

**Chula Vista Bayfront Facilities Financing Authority**

**Resolution 2020-007**

RESOLUTION RATIFYING THE FINAL FORM OF THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY (AUTHORITY) PROCUREMENT POLICY FOR DEVELOPER-PERFORMED PUBLIC WORKS AND RESOLUTION 2020-002 IMPLEMENTING THE CONSTRUCTION OF DEVELOPER-PERFORMED PUBLIC WORKS FOR AND IN SUPPORT OF THE CHULA VISTA BAYFRONT RESORT HOTEL AND CONVENTION CENTER PROJECT

**WHEREAS**, on January 8, 2020, at a regular meeting of the Board of Directors (“Authority Board”) for the Chula Vista Bayfront Facilities Financing Authority (“Authority”), the Authority Board adopted Resolution 2020-001, which adopted a procurement policy for developer-performed public works for the Authority (“Procurement Policy”), but requested that Authority staff make minor modifications to the Procurement Policy to incorporate a cap on general/prime contractor profit and overhead fees of fifteen percent (15%) on the hard construction costs of the subject developer-performed public work (the “GC Fee Cap”); and

**WHEREAS**, on January 8, 2020, at a regular meeting of the Authority Board, the Authority Board adopted Resolution 2020-002, which, among other things, included an Authority Board finding that RIDA Chula Vista, LLC’s proposed sole source award of the prime contract to construct the developer-performed public works for the Chula Vista Bayfront resort hotel and convention center was in the best interest of the public, but requested that Authority staff make minor modifications to incorporate the GC Fee Cap; and

**WHEREAS**, staff has revised the Procurement Policy and Resolution 2020-002 in order to implement the minor modifications requested by the Authority Board; and

**WHEREAS**, accordingly, Authority staff recommends the Authority Board ratify the final form of the Procurement Policy and Resolution 2020-002 in the forms presented.

**NOW, THEREFORE, BE IT RESOLVED** by the Authority Board, as follows:

**Section 1.** In accordance with the findings set forth above, the Procurement Policy in the form presented and attached hereto as **Exhibit A** is hereby ratified as the procurement policy for developer-performed public works for the Authority.

**Section 2.** In accordance with the findings set forth above, Resolution 2020-002, in the form presented and attached hereto as **Exhibit B** is hereby ratified as the final form of Authority Board Resolution 2020-002.

2020-007

**Section 3.** This Resolution is not a new action by the Authority Board with respect to the Procurement Policy or Resolution 2020-002 but merely a ratification of the final forms of the same as previously deliberated and approved by the Authority Board at its regular meeting duly held on January 8, 2020.

**Section 4.** This Resolution shall take effect immediately upon its adoption.

APPROVED AS TO FORM AND LEGALITY:  
CO-COUNSEL

*Thomas Russell*

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Thomas A. Russell, San Diego Unified Port District

*Glen Googins*

\_\_\_\_\_  
Glen R. Googins, City of Chula Vista City Attorney

Passed and Adopted by the Board of Directors of the Chula Vista Bayfront Facilities Financing Authority this 20th day of May, 2020, by the following vote:

- AYES: Castellanos, Malcolm, Moore, and Padilla
- NAYS:
- EXCUSED: Casillas Salas
- ABSENT:
- ABSTAIN:

*Mary Casillas Salas*

\_\_\_\_\_  
Mary Casillas Salas, Chair  
Board of Directors

ATTEST:

*Donna Morales*

\_\_\_\_\_  
Donna Morales  
Secretary

**Exhibit A**

**AUTHORITY PROCUREMENT POLICY**

[To Be Attached]

# Chula Vista Bayfront Facilities Financing Authority

## Procurement Policy

### For Developer-Performed Public Works

#### Introduction; General Terms

This Chula Vista Bayfront Facilities Financing Authority Procurement Policy for Developer-Performed Public Works (“JEPA Procurement Policy” or “Policy”) was approved by the Chula Vista Bayfront Facilities Financing Authority (“Authority”) on January 8, 2020 pursuant to Resolution No. \_\_\_\_\_.

This Policy is based on the procurement policy for developer-performed public works utilized by the City of Chula Vista (“City”) set forth in Section 2.56.160(H) of the Chula Vista Municipal Code (“CVMC”). Except where the context otherwise requires, capitalized terms not expressly defined herein shall have the meanings ascribed thereto in the City Charter, CVMC Chapter 2.56 (Purchasing System), or elsewhere in the CVMC. Any provisions in the City Charter, or Sections of the CVMC, that are expressly cross-referenced by this Policy are hereby incorporated herein by such reference, substituting the terms “Authority” for “City”, “Authority Board” for “City Council” and “Executive Director” for “City Manager”, as appropriate. For ease of reference, these cross-referenced Sections from the City Charter and the CVMC are set forth in full in the attached **Appendix A**. Except as expressly provided herein, no other provisions of the City Charter or the CVMC shall govern the Authority in its implementation of this Policy.

#### Specific Terms

In General. This Policy shall apply to public works (as defined by Section 1009 of the Charter of the City of Chula Vista, as amended) that are to be constructed, or designed and constructed, by or at the direction of a developer or private property owner and subsequently accepted by, dedicated to, or acquired by the Authority, the City, or the San Diego Unified Port District, a public benefit corporation (“Port”), as appropriate (“developer-performed public work”).

1. Procurement. A developer-performed public work shall be procured pursuant to one of the following project contracting methods:

a. Competitive Bid or Solicitation. A developer may award a contract for a developer-performed public work by competitive bid or solicitation in compliance with all applicable requirements of this Policy.

b. Sole Source. A developer may award a contract for a developer-performed public work on a sole source basis where, in addition to compliance with all applicable requirements of this Policy:

i. The Authority Board finds that an award of a sole source contract is in the best interest of the public because of the particular (1) performance capabilities of the proposed entity or contractor, (2) project characteristics, (3) manufacturing processes, (4) compatibility requirements, and/or (5) market or other conditions/circumstances that render the award of a sole source contract to be in the best interest of the public; and

ii. The entity or contractor awarded a contract for a developer-performed public work competitively bids all subcontracts for the developer-performed public work; and

iii. The Authority Board has been provided assurances that the amount that the developer will pay to the prime contractor for Profit and Overhead shall not exceed fifteen percent (15%) of the total amount of the hard construction costs of the developer-performed public work ("15% Requirement"); provided, however, the 15% Requirement does not apply to any compensation that is paid to the prime contractor for the performance, on a fixed-price basis, of trade work which the prime contractor does not subcontract, and such compensation will be excluded in determining whether the 15% Requirement has been satisfied.

"Profit and Overhead" means, cumulatively, with respect to any developer-performed public work, the prime contractor's fee (which is compensation for profit and general overhead) and costs for general administration (internal overhead that is not project specific) and supervision.

c. Developer as Design-Build Entity or Prime Contractor. A developer may act as a design-build entity or prime contractor for a developer-performed public work where, in addition to compliance with all applicable requirements of this Policy:

i. Developer provides written notice to Authority of its intent to act as a design-build entity or prime contractor and provides information demonstrating its competence and qualifications to perform the developer-performed public work;

ii. Authority determines, in Authority's sole discretion, that the developer is competent and qualified to complete the developer-performed public work and authorizes the developer to proceed with the developer-performed public work; and

iii. Developer competitively bids all subcontracts for the developer-performed public work.

## 2. Bid and Award.

a. Authorization to Proceed. If a developer-performed public work is not otherwise authorized by means of an approved agreement with the Authority or other approved action of the Authority, a developer shall be required to: (i) obtain prior written approval of the Executive Director, or designee, to proceed with a developer-performed public work with an estimated maximum contract value of \$2,000,000 or less; or (ii) obtain approval of the Authority Board, by resolution, to proceed with a developer-performed public work with an estimated maximum contract value of more than \$2,000,000. Failure to comply with the procedures in this Policy may, in Authority's discretion, result in a waiver of all claims for payments by Authority or bond drawdowns to developer in connection with a developer-performed public work.

b. Bid and Contract Documents. Developer shall prepare, or cause to be prepared, bid documents (except with respect to prime contracts awarded pursuant to section A.1.b. of this Policy) and contract documents for a developer-performed public work in accordance with all local codes, City design guidelines, and project-specific design guidelines, subject to Authority approval. The bid and contract documents shall include, without limitation, detailed plans and technical specifications, bonding requirements, insurance requirements, prevailing wage requirements, mandates for timely completion, and remedies for untimely completion.

c. Competitive Solicitation of Bids. Developer shall solicit, or cause to be solicited, sealed competitive bids for prime contracts (except for prime contracts awarded pursuant to section A.1.b. of this Policy) and subcontracts for a developer-performed public work on a guaranteed maximum price, lump sum price, or per unit, line item basis and in accordance with industry standard procurement practices as determined by Authority. A developer may combine into one bid solicitation the construction of a developer-performed public work and other development work, but the bid and contract documents must clearly separate the developer-performed public work from other development work to be performed, in a manner and form as approved by Authority. Any consultant retained by a developer to assist in the preparation of bid or contract documents (including without limitation preliminary/concept designs), or to assist in the solicitation of bids for a developer-performed public work, shall not be eligible to submit a bid for or be awarded a subsequent contract for that developer-performed public work.

d. Award of Contract. Developer shall award contracts (except for contracts awarded pursuant to section A.1.b. of this Policy), and shall award, or shall cause the applicable entity or contractor to award, subcontracts for a developer-performed public work to the lowest responsive and responsible

bidder, or the bidder that is determined by developer to be the “best qualified contractor,” subject to Authority approval. When determining the “best qualified contractor,” developer shall consider, without limitation, a bidder’s demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria. If a developer awards a prime contract or subcontract to a bidder other than the lowest responsive and responsible bidder for an item or unit of work, then all payments and reimbursements shall not exceed the amount of the lowest responsive bid for that item or unit of work. This not-to-exceed limitation may be waived where:

- i. The amount of the bid does not exceed the engineer’s estimate or other approved estimate for the developer-performed public work by more than 10 percent; and
- ii. Authority approves the waiver in accordance with section A.6. of this Policy.

e. Design-Build Contracts. Where a design-build contract is utilized to complete a developer-performed public work, a developer is not required to comply with section A.2.b. or A.2.c. of this Policy; provided, that developer complies with:

- i. All remaining requirements of this Policy;
- ii. The design-build procurement requirements set forth in CVMC 2.57.030;
- iii. The qualification and selection process set forth in CVMC 2.57.040; and
- iv. All other applicable administrative policies, procedures, and standards for design-build projects, which may be adopted or applied by the Authority.

### 3. Construction and Acceptance.

a. Payments. Authority shall have the authority to audit and determine the acceptable amounts of all payments by Authority and bond drawdowns for a developer-performed public work.

b. Change Orders. Any change to the contract documents or improvements for a developer-performed public work (“change order”) shall be subject to Authority’s prior written approval, except for change orders that: (i) result in no additional payment by Authority or bond drawdown; (ii) result in no additional maintenance or overhead costs to the Authority; (iii) result in no material delay to the completion date; and (iv) result in no material modifications to the design or construction. Authority shall have the sole discretion to determine whether sections A.3.b.(i), (ii), (iii), and (iv) of this Policy have been satisfied. All change order requests shall be submitted in

writing in advance of performing any work or incurring any increased costs for a change order, and substantiated with supporting documentation justifying the request. Cumulative change orders resulting in a total project amount of less than \$2,000,000 shall be considered by and subject to approval of the Executive Director, or designee. Cumulative change orders resulting in a total project amount of \$2,000,000 or more shall be considered by and subject to approval of the Authority Board. Failure to comply with the procedures in this Policy may, in Authority's discretion, result in a waiver of all claims for additional payments from Authority or bond drawdowns to developer in connection with a change order.

c. Post-Construction. Authority shall have the discretion to accept a developer-performed public work based on Authority's determination of compliance with local codes, Authority's general design and construction standards, and project-specific design and construction standards. Authority shall have the discretion to release all bonds for a developer-performed public work.

4. Other Obligations. Nothing in this Policy shall limit or relieve a developer of other obligations or restrictions applicable to the performance of a developer-performed public work, including, without limitation, obligations or restrictions required by a funding source for the developer-performed public work.

5. Agreement. Where otherwise required or advisable, in Authority's sole discretion, Authority may require a developer to enter into an agreement prior to commencement of a developer-performed public work to implement the developer-performed public work in accordance with the terms of this Policy and/or in accordance with other obligations or restrictions applicable to the developer-performed public work. Such agreement may: (a) clarify or modify the application of and/or waiver of the requirements of this Policy to a developer-performed public work, and/or (b) clarify, establish, or modify the procedures to be undertaken by developer and Authority in connection with this Policy (including but not limited to the procedures and approvals described in section A.3. of this Policy). The Authority Board's approval of an agreement that clarifies and establishes such procedures constitutes the Authority Board's determination and finding that such procedures satisfy all applicable requirements of this Policy.

6. Waiver. The requirements of this Policy may be waived, in whole or in part, solely as follows:

a. For developer-performed public works with an original project award amount of more than \$2,000,000, by the Authority making findings that (i) the waiver is in the best interest of the public after consideration of factors including, without limitation, project costs, time for completion, and other relevant criteria, and (ii) appropriate safeguards are in place to protect the public interest.

b. For developer-performed public works with an original project award amount of \$2,000,000 or less, by written determination of the Executive



Director, or designee, that (i) the waiver is in the best interest of the public after consideration of factors including, without limitation, project costs, time for completion, and other relevant criteria, and (ii) appropriate safeguards are in place to protect the public interest.

c. For post-award waiver requests, if the estimated total project amount, including all change orders, is more than \$2,000,000, post-award waiver requests shall be considered by and subject to approval of the Authority and require the findings stated in section H.6.a. of this Policy. If the estimated total project amount, including all change orders, is \$2,000,000 or less, post-award waiver requests shall be considered by and subject to the approval of the Executive Director, or designee, and require the findings stated in section A.6.b. of this Policy. Nothing in this Policy shall subject previously approved waivers to further consideration and/or approval.

d. For a “special purpose project,” by resolution of the Authority making findings that: (i) the waiver is in the best interest of the public after consideration of factors including, without limitation, the total project costs, Authority’s share of project costs, time for project completion, public benefits of the project, and other relevant criteria and circumstances, and (ii) appropriate safeguards are in place to protect the public interest. For purposes of this Policy, “special purpose project” means a developer-performed public work that is intended to be owned, leased, and/or operated by a party or parties other than the Authority for a period of no less than 10 years after completion of the developer-performed public work.

7. Delegation of Authority. As the Authority Board deems appropriate or necessary for the implementation of a developer-performed public work, the Authority Board may delegate authority to implement this Policy to the Executive Director, or designee, including without limitation the authority to grant approvals, make findings, implement waivers, and waive requirements in accordance with the standards set forth in this Policy.

8. Exemption from California Public Contract Code. The Authority is exempt from the California Public Contract Code in its procurement of developer-performed public works pursuant to this Policy.

## **APPENDIX A**

### **Excerpts from the City Procurement Policy**

#### **City Charter**

##### **Section 1009. Contracts on Public Works.**

When the City contracts for the construction, reconstruction, improvement or repair (excluding routine maintenance) of public buildings, streets, drains, sewers, utilities, parks, playgrounds and similar public facilities (each a "Public Work" and collectively, "Public Works"), the furnishing of labor, supplies, materials, equipment or other contractual services for same shall be done by written contract approved as to form and legality by the City Attorney.

The City Council shall, by ordinance, adopt specific policies and procedures for the award of Public Works contracts. This ordinance must contain provision for the following:

- (a) City Council reservation of authority to approve what it defines as "major" contracts or "special" contracts, based on factors such as contract cost, value or other relevant factors;
- (b) Competitive bid processes for all contracts, with formal advertisement for bids and sealed bids required for all "major" contracts;
- (c) The award of contracts to the lowest responsive and responsible bidder;
- (d) The ability to reject any and all bids, to re-advertise for bids, or to waive minor defects in any bid, where determined by the designated contract-approving authority that such action is necessary or appropriate for the benefit of the public;
- (e) Emergency authority to waive the applicable competitive bid process requirements if the City Manager determines that the work required is of urgent necessity for the preservation of life, health or property; and
- (f) Such other provisions consistent with this section as may be necessary or appropriate to implement a Public Works procurement process that is consistent with best practices.

The ordinance may also provide for one or more exceptions to the approval and competitive bid processes described in a. through c., above, provided that any such exception is implemented as part of a City-wide policy or program that has been approved and determined to be in the best overall interests of the City by at least four affirmative votes of the City Council.

Notwithstanding any provisions of this Charter to the contrary, the City may employ a design-build process for the construction, reconstruction or repair of public works. A “design-build process” shall mean a process in which the design and construction of a project are procured from a single entity. Prior to employing the design-build process, the City shall establish, by ordinance, specific procedures and standards to be used to solicit, qualify, evaluate and select design-build proposals by competitive bid or negotiation process.

## **Chula Vista Municipal Code**

### **Section 2.57.030 Design-build procurement.**

Prior to procuring a design-build public works contract, the City shall complete one of the following processes:

A. *Project-Specific RFP/RFQ.* Prepare a project-specific request for proposal or qualification setting forth the basic scope of the project that may include, but is not limited to, the size, type, and desired design character of the project and site, and performance specifications. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City’s needs. The performance specifications shall be prepared by a design professional designated by the City; or

B. *Project-Specific RFP to a Qualified List of Proposers.* Prepare a project-specific request for proposal setting forth the basic scope of the project that may include, but is not limited to, the size, type and desired design character of the project and site, and performance specifications to be distributed exclusively to those teams selected from the qualified list of design-build entities. The performance specifications shall describe the quality of construction materials, assemblies, and other information deemed necessary to adequately describe the City’s needs. The performance specifications shall be prepared by a design professional designated by the City; or

C. *Project-Specific RFP (Collaborative Design-Build/Progressive Design-Build) to a Qualified List of Proposers.* Prepare a project-specific request for proposal setting forth the basic scope of the project and the project budget to be distributed exclusively to teams selected from a qualified list of design-build entities. The request for proposals shall indicate that the project is to be completed in two contract phases: (1) a design and preconstruction phase and (2) a final design and construction phase. The request for proposals shall require proposers to submit a technical proposal describing the proposer’s experience, project personnel, organizational structure, project approach, and project schedule and plan. The request for proposal shall require proposers to submit a fee proposal for both phases of the project; or

D. *Selection from Qualified List of Proposers.* Select a design-build entity from those teams identified on the qualified list of design-build entities without preparing a formal request for proposals. Prior to an award to a design-build entity pursuant to the qualified list of design-build entities, the City Manager shall certify to the

City Council in writing that the most qualified firms have been invited to interview and the selected firm is capable of providing the services and it is in the best interest of the City to proceed in this manner; or

E. *Sole Source*. Select a design-build entity or team as a sole source, if, in advance of the award of the contract, the City Manager certifies in writing that the proposed provider and services meet the requirements for award as a sole source (as defined in CVMC [2.57.020](#)); or

F. *Cooperative Purchasing*. Select a design-build entity or team through a competitive cooperative purchasing solicitation in accordance with CVMC [2.56.140](#) (Cooperative purchasing agreements) and other City rules, regulations, and procedures governing design-build procurement.

The City is authorized to cancel any design-build procurement process at any time if the City determines doing so would be in the best interest of the City. The City is not responsible or liable for any costs incurred by a proposer pursuant to any design-build procurement process. (Ord. 3436 § 1, 2018; Ord. 2827 § 1, 2000).

#### **2.57.040 Qualification and selection process.**

The City may establish a qualification and selection process for design-build entities that specifies the qualification criteria, as well as recommends the manner in which the winning entity will be selected. Nothing in this chapter precludes a design-build contract from being awarded to a sole source if, in advance of the contract, the City Manager certifies in writing the sole source status of the provider. (Ord. 3436 § 1, 2018; Ord. 2827 § 1, 2000).

**Exhibit B**

**RESOLUTION 2020-002**

[To Be Attached]

**Chula Vista Bayfront Facilities Financing Authority****Resolution 2020-002**

RESOLUTION OF THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY (AUTHORITY) (1) AUTHORIZING RIDA CHULA VISTA, LLC (DEVELOPER) TO PROCEED WITH THE DEVELOPMENT AND CONSTRUCTION OF DEVELOPER'S PUBLIC IMPROVEMENTS, WITH CONDITIONS; (2) FINDING DEVELOPER'S PROPOSED SOLE SOURCE AWARD OF THE PRIME CONTRACT TO CONSTRUCT DEVELOPER'S PUBLIC IMPROVEMENTS TO BE IN THE BEST INTEREST OF THE PUBLIC; (3) DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR, OR DESIGNEE, TO IMPLEMENT THE SUBCONTRACTOR PROCUREMENT PROCESS FOR THE PHASE 1A IMPROVEMENTS IN ACCORDANCE WITH AUTHORITY'S PROCUREMENT POLICY; AND (4) FINDING THE CONVENTION CENTER TO BE A SPECIAL PURPOSE PROJECT PURSUANT TO THE AUTHORITY'S PROCUREMENT POLICY, GRANTING A WAIVER OF THE PROCUREMENT POLICY REQUIREMENTS FOR THE SUBCONTRACTOR AWARD AND BID PROCESS FOR THE CONVENTION CENTER, AND DELEGATING AUTHORITY TO THE EXECUTIVE DIRECTOR, OR DESIGNEE, TO IMPLEMENT APPROPRIATE PROJECT IMPLEMENTATION SAFEGUARDS FOR THE CONVENTION CENTER

**WHEREAS**, on May 7, 2018, the San Diego Unified Port District, a public benefit corporation ("Port"), the City of Chula Vista, a California chartered municipal corporation ("City"), and RIDA Chula Vista, LLC, a Delaware limited liability company ("Developer"), entered into a Disposition and Development Agreement (as it may be amended from time to time, "DDA") for the development of a Resort Hotel and Convention Center Project (the "Project") on Parcel H-3 within the Chula Vista Bayfront Master Plan ("CVBMP"), as more fully described in the DDA; and

**WHEREAS**, the "Project" includes the development and construction of "Developer's Public Improvements", which consist of the "Phase 1A Infrastructure Improvements" and the "Convention Center", all as more fully described in the DDA; and

**WHEREAS**, the Project includes the development and construction of "Developer's Private Improvements" which are comprised of a resort hotel, consisting of no less than 1,570 rooms and no more than 1,600 rooms (the "Hotel") and related resort-level amenities as more fully described in the DDA; and

**WHEREAS**, City and Port formed the Chula Vista Bayfront Facilities Financing Authority (“Authority”) pursuant to the California Joint Exercise of Powers Act for the primary purpose of assisting with the financing of the Developer’s Public Improvements portion of the Project; and

**WHEREAS**, on January 8, 2020, the Authority approved and adopted a Procurement Policy (“Procurement Policy”) implementing regulations related to the Authority’s procurement of contracts for developer-performed public works within the CVBMP; and

**WHEREAS**, the Procurement Policy regulates the procurement of construction contracts for certain public improvements such as Developer’s Public Improvements; and

**WHEREAS**, Procurement Policy Section 2.a (Authorization to Proceed) requires Developer to obtain authorization of the Board of Directors of the Authority (“Board”), by resolution, prior to proceeding with a developer-performed public work estimated to exceed \$2 million; and

**WHEREAS**, the total cost of constructing the Convention Center portion of the Project is currently estimated at \$376 million and the Project Public Investment Amount (as defined in the DDA) is \$240 million, with the Developer responsible for all construction costs of the Convention Center in excess of the Project Public Investment Amount; and

**WHEREAS**, Procurement Policy Section 1.b (Sole Source) provides that developer-performed public works may be constructed through the award of a sole source contract where: (i) the Authority Board finds that the award of the sole source contract is in the best interest of the public based on consideration of (1) performance capabilities of the proposed entity or contractor, (2) project characteristics, (3) manufacturing processes, (4) compatibility requirements, and/or (5) market or other conditions/circumstances that render the award of a sole source contract to be in the interest of the public; (ii) the entity or contractor awarded a contract for a developer-performed public work shall competitively bid all subcontracts for the developer-performed public work; and (iii) the Authority Board has been provided assurances that the amount that the developer will pay to the prime contractor for Profit and Overhead (as defined in the Policy) shall not exceed fifteen percent (15%) of the total amount of the hard construction costs of the developer-performed public work (“15% Requirement”); provided, however, the 15% Requirement does not apply to any compensation that is paid to the prime contractor for the performance, on a fixed-price basis, of trade work which the prime contractor does not subcontract, and such compensation will be excluded in determining whether the 15% Requirement has been satisfied; and

**WHEREAS**, Developer has proposed award of a single sole source prime contract to Mortenson/McCarthy Chula Vista Resort, A Joint Venture (“MMJV”) which is comprised of M.A. Mortenson Company (“Mortenson”) and McCarthy Building Companies, Inc. (“McCarthy”); and

**WHEREAS**, the proposed prime contract would combine certain public improvement work, the Developer’s Public Improvements, certain private improvement work, and the Developer’s Private Improvements; and

**WHEREAS**, Developer represents that it has selected MMJV for the construction of, and partial design, of the Project on the following basis: Mortenson is an industry leader with a wealth of experience in similar large-scale projects, including the recent construction of the Gaylord Rockies Resort and Convention Center project developed by a Developer affiliate which makes it uniquely qualified to develop the Project; and McCarthy provides a strong local presence, positive reputation, relationships with the local subcontractor community, and a resume of large-scale development projects; and

**WHEREAS**, as authorized by Procurement Policy Section 1.b (Sole Source), Developer is seeking Authority's acceptance of MMJV as the sole source general contractor for the construction of the Developer's Public Improvements based on the Developer's representation that hiring MMJV as general contractor will provide for a compatible, streamlined, and successful approach that will result in time and cost efficiencies for Project delivery, timely delivery of the Convention Center (where the collective investment of the City, the Port and the Authority in the construction of the Convention Center will not exceed the Project Public Investment Amount), timely deliver the Phase 1A Infrastructure Improvements pursuant to a competitive procurement process that meets the 15% Requirement, and avoid logistical coordination issues that would otherwise impede the overall schedule for completion of the Project; and

**WHEREAS**, staff concurs that MMJV is highly qualified to build the Project and accepts Developer's assessment that having one contractor build both the public and private improvements will enhance Project implementation quality and timeliness. Accordingly, staff recommends that the Board find that Developer's proposed sole source award of the prime contract to MMJV to be in the "best interest of the public"; and

**WHEREAS**, Procurement Policy Section 2.d (Award of Contract) requires competitive bidding for all subcontractors for developer-performed public works in accordance with the Procurement Policy where a developer awards its prime contract on a sole source basis; and

**WHEREAS**, Procurement Policy Section 2.d (Award of Contract) provides that "subcontracts for a developer-performed public work to the lowest responsive and responsible bidder, or the bidder that is determined by developer to be the 'best qualified contractor,' subject to Authority approval. When determining the 'best qualified contractor,' developer shall consider, without limitation, a bidder's demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria"; and

**WHEREAS**, Developer has informed staff that it intends to cause its contractors to award subcontracts for the Project, including the Phase 1A Infrastructure Improvements, to "best qualified" subcontractors to ensure that the Project is constructed in a timely manner by subcontracting teams that are determined to be the best qualified to perform the work; and

**WHEREAS**, Developer has presented staff with its proposed process for selection of "best qualified" subcontractors for each respective trade for the Phase 1A Infrastructure Improvements that currently generally includes: (1) a qualification process that considers past relevant / similar project experience, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory / management personnel, financial capability, and design capabilities (for design-



build subcontracts); (2) where practical, the solicitation of (a) three competitive bid proposals from the pre-qualified list of subcontractors for work estimated to be equal to or in excess of \$75,000 and (b) two competitive bid proposals for work estimated to be less than \$75,000; (3) a bid proposal evaluation process that considers qualitative factors (i.e. personnel, schedule management, experience, expertise and business practices and policies that increase the likelihood that the Project will be completed without disruption, and quality management) and quantitative factors (i.e. price, schedule details, and rates for labor, equipment, and insurance); (4) a pre-selection in-depth interview with potential “best qualified” subcontractors; and (5) a pre-selection process for potential subcontractors to present a “best and final offer”. Further, prior to execution of each subcontract for the Phase 1A Infrastructure Improvements, Developer will provide written confirmation to the Authority that the subcontractor selection process was complied with or it will provide a written request to waive the process in accordance with the Procurement Policy; and

**WHEREAS**, staff is satisfied that the above-described process will result in the selection of the “best qualified” subcontractors consistent with the Authority’s best interest in high quality and timely construction per applicable standards and the DDA, leases, and other agreements to be entered into between Developer, the City, the Port, or the Authority, or any combination thereof, related to the construction of the Project (“Project Agreements”). Staff acknowledges that it may be desirable or necessary to modify the herein described subcontractor selection process in order to facilitate timely and satisfactory completion of the Phase 1A Infrastructure Improvements; and

**WHEREAS**, if Developer proposes a material change to the process as provided in this Resolution, staff will present such proposed material change to the Authority Board for its consideration and action at a future meeting of the Board; and

**WHEREAS**, Procurement Policy Section 2.d (Award of Contract) states that if a developer awards a “subcontract to a bidder other than the lowest responsive and responsible bidder for an item or unit of work, then all payments, reimbursements, and credits against developer impact fees or other developer fees or obligations (“development credits”) shall not exceed the amount of the lowest responsive bid for that item or unit of work”. This not-to-exceed limitation may be waived where: (i) the amount of the bid does not exceed the engineer’s estimate or other approved estimate for the developer-performed public work by more than 10 percent; and (ii) Authority approves the waiver in accordance with subsection A.6 of this section”; and

**WHEREAS**, Procurement Policy Section 6.a (Waiver) provides that the Authority may waive the requirements of the Procurement Policy, in whole or in part, for developer-performed public works with an original project award amount of more than \$2,000,000 where it finds that: (i) the waiver is in the best interest of the public after consideration of factors, including, without limitation, project costs, time for completion, and other relevant criteria, and (ii) appropriate safeguards are in place to protect the public interest; and

**WHEREAS**, final subcontractor bids for the Phase 1A Infrastructure Improvements will not be received or awarded until after the Board’s adoption of this Resolution; and

**WHEREAS**, Developer has informed staff that it intends to seek waivers for the award of certain subcontracts for the Phase 1A Infrastructure Improvements that it believes will achieve the objective of the Procurement Policy, but not precisely follow the procurement process set forth in the Procurement Policy; and

**WHEREAS**, appropriate safeguards to protect the public interest are in place and will be put in place for the selection of subcontracts for the Phase 1A Infrastructure Improvements in the Procurement Policy, this Resolution, and the various Project Agreements, which may include but are not limited to the following: insurance requirements; performance bond requirements; payment bond requirements; a completion guaranty; Developer's obligation to comply with all laws including without limitation prevailing wage laws; and Developer obligation to indemnify, defend, and hold harmless the public entity parties; and the above-described 10 percent not-to-exceed limitation for the award of subcontracts to non-low bidders; and

**WHEREAS**, in accordance with Section 7 of the Procurement Policy, staff recommends delegating authority to the Executive Director, or designee, to take other actions on behalf of the Authority to implement the subcontractor selection process for the Phase 1A Infrastructure Improvements, or to modify or waive any requirement of the subcontractor selection process for the Phase 1A Infrastructure Improvements; provided, that the actions of the Executive Director are consistent with the Procurement Policy and this Resolution; and

**WHEREAS**, Procurement Policy Section 6.d (Waiver) provides that the Board may, by resolution, waive the requirements of the Procurement Policy, in whole or in part, for a "special purpose project" where it finds that (i) the waiver is in the best interest of the public after consideration of factors including, without limitation, the total project costs, Authority's share of project costs, time for project completion, public benefits of the project, and other relevant criteria and circumstances, and (ii) appropriate safeguards are in place to protect the public interest; and

**WHEREAS**, Procurement Policy Section 6.d (Waiver) defines a "special purpose project" as a "developer-performed public work that is intended to be owned, leased, and/or operated by a party or parties other than the Authority, the City or the Port, for a period of no less than 10 years after completion"; and

**WHEREAS**, staff recommends that the Board find that the Convention Center portion of the overall Project constitute a "special purpose project" as the Convention Center will be leased and operated by Developer for a period of no less than 10 years after completion of the Convention Center; and

**WHEREAS**, Developer has informed staff that Developer is seeking, and may seek in the future, special purpose project waivers of certain aspects of the Procurement Policy for the Convention Center portion of the Project, including the subcontractor bid and award process, that it believes will achieve the objective of the Procurement Policy, but not precisely follow the procurement process set forth in the Procurement Policy; and

**WHEREAS**, appropriate safeguards to protect the public interest are in place in existing Project Agreements and will be put in place in future Project Agreements for the Convention Center, including but

not limited to the following: a not-to-exceed Project Public Investment Amount; insurance requirements; obligations for quality of work, permitting requirements, inspection requirements, performance bond requirements; payment bond requirements; obligations for timely completion; a completion guaranty; Developer's obligations to comply with all laws including without limitation prevailing wage laws; and Developer's obligations to indemnify, defend, and hold harmless the public entity parties; and

**WHEREAS**, subcontracts for the Convention Center will not be executed until after the Board's adoption of this Resolution; and

**WHEREAS**, in accordance with Section 7 of the Procurement Policy, staff recommends delegating authority to the Executive Director, or designee, to take other actions on behalf of the Authority to implement the Procurement Policy as it applies to the Convention Center, including the subcontractor selection process, and to modify or waive requirements of the subcontractor selection process; provided, that the actions of the Executive Director are consistent with this Resolution and the Procurement Policy; and

**WHEREAS**, the development, construction, or financing of the Convention Center or the Phase 1A Infrastructure Improvements are exempt from compliance with the California Public Contract Code pursuant to Section 8 of the Procurement Policy, as adopted by Resolution No. 2020-001; and

**WHEREAS**, as a condition to any waiver of the Procurement Policy, Developer will enter into an agreement with the City, the Port, and the Authority to indemnify, defend, and hold harmless the Authority, the Port, and the City, in a manner substantially consistent with Developer's indemnification, defense, and hold harmless obligations under Section 4.17 of the DDA as set forth in more detail in Section 7 hereof; and

**WHEREAS**, in accordance with Section 7 of the Procurement Policy, staff recommends granting the Executive Director, or designee, the authority to delegate the authority provided in this Resolution to two or more members of the staff of the Authority; provided that such delegation is made to a contingent comprised of an equal number of City and Port staff members respectively; and

**WHEREAS**, staff intends to bring future Project Agreements concerning the financing, development, and construction of the Developer's Public Improvements to the Board for its review and consideration at the appropriate time.

**NOW THEREFORE, BE IT RESOLVED** by the Board as follows:

**Section 1. Authorization to Proceed.** In accordance with Procurement Policy Section 2.a, the Board authorizes the Developer to proceed with the development and construction of the Developer's Public Improvements subject to the terms, conditions, and obligations of the Procurement Policy, this Resolution, all applicable Project Agreements, and all applicable federal, state, and local laws and regulations.

**Section 2. Sole Source Prime Contract.** After consideration of factors stated in Procurement Policy Section 1.b, the agenda statement, the existing Project Agreements, the terms to be contained in future

Project Agreements as required pursuant hereto, and the Recitals above, the Board finds that the Developer's award of a sole source contract to MMJV for the construction of the Developer's Public Improvements to be in the best interest of the public and finds the 15% Requirement limitation in the Policy to be consistent with current industry standards, and delegates the authority to the Executive Director or designee to implement Procurement Policy Sections 1.b (ii) and (iii) through provisions to be included in future Project Agreements and to oversee and determine compliance therewith.

**Section 3. Subcontracting Process – Phase 1A Infrastructure Improvements.** After consideration of the subcontractor bid and award process for the Phase 1A Infrastructure Improvements in the agenda statement, the existing Project Agreements, the terms to be contained in future Project Agreements as required pursuant hereto, and the Recitals above, the Board finds that the subcontractor bid and award process for the Phase 1A Infrastructure Improvements complies with the Procurement Policy or is in the best interest of the public and appropriate safeguards are in place to protect the public interest. The Board also delegates the authority, pursuant to Procurement Policy Section 7, to the Executive Director, or designee, to implement the subcontractor bid and award process for the Phase 1A Infrastructure Improvements in accordance with the Procurement Policy, as applied by, and subject to, this Resolution, including without limitation the following:

- (a) The authority, pursuant to Procurement Policy Section 2.b, to make findings and a compliance determination regarding subcontractor bid and contract documents;
- (b) The authority, pursuant to Procurement Policy Section 2.c, to make findings and a compliance determination regarding competitive solicitations of subcontractor bids, such delegation to include, without limitation, the authority to waive the limitations of the last sentence of Section 2.c as necessary and appropriate to implement a “design assist” procurement protocol and/or to allow MMJV to bid on certain project components where determined by Authority staff to be in the best interests of the public with appropriate safe-guards.
- (c) The authority, pursuant to Procurement Policy Section 2.d, to make findings and a compliance determination regarding the award of subcontractor contracts to “best qualified contractors”.
- (d) The authority, pursuant to Procurement Policy Section 2.d, to make findings and waive the not-to-exceed limitation provided in Section 2.d of the Procurement Policy.
- (e) The authority, pursuant to Procurement Policy Section 6.a, to make findings and waive requirements of the Procurement Policy, in accordance with standards and safeguards set forth in the Procurement Policy and this Resolution.

If Developer proposes a material change to the process as provided in this Resolution, staff is directed to present such proposed material change for consideration and action at a future meeting of the Board.

**Section 4. Special Purpose Project – Convention Center.** After consideration of the agenda statement, the existing Project Agreements, the terms to be contained in future Project Agreements as required pursuant hereto, and the Recitals above, the Board:

- (a) Finds that the Convention Center portion of the Project constitutes a “special purpose project” as defined by Procurement Policy Section 6.

- (b) Waives the requirements of Sections 1.b.ii., 1.b.iii, 2, and 3.b of the Procurement Policy for the Convention Center.
- (c) Finds that the waiver in Section 4(b) is in the best interest of the public and that appropriate safeguards are in place based on the following factors: (1) the collective investment of the City, the Port and the Authority in the construction of the Convention Center is limited to the Project Public Investment Amount in accordance with the DDA; and (2) the Developer and the Authority have agreed to include the following additional appropriate safeguards in future Projects Agreements relating to the Convention Center: insurance requirements; obligations for quality of work, performance bond requirements; payment bond requirements; obligations for timely completion; a completion guaranty; Developer's obligations to comply with all laws including without limitation prevailing wage laws; and Developer's obligations to indemnify, defend, and hold harmless the contracting public entity parties.
- (d) Delegates the authority, pursuant to Procurement Policy Section 7, to the Executive Director, or designee, to implement the safeguards set forth in Section 4(c), above, for the Convention Center.

**Section 5. Delegation of Authority.** The Board authorizes the Executive Director, or her designee, to further delegate the authority granted in this Resolution to two or more members of the staff of the Authority; provided that such delegation is made to a contingent comprised of an equal number of City and Port staff members respectively.

**Section 6. Future Implementing Agreements.** The Board also delegates the authority, pursuant to Procurement Policy Section 7, to require Developer to enter into an agreement prior to commencement of a developer-performed public work to implement the developer-performed public work in accordance with the terms of Procurement Policy Section 5 and/or in accordance with other obligations or restrictions applicable to the developer-performed public work.

**Section 7. Conditional Approval.** The actions taken by the Board pursuant to this Resolution are conditioned upon the Developer satisfying the safeguards set forth in Sections 2, 3, and 4 of this Resolution, including without limitation, entering into an agreement with the Authority, the Port, and the City to indemnify, defend, and hold harmless the Authority, the Port, and the City, in a manner substantially consistent with the Developer's indemnification, defense, and hold harmless obligations under Section 4.17 of the DDA, but solely against any Claims (as defined in the DDA) and Related Costs (as defined in the DDA) brought by any third party arising out of any action taken by the Authority, the Port, or the City, as applicable, in implementation of this Resolution; provided that, such indemnity, defense, and hold harmless obligations of the Developer shall not include any Claims (as defined in the DDA) and Related Costs (as defined in the DDA) arising solely out of (i) the Authority's, the Port's, or the City's, as applicable, sole or collective negligence, or willful misconduct, (ii) the failure of the Board to follow the procedures of the Authority in adopting this Resolution, or (iii) the Board's lack of authority to adopt this Resolution, but shall include Claims (as defined in the DDA) and Related Costs (as defined in the DDA) arising from Developer's delivery of incorrect, misleading, or inaccurate information to the City, the Port, or Authority, officers of the Authority, or the Board, which any of the aforementioned parties relied on to adopt, or recommend the adoption of, the Resolution. Such indemnification, defense, and hold harmless obligations shall exist for so long as a challenge or claim can be made against the Authority, the Port, or the City.

**Section 8. Compliance with the California Public Contract Code.** In accordance Section 8 of the Procurement Policy, as adopted by Resolution No. 2020-001, the Authority is exempt from the California Public Contract Code in its procurement of developer-performed public works and the development, construction, and financing of the Convention Center and Phase 1A Infrastructure Improvements are exempt from compliance with the California Public Contract Code.

**Section 9. Effective Date.** This Resolution shall take effect from and after January 8, 2020.


## Certificate Of Completion

Envelope Id: FA32B3CF9EC94D869A47244E95F38BAB	Status: Completed
Subject: Please DocuSign: CVBFFA Resolution 2020-002 for DocuSign.pdf, CVBFFA Resolution No. 2020-007 fo...	
Source Envelope:	
Document Pages: 31	Signatures: 8
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Gabby Livingston
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	3165 Pacific Highway
	San Diego, CA 92101
	glivingston@portofsandiego.org
	IP Address: 207.215.153.162


## Record Tracking

Status: Original 8/3/2020 5:12:37 PM	Holder: Gabby Livingston glivingston@portofsandiego.org	Location: DocuSign
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: San Diego Unified Port District	Location: DocuSign


## Signer Events

Signer Events	Signature	Timestamp
Thomas Russell trussell@portofsandiego.org General Counsel Security Level: Email, Account Authentication (None)	  Signature Adoption: Pre-selected Style Using IP Address: 174.192.135.152 Signed using mobile	Sent: 8/3/2020 5:19:14 PM Viewed: 8/3/2020 8:46:30 PM Signed: 8/3/2020 8:46:48 PM


**Electronic Record and Signature Disclosure:**  
 Accepted: 4/2/2020 11:20:36 AM  
 ID: 31ccb88b-7938-4c4a-8675-c7c09341f658

Glen Googins GGoogins@chulavistaca.gov City Attorney City of Chula Vista Security Level: Email, Account Authentication (None)	  Signature Adoption: Uploaded Signature Image Using IP Address: 209.242.148.130	Sent: 8/3/2020 8:46:50 PM Viewed: 8/5/2020 8:26:56 AM Signed: 8/5/2020 8:27:22 AM
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**Electronic Record and Signature Disclosure:**  
 Accepted: 4/16/2020 11:42:24 AM  
 ID: 000b9c9e-3d9c-40f5-9734-8e946936a005

Mary Casillas Salas msalas@chulavistaca.gov Mayor City of Chula Vista Security Level: Email, Account Authentication (None)	  Signature Adoption: Uploaded Signature Image Using IP Address: 162.198.65.45 Signed using mobile	Sent: 8/5/2020 8:27:25 AM Viewed: 8/5/2020 11:04:57 AM Signed: 8/5/2020 11:05:19 AM
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**Electronic Record and Signature Disclosure:**  
 Accepted: 8/5/2020 11:04:57 AM  
 ID: b9a2a653-14d6-4b41-b50f-7ea7d17a5c5d

Donna Morales dmorales@portofsandiego.org District Clerk San Diego Unified Port District Security Level: Email, Account Authentication (None)	  Signature Adoption: Pre-selected Style Using IP Address: 70.95.190.9 Signed using mobile	Sent: 8/5/2020 11:05:22 AM Viewed: 8/6/2020 5:54:32 AM Signed: 8/6/2020 5:55:56 AM
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**Electronic Record and Signature Disclosure:**

Signer Events	Signature	Timestamp
Not Offered via DocuSign		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Sally Raney sraney@portofsandiego.org Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 8/6/2020 5:55:58 AM
Elizabeth Alonso ealonso@portofsandiego.org Deputy General Counsel Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 4/23/2020 2:21:12 PM ID: 280d898a-123d-485f-b6d3-602391308b0a	<b>COPIED</b>	Sent: 8/6/2020 5:55:59 AM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		