

## **ORDINANCE NO. 333**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRAND TERRACE, CALIFORNIA ADDING CHAPTER 3.26 TO TITLE 3 OF THE GRAND TERRACE MUNICIPAL CODE AND AMENDING SECTION 3.24.060 OF CHAPTER 3.24 OF TITLE 3 OF THE GRAND TERRACE MUNICIPAL CODE, WHICH ESTABLISH PROCUREMENT PROCEDURES FOR PUBLIC PROJECTS, PURSUANT TO THE UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT, AND FOR MAINTENANCE WORK**

**WHEREAS**, Public Contract Code Section 20100 *et seq.* establishes contracting, bidding, and other procedures for public projects.

**WHEREAS**, the Uniform Public Construction Cost Accounting Act (codified at Public Contract Code Section 22000 *et seq.*) provides for an alternative procedure for the City to contracting, bidding and other procedures for public projects ("Act"), provided that the City adopt this informal bidding ordinance and a resolution electing to be subject to the public construction cost accounting procedures of the Act.

**WHEREAS**, the City Council has adopted Resolution No. 2020-39 electing to be subject to the public construction cost accounting procedures of the Act.

**WHEREAS**, the City Council now desires to adopt informal bidding requirements for public projects pursuant to the Act.

**WHEREAS**, the City Council further desires to adopt bidding requirements for maintenance work.

**WHEREAS**, all legal prerequisites to the adoption of this Ordinance have occurred.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY GRAND TERRACE DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby specifically finds that all of the facts set forth in the above Recitals, are true and correct and are incorporated herein as findings of the City Council.

**SECTION 2.** Section 3.24.060 (PUBLIC PROJECTS EXEMPTIONS) of Chapter 3.24 (PURCHASING SYSTEM) of Title 3 (REVENUE AND FINANCE) is hereby retitled and amended in its entirety as follows:

"Section 3.24.060 – Public Projects And Maintenance Work Exemptions

The procedures set forth in this chapter shall not apply to contracts for "public projects," as defined in Public Contract Code Sections 20161 and 22002, or any applicable successor statute, and "maintenance work," as

defined by Public Contract Code 22002 and Chapter 3.26 (Bid Procedures for Public Projects and Maintenance Work), which are governed by the procedures set forth in Chapter 3.26 (Bid Procedures for Public Projects and Maintenance Work) and applicable provisions of the Public Contract Code.”

**SECTION 3.** Chapter 3.26 (BID PROCEDURES FOR PUBLIC PROJECTS AND MAINTENANCE WORK) is hereby added to Title 3 (REVENUE AND FINANCE) as follows:

**“Chapter 3.26 – Bid Procedures for Public Projects and Maintenance Work**

**3.26.010 – Purpose.**

A. This chapter is intended to provide for the city’s purchasing procedures for public projects and maintenance work in a manner consistent with State law.

B. The city has elected to become subject to the Uniform Public Construction Cost Accounting Act (Public Contract Code Section 22000 et seq.) and the contracting procedures set forth therein. Accordingly, the city may procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding in accordance with the alternative procedures authorized by the Act and the applicable dollar amount limitations set forth in Section 22032 of the Act, as it may be amended from time to time.

C. Specifically, this chapter is intended to comply with Public Contract Code Section 22034, which requires that a public agency that has elected to become subject to the uniform construction accounting procedures enact an informal bidding ordinance to govern the selection of contractors.

D. This chapter is intended to ensure that contracts for public projects in the city meet the requirements of applicable state laws, including California Public Contract Code, Division 2, Part 1, and Division 2, Part 3, Local Agency Public Construction Act. All procedures set forth in this chapter shall be interpreted in a manner consistent with state law.

E. This chapter is further intended to provide bidding procedures for maintenance work consistent with State law.

**3.26.020 – Definitions.**

As used in this chapter, the following words and terms shall be defined as follows unless the context indicates that a different meaning is intended:

“Act” means the Uniform Public Construction Cost Accounting Act

(California Public Contract Code Section 22000 et seq.).

“Bid” means the response submitted by a bidder to an invitation for bids issued by the city for goods, services, maintenance work, or public projects.

“Commission” means the California Uniform Public Construction Cost Accounting Commission established pursuant to Public Contract Code Section 22010.

“Facility” shall have the same meaning as set forth in Section 22002 of the Act and includes any plant, building, structure, ground facility, utility system (subject to the limitation found in Public Contract Code Section 22002), real property, streets and highways, or other public work improvement.

“Force account” means work performed on public projects or maintenance work using internal resources, including, but not limited to, labor, equipment, materials, supplies, and subcontracts of the public agency.

“Informal bid” means a competitive bid that is submitted by a bidder for procurement of goods or services for which formal bidding is not required.

“Maintenance work” shall have the same meaning as set forth in Public Contract Code Section 22002. For the purpose of this chapter, maintenance work is not considered a public project. Maintenance work includes:

1. The routine, recurring, and usual work for the preservation or protection of any publicly owned or operated facility for its intended purposes.
2. Minor repainting.
3. Resurfacing of streets and highways at less than one inch.
4. Landscape maintenance including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

“Public project” shall have the same meaning as set forth in Public Contract Code Section 22002 and includes the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
2. Painting or repainting of any publicly owned, leased, or

operated facility.

“Public project” does not include maintenance work as defined above.

### **Section 3.26.030 – Bid Procedures for defined public projects.**

#### **A. Authority to Award.**

1. The city manager may award contracts for public projects or maintenance work of ten thousand dollars or less pursuant to the requirements of this chapter.

2. Contract for public projects or maintenance work over ten thousand dollars shall be awarded by the City Council pursuant to the requirements of this chapter.

#### **B. Bidding Thresholds. The following limits and procedures apply to contracting for public projects and maintenance work in the city:**

1. Public projects or maintenance work of sixty thousand dollars or less (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22032(a) of the Public Contract Code) may be performed by the employees of the city, by force account, by negotiated contract, or by purchase order. Except for performance by employees, by force account, at least three quotes shall be sought when it is in the best interest of the City;

2. Public projects or maintenance work of greater than sixty thousand dollars but less than two hundred thousand dollars (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22032(b) of the Public Contract Code) may be let to contract through informal procedures as set forth in this chapter; and

3. Public projects or maintenance work of more than \$200,000 (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22032(c) of the Public Contract Code) shall, except as otherwise provided in this chapter or in the Public Contract Code, be let to contract by the formal bidding procedure set forth in this chapter.

### **Section 3.26.040 – List of contractors.**

A list of qualified contractors, identified according to categories of work, shall be developed, and maintained in accordance with Public Contract Code Section 22034(a) and any criteria promulgated from time to time by the Commission. Such list shall be maintained and updated from time to time by the city manager or his/her designee.

### **Section 3.26.050 – Informal bid procedure.**

The following procedures shall apply to informal bids for public projects and maintenance work:

A. Notice Inviting Informal Bids.

1. In accordance with Public Contract Code Section 22034, when a public project or maintenance work is permitted to be let to contract by informal bidding pursuant to this chapter, a notice inviting informal bids shall be mailed and/or emailed to all contractors on the list created pursuant to Section 3.26.040 for the category of work being bid.

2. Optional Noticing. Notice may be also provided to any additional contractors, publications and/or construction trade journals identified by the city manager or the city manager's designee.

B. Exception. If the product or service to be procured for a public project or maintenance work 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 or contractors.

C. Time of Giving Notice. All mailing of notices to contractors and construction trade journals pursuant to this section shall be completed not less than ten calendar days before bids are due.

D. Description of Public Project or Maintenance Work. The notice inviting informal bids shall describe the public project or maintenance work in general terms and how to obtain more detailed information about the public project or maintenance work and state the time and place for the submission of bids.

E. Authority to Award Contracts. The city manager is authorized to award a contract for a public project or maintenance work pursuant to the process set forth in this section if the lowest bid received is ten thousand dollars or less. Contracts valued at more than ten thousand dollars shall require city council approval.

F. Bids Exceeding Two Hundred Thousand Dollars. If all bids received pursuant to the informal process are in excess of two hundred thousand dollars (or the current amount as specified in Article 3, Chapter 2 of Part 3 of Division 2, Section 22034(d) of the Public Contract Code), the city council may adopt a resolution by a four-fifths vote to award the contract to the lowest responsible bidder at two hundred twelve thousand five hundred dollars (or the current amount as specified in Section 22034(d) of the Public Contract Code) or less, if it determines the city's cost estimate was reasonable.

G. Award of Contract. Any contract awarded pursuant to this section shall be awarded to the lowest responsible bidder. If two or more bids received are for the same total amount or unit price, quality and service being equal, the approving entity may accept either bid.

H. No Bids. If no bids are received, the project may be performed by city employees by force account or negotiated contract without further complying with this chapter.

### **Section 3.26.060 – Formal bidding procedures.**

For those public projects or maintenance work requiring formal bidding under Section 3.26.030, the following procedures shall be used:

A. Publication of Notice. In accordance with Public Contract Code Section 22037, a notice shall be published, at least once, fourteen calendar days before the date of opening the bids in a newspaper of general circulation printed and published in the jurisdiction of the city. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or email, and mailed to all construction trade journals specified by the commission in accordance with Public Contract Code Section 22036 specified as appropriate for the area. The notice shall be mailed at least fifteen calendar days before the date of opening the bids. The notice inviting formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the public project or maintenance work. In addition to notice required by this section, the city may give such other notice as it deems proper.

B. Bidder's Security/Failure to Sign Contract. When deemed necessary bidder's security shall be prescribed in the notice inviting bids in an amount equal to ten percent of the amount bid. Bidder's security shall be either a cash deposit with the city, a cashier's, or certified check payable to the city, or a bidder's bond. Unsuccessful bidders shall be entitled to the return of bid security within sixty days of the date of the award. On the refusal or failure of the lowest responsive and responsible bidder to execute the contract, the city council may award the contract to the next lowest responsive and responsible bidder. Should the lowest responsive and responsible bidder refuse or fail to execute the contract within ten days after the date of the award of the contract, then the bidder shall be deemed to have forfeited the bid security amount to the city. The city may retain as damages an amount out of the bid security equal to the difference between the lowest bid and the second lowest bid and return the excess bid security amount, if any, to the lowest bidder. All bids must be signed by an individual or individuals authorized to bind the bidder to bid terms.

C. Bid Opening Procedure. Sealed bids shall be submitted to

the city clerk's office and shall be identified as to bidder, public project, or maintenance work (as applicable), and shall state "Bid" on the envelope. Bids shall be opened by the city clerk's staff in public at the time and place stated in the notice inviting bids. A written record and tabulation shall be made at that time of all bids received by the deadline. Bids that are received after the submittal deadline shall be marked as "Late" and shall not be opened at the bid opening and shall not be considered for award. Bids shall be open for public inspection in accordance with the California Public Records Act. Bids may be submitted electronically, such as through online bid boards or online websites, provided that such submissions comply with the requirements of this Chapter.

D. Award of Contracts/Minor Irregularities. Contracts shall be awarded by the city council to the lowest responsive and responsible bidder whose bid fulfills the purpose intended, according to criteria designated in the solicitation, and provided the award amount is within the unencumbered appropriation for that item. The city council may waive minor bid irregularities.

E. Change Orders. A "change order" shall be used to modify the contract documents regarding contract price, schedule of payments, completion date, plans and specifications, and for unit price overruns and under runs, as specified in the contract. Work description and justification must relate to the original project and must be work necessary to achieve original scope of project. After a determination that costs are merited by developments in a specific project, the purchasing officer, city manager is authorized to issue contract amendments or change orders up to the contract contingency approved by the city council.

F. Tie Bids. If two or more bids received are for the same total amount or unit price, the city council may accept either bid.

G. Performance/Labor/Materials Bonds. A labor and materials bond, plus a performance bond shall be required, from an acceptable surety, in such amounts and in such a form as the city finds reasonably necessary to protect the public interest. The City Manager may waive bond requirements in this Section 3.26.070(G) for maintenance work if it is determined to be in the best interest of the City and consistent with State law.

H. No Bids. If no bids are received, the public project or maintenance work may be performed by city employees by force account or negotiated contract, without further complying with this chapter.

### **Section 3.26.070 – Rejecting formal bids.**

The following rules apply to rejecting bids for public projects and

maintenance work:

A. In accordance with Public Contract Code Section 22038, the city council may, in its discretion, reject any bids presented, if the city, prior to rejecting all bids, furnishes a written notice to an apparent low bidder. The notice shall inform the bidder of the city's intention to reject the bid and shall be mailed at least two business days prior to the city council meeting at which the city intends to reject the bid. If after the first invitation of bids all bids are rejected and after reevaluating its cost estimates of the project, the city shall have the option of either of the following:

1. Abandoning the public project/maintenance work or re-advertising for bids in the manner described by this chapter.

2. Have the public project or maintenance work done by force account without further complying with this chapter, provided the city council has passed a resolution by a four-fifths vote declaring that the project can be performed more economically by city employees.

B. Lowest Bidder. If a contract is awarded, it shall be awarded to the lowest responsible bidder.

C. No Bids. If no bids are received through the formal or informal procedure, the public project or maintenance work may be performed by the employees of the city, by force account, or negotiated contract without further complying with this chapter.

### **Section 3.26.070 – Exceptions to Competitive Bidding.**

Bidding pursuant to this Chapter shall not be required in the following circumstances:

A. In the case of emergency pursuant to Public Contract Code Section 22035.

B. Any procurement that is governed by Chapter 3.24 of the Grand Terrace Municipal Code.

C. As authorized by any other applicable law.”

**SECTION 4. Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable. The City Council of the City of Grand Terrace declares that it would have adopted all the provisions of this ordinance that remain valid if any provisions of this



ordinance are declared invalid.

**SECTION 5.** Effective Date. This Ordinance shall become effective thirty (30) days from and after its adoption.

**SECTION 6.** Certification. The Mayor shall sign, and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard.

**PASSED, APPROVED, AND ADOPTED** by the City Council of the City of Grand Terrace at a regular meeting held on the 10<sup>th</sup> day of November 2020.

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Darcy McNaboe  
Mayor

**ATTEST:**

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Debra Thomas  
City Clerk

**APPROVED AS TO FORM:**

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Adrian R. Guerra  
City Attorney