

## **ORDINANCE NO. 2021-016**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN BUENAVENTURA, CALIFORNIA, ADDING CHAPTER 4.602, "ALTERNATIVE METHODS FOR PUBLIC WORKS PROJECT DELIVERY," TO THE SAN BUENAVENTURA MUNICIPAL CODE TO IMPLEMENT RECENTLY ADOPTED CHARTER AMENDMENT**

WHEREAS, The City of San Buenaventura ("City"), as a "charter city," is authorized to establish guidelines and enact local ordinances governing municipal affairs that supersede the State's general laws otherwise governing general law cities; and,

WHEREAS, Prior to the November 3, 2020 election, the City of San Buenaventura Charter generally required award of public works construction contracts to the "lowest responsible bidder," based on a "design-bid-build" procurement method, under which design, procurement, and construction of the project proceeded sequentially: first the preparation of plans and specifications are completed, either with City staff or with a design consultant, and second an award of the construction contract with the contractor entity separate from the designer typically being made to the lowest responsible bidder on the basis of previously completed plans and specifications; and,

WHEREAS, At the November 3, 2020 election, the voters approved Measure J which amends Section 400 of the City of San Buenaventura Charter to provide that the City is exempt from the provisions of the California Public Contract Code, unless on a particular contract it elects to be so bound, and specifically reserves the right for the City to determine the manner in which it contracts for public works projects; and,

WHEREAS, The City's award of local contracts and the establishment of local procedures to govern public works project delivery is a municipal affair, and the City, as a charter city, thus is authorized to adopt an ordinance establishing procedures for awarding contracts for public works construction that differ from those imposed on general law cities,

based on the City's broad Constitutional "home rule" authority (pursuant to California Constitution Article XI, Section 5); and,

WHEREAS, The City's authority, as a charter city, to exempt itself from the requirements of the California Public Contract Code are specifically identified in Public Contract Code Section 1100.7; and,

WHEREAS, Measure J amended Charter Section 1006 to authorize the City Council to adopt ordinances that establish criteria and requirements for the award of certain city contracts, including public works construction contracts; and,

WHEREAS, Design-build project delivery is a method of public works construction delivery in which the design and construction functions are contracted by a single "design-build" entity; and,

WHEREAS, Construction manager at risk project delivery is a method of public works construction delivery in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project; and,

WHEREAS, California general law cities, charter cities and other public agencies have utilized the design-build and construction manager at risk delivery methods for completion of public works projects and have experienced numerous benefits from utilizing these alternative delivery methods, including enhanced design quality, reduced costs to the public agencies, development of innovative solutions to construction and design challenges, accelerated schedules for project delivery and completion, improved coordination and communication between parties, a reduction in risk, claims, and litigation related to public project construction, and the ability of public entities to make and negotiate contractor selections based on qualifications, value, cost, and criteria in addition to price; and,

WHEREAS, San Buenaventura Municipal Chapter 4.600 establishes certain procedures for the award of City contracts that require selection of the lowest bid contractor for public works construction, based on City Charter requirements in effect prior to adoption of Measure J; and,



WHEREAS, The City anticipates funding and contracting for the construction of public works projects and facilities in the future for which design-build or construction manager at risk delivery methods may be a viable and beneficial alternative to the more traditional design-bid-build delivery method; and,

WHEREAS, The City desires to clarify the procedures to be followed in the execution of design-build and construction manager at risk contracts; and,

WHEREAS, While City plans to utilize elements of the procurement process outlined under relevant Sections of the Public Contract Code in the drafting of Requests for Proposals soliciting qualified design-build and construction manager at risk contractors under the process authorized by this Ordinance, the City is not bound by the limitations contained in the statutes, including, but not limited to, limitations on the use of design-build contracts; and,

WHEREAS, The intent of this Ordinance is to establish a procedure for the use, evaluation and award of design-build and construction manager at risk contracts for City projects in order to provide that the City may utilize the design-build and construction manager at risk delivery methods to achieve superior design and quality, to minimize disputes between project designers and contractors, to expedite project delivery by overlapping the design and construction phases of projects, and to reduce project costs; and,

WHEREAS, This City Council has considered all information related to this matter, as presented at the public meeting of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

The Council of the City of San Buenaventura does ordain as follows:

Section 1. ADDITION TO CODE. Chapter 4.602, "Alternative Methods for Public Works Project Delivery," is hereby added to San Buenaventura Municipal Code to read as follows:

### **"Chapter 4.602**

## **Alternative Methods for Public Works Project Delivery**

### **Sections:**

**Sec. 4.602.010 – Definitions.**

**Sec. 4.602.020 – Design-Build and Construction  
Manager At Risk Authorized.**

### **Sec. 4.602.010 – Definitions.**

‘Construction manager at risk method’ means a project delivery method in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The contract may be entered into using a qualifications-based selection process or using a selection process that evaluates price as well as other factors.

‘Design-build method’ means a project delivery method in which both the design and construction of a project are procured from a single entity. The contract may be entered into using a qualifications-based selection process or using a selection process that evaluates price as well as other factors.

‘Proposer’ means a corporation, limited liability company, partnership, joint venture, or other legal entity that is able to provide appropriately licensed services as needed pursuant to a design-build or construction manager at risk contract.

**Sec. 4.602.020 – Design-Build and Construction  
Manager At Risk Authorized.**

Pursuant to Section 1006 of the Charter of the City of San Buenaventura, the City Council hereby authorizes the use of the design-build and construction manager at risk methods as defined in Section 4.602.010 hereof where the Director of Public Works makes a written determination that utilizing such method for a particular project will promote efficiency and will not hamper fair competition and the City Council has adopted a conflict of interest policy pertaining to such method. The City Manager shall adopt administrative policies and procedures to implement this authorization and promote fair competition. Procedures shall include a requirement for the proposer to identify the proposer and its subcontractors as specified in the procurement package, and shall require the selected contractor to follow a process approved by the City for selection of subcontractors. For design-build contracts the proposer must identify the general contractor, the principal design firm and all design subconsultants.”

Section 2. SEVERABILITY. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 3. CEQA FINDINGS. EXEMPTION FROM CALIFORNIA ENVIRONMENTAL QUALITY ACT: The City Council further finds that the enactment of the Alternative Methods for Public Works Project Delivery Chapter of the Municipal Code pursuant to this Ordinance is determined to be exempt under Section 15061(b)(3) of the of Title 14 of the California

Code of Regulations (the "State CEQA Guidelines") in that the adoption of these procedures merely implements a(n) administrative process that will not foreseeably result in construction activities or other physical activities, either directly or indirectly. It can therefore be foreseen that the enactment of this ordinance does not have the potential to result in significant effects on the environment.

Section 4. EFFECTIVE DATE. This Ordinance will take effect on the 30<sup>th</sup> day following its final passage and adoption.

PASSED and ADOPTED this 13th day of December, 2021.



SOFIA RUBALCAVA  
Mayor


ATTEST:



ANTOINETTE M. MANN, MMC, CRM  
CITY CLERK

APPROVED AS TO FORM

Gregory G. Diaz, City Attorney

By:  11/17/2021  
Gregory G. Diaz Date  
City Attorney



# CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF VENTURA ) SS.  
CITY OF SAN BUENAVENTURA )

I, ANTOINETTE M. MANN, City Clerk of the City of San Buenaventura, DO HEREBY CERTIFY that the foregoing is a full, true, and correct copy of Ordinance No. 2021-016 that was introduced by said City Council at a regular meeting held December 6, 2021, and adopted by said City Council at a regular meeting held December 13, 2021, by the following vote:

AYES: Councilmembers Sanchez-Palacios, Brown, Johnson, Halter, Friedman, Deputy Mayor Schroeder, and Mayor Rubalcava

NOES:       None

ABSENT: None

I further certify that said Ordinance No. 2021-016 was published as required by law in the VENTURA COUNTY STAR, a newspaper of general circulation printed and published in said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Buenaventura, California.

  
Antoinette M. Mann, MMC, CRM  
City Clerk  
City of San Buenaventura, California

December 20, 2021  
Date Attested

