

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, ADDING SECTIONS 3.45.110 THROUGH 3.45.200 TO CHAPTER 3.45 ("PUBLIC WORKS PROJECTS") OF TITLE 3 ("REVENUE AND FINANCE") OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO PROVIDE INFORMAL AND FORMAL BIDDING PROCEDURES UNDER THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the California Public Contract Code (the "Public Contract Code"), existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Sections 22000 *et seq.*, the Uniform Public Construction Cost Accounting Act (sometimes, "Act"), establishes such a uniform cost accounting standard; and

WHEREAS, the California Uniform Construction Cost Accounting Commission (sometimes, "Commission") established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

WHEREAS, the City of Desert Hot Springs ("City") has adopted a resolution electing to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended; and

WHEREAS, Public Contract Code Section 22034 provides that each public agency that elects to become subject to the uniform construction accounting procedures set forth in the Act shall enact an informal bidding ordinance to govern the selection of contractors to perform public projects pursuant to Public Contract Code Section 22032(b), which ordinance shall include certain required information as set forth in Section 22034; and

WHEREAS, this Ordinance is an informal bidding ordinance intended to comply with Public Contract Code Section 22034, as well as a formal bidding ordinance, adopted to prescribe procedures to be adhered to whenever the City goes out to bid for projects governed by the Public Contract Code.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. BIDDING PROCEDURES AND APPROVALS

That Sections 3.45.110 through 3.45.200 are hereby added to Chapter 3.45 ("Public Works Projects") of Title 3 ("Revenue and Finance") of the Desert Hot Springs Municipal Code to provide as follows:

Section 3.45.110. California Uniform Construction Cost Accounting Procedure.

The City, by adoption of Resolution 2017-012, has elected to become subject to the California Uniform Construction Cost Accounting Procedures referred to in the Uniform Public Construction Cost Accounting Act (the "Act," Public Contract Code Sections 22000 *et seq.*) and to meet the requirements prescribed in the Cost Accounting Policies and Procedures Manual (the "Manual") promulgated by the California Uniform Public Construction Cost Accounting Commission, as such Manual may be amended from time to time. The terms referred to herein shall have the meanings assigned to them in the Act and the Manual. The Act sets forth different required bidding procedures depending on the dollar amounts of the contracts.

Section 3.45.120. Monetary Thresholds Applicable to Public Projects Through Informal and Formal Procedures.

A. Public projects within the limits listed in Section 22032(a) of the Public Contract Code, as may be amended from time to time, may be performed by the employees of the City by force account, by negotiated contract, or by purchase order, as determined by the City Manager. [Note: As of the effective date of this Ordinance, the limit provided in Section 22032(a) of the Public Contract Code is forty-five thousand dollars (\$45,000) or less.]

B. Public projects within the limits listed in Section 22032(b) of the Public Contract Code, as may be amended from time to time, may be let to contract by informal procedures as set forth in the Act and this Chapter. [Note: As of the effective date of this Ordinance, the limit provided in Section 22032(b) of the Public Contract Code is one hundred seventy-five thousand dollars (\$175,000) or less.]

C. Public projects within the limits listed in Section 22032(c) of the Public Contract Code, as may be amended from time to time, shall, except as otherwise provided in this Chapter, be let to contract by formal bidding procedures as set forth in the Act and this Chapter. [Note: As of the effective date of this Ordinance, the limit provided in Section 22032(c) of the Public Contract Code is more than one hundred seventy-five thousand dollars (\$175,000).]

Section 3.45.130. Bidding Procedures for Informal Bids

A. Where a public project is to be performed which is subject to the provisions of this Chapter, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 3.45.150, and to all construction trade journals as specified by the Commission in accordance with Section 22036 of the Public Contract Code. Additional contractors and/or construction trade journals may be notified at the discretion of the department soliciting bids, provided however:

(1) If there is no list of registered contractors maintained by the City for the particular category of work performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.

(2) If the product or service is proprietary in nature such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor(s).

B. The notice inviting informal bids shall describe the project in general terms, shall state how to obtain more detailed information about the project, and shall state the time and place for the submission of bids.

C. All mailing of notices to contractors and construction trade journals inviting informal bids shall be completed not less than ten (10) days before bids are due.

D. If the project is exempt from the payment of prevailing wages under California's prevailing wage laws (Labor Code Sections 1770 *et seq.*), the notice inviting informal bids shall also provide notice that the contract is not subject to payment of prevailing wages.

Section 3.45.140. Acceptance of Informal Bids in Excess of One Hundred Seventy-Five Thousand Dollars.

In accordance with Public Contract Code Section 22034(d), if all informal bids received are in excess of one hundred seventy-five thousand dollars (\$175,000), the City Council may, by passage of a resolution by a four-fifths vote, award the contract at one hundred eighty-seven thousand five hundred (\$187,500) dollars or less to the lowest responsible bidder if it determines the cost estimate prepared by City staff was reasonable.

Section 3.45.150. Contractors List.

A list of contractors shall be developed, identified by category of work, and maintained in accordance with the provisions of Section 22034 of the Public Contract Code and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission.

Section 3.45.160. City Manager Authorized to Award Informal Contracts

In accordance with Public Contract Code Section 22034(c), the City Council hereby delegates to the City Manager, or his or her designated representative, the authority to award or reject informal contract bids in accordance with the Act and this Chapter.

Section 3.45.170. Bidding Procedures for Formal Bids.

A. In accordance with Public Contract Code Section 22037, at least fifteen (15) calendar days before bids are opened, mailed notice inviting formal bids shall be provided to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 3.45.150. If available, the notice shall also be sent electronically by either facsimile or email and mailed to all construction trade journals as specified by the Commission in accordance with Section 22036 of the Public Contract Code.

B. The notice inviting formal bids shall be published at least fourteen (14) calendar days prior to the date of the bid opening and as required by Public Contract Code Section 22037, in a newspaper of general circulation, printed and published in the jurisdiction of the City of Desert Hot Springs; or, if there is no newspaper printed and published within the City's

jurisdiction, in a newspaper of general circulation which is circulated within the jurisdiction of the City. If there is no newspaper which is circulated within the jurisdiction of the City, publication shall be by posting the notice in at least three (3) locations within the City's jurisdiction. Those locations are City Hall, Carl May Center/Council Chamber and the Senior Center.

C. The notice inviting formal bids shall state the time and place for the receipt and opening of sealed bids and shall distinctly describe the project.

D. If the project is exempt from the payment of prevailing wages under California's prevailing wage laws (Labor Code Sections 1770 *et seq.*), the notice inviting formal bids shall also provide notice that the contract is not subject to payment of prevailing wages.

Section 3.45.180. Opening of Bids – Award or Rejection of Both Informal and Formal Contracts

A. In accordance with Public Contract Code Section 22038, at the time provided in the notice inviting bids, all bids timely received shall be opened, evaluated and, unless all bids are rejected, the contract shall be awarded to the lowest responsible bidder.

B. If two or more bids are the same and the lowest, the City may accept the one it chooses. If no bids are received through the formal or informal procedure, the project may be performed by employees of the City by force account or by negotiated contract.

C. If the City, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the City, furnishes a written notice to an apparent low bidder, the City may, in its discretion, reject all bids presented, by following the procedures specified at Public Contract Code Section 22038. If after the first invitation of bids all bids are rejected, after re-evaluating its cost estimates of the project, the City Council may elect to either abandon the project, re-advertise the project, or by passage of a resolution by a four-fifths majority of the City Council declaring the project can be performed more economically by its employees, the City may have the project done by force account.

Section 3.45.190 Grounds for Rejecting Public Bids

The City may reject a bid based on any of the following grounds:

A. Where a bid is responsive and responsible but does not represent the lowest total cost estimate of the project.

B. Failure to conform to the specifications and requirements of the bid proposal form, including, but not limited to, errors, omissions, defects and/or irregularities, shall be rejected as nonresponsive bids. The City may, but is not required to, waive any minor deviations that do not materially affect the amount of the bid or result in an unfair competitive advantage in the bidding process.

C. Bids that do not demonstrate the requisite trustworthiness, quality, fitness, capacity and/or experience to satisfactorily perform the particular requirements of the proposed work shall be rejected as nonresponsible. Elements of a nonresponsible bid may include, but are not limited to, one or more of the following:

(1) Lack of or insufficient experience and/or qualifications of bidder or subcontractor(s) to perform the proposed work.

(2) Lack of or insufficient financial resources of bidder.

(3) Unsatisfactory references or work on previous City projects or other public projects.

(4) Lack of or expired licenses or license designations of the bidder or subcontractor(s) required to perform the proposed work.

(5) History of bidder's surety experience.

(6) History of bidder's insurance losses and/or workers' accidental deaths.

(7) Bidder's credit history.

(8) Delegation of work to subcontractor(s) exceeding fifty percent (50%) of the total proposed work.

(9) History of violations with state regulatory agencies, including, but not limited to, the Department of Industrial Relations, the Contractors State License Board, and the California Division of Occupational Safety and Health (Cal OSHA).

Section 3.45.200. Maintenance

Maintenance work, as defined by the Act, may, at the discretion of the City Manager, be performed by City employees by force account or by an outside contractor.

Section 3. CEQA

That this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the Guidelines for California Environmental Quality Act (California Code of Regulations, Title 14, Chapter 3), because approval of this Ordinance does not have the potential for causing a significant effect on the environment, and it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 4. SEVERABILITY

That the City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

That all the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. EFFECTIVE DATE

That this Ordinance shall take effect thirty (30) days after its adoption.

Section 7. CERTIFICATION

That the City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the 18th day of April, 2017 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

DRAFT

ATTEST:

Jerryl Soriano, City Clerk

APPROVED:

Scott Matas, Mayor

APPROVED AS TO FORM:

Jennifer A. Mizrahi, City Attorney

DRAFT