RESOLUTION NO. 2015-82

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, ESTABLISHING A POLICY ENTITLED "CONSTRUCTION MANAGEMENT ACT"

WHEREAS, the Construction Management Act (the "Act") will provide policies and practices to improve City construction planning and management for both General Fund and Enterprise capital projects; and

WHEREAS, the Act will implement policies and practices to provide more accountability for project management for General Fund and Enterprise capital projects; and

WHEREAS, the Act will enhance Public Works project standards, qualifications, and evaluation process to protect taxpayers; and

WHEREAS, the Act will improve City facilities management through developing an accurate and timely inventory of City owned and leased facilities; and

WHEREAS, the Act will lead to better management of City assets by implementing a comprehensive facilities long-term plan; and

WHEREAS, the Act will integrate an oversight board with the Enterprise Accountability and Oversight Act to review the implementation and management of General Fund capital projects; and

WHEREAS, the Act will identify and remove potential construction design defects early in the development process through a "Peer Review" process and Earned Value Reports; and

Date Adopted: 5/21/2015
Date Approved: 6/1/2015
Effective Date: 6/1/2015

WHEREAS, the Act will improve accountability and transparency in fiscal management through an annual report from the City Manager to the Council on all construction projects over $1 million; and

WHEREAS, the Act will establish a central database of all citywide construction data through the Public Works Directors Office to better manage construction projects; and

WHEREAS, accomplishing the objectives set forth in the Act will provide effective City construction fiscal management for construction capital projects protecting the best interests of taxpayers.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

SECTION 1. The Council hereby adopts the attached Exhibit "A" Construction Management Accountability and Oversight Act as a formal Council policy.

SECTION 2. This resolution shall become effective upon its adoption.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the 21st day of May, 2015.

AYES : Brand, Brandau, Caprioglio, Olivier, Quintero, Soria, Baines
NOES : None
ABSENT : None
ABSTAIN : None

Mayor Approval: N/A, 2015
Mayor Approval/No Return: June 1, 2015
Mayor Veto: N/A, 2015
Council Override Vote: N/A, 2015

YVONNE SPENCE, CMC
City Clerk

BY: Yvonne Spence
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

BY: 6/2/15
Katie Doerr [DATE]
Assistant City Attorney

KBD:ns [67127ns/reso]- 5/11/15

RECEIVED

2015 JUN 2 AM 8 17

CITY CLERK, FRESNO CA

Council Adoption: 5/21/2015
Mayor Approval:
Mayor Veto:
Override Request:

May 22, 2015

TO: MAYOR ASHLEY SWEARENGIN

FROM: YVONNE SPENCE, CMC
City Clerk

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 5/21/15, Council adopted the attached Resolution No. 2015-82 entitled, **Adopting the Construction Management Act** Item No. 3A, File ID# 15-424, by the following vote:

Ayes	:	Brand, Brandau, Caprioglio, Olivier, Quintero, Soria, Baines
Noes	:	None
Absent	:	None
Abstain	:	None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before June 1, 2015. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

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APPROVED/NO RETURN: _____

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)

_____

_____

_____ Date: _____
Ashley Swearengin, Mayor

COUNCIL OVERRIDE ACTION: Date: _____

Ayes	:
Noes	:
Absent	:
Abstain	:

CITY OF FRESNO
CONSTRUCTION MANAGEMENT ACT

MAY 11, 2015

The following policies and practices are enacted to improve City construction planning and fiscal management.

ARTICLE I
DEFINITIONS

Capital Expenses
Capital Expenses are expenditures creating future benefits. A capital expenditure is incurred when monies are spent to either buy fixed assets or to add to or to maintain the value of an existing fixed asset with a useful life that extends beyond the fiscal year. In accounting, a capital expenditure is added to an asset account ("capitalized"), thus increasing the asset's basis (the cost or value of an asset). For taxpaying entities, capital expenditures are costs that cannot be deducted in the year in which they are paid or incurred, and must be capitalized. The general rule (even for municipalities) is that if the property acquired has a useful life longer than the taxable/fiscal year, the cost must be capitalized. The capital expenditure costs are then amortized or depreciated over the life of the asset in question

City
"City" means the City of Fresno, a municipal corporation.

Earned Value Report
An Earned Value Report is a method for measuring progress in reports. It indicates how much of the budget should have been spent, in view of the amount of work done so far and the baseline cost for the task, assignment, or resources. Current performance is the best indicator of future performance and, therefore using trend data, it is possible to forecast cost or schedule overruns at the early stage of a project.

Enterprise Funds
A fund established to account for operations that are financed and operated in a manner similar to private business enterprises, where the intent of the government body is that the cost of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. Department of Public Utilities Water, Waste Water, and Solid Waste are Enterprise Funds, as well as Airports and FAX.

General Fund
Revenues of the City that are not otherwise restricted as to their use, including monies from local property and sales tax, and other revenue sources. The General Fund pays for City services such as police; fire; public works; elected offices; City Manager; City Clerk; City Attorney; parks and recreation, and community services.

Infrastructure
Facilities that support the daily life and growth of the City, including roads, water and sewer lines, public buildings, parks and airport facilities.

Peer Review
Peer review is a comprehensive review of the design and constructability of a construction project and for checking work performed to ensure it meets specific criteria by an independent peer entity. Peer review can be performed in the design stage to mitigate or eliminate the potential for construction defects or project delays.

Public Works Projects
Public work as construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds including but not limited to street improvements, utility improvements, sewer improvements, and facilities by a government agency for the benefit and use of the general public.

Ratepayers
Ratepayers are people who pay a certain charge for utility services.

Request for Proposals
A Request for Proposal (RFP) is a solicitation initiated by the City to provide a competitive process for awarding contracts and establishing the terms and conditions for the work to be completed.

Senate Bill 425
The bill was adopted in 2013 and requires public works manager to disclose the interests of groups charged with reviewing major public works projects to provide more disclosure and transparency in large public works projects in California.

Taxpayers
Taxpayers are people who own property and pay property taxes or who pay other taxes (e.g. sales tax, room tax, business tax). A share of the property taxes, sales tax and certain other taxes is a funding source for the City General Fund.

ARTICLE II
PURPOSE OF ACT

The overriding goal of this Act is to provide policies and practices to improve City construction planning and management for both General Fund and Enterprise Capital Projects, with more focus on those exceeding $10 million.

Objectives of Act:

1. To implement policies and practices to provide more accountability for construction project management for General Fund/Enterprise Capital Projects;

2. To enhance public works projects standards, qualifications and evaluation process to protect taxpayers;

3. To improve City facilities management through developing an accurate and timely inventory of City owned and leased facilities;

4. To better manage City assets by implementing a comprehensive facilities long-term plan;

5. To integrate an oversight board with the Enterprise Accountability and Oversight Act to review the implementation and management of General Fund Capital projects;

6. To identify and remove potential construction design defects early in the development process through a "Peer Review" process and earned value reports;

7. To improve accountability and transparency in fiscal management of City Capital Projects through an annual audit of projects exceeding $10 million; and

8. To establish a central database of all citywide construction data through the City Attorney's Office to better manage construction projects.

Accomplishing the above stated objectives will provide effective City construction planning and fiscal management for capital projects protecting the best interests of the taxpayers.

ARTICLE III
CONSTRUCTION PROJECT STANDARDS

Maintaining high standards for contractors selected for City capital projects will help prevent future problems during the construction period and when the project is completed. This Act shall elevate contractor standards for construction capital projects. The following standards shall apply to all contractors bidding on City projects:

1. The City shall initiate a prequalification of all prospective bidders on specific City construction projects, unless disallowed by the funding agency. The prequalification process shall evaluate all prospective contractors, architects and engineers on their experience, qualifications and financial capacity to determine whether they are a "responsible" bidder. There shall be an appeals process pursuant to Chapter 1, Article 4 of the FMC for contractors to contest non-responsibility;

2. Any contractor bidder on a City project must have at least 5 years of experience in the specialty filed that can be verified in which they are bidding;

3. To the maximum extent permitted by law, the awarded contractor shall defend, protect and hold harmless the City from and against all claims;

4. The City, in consultation with industry experts, shall develop standards that are easily understood methods to determine project contingencies; and

5. Surety bond coverage shall increase from 100% of the bid price to 110% on projects exceeding $10 million.

ARTICLE IV
PROJECT DELIVERY METHOD

There are optional capital project deliver methods that the City should consider. The capital project delivery methods include the following industry models:

Design-Bid-Build
The most popular method for capital project delivery is the Design-Bid-Build method. The City would engage a architect/engineer designer to prepare the design of a proposed capital facilities including construction drawings, specifications and contract documents. Once completed, the design package is presented to interested general contractors who prepare bids for the work and execute contracts with subcontractors to perform specialty jobs. In most cases, the contractor submitting the lowest responsive and responsible bid is chosen to perform the construction project.

General Contractor/Construction Manager
In this method the construction manager acts as the general contractor. The construction manager holds the risks of selecting subcontractors and guaranteeing completion of the project for a fixed, negotiated price following completion of the design. The construction manager also provides advisory professional management assistance to the City prior to construction, offerings schedule, budget and general construction advice during the capital project planning phase.

Design-Build
In this delivery method the City contracts with a design-build team, which itself is often a joint venture of a general contractor and a architect/engineer designer. General contractors are usually the lead members of the design-build team. The design-build team performs the complete design of the capital facility project, usually based on a preliminary scope or design by the City.

The criteria for selecting a specific capital project delivery method shall include the following:

1.Type of project: Determine the level of complexity and uniqueness of the project and maintain an appropriate level of control.

2. Size of project: The level of outside assistance and number of project participants should match the significance of the project. If a project is more complex or costly, the City's need for professional management advice is greater.

3. City capabilities: The City must realistically assess its in-house capabilities in evaluating project procurement methods.

4. Time considerations: If the project needs to be constructed quickly, methods adaptable to fast-track construction should be considered. The City must weigh the need for speed against increased costs and risks of fast tracking.

5. Probability of changes: If the City is aware that its requirements may change considerably during the project, this possibility should be evaluated against the potential cost of such changes.

Using the above criteria, the City Manager shall be responsible for making the final decision on which project delivery method shall be recommended to Council for approval as part of the architectural or engineering design contract approved.

ARTICLE V
PREVIEW/PRE-DESIGN OF CAPITAL PROJECTS

The City can more efficiently gauge capital construction costs and needs through a preview of the design of capital projects. The City Manager shall determine whether or not a capital project should have an early design review. An early design review can accomplish the following:

1. Determine whether a given capital project is necessary for a given department to meet the City business needs;

2. Determine whether existing facilities can accommodate a City business need without extensive renovation;

3. Provide a more refined estimate during the design process to develop the construction budget and to provide a basis for comparison of construction bids;

4. Review the design plans and specifications to verify the design as presented is clear to the contractor, poses no construction conflicts, and is economically feasible to build;

5. Review the project components to ensure they are provided in the most cost effective way (value engineering);

6. Pre-select contractors, architects and engineers and developing a bid package to ensure that the contractor selection process is fair and provides the best value;

7. Establish reasonable costs for design services; and

8. Determine if a project falls under more than one City Department to identify overlapping work to improve communications and better coordinate the project.

ARTICLE VI
CHANGE ORDERS

Construction change orders will escalate the cost of an approved construction contract and cause delays in project completion. There are many reasons for change orders. The primary reasons are design errors and omissions, change in field conditions and changes in scope usually initiated by the City. The best protection for both the City and the Contractor is careful and detailed contract procedures that in advance require exacting descriptions of change, its money and time impact, written approval of all those who are affected, and precise turn around or approval times. All parties are affected by change orders including subcontractors, lenders, and bonding companies.

This Act shall implement change order policies. Projects under construction shall require the execution of a Change Order to change the design requirements and/or scope of construction that will result in an adjustment to the contract amount and projected time of completion. A proposed Change Order will be used in the following situations:

1. For Change Orders in work required by the City;

2. When necessary design work has been inadvertently omitted;

3. To correct errors in plans and specifications;

4. To correct design work when concealed conditions are exposed and found to differ from construction plans and documents; and

5. When unavoidable events (e.g. labor strike) or weather caused delays and the need for additional time for completion of project.

Pursuant to City Resolution No. 94-114, the City Manager or Public Works Director may approve all Contract Change Orders subject to the restrictions that individual Contract Change Orders which exceed 1% of the total contract price or $100,000 whichever is greater; and multiple change orders, which aggregate more than 10% of the total contract price or $100,000 whichever is greater; and Contract Change Orders which individually or aggregated provide a contract time extension equal to or exceeding 30

days or 20% of the total contract time allowed under the contract, whichever is greater shall be subject to prior authorization from the Council.

This Act shall amend City Council Resolution No. 94-114 for construction projects exceeding $10 million such that any single change order or cumulative change orders exceeding $1 million or 10% of the approved project budget more shall require Council approval. All other provisions of Resolution 94-114 shall remain in effect.

This will provide flexibility to adjust the approval authority limit based, in part, by the size and scope of the project.

The following Change Order procedures shall be followed:

1. Change Orders shall be administered in conformity with procedures outlined in the contract documents;

2. Change Orders shall be prepared on a City approved form;

3. The Public Works Director or designee is responsible for the preparation of Change Orders;

4. The construction budget/contingency budget shall be adjusted following approval of the Change Order; and

5. Proposed Change Orders that exceed the balance approved project construction budgets/contingency/change order authority require Council approval.

ARTICLE VII
CONSTRUCTION PROGRESS PAYMENT DRAWS

Construction industry standards usually require a cash draw process where contractors are paid periodically based upon the percentage of work completed. Retainers are withheld until the completion of the project. This Act shall provide detailed policies to provide better cash management of large construction capital projects and better accountability of public funds financing capital projects.

The following procedures shall are to be implemented:

1. All cash draw procedures must be outlined in the construction contract;

2. All cash draws must be submitted on a timely basis;

3. A City official and/or City selected Project Manager shall approve all cash draw requests;

4. Contractors must sign an affidavit under penalty of perjury on each cash draw document certifying the following:
   A) There are no anticipated delays in the project, other than those stated in the draw request;
   B) There are no anticipated change orders, other than those stated in the draw request;
   C) Provide the City with a lien release confirming a "conditional waiver and release on progress payment;" and
   D) All subcontractors, labor and material suppliers have been paid and provide the City with appropriate lien releases from the subcontractors, laborers and material supplies (as required) and provide copies of signed appropriate conditional lien releases.

ARTICLE VIII
FACILITIES INVENTORY REPORT

The City can better assess and control Capital Improvement Project (CIP) costs by having an up to date accurate inventory of City facilities. The City shall conduct an annual inventory of all City owned or leased facilities. The City shall work in conjunction with the City's Asset Management brokerage firm (pursuant to Asset Management Act) in conducting the inventory of City owned and leased facilities. This inventory will include the following information:

1. Square footage by City function and space type (e.g. public safety). This will include both owned facilities and leased facilities;

2. A summary of the physical condition of each facility with a numerical rating from 1 to 10 with 10 being in top condition and 1 being in marginal condition;

3. A summary of all City owned inventory; and

4. A Summary of all City leased inventory.

The results of the inventory and assessment of facilities condition will help guide the City in decision-making for capital costs. The facilities in worst shape should be considered for replacement. Renovation of facilities in poor condition should have a reasonable remaining life to justify the expenditure. The City strategy should be to provide incentives to consolidate space, where feasible, and build better efficiency in City services delivery.

ARTICLE IX
MANAGING LONG TERM FACILITIES CAPITAL COSTS

The City can more efficiently plan annual capital budgets by department by having a comprehensive facilities long-term plan. The City must do periodic and independent physical assessments of its facilities. In developing the long-term plan, the City shall work in conjunction with the City's Asset Management brokerage firm (pursuant to Asset Management Act). The City shall do an initial 10-year, long-term, facilities plan and each succeeding year shall update the plan.

The overall goal of the long-term plan will be to identify the means to eliminate excess, unproductive facilities space and improve space efficiently. The plan will provide square foot cost metrics by fiscal year including a plan to achieve the designated metrics.

Implementing the long-term plan will achieve the following:

1) Identify long–term facilities needs to support City business;
2) Provide space that is healthy, safe and sustainable;
3) Determine maximum efficiency of facilities; and
4) Effective use of City funding sources.

ARTICLE X
OVERSIGHT BOARD

The Enterprise Accountability and Oversight Act adopted by the Council on February 26, 2015 provides for an Oversight Board to review any Enterprise Capital Project in excess of $20 million. This Act shall expand the authority of the above described Oversight Board to review and evaluate and General Fund Capital Projects exceeding $20 million.

ARTICLE XI
PEER REVIEW

The purpose of "peer review" is to identify and remove potential construction design defects early in the development process. Peer review will evaluate: 1) project demand studies; 2) design and engineering models and estimates; 3) construction, testing, and inspection practices; and 4) any other relevant issues related to the cost, integrity of construction, and project timeline.

All proposed City Public Works projects would be subject to a "peer review" process prior to the release of any RFQ/RFP on any public works project exceeding $10 million.

SB 425 requires state agencies to provide advance public notice on the goals, costs, and deliberative and member selection processes of groups setup to review public works projects. It provides more disclosure and transparency in PEER Review groups in public works projects that exceed $1 billion. A few years ago, an investigation by the Sacramento Bee found that members of a panel created for technical review of the Bay Bridge tower foundation had financial and professional ties to the California Department of Transportation (Caltrans) and Bay Bridge contractors.

The City shall adopt some similar provisions of SB 425 including the following:

1. Any member of a PEER review of a public works project group, within 30 days of joining the group, to file an affidavit, under penalty of perjury, stating his or her economic interests, and declaring himself or herself to be independent of all parties involved in the project and to have no conflicts of interest; and

2. The City shall draft and post on the City's website a charter for the peer review group describing the groups' members, objectives, and aims.

ARTICLE XII
EARNED VALUE MANAGEMENT OF CONSTRUCTION CAPITAL PROJECTS

This Act shall require Earned Value Management of locally funded construction projects exceeding $10 million. Earned Value Reports will measure progress and costs on projects. The key factors in Earned Value Reports are budgeted cost of work (BCWS), the budgeted cost of work performed (BCWP), and the actual cost of work performed (ACWP). These elements form the basis of the Earned Value Reporting System. From the Earned Value Report time phased, planned expenditures for the project can be viewed along with the actual cost of the project that was accomplished and the amount of work that was actually completed.

ARTICLE XIII
COMPLETED CAPITAL PROJECT REVIEW

Upon the completion of every facilities capital project in excess of $1 million the City Manager shall provide a final report to compare the final costs to the budgeted cost, by line item, the actual completion date of the project compared to the projected completion date, a list and justification of all change orders.

ARTICLE XIV
CENTRAL DATABASE OF CONSTRUCTION PROJECT DATA

The Public Works Director's office, though their Construction Management division, shall maintain a master database of all citywide construction projects completed each year, by department. This database shall include all original contracts, all change orders, and related construction documents.

This information shall be made available to the City Manager's office and to the Oversight Board pursuant Article X and XIV above.

ARTICLE XV
ONE-YEAR REVIEW

One year from the adoption of this Act, the Council shall, at a regularly scheduled meeting, review the implementation and practice of this Act and, if necessary, amend the Act to reflect required changes.

ARTICLE XVI
TRANSPARENCY

The City is committed to full and complete financial disclosure, and to cooperating fully with rating agencies, institutional and individual investors, City Departments and agencies, other levels of government, and the general public to share clear, comprehensible, and accurate financial information. All relevant financial information and reports related to bond issuance shall, consistent with applicable law, will be available for public viewing at the City's website via a link to the Electronic Municipal Market Access (EMMA) site maintained by the MSRB.

ARTICLE XVII
EFFECTIVE DATE

This resolution shall take effect upon its final adoption by the City Council.