

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE: (1) MAKING FINDINGS AND DETERMINING THAT THE CITY CAN AWARD A CONSTRUCTION CONTRACT FOR PHASE II OF THE EMERGENCY INTERIM HOUSING AT THE POLICE ADMINISTRATION BUILDING PARKING E-LOT (“PHASE II”) 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 THE FIRST AMENDMENT TO THE CONSTRUCTION AGREEMENT WITH DEVCON CONSTRUCTION, INC. IN AN AMOUNT NOT TO EXCEED \$8,300,000 TO CONSTRUCT THE PROJECT; AND (3) AUTHORIZING THE INCREASE OF THE CONSTRUCTION CONTINGENCY FOR THE PROJECT TO SEVEN (7%) OF THE CONSTRUCTION CONTRACT AMOUNT NOT TO EXCEED \$600,000**

**WHEREAS**, on October 5, 2021, the City of San José (“City”) City Council authorized the City Manager to negotiate and execute a construction agreement with Devcon Construction, Inc. to construct the original scope of the project which construction began on February 1, 2022; and

**WHEREAS**, the City Council desires to adopt this resolution for the reasons set forth in the memorandum, dated October 18, 2022, from Director of Public Works Matt Cano, Director of the Housing Department Jacky Morales-Ferrand, and Budget Director Jim Shannon for the November 1, 2022 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 Phase II is \$2,250,000.
2. Devcon Construction, Inc is already mobilized on-site and will continue to provide some of the construction services either pro-bono or at a discounted rate.
3. Devcon Construction, Inc has committed to working with the City and private donors to secure unit donations, which will offset the construction cost.

Based on the above facts, the City Council determines that publicly soliciting bids for construction of Phase II would likely not lead to the City obtaining a lower price for constructing Phase II and is unlikely to provide any significant value or benefit to the City. Accordingly, the City Council concludes the City can amend and expand the 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 first amendment to the construction agreement to increase compensation by \$2,300,000 for a total contract amount not to exceed \$8,300,000 with Devcon Construction, Inc. to construct Phase II consistent with the Memorandum and Chapter 5.09 of the San José Municipal Code.

**Section 3.** An additional \$300,000 is authorized for the construction contingency for a total construction contingency not to exceed \$600,000 equal to seven percent (7%) of the total construction contract amount.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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