

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.04.040 OF CHAPTER 4.04 AND SECTIONS 4.12.055 AND 4.12.110 OF CHAPTER 4.12 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO ALIGN THE PROCESS FOR SELECTION OF ARCHITECTURAL AND ENGINEERING CONSULTANTS TO BE CONSISTENT WITH THAT OF OTHER CONSULTANT PROCUREMENTS

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

SECTION 1. Section 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code is amended to read as follows:

4.04.020 Contract Authority of the City Manager

- A. The City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council, any Contract, for which:
1. Moneys have been appropriated; and
 2. There is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and
 3. The total monetary value expended or received by the City does not exceed the amount listed below with respect to the type of contract:
 - a. Emergency purchases pursuant to Section 4.12.220 regardless of the amount expended;

- b. Agreements for the lease or purchase of supplies materials and equipment including services incidental to such lease or purchase, having a maximum value of One Million Dollars (\$1,000,000) (as adjusted pursuant to Section 4.04.085), provided that the value of services incidental to such lease or purchase shall not exceed the lesser of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085) or twenty five-percent (25%) of the total contract value;
- c. Agreements for services, ~~other than professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms,~~ having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- d. Agreements relating to the grant of funds to or from the City and agreements for the acquisition of public artwork having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
- e. Sponsorship Agreements (as described in Section 4.04.010A.7). having a maximum value of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085), each with a term not exceeding three (3) years, and which otherwise comply with City Council policy;

- f. All other types of contracts having a maximum value of One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085).
- B. In addition, the City Manager is authorized to enter into and execute for and on behalf of the City of San José, without the prior approval of the City Council the following:
1. Any Contract for the payment of fees imposed on the developer of a residential project pursuant to Chapter 14.25 or Chapter 19.38 of this Code;
 2. Leases of property where the City is a lessee or lessor, where the rental payments do not exceed a cumulative total of Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085);
 3. One or more amendments to a lease, where City is a lessee or lessor, for the purpose of undertaking a cumulative total of no more than One Hundred Thousand Dollars (\$100,000) (as adjusted pursuant to Section 4.04.085) in improvements to the leased property over the term of the lease, including option periods;
 4. Tenant estoppel certificates on behalf of the City, where City is a landlord, tenant or subtenant under an existing lease;
 5. Agreements for the purchase or donation of fee interests in real property or for the grant of easements to the City, and all documents necessary to complete the purchase, where:

- a. the real property or the easement is being acquired in order to implement a project approved by the City Council; and
 - b. the grant of easement or acquisition of real property has been determined to present no significant toxics liability; and
 - c. the compensation to the seller of the real property or grantor of the easement does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085) and all costs of purchase and additional costs of escrow and closing are lawfully available in accordance with Subsections 4.04.020 A. 1 and 2 above.
6. Temporary construction easements for terms not exceeding two (2) years where the City is grantor or grantee and the compensation for the temporary construction easement rights does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085); and
7. Agreements for the sale of fee interests in real property where:
- a. The real property has been declared surplus to the needs of the City by the City Council as provided in Chapter 4.20; and
 - b. The process for conducting the sale is approved by the City Council in advance of the sale and otherwise complies with the provisions of Chapter 4.20; and

- c. The real property to be sold does not exceed one-half acre (21,780 square feet) in size; and
 - d. The sales price, including all costs of escrow, does not exceed Two Hundred Fifty Thousand Dollars (\$250,000) (as adjusted pursuant to Section 4.04.085).
- C. No provision of this Chapter is intended to limit the authority of the City Manager or any Council Appointee from seeking approval of a specific action by the City Council, nor is it intended to limit the authority of the City Council to place limitations on the City Manager's or other Council Appointee's authority with respect to entering into specific contracts.

SECTION 2. Section 4.12.055 of Chapter 4.12 of Title 4 of the San José Municipal Code is 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; or
 - 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.
 - i. Perform technical or professional services ~~other than other than professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms.~~
2. Software Licensing and Maintenance.
3. Leasing or rental of personal property for use by the City.

B. "Services" shall not include:

1. Any public works project as defined in Section 14.04.140 of the San José 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;
4. Services performed under a concession agreement between the City and a licensee or permittee on City property.

SECTION 3. Section 4.12.110 of Chapter 4.12 of Title 4 of the San José Municipal Code is amended to read as follows:

4.12.110 Scope of Chapter

A. The provisions of this Chapter shall be applicable to the following types of contracts:

1. Contracts for the purchases of supplies, materials and equipment,
2. Contracts for Services.
3. Contracts for information technology.

B. The provisions of this Chapter shall not be applicable to:

1. Public works construction contracts,
2. Grant agreements,
3. Agreements for the design, fabrication or installation of works of art, or
4. Leases, licenses or other interests in real property.

~~C. The provisions of Section 4.12.320 shall be applicable to professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction management firms.~~

PASSED FOR PUBLICATION of title this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk