

ORDINANCE O2015-__

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NAPA, STATE OF CALIFORNIA, AMENDING NAPA
MUNICIPAL CODE CHAPTER 2.91 TO AUTHORIZE
DESIGN-BUILD AS A METHOD OF DELIVERY FOR
PROJECT CONSTRUCTION

WHEREAS, the California Public Contract Code generally requires general law cities to award public works construction contracts to the “lowest responsible bidder,” based on a “design-bid-build” procurement method; and

WHEREAS, design-build project delivery is a method of public works construction delivery in which the design and construction functions are contracted by a single “design-build” entity; as opposed to a more traditional design-bid-build method, under which design, procurement and construction of the project proceed sequentially: first the preparation of plans and specifications are completed, either with City staff or with a design consultant, and second an award of the construction contract with a contractor entity separate from the designer typically being made to the lowest responsible bidder on the basis of previously completed plans and specifications; and

WHEREAS, California general law and charter cities that have utilized the design-build delivery method for the completion of public works projects have experienced numerous benefits from utilizing this alternative delivery method, including reduced design efforts and costs to the public agencies, development of innovative solutions to construction and design challenges, accelerated schedules for project delivery and completion, improved coordination and communication between parties, a reduction in risks, claims and litigation related to public project construction, improved quality in public works construction projects and public facilities, and the ability for public entities to make and negotiate contractor selections based on qualifications, value, cost and criteria in addition to price; and

WHEREAS, Napa Municipal Code Chapter 2.91 establishes certain procedures for the award of City contracts, and it expressly exempts the City from the provisions of state law imposed on general law cities relative to public contracting under the California Public Contract Code; and

WHEREAS, the City has, in the recent past, entered into design-build contracts based on the existing authority to contract for “specialty items,” pursuant to Napa Municipal Code section 2.91.050; and

WHEREAS, the City anticipates funding and contracting for the construction of public works projects and facilities in the future for which design-build delivery method may be a viable and beneficial alternative to the more traditional design-bid-build delivery method; and

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WHEREAS, the City desires to clarify the procedures to be followed for the execution of design-build contracts; and

WHEREAS, the City, as a “charter city,” is authorized to establish guidelines and enact local ordinances governing municipal affairs that supersede the State’s general laws otherwise governing general law cities; and

WHEREAS, the City’s award of local contracts and the establishment of local procedures to govern design-build project delivery is a municipal affair, and the City, as a charter city, thus is authorized to adopt an ordinance establishing procedures for the awarding of contracts for public works construction that differ from those imposed on general law cities, based on the City’s broad constitutional “home rule” authority (pursuant to California Constitution article XI, section 5); and

WHEREAS, the City’s authority, as a charter city, to exempt itself from the requirements of the California Public Contract Code are specifically identified in Public Contract Code Section 1100.7; and

WHEREAS, Section 101 of the City of Napa Charter authorizes the City Council to adopt ordinances that establish criteria and requirements for determining the “lowest and best bidder” in the award of city contracts for public works construction projects (which differs from the “lowest responsible bidder” standard applicable to general law cities); and

WHEREAS, California Public Contract Code, former Section 20175.2 authorized general law cities to utilize the design-build method for the construction of qualifying building construction projects in excess of \$1 million, and in addition, California Public Contract Code former Sections 20193-20195 authorized cities, counties and special districts to use design-build contracts for certain water or water treatment facilities; and

WHEREAS, on September 30th, 2014, Governor Brown approved Senate Bill No. 785, repealing and amending various provisions of the California Government Code, Health and Safety Code, and Public Contract Code to authorize various California state and local agencies to use the design-build procurement process for specified public works projects; and

WHEREAS, under its home rule authority as a charter city, the City may exempt itself from certain limitations otherwise imposed upon general law cities by the statutes codified under Senate Bill No. 785; and

WHEREAS, while the City plans to utilize elements of the procurement process outlined under relevant sections of the Public Contract Code as amended under Senate Bill No. 785, (i.e., Public Contract Code Sections 22160, et seq.) in the drafting of Requests for Proposals soliciting qualified design-build entities under the design-build delivery process authorized by this ordinance, the City is not bound by the limitations on design-build authority contained in those statutes, including, but not limited to, limitations on the use of design-build-operate contracts; and

WHEREAS, the intent of this ordinance is to establish a procedure for the use, evaluation and award of design-build contracts for City projects in order to provide that the City may utilize the design-build alternative delivery method to achieve superior design and quality, to minimize disputes between project designers and contractors, to expedite project delivery by overlapping the design and construction phases of projects, and to reduce project costs; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as follows:

SECTION 1: Amendment. Napa Municipal Code Chapter 2.91, "Contracting Ordinance," is hereby amended by adding a new Section 2.91.070, "Exceptions for design-build project delivery," to read as follows:

2.91.070 Exceptions for design-build project delivery.

A. The City may enter into a single contract with a design-build entity for the design and construction or manufacture of a project (a "design-build contract"), in accordance with this section, without further complying with the requirements of this code, provided that the City Manager or the City Council makes a written determination of the following:

1. The City's goals for the proposed public works project will be more cost effectively achieved through a design-build contract, as compared to the City's design-bid-build process described in Chapter 2.94 of this Code, after taking into consideration: costs of design, construction or manufacture, and ongoing maintenance and repair; timing of design and construction or manufacture; the need to coordinate with third parties during construction or manufacture; unique requirements for managing the quality of design and construction or manufacture; the likely need to consider innovative solutions to design, construction or manufacturing challenges in order to respond to potential challenges to the certainty of the timing or costs of design or construction or manufacture; and the need to consider unique project financing alternatives (including public/private partnerships).
2. The City actively solicited proposals from design-build entities in a manner that effectively requested competitive proposals from entities qualified and available to successfully complete the proposed project under a design-build contract.
3. After evaluating the respective qualifications and proposals submitted by competitive proposers, and after negotiating contract terms with the apparently successful design-build entity, the City selected the design-

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build entity on a “best value” basis that will most cost effectively achieve the City’s goals for the proposed project, after considering: the criteria set forth in Section 2.91.070(A)(1); proposed approach for design and construction or manufacture (including project features, and operational and functional performance of the project to be constructed); overall price (including initial and/or life cycle costs); schedule; the design-build entity’s experience, training, and qualifications (including an evaluation of references of the design-build entity’s experience on similar projects related to responsiveness, timeliness, quality of work, and overall performance); the design-build entity’s capacity, capability, and financial stability to complete the project; and overall responsiveness to the City’s request for proposals.

B. The City Council hereby determines that compliance with the requirements of this section shall satisfy the requirement to award city contracts to the lowest and best bidder, pursuant to City Charter Section 101.

SECTION 2: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

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STATE OF CALIFORNIA }
COUNTY OF NAPA } SS:
CITY OF NAPA }

I, Dorothy Roberts, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 4th day of August, 2015, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 18th day of August, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Dorothy Roberts
City Clerk

Approved as to Form:

Michael W. Barrett
City Attorney