

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE CALLING AND GIVING NOTICE OF, ON ITS OWN MOTION, THE SUBMISSION TO THE ELECTORS OF THE CITY OF SAN JOSE AT A SPECIAL MUNICIPAL ELECTION, TO BE CONSOLIDATED WITH THE NEXT GENERAL ELECTION ON NOVEMBER 6, 2018, A BALLOT MEASURE PROPOSAL TO AMEND SECTION 1217 OF ARTICLE XII OF THE SAN JOSE CITY CHARTER TO MODIFY CONSTRUCTION CONTRACT PROCUREMENT AND THE BIDDING PROCESS**

**WHEREAS**, San José City Charter Sections 1600 and 1601 authorize the City Council to set the date for a Special Municipal Election; and

**WHEREAS**, pursuant to California Elections Code Sections 9255(b)(1) and 1415(a)(2)(A) and Government Code Section 34458(a), the City Council desires to submit to the electors of the City of San José (the “City” or alternatively, “San José”), at a Special Municipal Election, a ballot measure proposal to amend Section 1217 of Article XII of the San José City Charter to modify construction contract procurement and the bidding process, and to place the measure on the ballot for the next General Election on November 6, 2018, a Statewide General Election;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

**SECTION 1.** A Special Municipal Election is hereby called and ordered to be held in the City of San José on November 6, 2018 to vote on a ballot measure to amend Section 1217 of Article XII of the San José City Charter to modify construction contract procurement and the bidding process, which shall be deemed ratified, pursuant to Government Code Section 34459, if a majority of the electors voting on the measure

vote to approve the measure. The full text of the proposed City Charter amendment is attached as Exhibit A and incorporated by reference in this Resolution.

**SECTION 2.** The ballot measure will be placed on the ballot for the November 6, 2018 election in the following form:

**MEASURE \_\_\_\_**  
**Construction Contract Procurement Modernization**

Shall the City of San José Charter be amended to: <ul style="list-style-type: none"><li>• Prioritize selecting contractors on cost, but enable consideration of factors like experience and work quality;</li><li>• Increase opportunities for small, local, and economically disadvantaged businesses to compete for contracts;</li><li>• Modify the bidding threshold from \$100,000 to \$600,000, adjusted annually for inflation;</li><li>• Lower the “design-build” contract threshold from \$5,000,000 to \$1,000,000; and</li><li>• Allow modernization of public noticing?</li></ul>	YES	
	NO	

**SECTION 3.** The City Council hereby requests the Board of Supervisors of the County of Santa Clara, California to permit the Registrar of Voters of Santa Clara County to render to the City of San José such services as the City Clerk of the City of San José may request relating to the conduct of the above-described Special Municipal Election with respect to the following matters:

Coordination of election precincts, polling places, voting booths, voting systems and election officers; Printing and mailing of voter pamphlets; Preparation of tabulation of result of votes cast; and all other services necessary to conduct an election.

**SECTION 4.** The City Council hereby requests that the Registrar of Voters of the County of Santa Clara consolidate the Special Municipal Election called and ordered to be held on November 6, 2018 with any other election that may be held on that date.

**SECTION 5.** The City Council hereby authorizes the Board of Supervisors of Santa Clara County, California to canvass the returns of the Special Municipal Election.

**SECTION 6.** The City Council hereby directs the City Clerk to reimburse the County of Santa Clara in full for any of the above-mentioned services which may be performed by the Registrar of Voters, upon presentation of a bill to the City, with funds already appropriated to the City Clerk for election purposes.

**SECTION 7.** The City Council hereby directs the City Clerk to take all actions necessary to facilitate the Special Municipal Election in the time frame specified herein and comply with provisions of the Elections Code of the State of California, City Charter, Ordinances, Resolutions and Policies regarding the conduct of the Special Municipal Election.

***ALTERNATE 1 (FULL TEXT PUBLICATION)***

**SECTION 8.** Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to: (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause copies of the full text of the proposed measure set forth in the attached Exhibit A to be printed in the Voter Information Portion of the Sample Ballot; (d) cause copies of the Sample Ballot to be mailed to each of the qualified electors of the City of San José; and (e) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election,

including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

***ALTERNATE 2 (FULL TEXT NOT PUBLISHED)***

**SECTION 8.** Pursuant to Section 12111 of the California Elections Code, the City Council hereby directs the City Clerk to: (a) cause a synopsis of the proposed measure to be published at least one time not later than one week before the election in the San José Mercury News, a newspaper of general circulation within the City of San José; (b) consolidate the Notice of Measure to be Voted with the Notice of Election into a single notice; (c) cause the following statement to be printed in the impartial analysis to be prepared by the City Attorney: "If you would like to read the full text of the measure, see <http://www.sanjoseca.gov/index.aspx?nid=5694> or call 408-535-1260 and a copy will be sent at no cost to you."; and (d) do all other things required by law to submit the specified measure above to the electors of the City of San José at the Special Municipal Election, including causing the full text of the proposed measure to be made available in the Office of the City Clerk at no cost and posted on the City Clerk's website.

**SECTION 9.** Pursuant to Sections 9282 and 9285 of the California Elections Code, the City Council hereby approves the submittal of direct arguments for and against the ballot measure, if any, [and authorizes the City Council or any member or members of the Council to author and submit a ballot measure argument in favor of the ballot measure] [but determines that rebuttal arguments will not be allowed] OR [and approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes the City Council or any member or members of the City Council to author and submit a rebuttal, if any.]

**SECTION 10.** The City Council hereby directs the City Clerk to transmit a copy of the measure qualifying for placement on the ballot to the City Attorney for preparation of an impartial analysis.

**SECTION 11.** The City Council hereby acknowledges that the consolidated election will be held and conducted in the manner prescribed in California Elections Code Section 10418.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

**EXHIBIT A TO RESOLUTION NO. \_\_\_\_\_ OF THE CITY OF SAN JOSE**

That the citizens of the City of San José do hereby enact the following amendments to the City Charter:

1. That Section 1217 of the City Charter be amended to read as follows:

**SECTION 1217. Public Works Procurement~~Bid~~ Requirements.**

~~(a) DEFINITIONS. For the purposes of this Section, the following words have the following meanings. Contracts are to be let to the lowest responsible bidder as set forth below:~~

~~(a) PUBLIC WORKS PROJECTS. When the expenditure required for a specific “public works project” (hereinafter defined), excluding the cost of any materials, supplies or equipment which City may have acquired or may separately acquire therefor, will exceed the greater of One Hundred Thousand Dollars (\$100,000) or the amount which a general law city of the State of California may legally expend for a “public project” (as defined by State law) without a contract let to a lowest responsible bidder after notice, it shall be let to the lowest responsible bidder after notice.~~

~~(1) For purposes of this Section, “Public Works Project” shall mean a project for the construction, erection, improvement or demolition of any public building, street, bridge, drain, ditch, canal, dam, tunnel, sewer, water system, fire alarm system, electrical traffic control system, street lighting system, parking lot, park or playground. “Public Works Project” shall not mean or include the following: (i) maintenance of any Public Works Project, or (ii) any repairs, construction, erection, improvement or demolition incidental to such maintenance, or (iii) the planting, care or maintenance of trees, shrubbery or flowers.~~

~~(2) “Major Public Works Contract” means a City contract for a Public Works Project that, at the time of award, requires the expenditure of City funds of more than \$600,000, excluding the cost of any materials, supplies or equipment the City may have acquired or may separately acquire.~~

~~(3) “Minor Public Works Contract” means a City contract for a Public Works Project that, at the time of award, requires the expenditure of City funds in an amount less than the threshold amount to be a Major Public Works Contract.~~

- (4) "Design-Build Contract" means a City contract in which both the design and construction of the Public Works Project are procured from a single entity.
- (b) ADJUSTMENT FOR INFLATION. Every July 1st the \$600,000 threshold used to define a Major Public Works Contract will be adjusted for inflation in the construction industry as set forth more specifically by ordinance of the City Council.
- (c) PROCUREMENT – MAJOR PUBLIC WORKS CONTRACTS. The primary means of procuring a Major Public Works Contract will be formal public bidding in which, following public notice, the City will award the contract to the lowest responsive bidder that is responsible. Formal public bidding will occur consistent with the requirements in Subsections (e) through (h) of this Section, and as otherwise set forth by ordinance of the City Council.
- (1) As a procurement alternative for Major Public Works Contracts, the City can select a contractor using objective criteria to determine the best combination of price and qualifications. This procurement process will be set forth by ordinance of the City Council consistent with the following requirements.
- (i) The City will follow the formal bidding requirements in Subsections (e) through (h) except as otherwise provided in Subsections (c)(1)(ii) through (c)(1)(v).
- (ii) The City will designate a panel to evaluate the qualifications of the bidders and to assign to each bidder a qualification score. The panel will base the qualification score on an evaluation of objective criteria that may include, but is not limited to, a bidder's safety record, past performance, labor compliance, demonstrated management competence, financial condition and relevant experience.
- (iii) The qualification score may be determined as part of a prequalification or as part of the bid solicitation. In either case, the relevant documents will set forth the criteria, methodology and rating system the panel will use to evaluate bidders.
- (iv) Bid prices will remain sealed until after the evaluation panel has assigned a qualification score to each bidder.

(v) Based on a formula that uses the assigned qualification score and bid price, the City will award the contract to the lowest responsive bidder that is responsible.

(2) As a procurement alternative for Major Public Works Contracts over \$1,000,000, the City may negotiate and award a Design-Build Contract without formal public bidding if the City Council finds that such a contract would save money or result in faster project completion. The process for competitively selecting a design-build contractor, and for negotiating and awarding a Design-Build Contract, will be set forth by ordinance of the City Council.

(d) PROCUREMENT – MINOR PUBLIC WORKS CONTRACTS. The City will procure Minor Public Works Contracts in the manner set forth by ordinance of the City Council.

(e) NOTICE REQUIREMENT AND PROCEDURE.

(1) The notice inviting bids shall set a date for the opening of bids, and shall be published at least once, at least ten (10) days before the date set for opening of bids, in a newspaper of general circulation in the City or electronically so that the notice is publicly available to the general community of potential bidders.

(2) All bids, including such bidder's security as may be required, shall be presented under sealed cover.

(3) If the successful bidder fails to execute the contract within the time specified in the notice inviting bids or in the specifications referred to therein, the amount of the security required, if any, may be declared forfeited to the City and may be collected and paid into its General Fund, and all bonds so forfeited may be prosecuted and the amount thereof collected and paid into such fund.

(4) All bids shall be publicly opened, and the aggregate bid of each bidder declared at a time and place specified in the notice inviting bids.

(5) The Council shall have the right to waive any informalities or minor irregularities in bids or bidding.

(fe) APPRENTICESHIP PROGRAM. Nothing herein shall preclude the City from including in any contract provisions that require contractor participation in an apprenticeship program for at-risk youth.



(gd) OTHER PROGRAMS. Nothing herein precludes the City from implementing otherwise lawful programs supporting the use of small, local or economically disadvantaged businesses.

(h) SELECTION OF LOWEST RESPONSIBLE BIDDER. If no bids are received, the Council may readvertise, or have the P“public Wworks Pproject” for which no bids are received done, without further complying with this Section.

- (1) If two or more bids are the same and the lowest, the Council may accept the one it chooses.
- (2) In its discretion, the Council may reject any or all bids presented. If it rejects all bids, the Council may, in its discretion, readvertise.
- (3) If, after rejecting all bids for any P“public Wworks Pproject” and after readvertising for bids, the Council finds and declares that the bids were excessive, it may have such P“public Wworks Pproject” done by City employees without further complying with this Section.

(ie) SECTION NOT APPLICABLE. The provisions of Subsection (c) of this Section shall not apply to any of the following Ppublic Wworks Pprojects.

- (1) Any Ppublic Wworks Pproject done for the City by any public or governmental body or agency.
- (2) Any Ppublic Wworks Pproject done by any public utility which is either publicly owned or is regulated by the Public Utilities Commission of the State of California where such work involves any property of such public utility or is otherwise of direct concern to both the City and such public utility.
- (3) Any Ppublic Wworks Pproject done by a subdivider, developer or owner of real property in connection with the subdivision or development by him or her of any real property, notwithstanding the fact that such may be subject to entire or partial reimbursement from the City.
- (4) Any Ppublic Wworks Pproject involving highly technical or professional skill where the peculiar technical or professional skill or ability of the person selected to do such work is an important factor in his or her selection.
- (5) Expenditures deemed by the Council to be of urgent necessity for the preservation of life, health or property, provided the same are authorized by resolution of the Council adopted by the affirmative vote of at least

eight (8) members of the Council and containing a declaration of the facts constituting the urgency.

(6) Situations where solicitation of bids would for any reason be an idle act.

~~(7) Any public works project where the contract will cost more than \$5,000,000 and the City Council finds that the "design-build" procurement process would save money or result in faster project completion. In such situations, the City may negotiate and award a "design-build" contract without having to award the contract to the lowest responsible bidder. For purposes of this provision, "design-build" means a procurement process in which both the design and construction of the project are procured from a single entity.~~

(if) PURCHASE OF SUPPLIES MATERIALS AND EQUIPMENT. The procedures for the purchase of supplies materials and equipment shall be as prescribed by ordinance.