging the resolution of such disputes. It is the intent of council that, except as otherwise provided in this chapter, each of the tiers of this dispute resolution policy be completed prior to commencing any litigation.~~

DRAFT: Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

~~14.06.510 Settlement Conference~~

~~A. If a dispute cannot be resolved through the applicable partnering techniques, then the contractor shall request a conference to meet with the city in an effort to resolve the dispute in a manner acceptable to both parties.~~

~~B. The city shall conduct the conference in a timely manner, with the goal of attempting to resolve the dispute as early as possible. The conference shall be conducted informally, with both sides being able to present their respective issues.~~

~~C. Both the contractor and the city will exchange written documentation of the dispute sufficiently prior to the conference to allow it to be adequately considered by all parties.~~

~~14.06.520 Facilitated Dispute Resolution~~

~~A. If the dispute remains unresolved after the conference provided for in Section 14.06.510, then the contractor shall request facilitated dispute resolution.~~

~~B. The scheduling of facilitated dispute resolution and the selection of a person to act as a facilitator will be agreed upon by the city and contractor.~~

~~C. All costs associated with conducting facilitated dispute resolution will be shared equally by the city and contractor.~~

~~14.06.530 Dispute Review Board.~~

~~A. Except as otherwise provided below, the city and the contractor will establish a dispute review board at the outset of a large public works construction project. The dispute review board will remain available throughout the project to provide non-binding recommendations as to the resolution of a dispute.~~

~~B. Except as otherwise provided below, for a medium public works construction project, the city or contractor may request, within a specified time period prior to the completion of the construction contract, that a dispute review board be established to provide non-binding recommendations as to the resolution of any dispute.~~

~~C. Notwithstanding anything to the contrary in this provision, the following shall apply to any large public works construction project or a medium public works construction project in which there are multiple contractors:~~

1. ~~For a large public works construction project, the director will either establish one dispute review board for the entire project or require a dispute review board for each construction contract pursuant to subsection A. of this Section 14.06.530.~~

2. ~~For a medium public works construction project, the director will either establish one dispute review board for the entire project or apply the requirements of subsection B. of this Section 14.06.530 to each construction contract.~~

3. ~~In making the determination set forth in this subsection C., the director will consider the size and complexity of the project, and the number and size of the contracts with the multiple contractors.~~

~~14.06.540 Dispute Review Board Members~~

A. ~~The members of a dispute review board will generally be selected as follows: the city will select a member, the contractor will select a member and the members selected by the parties shall select the third member.~~

B. ~~Notwithstanding subsection A. of this Section 14.06.540, on any public works project involving multiple contractors in which the director establishes a single dispute review board, the director shall establish appropriate procedures for selection of the member who will fairly represent the various contractors. The procedures shall have, to the greatest extent possible, the support of contractors who are, or who may, be engaged in the project.~~

C. ~~No member serving on a dispute review board shall have any relationship with the city, contractor or the particular public works project that would prevent that member from performing his or her duties in an impartial and fair manner.~~

~~14.06.550 Submitting A Dispute~~

A. ~~A dispute shall be submitted to a dispute review board only if the dispute resolution procedures set forth in Sections 14.06.510 and 14.06.520 have failed to resolve the dispute.~~

B. ~~The dispute review board shall be an advisory body that issues non-binding recommendations. Its recommendations shall not be admissible in court in any subsequent litigation.~~

~~14.06.560 Dispute Review Board Costs~~

~~All costs associated with a dispute review board will be shared equally by the city and the contractor.~~

~~14.06.570 Foregoing Dispute Resolution~~

~~Notwithstanding anything to the contrary set forth in this Part 4, the city and contractor may at any time mutually agree to forego the conference set forth in Section 14.06.510, the facilitated dispute resolution set forth in Section 14.06.520, and/or the submission of the dispute to the dispute review board as set forth in Section 14.06.550.~~

~~14.06.580 Additional Dispute Resolution Procedures~~

~~The director may establish additional dispute resolution procedures to be included in the construction contracts for all large public works projects or may, on a case-by-case basis, establish an additional dispute resolution procedure to be included in the construction contract for a particular public works project.~~

~~14.06.590 Implementation by director.~~

~~The director shall establish those rules, regulations, contract provisions and administrative procedures necessary and appropriate to implement the dispute resolution policy set forth in this Part 4. No such rules, regulations, contract provisions or administrative procedures established by the director shall be inconsistent with the dispute resolution policy set forth in this Part 4.~~

~~14.06.600 Effect Of Dispute Resolution Procedures~~

~~The dispute resolution policy set forth in this Part 4, together with all rules, regulations, contract provisions and administrative procedures established by the director to implement this policy, are intended to directly conflict with, and supersede in its entirety, and shall be in lieu of, those construction dispute resolution procedures set forth in Article 1.5 of Chapter 1 of Part 3 of Division 2 of the California Public Contract Code. The dispute resolution policy is not intended to preclude the parties from litigating a dispute or from otherwise mutually agreeing after a dispute arises from engaging in other methods of dispute resolution.~~

SECTION 9. Chapter 14.07 of Title 14 of the San José Municipal Code is hereby repealed.

~~Chapter 14.07~~
~~Design-Build Contracts~~

~~Part 1~~
~~Intent~~

~~14.07.100 Purpose~~

~~Section 1217 of the San José Charter establishes the "design-build" procurement process as an alternative and optional method for delivering certain public works projects. Section 1217 exempts from its competitive bidding requirement a "design-build" contract that will cost more than five million dollars if the city council finds that such a contract would save money or result in faster project completion. It defines "design-build" as a procurement process in which both the design and construction of the public works project are procured from a single entity. The city council desires that any "design-build" contract it awards pursuant to this exemption be the result of a competitive process. The intent of this chapter is to set forth the requirements, including the competitive process, the city will follow whenever it awards a "design-build" contract pursuant to the exemption from competitive bidding for such contracts.~~

~~Part 2~~
~~Definitions~~

~~14.07.200 Definitions~~

~~The definitions set forth in this part shall govern the application and interpretation of this chapter.~~

~~14.07.210 Director~~

~~"Director" means the director of the city department primarily responsible for awarding, managing and administering a design-build contract pursuant to the provisions of this chapter.~~

~~14.07.220 Design-Build Contract~~

~~"Design-build contract" means a contract between the city and a design-build entity to furnish the following for a public works project: (1) the architectural, engineering and other related services necessary to fully design the public works project; and (2) the labor, materials, project management and other related services necessary to construct the public works project.~~

~~14.07.230 Design-Build Entity~~

~~"Design-build entity" means the entity, whether a natural person, partnership, joint venture, corporation, limited liability company, professional corporation, business association or other legal entity, that provides appropriately licensed contracting, architectural, and engineering services as needed to perform the design-build contract.~~

~~Part 3~~
~~Request For Proposals~~

~~14.07.300 Request For Proposals~~

~~The city may award a design-build contract only upon completion of a competitive process involving interested parties submitting sealed proposals in response to a request for proposals.~~

~~14.07.310 Council Approval~~

~~Prior to issuance of a request for proposals for a design-build contract, the city council shall do each of the following:~~

~~A. Make findings that the cost of the proposed design-build contract is likely to exceed five million dollars, and that the design-build procurement process is likely to save money or result in faster project completion than if the city used a procurement process involving its normal competitive bidding procedures; and~~

~~B. Approve the request for proposals, and the criteria and process by which the city shall select a design-build entity.~~

~~14.07.320 General Requirements~~

~~The director shall prepare a request for proposals consistent with the requirements of this chapter and the requirements of all city laws, regulations and policies applicable to selecting and contracting for professional design and construction services. The requirements of this chapter shall prevail over any conflicting requirements of any city laws, regulations or policies.~~

~~14.07.330 Multiple Improvements Prohibition~~

~~No request for proposals shall contain a public works project consisting of the construction of multiple public improvements at different locations unless the city council makes a finding that the multiple improvements share common design and/or construction characteristics that are likely to save money or result in faster completion than if the improvements were constructed as separate public works projects.~~

~~14.07.340 Project Scope~~

~~At a minimum, a request for proposals for a design-build contract shall include, either directly or by reference, the following information describing the scope of the project:~~

~~A. The size, type and desired design character of the building, structure, system or other public improvement;~~

~~B. Any preliminary plans, specifications, layouts, schematic drawings or architectural renderings at a level of detail that the director deems appropriate for informing prospective proposers about the needs of the particular project, and any other information the director deems appropriate to describe adequately the needs of the project;~~

~~C. Performance specifications setting forth the quality of materials, equipment and workmanship required for the public project, and other appropriate criteria at a scope and level of detail to permit qualified design-build entities to submit proposals in accordance with the requests for proposals, given the nature of the project and the level of design provided in any preliminary plans, specifications, layouts, schematic drawings, architectural renderings or other city-supplied information;~~

~~D. The expected cost range of the public works project and budget constraints for the design-build contract, if any;~~

~~E. A schedule for the planned commencement and completion of the design-build contract, including, at a minimum, the proposed project start date and final completion date.~~

~~14.07.350 Proposal Documents~~

~~The request for proposals shall include a description of the documentation that must be submitted as part of the proposal, with guidance as to the acceptable form and level of completeness of any required drawings, specifications or submittals.~~

~~14.07.360 Labor Peace~~

~~Avoiding labor disputes and disruptions is a significant factor in achieving the objective of efficiently delivering projects through the design-build procurement process. For this reason, the request for proposals shall require a proposer to include in its proposal a plan for how it will assure that no labor dispute or unrest will occur during the term of the design-build contract. The request for proposals shall indicate that the design-build contract will incorporate the details and requirements of the plan for labor peace contained in the proposal.~~

~~14.07.370 Contract Provisions~~

~~The request for proposals shall include a description of the material terms and conditions to which the proposer must agree as part of a design-build contract,~~

~~including, but not limited to, the requirements for performance bonds, payments bonds, warranty bonds and insurance.~~

~~14.07.380 Selection Process~~

~~A. The request for proposals shall set forth the selection process the city will use to evaluate the proposals and select the design-build entity. The selection process set forth in the request for proposals shall be fair, objective and impartial, and shall lead to the selection of a design-build entity best meeting the needs of the city.~~

~~B. At a minimum, the selection process set forth in the request for proposals shall include each of the following:~~

~~1. Identify the factors the city will use to evaluate the proposals and the relative weights of each factor;~~

~~2. Identify whether the city reserves the right to hold discussions or negotiations with one or more of the responsive proposers; and~~

~~3. If the city reserves the right to hold discussions or negotiations with one or more of the responsive proposers, identify the general parameters for such discussions or negotiations, including, but not limited to, whether the city can request additional documents, and the conditions for requesting such additional submittals.~~

~~C. The selection process set forth in the request for proposals may be a tiered process in which the director, based upon an evaluation of the proposals, narrows the pool of proposers in a subsequent tier. The selection process may also include the director requesting additional information or documents from proposers in any subsequent tier, or conducting a design competition in which the city provides a stipend to proposers to defray some or all of the costs of participating in the competition.~~

~~14.07.390 Other Information~~

~~The request for proposals shall include any other information, procedures or requirements that the director, in the director's discretion, deems appropriate to properly evaluate and select a design-build entity.~~

~~Part 4~~
~~Qualifications~~

~~14.07.400 Qualifying Proposers~~

~~The director shall either prequalify design-build entities, in which case only prequalified design-build entities would be able to submit proposals, or qualify design-build entities as part of the request for proposals process. The director shall establish the qualifications and procedures the city will use to qualify design-build entities. The qualifications and procedures established by the director shall include a uniform system of rating proposers based on objective criteria, and shall otherwise be consistent with this Part 4 and all applicable legal requirements for qualifying contractors. Any prequalification process shall conform to the policies and procedures applicable when the city prequalifies bidders for public works projects.~~

~~14.07.410 - Minimum qualifications.~~

~~The qualification process established by the director shall, at a minimum, include the following:~~

~~A. In the case of a partnership or joint venture, the design-build entity shall provide evidence that all general partners or joint venture members agree to be fully liable for the performance of the design-build entity under the design-build contract.~~

~~B. The design-build entity must demonstrate that at the time of submission of the proposal it possesses all required licenses, registration and credentials required to design and construct the project, that all such licenses, registration and credentials are in good standing, and that it has the capacity to obtain all required payment, performance or warranty bonds, liability insurance, and errors and omissions insurance.~~

~~C. The design-build entity must identify the employees and staff of each design-build member that will be assigned to management and key-line supervision on the proposed project, and demonstrate that each such person has worked on projects of similar size, scope, building type, and complexity, and otherwise has the experience, competency, capability and capacity to successfully complete the proposed project.~~

~~D. The design-build entity must disclose any violation, by any entity member, of federal or state law governing the payment of wages, benefits, or personal income tax withholding, state disability insurance withholding, unemployment insurance payment requirements, or of federal or state law governing equal opportunity employment, contracting or subcontracting.~~

~~E. The design-build entity must disclose information concerning any entity member who defaulted on a construction contract, had responsibility for completing a construction project that a surety company had to finish, or was debarred,~~

~~disqualified, determined to be a non-responsible bidder or removed from any public works project.~~

~~Part 5~~
~~Proposals~~

~~14.07.500 Prohibited Conflict~~

~~A. Any person who substantially participated in the preparation of a request for proposals is prohibited from participating in the preparation of a proposal by, or otherwise being a part of, any design-build entity responding to that request for proposals.~~

~~B. A design-build entity is prohibited from including as a member or using on a project any person who substantially participated in the preparation of the request for proposals for that project.~~

~~C. The prohibition set forth in this section does not apply to a person who prepares a foundational report or study, such as a master plan, soils report, or environmental clearance document, that is subsequently used by another person to prepare the design requirements for a project.~~

~~D. The city shall disqualify from further consideration the proposal of any design-build entity violating this section.~~

~~14.07.510 Single Proposal~~

~~A design-build entity shall only submit one proposal in response to a request for proposals, and no member of a design-build entity shall participate in the submission of more than one proposal in response to a request for proposals. Nothing herein prohibits persons subcontracting with a design-build entity from participating as a subcontractor in more than one proposal.~~

~~14.07.520 Submission Of Proposals~~

~~A design-build entity shall submit its proposal at the place and by the day and time set forth in the request for proposals.~~

~~14.07.530 Extending Time~~

~~Prior to the time fixed in the request for proposals for submitting proposals, the director may extend the time for submitting proposals by giving written notice to each design-build entity requesting or otherwise provided with a request for proposals.~~

~~14.07.540 Listing Subcontractors~~

~~A. A proposal shall identify each person to whom the design-build entity intends to sublet obligations under the design-build contract. The proposal shall specify the trade of such person, or the type of work to be performed by such person.~~

~~B. The listing of persons to whom the design-build entity proposes to sublet obligations may be added to or otherwise amended prior to award of a design-build contract only when necessary to address changes in the proposal resulting from negotiations with the city.~~

~~14.07.550 Ownership Of Proposals~~

~~A. The drawings, specifications and other information contained in a proposal shall remain the property of the design-build entity making the proposal unless and until the city accepts the proposal.~~

~~B. Ownership of the drawings, specifications and other information contained in a proposal that the city has accepted shall be determined in accordance with the terms of the design-build contract and request for proposals.~~

~~14.07.560 Incomplete Proposal~~

~~A. At the time a design-build entity submits a proposal, the proposal shall contain all the information and documents required by the request for proposals.~~

~~B. The director shall deem a proposal that does not contain any material information or documents required by the request for proposals to be non-responsive and shall not consider the proposal further.~~

~~C. The director, in the director's discretion, may waive minor irregularities in a proposal and proceed to consider the proposal.~~

~~Part 6~~
~~Award Of Design-Build Contract~~

~~14.07.600 Evaluation Of Proposals~~

~~The director shall evaluate and rank the proposals using only the criteria and selection process set forth in the request for proposals.~~

~~14.07.610 Supplemental Information~~

~~After evaluating the proposals, the director may request all or some of the proposers to submit additional designs, information or documents, or to clarify or refine a response to some part of the request for proposals. The proposers shall submit the responses in the manner set forth in the request.~~

~~14.07.620 Rejecting Proposals~~

~~The director is authorized to reject all of the proposals. In the event that the director determines to reject all proposals, the director may take any of the following actions:~~

~~A. Re-issue the request for proposals in the form previously approved by the city council.~~

~~B. Prepare a revised request for proposals for approval by the city council pursuant to the provisions of this chapter.~~

~~C. Discontinue the competitive process for award of a design-build contract for the project.~~

~~14.07.630 Director's Recommendation~~

~~After evaluating the proposals, the director may recommend that the city council take either of the following actions:~~

~~A. Award a design-build contract to one of the design-build entities that submitted a proposal.~~

~~B. Authorize the director to engage in discussions or negotiations with one or more of the design-build entities that submitted a proposal if the city reserved the right in the request for proposals to hold such discussions or negotiations.~~

~~14.07.640 Proposer Scores~~

~~The director's recommendation made pursuant to Section 14.07.630 shall include the cumulative scores of each of the proposers as against the selection criteria.~~

~~14.07.650 Objecting To Recommendation~~

~~A. The director shall notify all proposers in writing of the recommendation the director is making to the city council. The written notice of recommendation shall include the reasons for the recommendation and the cumulative scores of each of the proposers as against the selection criteria.~~

~~B. A proposer shall submit to the director a written statement setting forth any objections to the director's recommendation on or before five working days following the date of the notice of recommendation. The statement shall set forth each objection and the reasons supporting each such objection.~~

~~C. The director shall consider each written objection to determine whether any one objection or the aggregate of the objections warrant amending the director's recommendation to the city council. The director shall provide all proposers with the written response to any objections prior to the city council considering the recommendation of the director.~~

~~D. The director shall provide the city council with copies of all written objections and responses to such objections.~~

~~14.07.660 Award~~

~~Following the competitive request for proposal selection process, the city council may award a design-build contract to the design-build entity it concludes best meets the needs of the city if the amount of the contract exceeds five million dollars, and it makes a finding that the design-build procurement process would save money or result in faster project completion than if the city used a procurement process involving its normal competitive bidding procedures.~~

~~Part 7~~
~~Communications By Proposer~~

~~14.07.700 Permissible Communications~~

~~Between the time following the City Council's approval of a request for proposals and the time that the director makes a recommendation to the city council pursuant to Section 14.07.630 of this chapter, members of a design-build entity and any persons working for or representing the design-build entity shall communicate with only the person(s) designated in the request for proposals regarding the request for proposals.~~

~~14.07.710 Exception~~

~~Nothing in this part shall prohibit any member of a design-build entity or any persons working for or representing a design-build entity from communicating with any person in the city, including, but not limited to the city council, regarding an alleged failure of a city employee to follow the procedures or requirements governing the request for proposals, or any alleged misconduct or impropriety of a city employee related to the request for proposals.~~

~~14.07.720 Failure To Comply~~

~~The failure of a design-build entity to comply with Section 14.07.700 shall result in its disqualification from consideration.~~

~~Part 8~~
~~Subcontractors~~

~~14.07.800 - Identified at award.~~

~~The design-build entity shall not replace those persons who the design-build entity identified at the time of the award of the design-build contract as being subcontractors for construction work on the project, except for those reasons and pursuant to the procedures generally applicable to the substitution of subcontractors on public works projects that are formally bid.~~

~~14.07.810 Adding Subcontractors.~~

~~The city recognizes that listing all subcontractors at the time of the award of the design-build contract is often impracticable for the design-build entity because the design has not been completed. All subcontractors that were not listed by the design-build entity at the time of the award of the design-build contract shall be obtained by the design-build entity in accordance with the subcontractor bidding process set forth in the design-build package.~~

SECTION 10. Chapter 14.08 of Title 14 of the San José Municipal Code is hereby repealed.

~~Chapter 14.08~~
~~Encumbrance Of Funds For Construction Contracts~~

~~14.08.010 Construction Contract Defined~~

~~A. As used in this chapter, "construction contract" means a written contract between the city and an independent contractor or another public agency for the construction, rehabilitation, alteration, conversion, extension, repair, maintenance or demolition by such contractor or by such public agency for the city of the following municipal improvements: Buildings and structures, streets, bridges, drains, ditches, canals, dams, tunnels, sewers, water systems, fire-alarm systems, parking lots, parks or playgrounds, or other improvement to real property.~~

~~B. As used herein, "construction contract" shall also include a written contract between the city and a contractor for preparation by the contractor for the city of~~

~~plans and specifications for the above, and for the making of soil tests or engineering surveys in connection with such improvements.~~

~~14.08.020 Encumbrance Of Funds~~

~~A. Whenever the city shall have awarded or entered into a construction contract which is not completed within the fiscal year in which such contract is awarded or entered into, funds may be encumbered in the year in which such construction contract is entered into which are reasonably necessary to pay all or part of the following costs (for which contracts have not been entered into or encumbrances made) incurred or to be incurred in connection with and necessary for the completion of the construction contract.~~

~~The aforesaid costs include, but are not limited to, costs for change orders, city vehicle maintenance, payment to utilities, payment for equipment rented by the city, payment for supplies and material purchased by the city, costs of mileage, travel expenses, salaries, overtime, fringe benefits of city employees, payment for construction of public works and/or maintenance work, payment for services, either singly or in combination for civil engineering, electrical engineering, mechanical engineering, architectural engineering, structural engineering, landscape architectural engineering, soils engineering, geologic engineering, seismic engineering, acoustical engineering, communication engineering, corrosion engineering, elevator engineering, illumination engineering, traffic engineering, arborology, entomology, archaeology, chemical analysis, graphic art, inspection of construction to ensure compliance with applicable plans and/or specifications, marine biology, testing of materials to be used on public works projects, testing of soils, inspection of sewers by TV monitoring devices, analysis of water and/or wastewater, sampling of water and/or wastewater, air photography, preparation of topographic information, preparation of maps, surveying, surveying for preparation of metes and bounds descriptions, preparation of metes and bounds descriptions, preparation of environmental impact reports or studies, expert aerial technical consultants, environmentalists, payment for agreements with the state of California, and/or counties, and/or cities, and/or districts for the construction of public improvements.~~

~~Funds for the aforesaid costs may be encumbered in accordance with and subject to the following provisions:~~

~~1. There is available immediately prior to the end of such fiscal year sufficient unencumbered appropriations and funds to support such encumbrance;~~

~~2. The city manager shall file with the director of finance and the city council a written statement or statements showing the construction contract for~~

~~which the encumbrance is to be made; estimated completion date of such construction contract; the estimated amount of costs to be incurred in connection with each such construction contract; the amount of encumbrance requested for each such contract, which shall not exceed the total of said estimated costs; the fund and appropriation to which said encumbrance is to be made.~~

~~B. In addition to the foregoing, the city manager may provide and request in said written statement or statements for the combining of encumbrances for more than one contract (multiple contracts) if there is an existing single appropriation covering such multiple contracts.~~

~~C. Upon receipt of such statement from the city manager, the director of finance shall encumber available funds for each such contract or for such multiple contracts, to the extent that unencumbered and unexpended appropriations are available therefor, as requested by the city manager.~~

~~D. Funds so encumbered shall be used for any of the aforesaid cost categories without limitation as to amount as between such categories, for the contract for which said encumbrance is made, and in case of encumbrances for multiple contracts, without limitation as to amounts between such multiple contracts.~~

~~14.08.030 Cancellation Of Encumbrance - Conditions~~

~~A. At any time after such encumbrance is made, all or any part of any such encumbrance, up to the amount of the unexpended balance thereof, less amounts covered by contracts, may be canceled in accordance with the following provisions:~~

~~1. The city manager shall file with the director of finance a written request that all or part of such encumbrance be canceled; upon receipt of such request the director of finance shall cancel the encumbrance as requested; or~~

~~2. Upon completion of the public works contract or contracts for which such encumbrance is made, the director of finance shall cancel the remaining unexpended balance of any such encumbrance.~~

~~B. The portion of any such encumbrance which is canceled shall revert to the unallocated, unappropriated surplus of the fund in which it is made.~~

SECTION 11. Section 15.26.120 of Chapter 15.26 of Title 15 of the San Jose Municipal Code is hereby amended to read as follows:

15.26.120 Underground Utility Fund - Use of Fees

A. All fees collected pursuant to the provisions of this Chapter shall be placed in the underground utility fund established by Part 35 of Chapter 4.80 of the San José Municipal Code.

B. All fees collected pursuant to the provisions of this Chapter shall be used solely for the conversion of overhead utility facilities to underground facilities on designated streets within the City. The fees may be used for any and all of the following purposes:

1. Payment to utility companies subject to Cal. P.U.C. Rule 20, Tariff Schedule Cal. P.U.C. No. A2, or the City's cable franchise for the costs of converting their existing overhead utility facilities with underground facilities in the public right-of-way;

2. Reimbursement of a project applicant for the costs of converting existing overhead utility facilities to underground facilities on designated streets within the City which are being converted pursuant to Section 15.26.180. The amount of reimbursement shall be no more than the principal amount of fees previously collected by the City from development projects:

   a. Located on the opposite side of the street from the applicant's development project that are within the applicant's project site frontage; or

   b. Within the boundaries of the undergrounding project area if the project applicant elects to underground facilities beyond the applicant's project site frontage; and

   c. Reimbursement of the project applicant shall be made pursuant to a City-private developer contract in accordance with Chapter ~~14.04~~27.38 of the San José Municipal Code or a subdivision improvement agreement in accordance with Chapter 19.32 of the San José Municipal Code;

3. City costs to convert City overhead utility facilities to underground facilities;

4. Contributions to underground utility districts that are established on designated streets pursuant to Chapter 15.24 of the San José Municipal Code;

5. Payment of City expenses for staff, equipment, supplies and overhead associated with the establishment and administration of undergrounding projects eligible for funding under this Chapter or that are otherwise subject to contribution pursuant to Subsection B.4.;

6. Contributions to a revolving fund for the purpose of performing work pursuant to Section 15.24.170 of Chapter 15.24 of this Title, with such contributions not to exceed ten percent of the total fees collected under this Chapter; or

7. Payment to utility companies in connection with provision of underground service laterals to properties in designated underground utility districts, including a maximum of one hundred feet of electric service trenching and underground conductor (as measured from property line) as well as backfill, paving, and conduit.

C. Nothing in this Chapter is intended to affect the amount of reimbursement which would otherwise be paid to utilities, under applicable laws, rules, regulations, and tariffs, for undergrounding of utilities.

SECTION 12. Section 19.32.120 of Chapter 19.32 of Title 19 of the San Jose Municipal Code is hereby amended to read as follows:

19.32.120 Construction of Improvements Before Approval of Final Map

In the event the subdivider elects to construct the improvements required by the Director in connection with the subdivision before the final map is presented for approval to the City Engineer, the subdivider shall present to the City Engineer for approval the plans for such improvements. The subdivider of the subdivision shall also enter into an improvement agreement with the City, in a form approved by the City Attorney, agreeing to complete said improvements consistent with the approved improvement plans within eighteen (18) months from the date of execution of the agreement and approval of the improvements plans. Concurrently with the improvement agreement, the subdivider shall provide the City with the security required by Section 19.32.130, excepting that the required security for faithful performance may be waived at the discretion of the City Engineer. The subdivider shall also provide the City with a cleanup deposit in the manner and amount specified in Section ~~14.04.450~~27.38.140 of Chapter ~~14.04~~27.38 of Title 27~~14~~ of this Code. Security for labor and materials and warranty security shall not be waived by the City Engineer.

Immediately upon execution of the improvement agreement and improvement plans by the City Engineer, the subdivider may commence the construction of such improvements in accordance with such plans and the standard specifications of the City in effect at the time of approval of the tentative map.

SECTION 13. The San Jose Municipal Code is hereby amended by adding a new Title to be numbered and entitled and to read as follows:

TITLE 27
PROCUREMENT OF PUBLIC WORKS

CHAPTER 27.02
DEFINITIONS

27.02.010 Definitions

The definitions in this Chapter 27.02 govern the application and interpretation of Title 27.

27.02.020 Business Day

"Business Day" means any day in which San José City Hall is open to conduct public business.

27.02.030 Calendar Day

"Calendar Day" means any day of the week, including Saturdays, Sundays and holidays.

27.02.040 Contractor

"Contractor" means a properly licensed Person that contracts to provide the material, labor, equipment and services, including the hiring and supervision of subcontractors, needed to implement a Public Works Project.

27.02.050 Director

"Director" means the following:

A. The Director of the Department of Public Works as to all Public Works Contracts;

B. The Director of the Department of Transportation as to Minor Public Works Contracts involving Public Works Projects under the Department's jurisdiction; and

C. The Director of the Environmental Services Department as to all Public Works Contracts involving Public Works Projects under the Department's jurisdiction.

27.02.060 Design-Build Contract

"Design-Build Contract" means a Public Works Contract in which both the design and construction is procured from a single Person.

27.02.070 Major Public Works Contract

"Major Public Works Contract" has the meaning set forth in Section 1217(a)(2) of the Charter of the City of San José.

27.02.080 Minor Public Works Contract

"Minor Public Works Contract" has the meaning set forth in Section 1217(a)(3) of the Charter of the City of San José.

27.02.090 Public Bidding

"Public Bidding" means the formal public bidding method of procuring a Public Works Contract described in Section 1217(c) of the Charter of the City of San José.

27.02.100 Public Property

"Public Property" means real property, buildings, structures, ground facilities, easements (including public utility and public service easements) and rights of way, equipment or other property owned or controlled by the City, including, but not limited to, libraries, fire stations, auditoriums, theaters, City Hall, parks, playgrounds, gardens, bridges, drains, ditches, canals, sewers, water systems, electrical traffic control systems, street lighting systems, parking lots, sidewalks, and streets and highways.

27.02.110 Public Works Contract

"Public Works Contract" means a contract between the City and a Contractor to implement a Public Works Project. It includes a Minor Public Works Contract and a Major Public Works Contract.

27.02.120 Public Works Project

"Public Works Project" has the meaning set forth in Section 1217(a)(1) of the Charter of the City of San José.

CHAPTER 27.04
ADMINISTRATIVE

27.04.010 Relationship with State Law

A. The City intends the ordinance adopting Title 27 to be an ordinance that conflicts with the California Public Contract Code as provided in Section 1100.7 of the California Public Contract Code. The City intends this Title to control over the California Public Contract Code except where it expressly incorporates the California Public Contract Code.

B. Nothing herein is intended to limit the City's plenary authority over municipal affairs under the charter city home-rule doctrine in Section 5(a) of Article XI of the California Constitution.

27.04.020 Administrative Implementation

The Director of the Department of Public Works, in coordination with the City Manager's Office and the City Attorney's Office, is responsible for promulgating, developing, maintaining and updating the following:

A. Administrative rules and procedures implementing this Title 27; and

B. Standardized procurement documents, contract documents, plans and specifications implementing this Title 27.

27.04.030 Subdivision Improvement Agreements

Nothing in this Title applies to any improvement agreement governed by the requirements of Title 19 of the San Jose Municipal Code.

27.04.040 Permit/Utility Work Authority

The Director is authorized to execute a permit or a contract for utility work if:

A. The permit is issued by a Federal, State or local public agency, or any other entity with regulatory jurisdiction over the Public Works Project;

B. The permit or utility work is needed to perform the work required by the Public Works Contract; and

C. The costs associated with the permit or contract for utility work have been appropriated as part of funding for the Public Works Project.

27.04.050 Contingency Amount

A. Except for a contract in which the Council approves a different amount, the contingency amount established when a Public Works Contract is awarded will be as follows:

1. No more than 10 percent of the total contract amount for all Public Works Projects except those involving the renovation of a building or buildings; and

2. No more than 15 percent of the total contract amount for all Public Works Projects involving the renovation of a building or buildings.

B. Following the award of a Public Works Contract, only the Council can approve an increase in the contingency amount.

27.04.060 Award Authority

The following applies whenever the Council reserves to itself the authority to award and execute a Major Public Works Contract:

A. The City Clerk will execute, on behalf of the Council, the Major Public Works Contract that the Council awards in accordance with such reserved authority; and

B. The Council may delegate, by resolution, to the City Manager or a director of a City department, any such reserved authority to award and execute the Major Public Works Contract.

27.04.070 Design Approval Authority

This Section 27.04.070 sets forth the City Council's delegation of authority to approve a plan or design on behalf of the City for the purpose of establishing design immunity. It does not refer to the technical design approval of a licensed design professional who is in responsible charge or control of the preparation of the plans and specifications for a Public Works Project.

A. The award of a Public Works Contract by the Council, or the approval of an amendment, change order, work order or other similar document by the Council, is the City's approval of the plan or design associated with such contract, amendment, change order, work order or document.

B. Whenever the Director is authorized in this Title 27 to execute a Public Works Contract, contract, work order, change order, amendment or other similar

document described in this Title 27, such authority includes the authority to approve, in the Director's discretion, the plan or design associated with such document. The Director's execution of such document constitutes the City's approval of the plan or design associated with such document.

C. Whenever a City employee is deputized in accordance with San Jose Municipal Code Section 2.06.010 to execute an official document on the City's behalf, including a Public Works Contract, contract, work order, change order, amendment or other similar document described in this Title 27, such authority includes the authority to approve, in the employee's discretion, the plan or design associated with such document. The City employee's execution of such document constitutes the City's approval of the plan or design associated with such document.

D. The authority of the Director or a City employee to direct other City employees to implement a Public Works Project includes the authority, in the Director or employee's discretion, to approve the plan or design associated with the project. Authorization by the Director or City employee for other City employees to precede with a Public Works Project constitutes the City's approval of the plan or design pursuant to which such work will be completed.

27.04.080 Calculating Time

Whenever this Title 27 requires an action to be taken within a specified number of days following an event, such as the giving of notice, the day such event occurs is not included in calculating the number of days within which to take the action.

27.04.090 Computer Mapping Program Licenses

A. The Director of the Department of Public Works is authorized to negotiate and execute all license agreements for any computer mapping program or system developed by the City. The license agreements must, at a minimum, include the following terms and conditions:

1. The initial term of each license agreement must be one year, renewable for additional periods of one year;

2. The City must have the right to terminate the license agreement with thirty days' notice to the licensee; and

3. If the license agreement authorizes the transfer, resale, or relicense of the program or system, or any portion thereof, it must provide for royalty payment to the City.

B. The Director of the Department of Public Works is authorized to negotiate and execute agreements with other public agencies for the use by the other public agency of the computer mapping system developed by the City.

1. The agreements must contain the provision set forth in Subsection A of this Section, as applicable.

2. The agreements may authorize the use of the computer mapping system by a public agency without payment of any fees or charges, other than reimbursement to the City for direct costs incurred in providing the system to the public agency, if the Director of Public Works finds that the use furthers a joint project between the City and the public agency or that the use will otherwise benefit the City.

CHAPTER 27.06
PROCURING MINOR PUBLIC WORKS PROJECTS

27.06.010 Application of Chapter

This Chapter 27.06 sets forth the Director's authority to procure and implement the following: (1) Minor Public Works Contracts and (2) other Public Works Projects that cost no more than the threshold amount of a Minor Public Works Contract.

27.06.020 Definition

For purposes of this Chapter 27.06, "Minor Public Works Project" means a Public Works Project that costs no more than the threshold amount of a Minor Public Works Contract.

27.06.030 Funding

The Director can enter into a contract, work order, amendment or change order in accordance with this Chapter 27.06 only if enough money from an applicable appropriation exists to pay for such contract, work order, amendment or change order.

27.06.040 City Employees

In accordance with the requirements of Chapter 27.48, the Director may authorize City employees under the Director's supervision to perform Minor Public Works Projects.

27.06.050 Request for Quotes

The Director will use a request for quotes process that complies with the following requirements as the primary method of procuring Minor Public Works Contracts.

A. The Director may send a request for quotes to Contractors by telephone, fax, e-mail or any other electronic means.

B. The request for quotes must be in writing, and the Director must send the same written request for quotes to all Contractors.

C. The Director must give Contractors a reasonable amount of time to respond to a request for quotes given the complexity of the Minor Public Works Project.

D. The Director may conduct the procurement consistent with the "best value" approach in Chapter 27.12, except that the Public Bidding requirements of Section 27.12.030 will not apply.

E. The Director must require Contractors to respond to a request for quotes in writing.

F. The Director must obtain written quotes from at least 3 Contractors unless doing so is not practicable.

G. Except where legal constraints on the expenditure of funds prohibits the use of preferences, the Director will give the following preferences to a Contractor in determining the lowest quote:

1. A credit of 2.5 percent of the amount of the quote if the Contractor is a Local Business Enterprise, as defined in 4.12.030 of Chapter 4.12 of the Municipal Code; and

2. An additional credit of 2.5 percent of the amount of the quote if the Contractor is also a Small Business Enterprise, as defined in 4.12.060 of Chapter 4.12 of the Municipal Code.

H. The Director must award the Minor Public Works Contract in accordance with either of the following:

1. To the Contractor submitting the lowest quote; or

2. If the Director uses the "best value" approach, to the Contractor submitting the lowest quote as determined in accordance with Section 27.12.040 of Chapter 27.12.

27.06.060 Competitive Work Orders

As an alternative to the competitive procurement process in Section 27.06.050, the Director may procure Minor Public Works Projects as follows.

A. The Director will enter into a contract with each member of a pool of Contractors that have been prequalified to perform Minor Public Works Projects involving a defined category of work. The contract will not include work for a specific Minor Public Works Project but will state how Contractors in the pool will compete for work orders to perform specific projects as they arise.

B. The contract that the Director enters with each prequalified Contractor must include, at a minimum, the following:

1. How Contractors will compete for work orders consistent with the request for quotes process in Section 27.06.050; and

2. The general terms and conditions for performing the Minor Public Works Projects consistent with requirements set forth in 27.06.100.

C. The amount of each work order issued pursuant to a contract cannot exceed the threshold amount of a Minor Public Works Contract.

D. The Director will implement a process by which, at least once every 12 months, new Contractors can be prequalified to participate in an already established pool of Contractors.

27.06.070 On-Call Contracts

A. For purposes of this provision, “On-Call Contract” means a City contract in which the specific maintenance or Public Works Project a Contractor will perform, and the compensation for such work, is not in the contract but is in negotiated work orders issued pursuant to the contract as the need for work arises.

B. The Director will procure On-Call Contracts:

1. In the same manner as Major Public Works Contracts, except the low bidder will be based on the lowest percentage markup; or

2. In the same manner as the City procures Services under Chapter 4.12 of Title 4 of the San Jose Municipal Code, entitled “Procurement of Goods and Services.”

C. The Director may use a work order issued pursuant to an On-Call Contract as an alternative means of procuring a Minor Public Works Project.

D. The Director cannot use On-Call Contracts to procure Major Public Works Projects, and no work order issued pursuant to an On-Call Contract can exceed the threshold amount of a Minor Public Works Contract.

27.06.080 Micro Contracts

Notwithstanding anything to the contrary in this Chapter 27.06, the Director may procure without any competitive process a Minor Public Works Contract that does not exceed $10,000, as adjusted pursuant to Section 4.04.085.

27.06.090 Exceptions

Notwithstanding anything to the contrary in this Chapter 27.06, the Director of the Department of Public Works can procure the following contracts without any competitive process if the amount paid by the City is equal to or less than the threshold amount of a Minor Public Works Contract.

A. The contract is an Intergovernmental Contract as defined in Section 27.34.020 of Chapter 27.34 of this Title, and the Director makes a written determination that having the other public or governmental entity perform the Minor Public Works Project is the most efficient way of completing the work.

B. The contract is a City-Public Utility Contract as defined in Section 27.36.020 of Chapter 27.36 of this Title, and the Director makes a written determination that having the public utility perform the Minor Public Works Project is the most efficient way of completing the work.

C. The contract is a City-Developer Contract as defined in Section 27.38.020 of Chapter 27.38 of this Title and the City-Developer Contract complies with the requirements of Chapter 27.28 of this Title.

D. The Director makes a written finding that the contract is for Specialty Work, as defined in Section 27.40.020 of Chapter 27.40 of this Title.

E. The Director makes a written finding that the contract is for Work of Urgent Necessity, as defined in Section 27.42.020 of Chapter 27.42 of this Title.

F. The Director makes a written determination that an unusual or unique situation makes competitive procurement of the contract contrary to the public interest, the procurement is made with such competition as is practical under the

circumstances, and the Director makes a written determination of the basis for the procurement and for the selection of the Contractor.

27.06.100 Contract Requirements

Any contract entered into pursuant to this Chapter 27.06, together with any work order issued pursuant to such contract, must include at least each of the following:

A. Plans and specifications that are:

1. Appropriately detailed given the complexity, magnitude and nature of the work;

2. Prepared, signed and sealed by the appropriate registered design professional in accordance with any State law applicable to the preparation, signing and sealing of such plans and specifications; and

3. Prepared in accordance with Chapter 27.20 of the Title 27 regarding directing a Contractor to use a designated material, product, service or business;

B. Bond, insurance and indemnity requirements in accordance with Chapter 27.24 of this Title 27;

C. Environmental mitigation monitoring and reporting provisions consistent with Chapter 27.18 of this Title 27;

D. Prevailing wage provisions consistent with Chapter 27.22 of this Title 27;

E. Any Contractor or subcontractor work-related qualification requirements that the Director determines are appropriate;

F. Nondiscrimination requirements consistent with Chapter 4.08 of Title 4 of the Municipal Code; and

G. Any other requirements the Director deems appropriate.

27.06.110 Contingency

The amount of a contingency for a contract or work order entered pursuant to this Chapter 27.06 must comply with Section 27.04.050 of Chapter 27.04.

27.06.120 Alternative Procurements

The Director of the Department of Public Works may establish additional procedures for procuring Minor Public Works Projects, provided that such procedures involve a competitive process in which selection is based primarily on the lowest cost to the City.

27.06.130 Director's Authority

A. The Director may execute a contract procured in accordance with, and otherwise complying with, the requirements of this Chapter 27.06.

B. The Director has the following authority regarding each contract the Director executes:

1. If the contract allows for the issuance of work orders, to execute work orders that comply with the requirements of the contract and this Chapter 27.06;

2. To negotiate and execute change orders in accordance with Chapter 27.30 of this Title 27;

3. To approve the plan or design associated with the contract, task order, amendment or change order;

4. To terminate the contract or any work order; and

5. To take such other actions the Director determines are reasonably necessary to implement the contract or work order.

CHAPTER 27.08
PROCURING MAJOR PUBLIC WORKS CONTRACTS

27.08.010 Application of Chapter

This Chapter 27.08 sets forth the methods for procuring Major Public Works Contracts.

27.08.020 Competitive Procurement

In accordance with Section 1217(c) of the Charter of the City of San José, the Director will procure Major Public Works Contracts using one of the following competitive procurement methods.

A. The Director will procure Major Public Works Contracts primarily by Public Bidding done in accordance with the requirements of Chapter 27.10.

B. As an alternative to Public Bidding, the City may procure Major Public Works Contracts using a best-value approach complying with the requirements of Chapter 27.12.

C. The City may procure Major Public Works Contracts as Design-Build Contracts using a process that complies with the requirements of Chapter 27.14 if the contract is over $1,000,000 and the City Council finds a Design-Build Contract would save money or result in faster project completion.

27.08.030 Prohibition

A Public Works Project cannot be separated into smaller items of work to avoid Public Bidding.

27.08.040 Competitive Procurement Exceptions

In accordance with Section 1217(e) of the Charter of the City of San José, the Director may procure the following Major Public Works Contracts without any competitive process and without complying with Section 27.08.020:

A. Intergovernmental Contracts, which are subject to the requirements of Chapter 27.34 of this Title;

B. City-Public Utility Contracts, which are subject to the requirements of Chapter 27.36 of this Title;

C. City-Developer Contracts, which are subject to the requirements of Chapter 27.38 of this Title;

D. Contracts involving specialty work, which are subject to the requirements of Chapter 27.40 of this Title;

E. Contracts involving work of urgent necessity, which are subject to the requirements of Chapter 27.42 of this Title;

G. Contracts for which the solicitation of bids would be an idle act, which are subject to the requirements of Chapter 27.46 of this Title.

27.08.050 State/Federal Funding

Notwithstanding anything to the contrary in this Chapter 27.08, if a Major Public Works Contract is funded in whole or in part with State and/or Federal funds, the Director will

procure the contract in accordance with any applicable State and/or Federal funding requirements.

CHAPTER 27.10
PUBLIC BIDDING

27.10.010 Application of Chapter

This Chapter 27.10 sets forth the requirements for procuring Major Public Works Contracts by Public Bidding.

Part 1
Electronic Media

27.10.020 Scope of Part

Part 1 of this Chapter 27.10 addresses the use of electronic media in Public Bidding.

27.10.030 Use

The Director may use electronic media as part of Public Bidding, including without limitation, the electronic solicitation, submission, opening and/or reporting of bids.

27.10.040 Requirements

The Director must use any electronic media in a manner that is consistent with the Public Bidding requirements and the requirements of any applicable local, state or federal laws or regulations.

Part 2
Bid Documents

27.10.050 Scope of Part

Part 2 of this Chapter 27.10 addresses the content of the bid documents used to procure a Major Public Works Contract by Public Bidding.

27.10.060 Bid Security

A. The bid documents must require each bidder to provide bid security guaranteeing that the bidder, if awarded the Major Public Works Contract, will execute the contract.

B. Except as otherwise directed by the Council, the bid security amount for Major Public Works Contracts will be at least 10 percent of the total bid amount, without consideration of the amount of any bid alternates.

C. The bid documents will set forth the form of the bid security, the grounds and the manner for return and forfeiture of the bid security, and any other requirements the Director deems appropriate.

27.10.070 Additional Requirements

The bid documents must also include each of the following:

A. Plans and specifications that are:

1. Appropriately detailed given the complexity, magnitude and nature of the work;

2. Prepared, signed and sealed by the appropriate registered design professional in accordance with any State law applicable to the preparation, signing and sealing of such plans and specifications; and

3. Prepared in accordance with Chapter 27.20 of the Title 27 regarding directing a Contractor to use a designated material, product, service or business;

B. Bond, insurance and indemnity requirements in accordance with Chapter 27.24 of this Title 27;

C. Environmental mitigation monitoring and reporting provisions consistent with Chapter 27.18 of this Title 27;

D. Prevailing wage provisions consistent with Chapter 27.22 of this Title 27;

E. Dispute resolution requirements consistent with Chapter 27.28 of this Title 27;

F. Any Contractor or subcontractor work-related qualification requirements that the Director determines are appropriate;

G. Nondiscrimination requirements consistent with Chapter 4.08 of Title 4 of the Municipal Code; and

H. Any other requirements the Director deems appropriate.

27.10.080 Review and Approval

A. Before soliciting bids for a Major Public Works Contract, the Director will review the bid documents to determine if they are suitable for Public Bidding.

B. The Director's signature on the front of the bid documents indicates the following:

1. The Director's determination that the bid documents are suitable for Public Bidding; and

2. The Director's approval of the plan or design associated with the Public Works Project being undertaken by the City.

Part 3
Soliciting Bids

27.10.090 Scope of Part

Part 3 of this Chapter 27.10 addresses soliciting bids for Major Public Works Contracts procured by Public Bidding.

27.12.100 Notice Inviting Bids

The Director will issue a notice inviting bids containing at least the following information:

A. A brief, general description of the Public Works Project for which the City is soliciting bids;

B. How and where to obtain the bid documents;

C. Notice that bids must be sealed;

D. The date and time by which the sealed bids must be submitted to the City;

E. Where and to whom the sealed bids must be submitted;

F. The date and time when, and place where, the City will publicly open the sealed bids; and

G. Any other information the Director deems appropriate.

27.10.110 Publication

In accordance with Section 1217(e) of the Charter of the City of San José, the Director will publish the notice inviting bids as follows:

A. In a newspaper of general circulation in the City, or electronically so that the notice is publicly available to the general community of potential bidders; and

B. At least once no fewer than 10 Calendar Days before the date set for the opening of bids.

Part 4
Submission and Opening of Bids

27.10.120 Scope of Part

Part 4 of this Chapter 27.10 addresses submitting and opening bids for Major Public Works Contracts procured by Public Bidding.

27.10.130 Sealed Bids

Bidders must submit sealed bids on or before the time, and at the place, described in the notice inviting bids.

27.10.140 Bid Opening

The Director will publicly open the bids and announce the aggregate amount of each bid at the time and place specified in the notice inviting bids.

27.10.150 Availability of Bids

A. The Director will make available to bidders a summary of the properly submitted bids within a reasonable time after bids are opened.

B. The Director will determine in what manner to make available the summary of bids.

27.10.160 No Bids Received

If the City does not receive any bids:

A. The Director may re-advertise for bids; or

B. In accordance with Section 1217(h) of the Charter of the City of San José, the Council may have the Public Works Project done without further complying with Public Bidding.

Part 5
Notice of Intended Determination

27.10.170 Scope of Part

Part 5 of this Chapter 27.10 addresses giving notice of what action the Director will take after opening bids for Major Public Works Contracts procured by Public Bidding.

27.10.180 Notice Requirement

A. Within a reasonable time after opening bids, the Director will post a notice of intended determination and give bidders notice of the posting.

B. The Director will determine the manner of posting the notice and of giving bidders notice of the posting.

27.10.190 Notice of Action

The notice of intended determination will state which of the following actions the Director intends to take:

A. Reject all bids and take no further action or re-advertise for new bids;

B. Make a recommendation to the Council regarding the award of the contract, in which case the notice also must include to which bidder the Director intends to recommend awarding the contract;

C. Award the contract in accordance with the authority delegated in Sections 27.04.060.B of Chapter 27.04 or 27.10.560 of Chapter 27.10, in which case the notice also must include to which bidder the Director intends to award the contract; or

D. Any other proper action the Director will take in response to the bids.

27.10.200 Notice Contents

In addition to the requirements of Section 27.10.190, the notice of intended determination must include the following information whenever the Director's intended action is other than rejecting all bids:

A. The time and date when the Director intends to make the award, or when the Council will consider the Director's recommendation, whichever is applicable;

B. Any determination that a bid is non-responsive and the basis for that determination;

C. Any determination that a bidder is not responsible, and a summary of the evidence supporting that determination;

D. The location where, and the person to whom, bid protests and responses to bid protests must be submitted, and a general statement of the procedures and time requirements for submitting bid protests and responses to bid protests; and

E. Any other information the Director deems appropriate.

Part 6
Bid Protests

27.10.210 Scope of Part

Part 6 of this Chapter 27.10 addresses bid protests involving a Major Public Works Contract procured by Public Bidding.

27.10.220 Exclusive Remedy

The bid protest procedures and time limits in this Part 6 are mandatory and are the exclusive administrative remedy for protesting a bid.

27.10.230 Waiver of Rights

A. Failure to comply with the procedures and time limits in this Part 6 is a waiver of any right to pursue a bid protest.

B. Failure to include an issue or argument in a bid protest is a waiver of any right to pursue such issue or argument.

27.10.240 Rejection of Bids

A bidder cannot protest a decision to reject all bids, whether the rejection is by the Council or the Director.

27.10.250 Standing

Only the following Persons have standing to protest a bid:

A. A potential bidder who demonstrates it did not submit a bid because of an error in the procurement process; and

B. A bidder who demonstrates it would have a reasonable possibility of being awarded the contract if the City were to sustain its protest.

27.10.260 Timely Submission

A. The Director must receive a bid protest at the location stated in the notice of intended determination.

B. The Director must receive the bid protest by 5:00 p.m. on the 5th Business Day after the day the Director gives bidders notice of the posting of the notice of intended determination.

C. The Director will not accept a late bid protest.

27.10.270 No Additional Protest Period

A. Bid protests must be submitted within the time set forth in Section 27.10.260.

B. There will be no additional protest period, even if a timely submitted protest results in a change to which bidder the Director will award, or will recommend award of, the Major Public Works Contract.

27.10.280 Written Protest

A bid protest must be submitted in writing and cannot be supplemented after submittal without the Director's written approval.

27.10.290 Protest Contents

A written protest must include the following:

A. The protestor's identity and standing to submit a protest;

B. The name of the Major Public Works Contract at issue;

C. A complete statement of the legal and factual grounds for the protest, including specific references to relevant documents and legal authorities;

D. Copies of any documents that support the protest; and

E. A request for a responsibility hearing in accordance with Section 27.10.470 of this Chapter if the bidder is protesting a proposed determination that it is not a Responsible Bidder.

Part 7
Responding to a Bid Protest

27.10.300 Scope of Part

Part 7 of this Chapter 27.10 addresses responding to a bid protest.

27.10.310 Exclusive Remedy

The bid protest response procedures and time limits in this Part 7 of this Chapter 27.10 are mandatory and the exclusive administrative remedy for responding to a bid protest.

27.10.320 Waiver of Rights

A. A bidder's failure to comply with the procedures and time limits in this Part 7 of Chapter 27.10 is a waiver of any right to pursue a response to a bid protest.

B. A bidder's failure to include an issue or argument in a response to a bid protest is a waiver of any right to pursue such issue or argument.

27.10.330 Written Response

A. A bidder that is the subject of a protest may submit a response.

B. The response must be in writing and cannot be supplemented after submittal without the Director's written approval.

27.10.340 Timely Response

A. The Director must receive a bidder's written response at the location stated in the notice of determination.

B. The Director must receive the response by 5:00 p.m. on the 3rd Business Day following the last day for submitting a bid protest.

C. The Director will not accept a late response.

27.10.350 Response Contents

A bid protest response must include the following:

A. A complete statement of all legal and factual grounds for opposing the protest, including specific references to relevant documents and legal authorities; and

B. Copies of any relevant documents supporting the response.

Part 8
Resolution of Protests

27.10.360 Scope of Part

Part 8 of this Chapter 27.10 addresses how the Director will resolve bid protests other than those involving the responsibility of a bidder. The exclusive procedures for resolving issues of responsibility are set forth in Part 9 of this Chapter 27.10.

27.10.370 Final Decision

The Council will finally resolve bid protests made during the procurement of a Major Public Works Contract.

27.10.380 Director's Recommendation

A. The Director will make a written recommendation, including a brief supporting explanation, to the Council regarding a bid protest.

B. The Director may include the written recommendation as part of the Council memorandum on the matter.

C. The Director will provide notice of the recommendation to the protestor(s).

27.10.390 Additional Information

To help determine what recommendation to make to the Council, the Director may request the bidder protesting the bid and/or responding to a protest to provide additional written or oral information.

27.10.400 Basis of Recommendation

The Director's recommendation may be based on the bid documents, any information submitted as part of the protest or protest response, the results of any independent investigation, and any other information the Director deems relevant.

27.10.410 No Hearing Required

Neither the Council nor the Director is required to conduct a hearing on a bid protest.

Part 9
Responsible Bidder

27.10.420 Scope of Part

A. This Part 9 of Chapter 27.10 sets forth how the City will determine that a Contractor bidding on a Major Public Works Contract is not responsible.

B. This Part 9 of Chapter 27.10 does not apply to the prequalification of Contractors under Chapter 27.16 or to the debarment of a Contractor under Chapter 4.10 of Title 4.

27.10.430 Final Decision

The Council will make the final decision regarding whether a bidder on a Major Public Works Contract is responsible.

27.10.440 Director's Recommendation

A. If a bidder's responsibility is at issue, the Director will make a written recommendation to the Council regarding the matter.

B. The Director must include supporting evidence with any recommendation that a bidder is not responsible.

C. The Director may include the written recommendation as part of the Council memorandum on the matter.

D. The Director will provide a copy of any recommendation regarding the responsibility of a bidder to any protestor(s) and to all bidders.

27.10.450 Relevant Information

The following information is relevant to determining if a bidder is responsible:

A. The bidder's performance on other contracts, including other City contracts;

B. The bidder's record of compliance with relevant laws and regulations, such as laws related to contractor licensing, labor laws related to employee compensation and benefits, and laws related to the submission of false claims;

C. The bidder's record of business integrity;

D. The bidder's management expertise, technical qualifications, and experience;

E. The bidder's demonstrated financial resources;

F. The lack of responsibility of one or more of the subcontractors listed by the bidder; and

G. Any ground for debarment in Section 4.10.355 of the San Jose Municipal Code.

27.10.460 Notice of Non-Responsibility

A. The Director will notify a bidder, in writing, of a proposed finding that the bidder is not responsible.

B. The Director's notice of non-responsibility will include a summary of the evidence forming the basis of the proposed finding.

C. The Director may include the notice of non-responsibility as part of the notice of intended determination issued in accordance with Part 5 of this Chapter 27.10.

27.10.470 Hearing Request

A bidder receiving a notice of non-responsibility has the right to request, in writing, that the Director conduct a "responsibility" hearing on the issue of the bidder's responsibility.

27.10.480 Timing of Hearing Request

A. If the notice of non-responsibility is included in a notice of intended determination, then the bidder must request a "responsibility" hearing as part of a response made in accordance with Part 7 of this Chapter 27.10.

B. In all circumstances other than those addressed in Subsection A, the bidder must request a "responsibility" hearing within 5 Business Days of the date of the notice of non-responsibility.

27.10.490 Untimely Request

The bidder waives its right to a "responsibility" hearing by failing to timely request such hearing.

27.10.500 Responsibility Hearing

If the bidder timely requests a "responsibility" hearing, the Director will conduct the hearing before making a recommendation to the Council.

27.10.510 Hearing Procedures

The Director will conduct the "responsibility" hearing in accordance with the following.

A. The Director will give the bidder written notice of the day, time and place of the hearing.

B. The Director will give the bidder a reasonable opportunity at the hearing to demonstrate it is a responsible bidder.

C. The Director will conduct the hearing in an informal manner. Formal rules of evidence will not apply.

D. The Director may establish reasonable hearing procedures, including placing reasonable time restrictions on the submission of documents and other evidence, and on the length of the hearing.

Part 10
Disposition of Bids

27.10.520 Scope of Part

Part 10 of this Chapter 27.10 sets forth the alternatives for final disposition of the bids and who has the authority to take those actions.

27.10.530 Reject all Bids

The Council and the Director each have the authority to reject all bids for any reason, and to take no further action or re-advertise for new bids.

27.10.540 Award

A Major Public Works Contract awarded following Public Bidding must be awarded to the responsible bidder submitting the lowest responsive bid, except as otherwise permitted in Section 27.12.040.

27.10.550 Award Authority - Council

Except as specified below in Section 27.10.560, the authority to award a Major Public Works Contract is reserved to the Council.

27.10.560 Award Authority - Director

A. The Director is authorized to award and execute a Major Public Works Contract under the following conditions:

1. The amount of the Major Public Works Contract is $1,000,000 or less, exclusive of the amount of any bid alternates being awarded; and

2. There is no unresolved bid protest that conforms to the requirements of Part 6 of this Chapter 27.10.

B. The Director's authority under this Section includes:

1. The authority to award bid alternates, even if their cost would cause the Major Public Works Contract to exceed $1,000,000;

2. The authority to reject bid alternates; and

3. The authority to establish a construction contingency in an amount consistent with Section 27.04.050.

C. The Director's authority under this Section is subject to the limitation that the contract amount, plus the project delivery costs, plus the construction contingency must be less than or equal to the amount appropriated for the project.

D. The Director's authority under this Section includes the authority to approve the plan or design associated with the Major Public Works Contract the Director awards and executes.

27.10.570 Minor Irregularities

In accordance with Section 1217(e)(5) of the Charter of the City of San José, informalities or minor irregularities in bids or bidding may be waived.

27.10.580 Identical Bids

In accordance with Section 1217(h)(1) of the Charter of the City of San José, a Major Public Works Contract may be awarded to any of the responsible bidders submitting identical responsive bids.

27.10.590 Second Lowest Bidder

If the responsible bidder submitting the lowest responsive bid is awarded a Major Public Works Contract and does not execute the contract, the contract may be awarded to the responsible bidder submitting the second lowest responsive bid.

27.10.600 Relief of Bidder

The Director may consent to relieving a bidder of its bid for mistake if the bidder established the grounds for such relief in accordance with California Public Contracts Code Sections 5101 through 5103, as those sections may be amended.

CHAPTER 27.12
BEST VALUE

27.12.010 Application of Chapter

This Chapter 27.12 sets forth the requirements for procuring Major Public Works Contracts by the Best Value method under Section 1217(c)(1) of the Charter of the City of San José.

27.12.020 Definitions

For purposes of this Chapter 27.12, the following phrases have the following meaning:

A. "Best Value" means a procurement method by which the City selects a Contractor using objective criteria to determine the best combination of price and qualifications.

B. "Labor Compliance" means a Contractor's 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.

27.12.030 Public Bidding

Except as provided in Sections 27.12.040 through 27.12.080, a Best Value procurement will follow the Public Bidding requirements in Chapter 27.10.

27.12.040 Low Bidder

The City will award the Major Public Works Contract to the responsible bidder that submits the responsive bid reflecting the best value to the City, determined as follow:

A. For each bid, the bidder's bid price will be divided by a qualification score assigned to that bidder; and

B. The bidder with the lowest resulting quotient, or cost per quality point, will be the Best Value bid.

27.12.050 Qualification Score

A. A panel of evaluators will assign each bidder a qualification score based on objective criteria.

B. The objective criteria used to assign each bidder a qualification score must 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.

27.12.060 Evaluation Timing

A. At the Director's discretion, qualification scores will be assigned either during a prequalification done in accordance with Chapter 27.16 or as part of bidding.

B. If qualification scores are assigned as part of a prequalification, the prequalification documents will set forth the objective criteria, as well as the methodology and rating system, the panel will use to evaluate bidders.

C. If the qualification scores are part of bidding, the bid solicitation documents will set forth the objective criteria, as well as the methodology and rating system, the panel will use to evaluate bidders.

27.12.070 Evaluation Panel

The Director will adopt procedures for the selection of evaluation panel members.

27.12.080 Bid Prices

Bid prices will remain sealed until after the evaluation panel has assigned a qualification score to each bidder.

CHAPTER 27.14
DESIGN-BUILD

27.14.010 Application of Chapter

This Chapter 27.14 sets forth the requirements for competitively procuring, negotiating and awarding a Design-Build Contract under Section 1217(c)(2) of the Charter of the City of San José.

27.14.020 Award Authority

The authority to award a Design-Build Contract procured in accordance with this Chapter 26.14 is reserved to the Council.

27.14.030 Requirements

The procurement set forth in this Chapter 27.14 applies only if:

A. The Major Public Works Contract exceeds $1,000,000; and

B. At or before contract award, the City Council makes a finding that the delivery of the project by design-build would save money or result in faster completion.

27.14.040 State Law Procedures

Except as otherwise set forth in this Chapter 26.14, the Director will procure a Design-Build Contract under Section 1217(c)(2) of the Charter of the City of San José in accordance with the procedures and requirements of California Public Contract Code Sections 22162 through 22168, as amended.

27.14.050 Prohibited Conflict

A. A Person that substantially participated in the preparation of the procurement documents for a Design-Build Contract cannot be part of any responding Person or team.

B. The prohibition in Subsection A of this Section 27.14.050 does not apply to a Person that prepared a foundational report or study, such as a master plan, soils report, or environmental clearance document, that is used by another Person to prepare the design requirements for a Design-Build Contract.

27.14.060 Single Proposal

A. No Person, team, or member of such Person or team can participate in the submission of more than one proposal.

B. Nothing herein prohibits subcontractors from participating as a subcontractor in more than one proposal.

27.14.070 Permissible Communications

A. Until the Director makes a recommendation to the Council regarding award of a Design-Build Contract procured under this Chapter 27.14, communications regarding the procurement must be to the City employee(s) designated in the solicitation to receive communications.

B. Subsection A of this Section 27.14.070 does not prohibit communicating with the Council or any other Person in the City regarding an alleged failure of a City employee to follow the procurement procedures, or any alleged misconduct or impropriety of a City employee related to the procurement.

27.14.080 Disqualification

The City will disqualify from further consideration a Person or team that violates Sections 27.14.050 through 27.14.070 of this Chapter 27.14.

CHAPTER 27.16
PREQUALIFICATION

27.16.010 Application of Chapter

This Chapter addresses the prequalification of Contractors and subcontractors before the procurement of a Public Works Contract.

27.16.020 Decision to Prequalify

A. The Director has the discretion to decide whether to prequalify Contractors and/or subcontractors for a procurement.

B. The Director will exercise the Director's discretion based on an analysis that weighs and balances various factors, including the project cost, complexity, budget and time constraints, the number and quality of bidders, and economic conditions.

27.16.030 Requirements

The Director will conduct a prequalification in accordance with California Public Contract Code Section 20101, as amended.

CHAPTER 27.18
ENVIRONMENTAL MITIGATION MONITORING AND REPORTING

27.18.010 Application of Chapter

This Chapter addresses the inclusion of environmental mitigation measures in a Public Works Contract.

27.18.020 Incorporating Mitigations

Every Public Works Contract will include appropriate requirements for the Contractor to complete the applicable environmental mitigation measures adopted by the City or other lead agency as a condition of approving the underlying project.

27.18.030 Confirming Completion

The Director, in coordination with the Director of Planning, will document completion of the environmental mitigation measures required by the Public Works Contract before finally accepting the work performed under the contract.

27.18.040 Procurement Documents

The procurement documents for any Public Works Contract must include appropriate provisions implementing this Chapter 27.18.

CHAPTER 27.20
DESIGNATING A MATERIAL, PRODUCT, SERVICE OR BUSINESS

27.20.010 Application of Chapter

This Chapter addresses the use of specifications directing a Contractor to use a designated material, product, service or business.

27.20.020 Conflict

The provisions of this Chapter are intended to conflict with California Public Contract Code Section 3400, as it may be amended, and with any other section(s) of the Public Contract Code covering the use of a designated material, product, service or business.

Part 1
"Or Equal" Requirement

27.20.030 Requirement

Except as otherwise provided in Part 2 of this Chapter 27.20:

A. A specification calling for a designated material, product, service or business must be followed by the words "or equal" so that Contractors may provide any equal material, product, service or business;

B. A specification calling for a designated material, product, service or business that is not followed by "or equal" will be read as including "or equal;" and

C. A Contractor must use the material, product, service or business designated in a specification unless the Contractor requests and obtains the Director's approval to substitute a different material, product, service or business in accordance with this Part 1.

27.20.040 Substitution Request

A. A Contractor may request to substitute an equivalent material, product, service or business for the one designated in the specification(s).

B. A Contractor's request for substitution must be in writing and must comply with the requirements in the applicable specification(s).

27.20.050 Equivalency

A. The Contractor's request for substitution must demonstrate to the Director's satisfaction that the proposed substitute material, product, service or business is equivalent in all material respects to the one designated in the applicable specification(s).

B. The Contractor's request for substitution must provide the information, test data and other documents reasonably required by the Director to fully evaluate the equivalency of the proposed substitute material, product, service or business.

C. The Director may require independent testing, including destructive testing, of the Contractor's proposed substitute material or product.

D. The Contractor must bear all expenses associated with its substitution request.

27.20.060 Timing of Request

A. The specifications will state a period before, after, or before and after the award of the Public Works Contract within which the Contractor must submit a substitution request.

B. If the specifications do not state a period within which the Contractor must submit a substitution request, then the Contractor must submit the request on or before 35 Calendar Days after the award of the Public Works Contract.

27.20.070 Untimely Requests

A. The Director has discretion to consider a substitution request not submitted within the time set forth in the specification(s).

B. If the Director denies an untimely substitution request, the Contractor must use the material, product, service or business designated in the specification(s).

27.20.080 Director's Decision

A. The Director will issue a written decision in response to each timely substitution request.

B. The Director's failure to issue a timely written decision in response to a substitution request will be deemed a rejection of the request.

C. The Director's decision on a substitution request is final.

27.20.090 Substitution Costs

If the Contractor's request for substitution is approved, then the following applies:

A. The Contractor bears all direct and indirect additional costs resulting from using the substitute material, product, service or business; and

B. The Contractor must credit the City with 50 percent of any net cost savings resulting from using the substitute material, product, service or business.

Part 2
Exceptions to "Or Equal" Requirement

27.20.100 Exceptions

Notwithstanding anything to the contrary in this Chapter 27.20, the Director may require the Contractor to use only the designated material or product in accordance with this Part 2.

27.20.110 Written Findings

To require a Contractor to use only the designated material or product, the Director must make a written finding that the material or product is designated for at least one of the following purposes:

A. To conduct a field test or experiment to determine suitability of the material or product for City use;

B. To match other materials or products already in use by the City, including, but not limited to, technology purchases required to achieve interoperability with existing hardware, software, systems or programs;

C. To obtain a necessary material or product that is available only from one source;

D. To respond to an imminent threat of harm to the health, safety or welfare of one or more persons as the result of an emergency; or

E. To achieve significant cost savings based upon consideration of the following factors:

1. Timeliness and quality of installation, repair and maintenance;

2. Quality of user training;

3. Supplies and replacement parts;

4. Modification of existing equipment, materials or systems;

5. Future upgrades and updates;

6. Estimated amount and cost of reasonably foreseeable future purchases of equipment that would be required to be compatible or functional with the designated manufacturer or product; and

7. Administrative costs.

27.20.120 Procurement Documents

The Director must include in the procurement documents the written finding(s) made in accordance with Section 27.20.110.

CHAPTER 27.22
PREVAILING WAGE REQUIREMENTS

27.22.010 Requirement

All Public Works Contracts must include the provisions needed to comply with the applicable prevailing wage requirements set forth in Chapter 14.09 of Title 14.

CHAPTER 27.24
BONDS, INSURANCE AND INDEMNITY

27.24.010 Application of Chapter

A. Except as provided in Subsection B, this Chapter 27.24 sets forth payment bond, performance bond, insurance and indemnity requirements for Public Works Contracts.

B. Notwithstanding Subsection A, this Chapter 27.24 does not apply to bond, insurance or indemnity requirements governed by a different Title of the San Jose Municipal Code, including subdivision improvement agreements governed by Title 19 and encroachment permits issued pursuant to Titles13 or 15.

Part 1
Bonds

27.24.020 Payment Bonds

In accordance with California Civil Code Section 9550, as it may be amended, the Director will require a Contractor that is awarded a Public Works Contract involving an expenditure of over $25,000 to provide a payment bond meeting the requirements of this Part 1 of this Chapter 27.24.

27.24.030 Payment Bond Requirements

A. The payment bond amount cannot be less than 100 percent of the total amount payable under the Public Works Contract.

B. The Contractor must provide an acceptable payment bond within the time set forth in the Public Works Contract, provided that under no circumstances can the Contractor start construction work until the required payment bond has been provided to the Director and approved by the City.

C. An acceptable payment bond is one that:

1. Is executed by the Contractor as principal;

2. Is executed as surety by a corporate surety authorized to be a corporate surety under the laws of California;

3. Otherwise complies with all California laws applicable to such bonds, including California Civil Code Sections 9550 through 9566, inclusive, as those sections may be amended; and

4. Complies with all other requirements reasonably required by the Director.

27.24.040 Performance Bonds

A. The Director will require a Contractor to provide a performance bond whenever a payment bond is required.

B. Only the Council can waive the performance bond requirement.

C. A performance bond must meet the same requirements as set forth for payment bonds in Section 27.24.030 of this Chapter 27.24.

27.24.050 Work on Public Property

The bond requirements in Sections 27.24.020 through 27.24.040 also apply to each Person performing construction work on any Public Property pursuant to a permit, except for any work that is done by the owner or occupier of property abutting upon a public street pursuant to a permit and that has a reasonable value of one hundred dollars or less.

27.24.060 Director's Discretion

For any construction project in which a payment and performance bond is not otherwise required under this Chapter 27.24, the Director has the discretion to require such bonds if the Director determines they would protect the City from non-performance by the Contractor or Persons working on the project from non-payment by the Contractor.

27.24.070 Multiple Sureties

The Contractor can satisfy its performance and payment bond obligations by submitting multiple bonds from multiple sureties provided each bond meets the requirements of this Chapter 27.24.

27.24.080 Other Bonds

In addition to payment and performance bonds, the Director may require any other kinds of bond(s) and may fix the amount of such bond(s) as part of a Public Works Contract.

27.24.090 Alternative Security

A. The Director cannot accept any alternative form of security for a payment bond.

B. For all bonds other than a payment bond, the Director may accept an alternative form of security, such as a certificate of deposit or a letter of credit, if the Director, after coordinating with the Office of the City Attorney, determines that the alternative form of security adequately protects the City against the risk being covered.

27.24.100 Cost of Bonds

A Person required to provide bonds in accordance with this Part 1 of this Chapter 27.24 must do so at that Person's sole cost.

Part 2
Insurance

27.24.110 Risk Manager Defined

For purposes of this Part 2, "Risk Manager" means the person from the City responsible for reviewing, determining and establishing appropriate insurance coverage and requirements for City contracts.

27.24.120 Insurance Requirements

The Risk Manager will determine and establish the appropriate insurance requirements, including coverages and coverage amounts, for all Public Works Contracts and all other contracts governed by this Title 27.

27.24.130 Contract Requirement

Public Works Contracts entered by the Director must conform to the insurance coverage and requirements established by the Risk Manager.

27.24.140 Proof of Insurance

A. Proof of insurance must be in the form of a complete and properly issued certificate of insurance, together with copies of all required endorsements.

B. Proof of insurance must be submitted to, and approved by, the Risk Manager.

27.24.150 Time for Providing Proof of Insurance

A. No Contractor can start performing any work pursuant to the Public Works Contract until the required proof of insurance has been submitted to, and approved by, the Risk Manager.

B. The Director may include provisions in a Public Works Contract requiring that proof of insurance be provided at the time the contract is executed or at any other time before the start of construction.

27.24.160 Waiver

Only the Council can waive the insurance required by this Part.

Part 3
Indemnification

27.24.170 General Requirement

Every Public Works Contract must include an appropriate provision, approved by the City Attorney, requiring the Contractor to indemnify and hold harmless the City.

27.24.180 Waiver

Only the Council can waive the indemnification required by this Part.

CHAPTER 27.26
COMPENSATION

27.26.010 Application of Chapter

This Chapter sets forth the requirements for payment of compensation in Public Works Contracts.

27.26.020 Conflict

To the extent they differ, this Chapter's provisions are intended to conflict with California Public Contract Code Sections 7100, 7101, 7107 and 20104.50, as those sections may be amended, and with any other section(s) of the California Public Contract Code addressing progress payments and retention.

Part 1
Progress Payments

27.26.030 Payment Application

The Contractor is responsible for submitting a progress payment application that complies with the requirements of, and includes the information and supporting documents required by, the Public Works Contract.

27.26.040 Release of Claims

A. The Director may include requirements in a Public Works Contract making a progress payment contingent on the Contractor providing a release of all claims related to the progress payment.

B. Requirements for a release under Subsection A of this Section 27.26.040 must allow the Contractor to exclude from the release disputed claim(s) if the Contractor:

1. States with specificity the basis of each disputed claim;

2. States the approximate amount of each disputed claim; and

3. Complies with any other contractual requirements related to asserting such a claim.

27.26.050 Deductions

A. The Director may include requirements in a Public Works Contract for withholding the following amounts from any progress payment: disputed amounts, retention, any other withholdings or deductions allowed under State law (such as for stop payment notices), and any other withholdings the Director determines are appropriate.

B. The Director must include as part of the progress payment written notice of any amounts withheld and the basis for withholding such amounts.

27.26.060 Timing

The City's performance standard for making progress payments as part of a Public Works Contract is 30 Calendar Days after the Director receives a progress payment application that complies with Section 27.26.030 of this Chapter 27.26.

27.26.070 Extra Compensation

A. The Director, in the Director's discretion, may include provisions in a Public Works Contract for the payment of extra compensation to the Contractor for cost reduction changes in the plans and specifications made pursuant to a proposal submitted by the Contractor.

B. Any provisions included pursuant to Subsection A of this Section 27.26.070 must provide for the Contractor and Director to negotiate the amount of extra compensation, provided that the extra compensation cannot exceed 50 percent of the net savings in construction costs as determined by the Director.

Part 2
Retention

27.26.080 Retention Amount

In accordance with California Public Contract Code Section 7201, as it may be amended, a Public Works Contract will not require retention to exceed 5 percent of a progress payment or total retention to exceed 5 percent of the contract price unless:

A. Before the procurement, the Director makes a written finding that the improvement being constructed is substantially complex and therefore requires a higher retention than 5 percent; and

B. The Director includes in the procurement documents details explaining the basis for the finding and the actual retention amount.

27.26.090 Decreasing Retention Amount

The Director will include reasonable requirements in Public Works Contracts for decreasing the amount of retention based on the progress of construction.

27.26.100 Securities/Escrow

In accordance with California Public Contract Code Section 22300, as it may be amended, a Public Works Contract will allow a Contractor to substitute securities for retention or to require the City to pay retention directly to an escrow agent.

27.26.110 Release of Retention

The Director will release retention to the Contractor in accordance with Part 3 of this Chapter 27.26.

27.26.120 Interest/Attorney's Fees

The interest and attorney's fees and costs provisions in California Public Contract Code Section 7107, as it may be amended, for untimely release of retention are not applicable to Public Works Contracts.

Part 3
Proposed Final Accounting

27.26.130 Requirement

The Public Works Contract will require the City to provide the Contractor with a proposed final accounting consistent with the requirements of this Part 3.

27.26.140 Contents

The proposed final accounting will be a proposed final financial statement of any compensation the City owes the Contractor and any moneys the Contractor owes the City. It must address the following financial elements as they exist at the time the accounting is prepared:

A. The original amount of the Public Works Contract;

B. Compensation adjustments;

C. Payments made by the City to the Contractor;

D. Payments owing to the Contractor by the City at the time of the proposed final accounting;

E. The retention balance amount and the amount of retention, if any, that the City will release to the Contractor after any withholdings; and

F. Any withholdings permitted in accordance with Section 27.26.160 of this Chapter 27.26.

27.26.150 Timing

The Public Works Contract will include time requirements for issuance of the proposed final accounting consistent with the following requirements:

A. Not any earlier than issuance of a certificate of substantial completion; and

B. Not any later than promptly following the City's final acceptance of the Public Works Project.

27.26.160 Permissible Withholds

Notwithstanding anything to the contrary in this Title 27, the Public Works Contract will include requirements for the withholding of any of the following amounts from any moneys due and owing the Contractor, including retention.

A. 150 percent of the cost to complete any unfinished work, including outstanding punch list work, work not approved or accepted in accordance with the plans and specifications, unfinished or unsubmitted as-built drawings, warranties, and other project-related documents, or any other outstanding work required by the Public Works Contract.

1. The City will calculate the withholding based on an estimate of the cost for the City to complete unfinished work, including the City's administrative costs of contracting with another entity to perform the work.

2. If the Contractor completes unfinished work for which the City has withheld money, the City will release to the Contractor the moneys withheld for such work.

B. 150 percent of the estimated amount of any liability to the City for any damage to property or Person caused by the Contractor. Once the City's actual liability is determined, the Director will release to the Contractor any excess moneys withheld for such liability.

C. Liquidated damages and any other amounts that may be imposed by the Director in accordance with the Public Works Contract.

D. Sufficient amounts to pay the claims stated in any outstanding stop payment notices, to provide for the City's reasonable cost of any litigation pursuant to the stop payment notice, and to otherwise comply with any law regarding stop payment notices.

E. The amount of any penalties, fines, charges, or assessments resulting from the Contractor's violation of any law, statute, regulation, permit or other requirement imposed by the City or a public entity having jurisdiction over the Public Works Project.

F. Any credits to which the City is entitled under the Public Works Contract.

G. Up to 150 percent of the amount involved in any dispute between the City and the Contractor.

27.26.170 Response

A. The Public Works Contract will provide requirements for the Contractor to submit written objections to the proposed final accounting and a Statement of Claims in accordance with Part 5 of Chapter 27.28.

B. The Public Works Contract will not require the Contractor to respond to the proposed final accounting any sooner than 30 Calendar Days following the date upon which the City sent the proposed final accounting to the Contractor.

Part 4
Final Accounting

27.26.180 Final Accounting

The Public Works Contract will require the City to provide the Contractor with a final accounting consistent with the requirements of this Part 4.

27.26.190 Contents

A. The final accounting will be a final financial statement of any compensation the City owes the Contractor and any moneys the Contractor owes the City.

B. The final accounting will include adjustments to the proposed final accounting based on the following:

1. Contractor's completion of any outstanding work since the issuance of the proposed final accounting;

2. City payments since the issuance of the proposed final accounting;

3. Any objection or claims raised by the Contractor that the City determines are meritorious; and

4. Any other financial changes since issuance of the proposed final accounting.

C. The final accounting will include the City's response to any objections and Statement of Claims submitted by the Contractor in response to the proposed final accounting.

27.26.200 Timing

The Public Works Contract will provide requirements for the City to issue the final accounting following a Contractor's response to the proposed final accounting or following the time within which the Contractor should have submitted a response to the proposed final accounting if the Contractor does not timely respond.

27.26.210 Undisputed Amounts

The Public Works Contract will include requirements for the City to promptly pay any amounts determined by the City in the final accounting to be due the Contractor.

27.26.220 Disputes

The Public Works Contract will provide for the City and Contractor to resolve any disputes over the final accounting in accordance with Chapter 27.28 of this Title 27.

CHAPTER 27.28
DISPUTE RESOLUTION

Part 1
Application

27.28.010 Application of Chapter

This Chapter sets forth the dispute avoidance and resolution requirements for Public Works Contracts.

27.28.020 Alternative Resolution Procedures

Notwithstanding anything to the contrary in this Chapter 27.28, the City and Contractor may at any time mutually agree in writing to forego the dispute resolution procedures in this Chapter and to seek resolution of a dispute through other methods, including litigation.

27.28.030 Conflict

The provisions of this Chapter are intended to conflict with Section 9204 and Article 1.5 of Chapter 1 of Part 3 of the California Public Contract Code (starting with Section 20104), as those sections may be amended, and with any other section(s) of the Public Contract Code that address Claims and the resolution of Claims.

Part 2
Definitions

27.28.040 Definitions

The definitions in this Part 2 govern the application and interpretation of this Chapter.

27.28.050 Claim

"Claim" means a dispute between the City and a Contractor over any of the following:

A. The time for completing the Public Works Project;

B. The payment of money or damages arising from work performed by a Contractor or a subcontractor;

C. The performance of work shown or contemplated in the Public Works Contract; or

D. An amount the payment of which is disputed by the City.

27.28.060 Dispute Review Board

"Dispute Review Board" means a panel of three independent individuals established to provide non-binding recommendations regarding the resolution of a Claim.

27.28.070 Facilitated Dispute Resolution

"Facilitated Dispute Resolution" means an informal, non-binding dispute resolution process in which the City and a Contractor meet with a trained, neutral facilitator in an effort to reach a mutually agreeable resolution to a Claim.

27.28.080 Notice of Potential Claim

“Notice of Potential Claim” means a written notice provided by a Contractor to the City identifying one or more potential Claims and otherwise meeting the requirements of Part 4 of this Chapter 27.28.

27.28.090 Partnering

A. "Partnering" is the development of team-based relationships between a Contractor and the City in which:

1. Trust and open communications are encouraged and expected from participants;

2. Parties address and resolve issues and problems promptly and at the lowest possible level;

3. Parties seek to develop solutions that are agreeable and meet the needs of everyone involved;

4. All parties have identified common goals for the partnerships and at the same time are aware of and respect each other's goals and values; and

5. Parties seek input from each other in an effort to find better solutions for the problems and issues at hand, thus creating synergy in the relationship that fosters cooperation and improves the productivity of the partnership.

B. “Partnering” does not denote a legal relationship of agency, partnership, or joint venture between the City and a Contractor.

27.28.100 Statement of Claims

“Statement of Claims” means a written statement provided by a Contractor to the Director asserting one or more Claims and otherwise meeting the requirements of Part 5 of this Chapter 27.28.

Part 3
Partnering

27.28.110 General Practice

The City will incorporate Partnering into the administration of its Public Works Contracts.

27.28.120 Partnering Workshop

A. For Major Public Works Contracts exceeding $1,000,000, the City and Contractor will engage in at least one pre-construction workshop to mutually develop a Partnering strategy.

B. The City and Contractor will engage in the Partnering workshop at a mutually agreed upon time promptly following contract award.

27.28.130 Facilitated Partnering

A. For Major Public Works Contracts in the amount of $10,000,000 or more, an independent facilitator must conduct the pre-construction Partnering workshop required by Section 27.28.120.

B. For Major Public Works Contracts in the amount of $1,000,000 or more but less than $10,000,000, the Contractor has the option, upon reasonable notice to the City, of having an independent facilitator conduct the pre-construction Partnering workshop required by Section 27.28.120.

27.28.140 Additional Partnering Workshops

The City and Contractor may agree to engage in additional Partnering workshops beyond the one required by Section 27.28.120 and may agree to have an independent facilitator conduct any additional Partnering workshops.

27.28.150 Selecting a Facilitator

The City and Contractor will mutually agree on a facilitator for any Partnering workshop that will have an independent facilitator.

27.28.160 Costs

The Director will include appropriate provisions in the Major Public Works Contract providing for the City and Contractor to share equally the costs of Partnering workshops.

Part 4
Notice of Potential Claim

27.28.170 Early Resolution

The City's intent is that the City and Contractor raise and, if possible, resolve disputes as early as possible.

27.28.180 Notice of Potential Claim

The Contractor must submit to the Director a Notice of Potential Claim no later than 15 Calendar Days after the event, occurrence or other cause giving rise to a potential Claim.

27.28.190 Contents

A Notice of Potential Claim must include the following information:

A. The basis of the potential Claim; and

B. All documentation reasonably needed for the Director to evaluate the potential Claim, or a statement of why such documentation is not available and when the Contractor expects it to be available.

27.28.200 Pass-Through Claims

A. A Person furnishing labor, materials and/or equipment under contract to the Contractor cannot submit a potential Claim directly to the City.

B. The Public Works Contract will allow the Contractor to pass through a potential Claim from a Person furnishing labor, materials and/or equipment under contract to the Contractor only if the Contractor certifies in the Notice of Potential Claim that the Contractor reviewed the potential Claim and reasonably concluded the potential Claim has merit.

27.28.210 Failure to Submit

A Contractor is not entitled to additional compensation or an extension of time based on any Claim for which the Contractor does not submit a proper and timely Notice of Potential Claim in accordance with Part 4 of this Chapter 27.28.

27.28.220 Response

The Director will provide a written response to a Notice of Potential Claim stating whether the City accepts all or part of the potential Claim, disagrees with all or part of the potential Claim, or lacks sufficient information to fully evaluate the potential Claim.

27.28.230 Additional Dispute Resolution

The Director is authorized to include in a Public Works Contract provisions for dispute resolution during the progress of the construction.

Part 5
Statement of Claims

27.28.240 Statement of Claims

The Contractor will submit to the Director a Statement of Claims in accordance with Section 27.26.170 of Chapter 27.26.

27.28.250 Contents

A Statement of Claims must include the following information:

A. Each Claim, separately stated and identified, that the Contractor is asserting against the City, along with the basis and amount of the Claim;

B. For each Claim, all documentation reasonably needed for the Director to evaluate and determine the merits of the Claim; and

C. A Contractor certification that the Claims and all information provided in the Statement of Claims are accurate and true to the best of Contractor's knowledge.

27.28.260 Precluded Claims

The Contractor is precluded from pursuing any of the following:

A. A dispute for which the Contractor failed to submit a Notice of Potential Claim as required by Part 4 of this Chapter 27.28;

B. Any dispute not included in the Contractor's Statement of Claims;

C. Any dispute included in the Statement of Claims for which the Contractor fails to provide enough documentation for the Director to evaluate and determine the merits; and

D. Any pass-through Claim arising from a Person or entity that furnished labor, materials and/or equipment under contract to the Contractor unless the Contractor complies with the certification requirement in Section 27.28.200.

27.28.270 Response to Statement of Claims

A. The Director will respond, in writing, to a Statement of Claims by indicating whether:

1. A Claim, in whole or in part, is disputed and the basis of any such dispute; or

2. The Contractor provided insufficient information to determine the validity of the Claims.

B. The Director will seek the appropriate authorization to pay the Contractor the amount of any Claims, or portions of Claims, not in dispute.

27.28.280 Dispute Resolution Process

A. Within 15 Calendar Days of the Director's response to a Statement of Claims, the Contractor may, in the Contractor's discretion, request a settlement conference in accordance with Part 6 of this Chapter 27.28.

B. If the Contractor requests a settlement conference and the settlement conference does not result in the resolution of the disputed Claims, the Contractor may, in the Contractor's discretion, request facilitated dispute resolution in accordance with Parts 7 and 8 of this Chapter 27.28.

Part 6
Settlement Conference

27.28.290 Settlement Conference

The purpose of a settlement conference is to try informally to resolve disputed Claim(s) in a manner acceptable to both parties.

27.28.300 Timing

The Director will conduct a settlement conference promptly following a Contractor's request for the conference.

27.28.310 Documents

A. The Contractor and Director may mutually agree to exchange documents setting forth their respective positions on the disputed Claim(s).

B. If the Contractor and Director agree to exchange documents, they will mutually agree on a time for the exchange that is sufficiently before the settlement conference to allow all parties to adequately consider the documents.

27.28.320 Procedures

The Director will conduct the settlement conference informally, with both sides being able to present their respective issues.

Part 7
Facilitated Dispute Resolution

27.28.330 Facilitated Dispute Resolution

If the Contractor requests a settlement conference in accordance with Part 6 of this Chapter 27.28 and the settlement conference does not resolve all the Claims, the Contractor may request the parties meet with a trained, neutral facilitator in an effort to reach a mutually agreeable resolution of the disputed Claim(s).

27.28.340 Informal Process

A. Facilitated dispute resolution will be informal and non-binding, with each party having an opportunity to present its position and supporting information.

B. Recommendations resulting from facilitated dispute resolution are not admissible in court in any subsequent litigation.

27.26.350 Selection and Scheduling

The Director and Contractor will mutually agree on the scheduling of facilitated dispute resolution and the selection of a person to act as the facilitator.

27.26.360 Costs

The Director will include appropriate provisions in the Public Works Contract providing for the City and Contractor to share equally the costs of facilitated dispute resolution.

Part 8
Dispute Review Board

27.28.370 Purpose

The purpose of a dispute review board is to provide a non-binding recommendation as to the resolution of a disputed Claim that could not be resolved by means of the settlement conference conducted in accordance with Part 6 of this Chapter 27.28.

27.28.380 Requirement

A. The Director and Contractor will establish a dispute review board before construction starts and have the board available through construction if the Major Public Works Contract is in the amount of $10,000,000 or more, and the Director determines the work is sufficiently complex to warrant the cost of such a board.

B. If the Major Public Works Contract is in the amount of $1,000,000 or more but less than $10,000,000, the Director or Contractor may request, at any time before project completion, the establishment of a dispute review board.

27.28.390 Selection of Board Members

The members of a dispute review board will be selected as follows: the Director will select a member, the Contractor will select a member and those 2 members will select a third member.

27.28.400 Board Member Impartiality

No member serving on a dispute review board can have any relationship with the City, Contractor or the construction project that would prevent that member from performing his or her duties in an impartial and fair manner.

27.28.410 Non-Binding

A. The dispute review board is an advisory body that issues non-binding recommendations.

B. The recommendations of the dispute review board are not admissible in court in any subsequent litigation.

27.28.420 Costs

The Director will include appropriate provisions in the Major Public Works Contract providing for the City and Contractor to share equally all costs associated with a dispute review board.

CHAPTER 27.30
CHANGES

27.30.010 Application of Chapter

This Chapter sets forth the requirements for using Change Orders, Directed Change Orders, and Emergency Change Orders.

Part 1
Definitions

27.30.020 Definitions

The definitions in this Part 1 govern the application and interpretation of this Chapter.

27.30.030 Change Order

"Change Order" means a written amendment to the Public Works Contract or work order, executed by both the City and Contractor, that does any of the following:

A. Changes the scope of work in the contract;

B. Adjusts the time for completing all or a portion of the scope of work in the contract;

C. Adjusts the Contractor's compensation to reflect any change in the scope of work or any time adjustment; or

D. Makes any other changes arising from a change to the scope of work, a time adjustment or an adjustment to the Contractor's compensation.

27.30.040 Directed Change Order

"Directed Change Order" means a written amendment to the Public Works Contract or work order that meets the requirements of a Change Order except that it is unilaterally issued by the City.

27.30.050 Emergency Change Order

"Emergency Change Order" means a Change Order or a Directed Change Order that provides for the Contractor to perform work necessary for the immediate preservation and safety of persons and/or property at or around the construction site.

Part 2
Authority to Execute

27.30.060 Council Authority

A. The Council reserves the authority to approve all Change Orders and Directed Change Orders except as delegated in this Part.

B. The Director will execute, on behalf of the Council, all Change Orders and Directed Change Orders approved by the Council.

27.30.070 Delegation of Authority

The Council, by resolution, may delegate to the Director the authority to approve and execute Change Orders and Directed Change Orders that the Director does not otherwise have authority to approve and execute.

27.30.080 Director's Authority

The Director has the authority to negotiate, execute and issue a Change Order or Directed Change Order that meets each of the following requirements:

A. The Change Order or Directed Change Order amount, when aggregated with the amount of all previously issued Change Orders and Directed Change Orders for the Public Works Contract or work order, does not exceed the contingency;

B. The Change Order or Directed Change Order does not extend the completion date by more than 180 Calendar Days; and

C. If the Change Order or Directed Change Order alters the scope of work, it complies with the requirements of Section 27.30.100 or 27.30.110, whichever is applicable.

27.30.090 Emergency Change Order

Subject to there being a sufficient unexpended and unencumbered balance in a proper appropriation, the Director has the authority to negotiate, execute and issue an Emergency Change Order in any dollar amount.

Part 3
General Requirements

27.30.100 Change Orders

A Change Order that modifies the scope of work must comply with either one of the following requirements:

A. The modification is needed to properly complete the construction work as contemplated by the City at the time the City awarded the Public Works Contract or work order; or

B. The modification meets each of the following requirements:

1. Its cost is not excessive relative to the cost of the Public Works Project to which it is being added;

2. It involves work on the same worksite as the Public Works Project to which it is being added and is related to that Public Works Project;

3. It is the most efficient way of completing the work reflected in the modification;

4. The Contractor has the expertise to perform the modification; and

5. The Contractor will perform the modification at a reasonable cost.

27.30.110 Directed Change Orders

A Directed Change Order can only modify the scope of work as needed to properly complete the construction work as contemplated by the City at the time it awarded the Public Works Contract or work order.

27.30.120 Emergency Change Order

Emergency Change Orders can only require a Contractor to perform work needed to address an imminent threat to the safety of persons and property on or around the work site.

27.30.130 Calculating Amount

If a Change Order or Directed Change Order includes one or more items that reduce the Contractor's compensation, and one or more items that increase the Contractor's

compensation, the amount of the Change Order or Directed Change Order is the net amount.

27.30.140 Compensation Reduction

Any reduction in compensation payable under a Public Works Contract or work order resulting from a Change Order or Directed Change Order will be treated as additional contingency, even if this results in the amount of the contingency exceeding the original contingency amount established for the Public Works Project.

CHAPTER 27.32
SUBCONTRACTORS

27.32.010 Application of Chapter

This Chapter sets forth requirements applicable to a Contractor's use of subcontractors.

27.32.020 State Law

Except as otherwise set forth in this Chapter 27.32, the City will follow the requirements of the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code Sections 4100 – 4114), as that Act may be amended.

27.32.030 Subcontractor Substitutions

If a Contractor requests to substitute a new subcontractor for one listed in the Contractor's original bid, the Director is authorized to do the following in the manner set forth in the California Subletting and Subcontracting Fair Practices Act:

A. Give all required written notices;

B. Conduct an informal hearing on the Contractor's substitution request if the listed subcontractor objects to the substitution and issue a preliminary decision on the matter; and

C. If the subcontractor wants the Council to make the final decision, make a recommendation to the Council based on the preliminary decision.

27.30.040 Voluntary Assignment

The Director is authorized to consent to a subcontract being voluntarily assigned or transferred.

27.30.050 Inadvertent Listing Error

If a Contractor claims, in accordance with the California Subletting and Subcontracting Fair Practices Act, that it made an inadvertent clerical error in listing a subcontractor, the Director is authorized to do the following:

A. Consent to the requested substitution if the Contractor, the listed subcontractor and the intended subcontractor agree that the Contractor made an inadvertent clerical error;

B. Consent to the requested substitution if the Contractor and the intended subcontractor agree that the Contractor made an inadvertent clerical error, and if the listed subcontractor fails to submit written objections to the Contractor's claim within 5 Business Days of the Contractor's notice of its claim; and

C. If the listed subcontractor submits written objections to the Contractor's claim within 5 Business Days of the Contractor's notice of its claim, investigate the Contractor's claim, conduct an informal hearing on the matter and issue a preliminary decision, and if the subcontractor wants the Council to make the final decision, make a recommendation to the Council based on the preliminary decision.

27.32.060 No Subcontractor Listed

The Contractor cannot subcontract any work in excess of ½ of 1 percent of the Contractor's total bid if it did not list a subcontractor to perform such work unless the Director makes a written finding that subcontracting the work is warranted by a public emergency or necessity, or is in the City's best interests.

CHAPTER 27.34
INTERGOVERNMENTAL CONTRACTS

27.34.010 Application of Chapter

This Chapter 27.34 applies to Intergovernmental Contracts, as defined herein.

27.34.020 Definition

Intergovernmental Contract means a contract in which a Public Works Project is done for the City by another public or governmental body or agency.

27.34.030 Charter Exception

Section 1217(i)(1) of the City of San José Charter excepts Intergovernmental Contracts from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter.

27.34.040 Council Authority

The authority to award an Intergovernmental Contract that exceeds the threshold amount for a Minor Public Works Contract is reserved to the Council.

27.34.050 Contract Requirements

In addition to any other terms and conditions the City may require, the Intergovernmental Contract must meet the following minimum requirements:

A. The contract must include payment and performance bond requirements consistent with Part 1 of Chapter 27.24 of this Title 27, and require the bonds to name the City as an additional obligee;

B. The contract must include insurance requirements complying with Part 2 of Chapter 27.24 of this Title 27, and require the City to be named as an additional insured;

C. The contract must include appropriate indemnity requirements that have been approved by the City Attorney; and

D. The contract must comply with all other applicable laws and regulations.

CHAPTER 27.36
CITY-PUBLIC UTILITY CONTRACT

27.36.010 Application of Chapter

This Chapter 27.36 applies to City-Public Utility Contracts, as defined herein.

27.36.020 Definition

City-Public Utility Contract means a contract in which a Public Works Project is done for the City by a public utility (publicly owned or regulated by the California Public Utilities Commission) and where the work involves the property of the public utility or is otherwise of direct concern to both the City and the public utility.

27.36.030 Charter Exception

Section 1217(i)(2) of the City of San José Charter excepts City-Public Utility Contracts from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter.

27.36.040 Council Authority

The authority to award a City-Public Utility Contract that exceeds the threshold amount for a Minor Public Works Contract is reserved to the Council.

27.36.050 Contract Requirements

In addition to any other terms and conditions that the City may require, the City-Public Utility Contract must meet the following minimum requirements:

A. The contract must include payment and performance bond requirements consistent with Part 1 of Chapter 27.24 of this Title 27, and require the bonds to name the City as an additional obligee;

B. The contract must include insurance requirements complying with Part 2 of Chapter 27.24 of this Title 27, and require the City to be named as an additional insured;

C. The contract must include appropriate indemnity requirements that have been approved by the City Attorney; and

D. The contract must comply with all other applicable laws and regulations.

CHAPTER 27.38
CITY-DEVELOPER CONTRACT

27.38.010 Application of Chapter

This Chapter 27.38 applies to City-Developer Contracts, as defined herein.

27.38.020 Definition

A. City-Developer Contract means a contract for a Public Works Project performed by a developer or real property owner in connection with its private property development.

B. City-Developer Contract does not include a contract involving improvements by a subdivider as a condition of the approval of a final map or parcel map. Such

contracts are governed by the requirements of Title 19 of the San Jose Municipal Code.

27.38.030 Charter Exception

Section 1217(i)(3) of the City of San José Charter excepts City-Developer Contracts from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter.

27.38.040 Council Authority

A. The authority to award a City-Developer Contract in which the amount paid by the City exceeds the threshold amount for a Minor Public Works Contract is reserved to the Council.

B. The Council may establish a contingency in conjunction with the execution of a City-Developer Agreement in which the City is reimbursing the developer or real property owner for work in accordance with Section 27.38.070.

27.38.050 Director's Authority

A. In accordance with Subsection C of Section 27.06.090, the Director of the Department of Public Works can execute a City-Developer Contract in which the amount paid by the City is equal to or less than the threshold amount for a Minor Public Works Contract.

B. The Director cannot include a contingency in any City-Developer Contract that the Director is authorized to execute under this Section 27.38.050.

27.38.060 Plan Review

A. Every City-Developer Contract must include appropriate requirements for the Director to review and approve the plan or design of the Public Works Project before construction starts.

B. The Director is authorized to approve the plan or design on behalf of the City.

27.38.070 Reimbursement

The City may agree in a City-Developer Contract to reimburse the developer or real property owner partially or entirely for the cost of an improvement required by the Contract if, and only if, all the following conditions exist:

A. The developer or real property owner will perform the reimbursable work in connection with its private property development;

B. The reimbursable work is related to an improvement required as a condition of the City's approval of the private property development but involves work exceeding the size, area, capacity, capabilities, or other similar requirements of the required improvement;

C. The developer or real property owner can perform the reimbursable work expeditiously and with no more inconvenience to the public than if the City were to perform the work;

D. The reimbursement amount is reasonably likely to be no more than what the City would have to pay to complete the same work; and

E. The developer or real property owner complies with the prevailing wage requirements in Chapter 14.09 of Title 14 to the extent they are applicable.

27.38.080 Security

Each City-Developer Contract will include the following types of security in the following amounts.

A. Performance security to secure the faithful performance by the developer or real property owner to construct the Public Works Project required by the City-Developer Contract. Performance security will be in the amount of 100 percent of the estimated cost of the Public Works Project required by the City-Developer Contract.

B. Payment security to secure payment by the developer or real property owner to any contractor, subcontractor, supplier or other person furnishing labor or materials to the Public Works Project required by the City-Developer Contract. Payment security will be in the amount of 100 percent of the estimated cost of the Public Works Project required by the City-Developer Contract.

C. Warranty security to warrant against defective labor and materials the work undertaken by the developer or real property owner under the City-Developer Contract. Warranty security will be for a period of one (1) year following the City's acceptance of the completed Public Works Project required by the City-Developer Contract. It will be in the amount of 25 percent of the estimated cost of the Public Works Project required by the City-Developer Contract.

D. Monument security to secure the developer or real property owner setting any public monuments required by the City-Developer Contract before the City's

acceptance of the completed Public Works Project. Monument security will be in the amount of 100 percent of the estimated cost of setting the public monuments required by the City-Developer Contract.

27.38.090 Security Form

A. For a City-Developer Contract in which the estimated cost of the required Public Works Project exceeds $250,000, the payment security and performance security must be in the form of bonds meeting the requirements of Part 1 of Chapter 27.24 of this Title 27.

B. For a City-Developer Contract in which the estimated cost of the required Public Works Project is $250,000 or less, and for the warranty and monument securities required by a City-Developer Contract of any amount, security may be in any of the following forms.

1. Bonds meeting the requirements of Part 1 of Chapter 27.24 of this Title 27.

2. An irrevocable standby letter of credit from a financial institution and in a form acceptable to the Director and the City Attorney. The City must have the ability to withdraw funds if the developer or property owner fails to fulfill any of the obligations for which the security is given.

3. A certificate of deposit from a financial institution and in a form acceptable to the Director and the City Attorney. The City must have the ability to withdraw funds if the developer or property owner fails to fulfill any of the obligations for which the security is given.

4. A cash deposit with the City under terms and conditions that allow the City to use the funds if the developer or property owner fails to fulfill any of the obligations for which the security is given.

27.38.100 Clean-Up Deposit

A. If the estimated cost of the Public Works Project required by the City-Developer Contract exceeds $250,000, then the developer or real property owner must deposit with the Director a sum of money that the City can use to remedy the developer's or owner's failure for any reason to perform any obligation of the Contract.

B. The deposit must be in the following amounts:

1. 5% of the first $100,000.00 of the estimated cost of the of the Public Works Project,

2. 2.5% of the next $400,000.00 of the estimated cost of the of the Public Works Project, and

3. 1% of the estimated cost of the Public Works Project exceeding $500,000.

C. The developer or real property owner must deposit the money with the City at the time it executes the City-Developer Contract.

D. No deposit is required if the City-Developer Contract provides for the City to reimburse the developer or real property owner pursuant to Section 27.38.070.

E. The Director will return any unexpended portion of such deposit following the City's final acceptance of the Public Works Project.

27.38.110 Insurance

Every City-Developer Contract must require insurance in accordance with Part 2 of Chapter 27.24 of this Title 27.

27.38.120 Indemnity

Every City-Developer Contract must require an indemnity provision in accordance with Part 3 of Chapter 27.24 of this Title 27.

27.38.130 Environmental Mitigation, Monitoring and Reporting

Every City-Developer Contract must include appropriate provisions complying with the requirements of Chapter 27.18 of this Title 27.

27.38.140 In Lieu Fee

The Director is authorized to enter into and execute a City-Developer Contract that provides for payment of a fee in lieu of construction of public improvements required as a condition of any development permit issued by the City.

27.38.150 Refunds of Fees

A. The Director may refund any fee, or portion thereof, paid as a condition of a development approval if the Director determines that:

1. The fee, or portion thereof, was collected in error;

2. The condition of development approval requiring payment of the fee is amended after payment of the fee to provide that the fee is not required or the amount thereof is reduced; or

3. The development approval expires and no development thereunder has commenced.

B. For the purposes of this Section, "development approval" means approval of any development permit pursuant to Chapter 20.100 of the Municipal Code.

CHAPTER 27.40
SPECIALTY WORK

27.40.010 Application of Chapter

This Chapter 27.40 applies to Public Works Projects involving Specialty Work, as defined herein.

27.40.020 Definition

Specialty Work means a Public Works Project in which the work meets each of the following requirements:

A. The work necessary to implement the Public Works Project involves a highly technical or professional skill or ability;

B. The highly technical or professional skill or ability is a key factor in selecting the person to perform the work; and

C. So few people have the skill or ability that a competitive procurement would not be practical.

27.40.030 Charter Exception

Section 1217(i)(4) of the City of San José Charter excepts a Public Works Project involving Specialty Work from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter.

27.40.040 Council Authority

The authority to award a Major Public Works Contract involving Specialty Work is reserved to the Council.

27.40.050 Contract Requirements

A Public Works Contract involving Specialty Work must comply with all requirements of this Title except those involving a competitive procurement.

CHAPTER 27.42
WORK OF URGENT NECESSITY

27.42.010 Application of Chapter

This Chapter 27.42 applies to expenditures for Work of Urgent Necessity, as defined herein.

27.42.020 Definition

Work of Urgent Necessity means a Public Works Project in which the work meets each of the following requirements:

A. There is an urgent need to perform the work immediately to preserve life, health or property; and,

B. The urgent need to perform the work makes the applicable competitive procurement requirements impracticable.

27.42.030 Charter Exception

Section 1217(i)(5) of the City of San José Charter excepts a Public Works Project involving Work of Urgent Necessity from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter provided the Council adopts, by approval of at least 8 members, a resolution that:

A. Authorizes the expenditure, and

B. Sets forth the facts demonstrating that the Public Works Project involves Work of Urgent Necessity.

27.42.040 Council Authority

The authority to award a Major Public Works Contract involving Work of Urgent Necessity is reserved to the Council.

27.42.050 Contract Requirements

Other than the competitive procurement requirements, a Public Works Contract for a Work of Urgent Necessity must comply with as many of the requirements of this Title as reasonably possible considering the time constraints created by the urgency.

CHAPTER 27.44
EMERGENCY PUBLIC WORKS CONTRACT

27.44.010 Application of Chapter

This Chapter 27.44 applies to procuring a Public Works Contract in accordance with Section 203 of the City of San José Charter.

27.44.020 Requirement

Section 203 of the City of San José Charter authorizes the City to respond to an emergency resulting from war, enemy-caused calamity or other disasters of whatever nature in any manner authorized by the laws of the State of California for such purposes.

27.44.030 Public Bidding Exception

Acting under the emergency powers granted by Section 203 of the San José Charter, the City may procure a Public Works Contract without Public Bidding in accordance with the requirements of Section 22050 of the California Public Contract Code or any other provisions of State law that exempt the award of such contracts from competitive procurement.

27.44.040 Contract Requirements

A Public Works Contract awarded by the City under this Chapter 27.44 must comply with as many of the requirements of this Title applicable to Public Works Contracts, excepting those applicable to Public Bidding, as reasonably possible considering the time constraints created by the emergency.

CHAPTER 27.46
IDLE ACT

27.46.010 Application of Chapter

This Chapter 27.46 applies to a Major Public Works Contract in which the solicitation of bids would be an Idle Act, as defined herein.

27.46.020 Definition

"Idle Act" means that soliciting bids would not provide any significant value or benefit to the City considered in the context of the purpose and goals of Public Bidding.

27.46.030 Public Bidding Exception

Section 1217(i)(6) of the City of San José Charter excepts a Public Works Project from the Major Public Works Contract procurement requirements of Section 1217(c) of the City of San José Charter if the solicitation of bids would be an Idle Act.

27.46.040 Council Authority

The authority to award a Major Public Works Contract based on a determination that soliciting bids would be an Idle Act is reserved to the Council.

27.46.050 Contract Requirements

A Major Public Works Contract awarded based on a determination that the solicitation of bids would be an Idle Act must comply with the requirements of this Title except those applicable to Public Bidding.

CHAPTER 27.48
CITY EMPLOYEES CONSTRUCTING PUBLIC WORKS

27.48.010 Application of Chapter

This Chapter sets forth the authority of the City to have its employees construct a Public Works Project.

27.48.020 Authority

The City can have its employees construct Public Works Projects in accordance with this Chapter 27.48 only upon determining that such employees have the skill to perform the work and that having City employees perform the work is in the City's best interests.

27.48.030 Minor Public Works

City employees can perform a Public Works Project if the Director of the department whose employees will perform the work makes a written determination that the cost of constructing the Public Works Project, excluding the cost of materials, supplies and equipment, is not more than the threshold amount of a Minor Public Works Contract.

27.48.040 Specialty Work

City employees can perform a Public Works Project involving Specialty Work, as defined in Section 27.40.020 of Chapter 27.40, if the Council determines the City employees possess the necessary technical or professional skill to perform the Specialty Work.

27.48.050 Work of Urgent Necessity

City employees can perform a Public Works Project involving Work of Urgent Necessity, as defined in Section 27.42.020 of Chapter 27.42, if the Council adopts the resolution required by Section 1217(i)(5) of the City of San José Charter and approves the work being done by City employees.

27.48.060 No Bids

In accordance with Section 1217(h) of the City of San José Charter, City employees can perform work that was included in a request for bids for a Major Public Works Contract for which the City received no bids.

27.48.070 High Rebids

In accordance with Section 1217(h)(3) of the Charter of the City of San José, City employees can perform work that was included in a request for bids for a Major Public Works Contract and, after receiving and rejecting all bids and after readvertising for and receiving new bids, the Council determines the bids are excessive.

CHAPTER 27.50
PUBLIC REPORTING

27.50.010 Application of Chapter

This Chapter sets forth reporting requirements.

27.50.020 Director's Report

The Director will provide to the City Manager on at least a bi-annual basis, as specified by the City Manager, a report setting forth all Public Works Contracts, work orders, change orders, permits and other related documents needed to implement a Public Works Project that the Director executed pursuant to this Title 27 since the last report.

A. For Public Works Contracts and work order, the report must include the amounts paid and/or payable by the City, and a general description of the

scope of work.

B. For change orders, the report must include the amounts paid and/or payable by the City, the scope of the change order and the reason for the change order.

27.50.030 City Manager Report

The City Manager will compile the report(s) submitted pursuant to Section 27.50.020 and make the report public on the City's official website and provide the Council with a copy of the report.

PASSED FOR PUBLICATION of title this _____ day of _____, 2019 by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk