ORDINANCE NO. 23-2307

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 2612 (CONTRACTS FOR PUBLIC PROJECT) OF CHAPTER 6 (PURCHASING SYSTEM) OF ARTICLE II (ADMINISTRATION) OF THE CARSON MUNICIPAL CODE TO AMEND THE DEFINITION OF MAINTENANCE WORK AS IT PERTAINS TO RESURFACING OF STREETS AND HIGHWAYS

WHEREAS, the City of Carson ("City") is a charter city as of November 6, 2018; and

WHEREAS, all charter cities have the right to adopt and enforce ordinances, regulations and laws regarding municipal affairs, subject only to conflicting provisions in the federal and state Constitutions and to preemptive state law (California Constitution, Article XI, Section 5; *Domar Elec. Inc. v. City of Los Angeles*, 9 Cal.4th 161 (1994)); and

WHEREAS, the expenditure of city funds on a city's public works project is a "municipal affair" and moreover, street work within a municipality and the making of contracts therefor on the part of the municipality are "municipal affairs" within the meaning of Article XI, Section 5 of the California Constitution (*Domar Elec Inc. v. City of Los Angeles*, 9 Cal.4th 161 (1994); *Loop Lumber Co. v. Van Loben Sels*, 173 Cal. 228 (1916)); and

WHEREAS, by City Council's adoption of Resolution No. 17-012, the City elected to become subject to the Uniform Public Construction Cost Accounting Act ("UPCCAA") under Public Contract Code Section 22000 *et seq*., which provides regulations and bidding procedures for public projects; and

WHEREAS, Section 22003 of the Public Contract Code as part of UPCCAA's regulations provides that a public agency such as the City which has, by resolution, elected to become subject to UPCCAA, may utilize the bidding procedures set forth under UPCCAA when contracting for "maintenance work," as such term is defined in Public Contract Code Section 22002; and

WHEREAS, as reflected in Section 2612 of the City's Municipal Code, the City elected to utilize UPCCAA's bidding procedures for purposes of "maintenance work" as defined in Public Contract Code Section 22002; and

WHEREAS, "maintenance work" under Public Contract Code Section 22002(d)(3) includes "resurfacing of streets and highways at less than one inch"; and

WHEREAS, the City Council now sees fit to amend Section 2612 of the City's Municipal Code so that "maintenance work" for resurfacing of streets and highways is defined as resurfacing of streets and highways at up to two (2) inches.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. RECITALS. The foregoing recitals are true and correct, and are incorporated herein as findings of fact.

SECTION 2. AMENDMENT. Section 2612 (Contracts for Public Project) of Chapter 6 (Purchasing System) of Article II (Administration) of the Carson Municipal Code is hereby amended to read in its entirety as follows (deletions shown in ~~strikethrough~~, additions shown in ***bold italics***):

"(a) Uniform Public Construction Cost Accounting Act Adopted. The City Council of the City of Carson, California, hereby adopts the Act, for the purpose of prescribing regulations governing purchases and contracts awarded by the City for "public projects" and "maintenance work," as defined in California Public Contract Code Section 22002 ***except as otherwise provided in this Section 2612(a)***. In accordance with the Act, the City shall utilize the Act's procedures and definitions when contracting for "public projects" or "maintenance work" ***except that "maintenance work" for resurfacing of streets and highways is defined as "resurfacing of streets and highways at up to two (2) inches."*** However, nothing shall preclude the City from utilizing more restrictive procedures.

(b) Informal Bidding Procedure. Public projects and maintenance work which are in accordance with the limits established in California Public Contract Code Section 22032(b) may be let to contract by following the Act's informal procedures. The informal procedures include the following:

(1) Contractors List. A list of contractors, identified according to categories of work, shall be developed and maintained in accordance with the provision of California Public Contract Code Section 22034, together with any criteria promulgated by the Commission from time to time.

(2) Notice Inviting Bids. At least ten (10) calendar days before bids are due, a notice inviting informal bids shall be mailed to all contractors on the list for the category of work being bid, and to all construction trade journals specified pursuant to the requirements of California Public Contract Code Section 22036; provided however:

(i) Additional contractors and trade journals may be notified at the discretion of the Purchasing Manager.

(ii) If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.

(iii) If the product or service is proprietary in nature, such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to those contractor(s).

(3) The City Council may delegate the authority to award contracts under this informal bidding procedure to the Purchasing Manager.

(4) If all bids received under this informal bidding procedure are in excess of the limits provided in California Public Contract Code Section 22034(d), then the City Council may award the contract consistent with California Public Contract Code Section 22034(d).

(c) Formal Bidding Procedure. Public projects and maintenance work, which are in accordance with the limits established in Public Contract Code Section 22032(c), shall, unless otherwise provided by the Act or by law, be let to contract pursuant to the formal procedures set forth in the Act.

(1) Notice Inviting Bids.

(i) Formal bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids in a newspaper of general circulation pursuant to the requirements of California Public Contract Code Section 22037.

(ii) The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail, and mailed to all construction trade journals specified in California Public Contract Code Section 22036.

(iii) For circumstances not involving a public project, where there is no construction trade journal for the maintenance work to be procured, the notice inviting bids shall instead be made in conformity with established procedures. All notices under this paragraph shall be sent at least fifteen (15) calendar days before the date of opening the bids.

(iv) In addition to notice required by this Section, the City may give such other notice as it deems proper.

(2) The City Council shall adopt plans, specifications and working details for all public projects requiring the formal bid procedure, pursuant to California Public Contract Code Section 22039.

(d) Bid Acceptance or Rejection.

(1) Processing Bids. Sealed bids shall be submitted to the City Clerk and shall be identified as bids on the envelope. It is the responsibility of the bidder to ensure receipt of the bid document by the City Clerk by the designated hour. Bids shall be

opened in public at the time and place stated in the public notice. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than thirty (30) calendar days after the bid opening.

(2) Bid Acceptance or Rejection.

(i) Rejection of All Bids. In its discretion the awarding authority may reject all bids presented, if the City, prior to rejecting all bids and declaring that the project can be more economically performed by City employees, furnishes a written notice to the apparent low bidder. The notice shall inform the bidder of the City's intention to reject the bid, and shall be mailed at least two (2) business days prior to the hearing where the bid will be rejected. If after the first invitation of bids all bids are rejected, after reevaluating its cost estimates of the project, the City may:

(A) Abandon the project or readvertise for bids; or

(B) Following passage of a resolution of the City Council by a four-fifths (4/5) vote stating the project can be performed more economically by the employees of the City, the City may have the project done by force account without further complying with the requirements of the Act.

(ii) If a contract is awarded, it shall be awarded to the lowest responsible bidder. If two (2) or more bids are the same and the lowest, the City may accept the one (1) it chooses.

(iii) If no bids are received through the formal or informal procedure, the project may be performed by the employees of the City by force account or negotiated contract without further complying with this article."

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 5. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

[SIGNATURES ON FOLLOWING PAGE]

PASSED, APPROVED and **ADOPTED** at a regular meeting of the City Council on this ___ day of _____, 2023.

_____
Lula Davis-Holmes, Mayor

ATTEST:

_____
Dr. Khaleah K. Bradshaw, City Clerk

APPROVED AS TO FORM:

_____
Sunny K. Soltani, City Attorney