

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ: (1) MAKING FINDINGS AND DETERMINING THAT THE CITY CAN AWARD A CONSTRUCTION CONTRACT FOR THE EMERGENCY INTERIM HOUSING AT THE POLICE ADMINISTRATION BUILDING PARKING LOT E (“PROJECT”) TO DEVCON CONSTRUCTION, INC. UNDER THE “IDLE ACT” EXCEPTION IN SECTION 1217(i)(6) OF THE CITY CHARTER; (2) AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH DEVCON CONSTRUCTION, INC. IN AN AMOUNT NOT TO EXCEED \$6,000,000 TO CONSTRUCT THE PROJECT; (3) AUTHORIZING THE ESTABLISHMENT OF A CONSTRUCTION CONTINGENCY FOR THE PROJECT EQUAL TO FIVE (5%) OF THE CONSTRUCTION CONTRACT AMOUNT NOT TO EXCEED \$300,000; (4) AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH DESTINATION: HOME TO ACCEPT A \$1,000,000 GRANT TO BE USED TO CONSTRUCT THE PROJECT; AND (5) REAFFIRMING THE APRIL 7, 2020 EMERGENCY ORDER AND DECLARATION OF A CONTINUED SHELTER CRISIS IN THE CITY OF SAN JOSÉ, PURSUANT TO. AND IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA GOVERNMENT CODE SECTIONS 8634 AND 8698 ET SEQ.**

**WHEREAS**, the City of San José (“City”) City Council desires to adopt this resolution for the reasons set forth in the memorandum, dated September 22, 2021, from Director of Public Works Matt Cano, Deputy Director of the Housing Department Ragan Henninger, and Budget Director Jim Shannon for the October 5, 2021 City Council meeting (“Memorandum”);

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

**Section 1.** The City Council hereby makes the following findings of fact based on the Memorandum:

1. The engineer's estimate to construct the Project is \$13,112,936;
2. The City does not have currently identified funding to support construction of the Project for the amount of the engineer's estimate;
3. The donation of modular units to Devcon Construction, Inc. by SHP Foundation has an estimated value of \$6,050,000;
4. Construction of the Project by Devcon Construction, Inc. for no more than \$6,000,000 based on the donation by SHP Foundation and a reduction in Devcon Construction, Inc's profit margin is less than 50% percent of the engineer's estimate to construct the Project.

Based on the above facts, the City Council determines that publicly soliciting bids for construction of the Project would likely not lead to the City obtaining a lower price for constructing the Project and is unlikely to provide any significant value or benefit to the City. Accordingly, the City Council concludes the City can enter into a construction contract with Devcon Construction, Inc. in accordance with the "idle act" exception (Section 1217(i)(6) of the City Charter) to the competitive procurement of construction contracts.

**Section 2.** The City Manager is authorized to negotiate and execute a construction agreement not to exceed \$6,000,000 with Devcon Construction, Inc. to construct the Project consistent with the Memorandum and Chapter 5.09 of the San José Municipal Code;

**Section 3.** A construction contingency is authorized for the Project equal to five percent (5%) of the construction contract amount not to exceed \$300,000;

**Section 4.** The City Manager is authorized to negotiate and execute an agreement with Destination: HOME to accept a \$1,000,000 grant to be used for the construction of the Project consistent with the Memorandum; and

**Section 5.** The April 7, 2020 Emergency Order and declaration of a continued shelter crisis in the City of San José is hereby reaffirmed, pursuant to and in accordance with the provisions of California Government Code Sections 8634 and 8698 et seq., in Resolution 79466 on the bases therein as if fully set forth herein.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

---

SAM LICCARDO  
Mayor

ATTEST:

---

TONI J. TABER, CMC  
City Clerk