

RESOLUTION NO. 74800

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE WAIVING THE REQUIREMENT THAT THE DIRECTOR OF PUBLIC WORKS SEEK FORFEITURE OF THE BID BOND SUBMITTED BY ÉLAN CONSTRUCTION ON THE THIRD STREET GARAGE REPLACEMENT PROJECT

WHEREAS, on October 16, 2008, the City of San José (“City”) received six bid proposals for the Third Street Garage Staircase Replacement Project (“Project”), with the low bid submitted by Élan Construction (“Contractor”) in the amount of \$338,800; and

WHEREAS, on October 28, 2008, the Director of Public Works awarded the construction contract for the Project to the Contractor, and on October 29, 2008, the construction contract and official award of contract notification letter were sent to the Contractor; and

WHEREAS, by letter dated November 22, 2008, the Contractor notified the City as follows:

- As a condition to issuing the necessary performance and payment bonds for the Project, the Contractor’s bonding company required the Contractor to obtain a bank-issued letter stating that the bank would lend \$150,000 to the Contractor in the event the Contractor could not complete the Project for the amount bid; and
- The Contractor could not obtain such a letter from a bank because of the current depreciation in real estate values, resulting in the Contractor being unable to obtain the necessary payment and performance bonds from its bonding company; and
- The Contractor was unsuccessful in its attempts to obtain the necessary payment and performance bonds from other bonding companies; and

WHEREAS, Sections 2-1.095, 3-1.04 and 3-1.05 of the City’s Standard Specifications require the forfeiture of a bid bond if the bidder fails to execute a construction contract within eight working days of receipt of the contract; and

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

Based upon the facts, as set forth above, the City Council hereby waives the requirement that the Director of the Department of Public Works seek forfeiture of the bid bond submitted by Élan Construction as security for its bid on the Project.

ADOPTED this 24th day of February, 2009, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA,
LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk