

1 MICHAEL N. FEUER, City Attorney (SBN 111529x)
 2 JAMES P. CLARK, Chief Deputy City Attorney (SBN 64780)
 3 james.p.clark@lacity.org
 4 GABRIEL S. DERMER, Supervising City Attorney (SBN 229424)
 5 gabriel.dermer@lacity.org
 6 BENJAMIN CHAPMAN, Deputy City Attorney (SBN 234436)
 7 benjamin.chapman@lacity.org
 8 200 North Main Street, 6th Floor, City Hall East
 9 Los Angeles, California 90012
 10 Telephone Number: 213.978.7556
 11 Facsimile Number: 213.978.8214

12 Attorneys for Defendants,
 13 CITY OF LOS ANGELES, ERIC GARCETTI, and HOLLY WOLCOTT

14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

16 NATIONAL RIFLE ASSOCIATION OF AMERICA; JOHN DOE,	)	Case No.: 19-cv-03212-SVW-GJS
)	
17 Plaintiffs,	)	DECLARATION OF BENJAMIN CHAPMAN
18 vs.	)	IN SUPPORT OF DEFENDANTS CITY OF
	)	LOS ANGELES, ERIC GARCETTI, AND
	)	HOLLY WOLCOTT’S MOTION TO DISMISS
19 CITY OF LOS ANGELES; ERIC GARCETTI, in his official capacity as	)	THE COMPLAINT
20 Mayor of the City of Los Angeles;	)	Date: July 8, 2019
21 HOLLY L. WOLCOTT, in her official	)	Time: 1:30 p.m.
22 capacity as City Clerk of the City of Los Angeles, and DOES 1-10,	)	Ctrm: 10A-First Street Courthouse
	)	Judge: Hon. Stephen V. Wilson
23 Defendants.		

24 Action Filed: 04/24/2019

DECLARATION OF BENJAMIN CHAPMAN

I, Benjamin Chapman, declare and state as follows:

1. I am an attorney at law duly admitted to practice before the Courts of the State of California. I am a Deputy City Attorney, counsel of record for Defendants the City of Los Angeles (the “City”), Los Angeles Mayor Eric Garcetti, and Los Angeles City Clerk Holly Wolcott. I have personal knowledge of the facts set forth below, and, if called as a witness, could and would testify competently thereto.

2. The City is bound by its Charter. The City’s Charter is available online. On May 23, 2019, I went to <https://www.lacity.org/your-government/government-information/city-charter-rules-and-codes>, and clicked on the link marked “City Charter.” Navigating from this link, I was able to download Section 371 of the Charter, a true and correct copy of which is attached hereto as Exhibit A.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 23, 2019 at Los Angeles, California.

/s/Benjamin Chapman

Print

Los Angeles Charter and Administrative Code

Sec. 371. Competitive Bidding; Competitive Sealed Proposals.

(a) **Competitive Bidding.** Except as provided in subsection (e) below, the City shall not be, and is not, bound by any contract unless the officer, board or employee authorized to contract has complied with the procedure for competitive bidding or submission of proposals established by this section and ordinance.

Contracts shall be let to the lowest responsive and responsible bidder furnishing satisfactory security for performance. This determination may be made on the basis of the lowest ultimate cost of the items in place and use. Where the items are to constitute a part of a larger project or undertaking, consideration may be given to the effect on the aggregate ultimate cost of the project or undertaking. Notwithstanding the provision of this subsection requiring award to the lowest responsive and responsible bidder, a bid preference can be allowed in the letting of contracts for California or Los Angeles County firms, and the bid specifications can provide for a domestic content and recycled content requirement. The extent and nature of the bid preference, domestic content and recycled content requirement and any standards, definitions and policies for their implementation shall be provided by ordinance.

(b) **Competitive Sealed Proposals.** As an alternative to an award pursuant to open and competitive bidding, a contract can be let pursuant to a competitive sealed proposal method, in accordance with criteria established by ordinance adopted by at least a two-thirds vote of the Council. The competitive sealed bid proposal system may permit negotiations after proposals have been opened to allow clarification and changes in the proposal. Adequate precautions shall be taken to treat each proposer fairly. No award may be made pursuant to this alternative method to a proposer whose final proposal is higher as to the ultimate cost to the City, as above defined, than any other responsive proposal submitted. The contracting authority, in order to utilize this alternative method, must make a written finding supported by a written statement of facts that adherence to the rule that the award be made to the lowest responsive and responsible bidder is not practicable or advantageous and shall also state in writing the reason for the particular award.

Consistent with competitive bidding requirements, design-build or other appropriate project delivery systems may be used when justified by the type of project and approved by the contracting authority.

(c) **Right to Reject.** The City shall reserve the right to reject any and all bids or proposals and to waive any informality in the bid or proposal when to do so would be to the advantage of the City. The City may also reject the bid or proposal of any bidder or proposer who has previously failed to timely and satisfactorily perform any contract with the City.

(d) **Notice.** The Council, board, officer or employee authorized to contract shall cause notice inviting bids or proposals to be published at least once in a daily newspaper circulated in the City, or to be given by other method prescribed by ordinance, inviting bids or proposals. All bids and proposals shall comply with additional requirements provided by ordinance, including, but not limited to, the furnishing of a bid bond, performance bond and affidavit of non-collusion. Further procedures for competitive bidding shall be prescribed by ordinance.

(e) **Exceptions.** The restrictions of this section shall not apply to:

(1) Contracts involving consideration reasonably valued at less than an amount specified by ordinance.

(2) Contracts, as determined by the contracting authority, for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which the contracting authority finds that competitive bidding is not practicable or advantageous.

(3) Contracts for the furnishing of articles covered by letters patent granted by the government of the United States.

(4) Contracts for leasing as lessee or purchasing real property when approved by majority vote of the Council.

(5) Contracts for repairs, alterations, work or improvements declared in writing by the contracting officer or board, or its designee, to be of urgent necessity for the preservation of life, health or property. The declaration shall give the reasons for the urgent necessity and must be approved by the Council or its designee. Approval may be conditioned upon compliance with one or more of the requirements of this section.

(6) Contracts entered into during time of war or national, state or local emergency declared in accordance with federal, state or local law, where the Council, by resolution adopted by two-thirds vote and approved by the Mayor, suspends any or all of the restrictions of this section or their applicability to specific boards, officers or employees.

(7) Contracts for equipment repairs or parts obtained from the manufacturer of the equipment or its exclusive agent.

(8) Contracts for cooperative arrangement with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements, even though the contracts and implementing agreements were not entered into through a competitive bid process.

(9) New, long-term concession agreements with the existing merchants as of the Adoption Date of the Charter on Olvera Street negotiated by the City department responsible for administering the El Pueblo de Los Angeles Historical Monument.

(10) Subject to the requirements of Section 1022, contracts (including without limitation those, as determined by the contracting authority, for the performance of professional, scientific, expert, technical or other special services), where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements.