

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING CHULA VISTA MUNICIPAL CODE SECTION 2.56 (PURCHASING SYSTEM) TO ADD JOB ORDER CONTRACTING (JOC) AS A CITY PROCUREMENT METHOD AND ESTABLISH RELATED POLICIES AND PROCEDURES, ESTABLISH UNIFORM POLICIES AND PROCEDURES FOR DEVELOPER-PERFORMED PUBLIC WORKS, EXEMPT THE CITY'S PURCHASING SYSTEM FROM THE REQUIREMENTS OF THE CALIFORNIA PUBLIC CONTRACT CODE, AND PROVIDE FOR AUTOMATIC INDEXED ADJUSTMENTS TO JOC DOLLAR THRESHOLDS

WHEREAS, on November 4, 2014, Chula Vista voters approved modifications to City Charter Sections 1009, 1010, and 1011 (Measure A) which, among other things, delegated authority to the City Council to establish procurement policies and procedures for awarding City contracts; and

WHEREAS, job order contracts (JOCs) are a procurement method designed to streamline the process of awarding small, repetitive construction contracts for minor or recurring tasks, such as repair or renovations that involve minimum design requirements; and

WHEREAS, staff recommends establishing JOC procurement policies and procedures in order to enhance the value, efficiency, and flexibility of the City's procurement practices; and

WHEREAS, the currently proposed additions and amendments to the purchasing ordinance are consistent with the above-referenced Charter Amendment and preserve appropriate checks and balances; and

WHEREAS, in order to maintain transparency, staff will periodically submit to the City Council reports evaluating the advantages and disadvantages of the City's use of JOCs; and

WHEREAS, staff recommends periodically increasing the monetary limits for JOCs based on the Engineering News Record (ENR) Construction Index in the same manner and to the same extent as public works contracts and cooperative purchasing agreements under the City's current purchasing ordinance; and

WHEREAS, it is common practice in the City of Chula Vista, and elsewhere, to have private developers construct public works related to or required in connection with private projects in order for project components to be constructed in a coordinated and efficient manner that maximizes the value of both public and private resources, and allocates risks of performance of the public works to developers, as appropriate. Accordingly, certain City public works have been and will continue to be constructed by or at the direction of developers and property-owners and subsequently dedicated back to or acquired by the City of Chula Vista ("Developer-Performed Public Works") in connection with the completion of otherwise private development projects; and

WHEREAS, it is desirable to amend the City's purchasing ordinance to codify the City's policies and procedures relative to Developer-Performed Public Works in order to allow for the completion of public works done in conjunction with private works while still providing appropriate safe guards to protect the public interest.

NOW THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I.

A. Chapter 2, Section 2.56.010 (Centralized purchasing system established) is amended to read as follows:

Pursuant to Section 1010 of the City Charter, there is established a centralized purchasing system for City departments, offices, and agencies, in order to (1) establish procedures for the purchase, lease or other acquisition of services, supplies and equipment, at the lowest possible cost commensurate with quality

needed, (2) exercise positive financial control over purchases, (3) clearly define authority for the purchasing function, and (4) assure the quality of purchases. Pursuant to section 1100.7 of the Public Contract Code and the City Charter, except as provided by ordinance or as required by law, the City of Chula Vista is exempt from the requirements of the California Public Contract Code.

B. Chapter 2 of the Chula Vista Municipal Code is amended to add section 2.56.145 to read as follows:

2.56.145 Job Order Contracts

A. In General. City of Chula Vista Charter Sections 1009, 1010, and 1011 (Measure A), among other things, delegate authority to the City Council to establish procurement policies and procedures for awarding City construction contracts. The purpose of this section is to add job order contracting procurement policies and procedures and to provide definitions and guidelines for the award, use, and evaluation of Job Order Contracts.

B. Definitions. “Job Order Contract” means a construction contract for minor or recurring construction tasks, including repairs, renovations, and alterations, with minimal design requirements, at a fixed price and for an indefinite quantity which are awarded on a unit price basis for all necessary labor, materials, and equipment. “Task Order” means an authorization to perform construction work under a Job Order Contract.

C. Implementation.

1. Job Order Contracts.

- a. Competitive Process.** Job Order Contracts shall be procured through a competitive process that the Purchasing Agent determines to be consistent with good procurement practices.
- b. Term.** Job Order Contracts shall have a term of no longer than four (4) years. Job Order Contracts may have a duration of more than four (4) years only if necessary to complete outstanding Task Orders issued during the four (4) year term, or as otherwise approved by the City Council.

- c. Specifications. The advertisement for bids and specifications shall include line item unit prices and detailed technical specifications for each construction task to be performed under the Job Order Contract.
 - d. Contractor Adjustment. Contractors submitting bids on a Job Order Contract shall state in their bids an adjustment on a percentage basis either increasing or decreasing the preset unit prices for all construction tasks in the bid documents.
 - e. Awarding Authority. The Awarding Authority for Job Order Contracts shall be as follows: Purchasing Agent for contracts with a Maximum Contract Amount of \$2,000,000 or less; City Council for contracts with a Maximum Contract Amount of more than \$2,000,000 (“Job Order Contract Awarding Authority”).
 - f. Periodic Review. The City Manager, or his designee, shall monitor the City’s use of Job Order Contracts and provide periodic informational reports regarding the observed advantages and disadvantages of the use of Job Order Contracts.
2. Task Order(s).
- a. Scope. Each Task Order shall include a detailed scope of work and time certain for completion of the work.
 - b. Task Order Price. The Task Order price shall be no more than the sum of the applicable unit prices and the contractor’s bid adjustment factor. The Task Order price shall not exceed \$2,000,000 (“Maximum Task Order Amount”).
 - c. No Subdivision of Work. City staff shall not subdivide work that logically should be performed as a single Task Order into multiple Task Orders for purposes of avoiding the Task Order limits in this section.

- d. **Awarding Authority.** The Awarding Authority for Task Orders shall be the Purchasing Agent (“Task Order Awarding Authority”).
- e. **Change Orders.** The Task Order Awarding Authority shall have the authority to approve change orders for a Task Order up to the Maximum Task Order Amount. The City Council shall have sole authority to approve change orders that exceed the Maximum Task Order Amount.
- f. **Rejection of Task Order Proposals.** The Task Order Awarding Authority may reject any and all Task Order proposals, waive minor defects in any Task Order proposal, or complete the scope of work contained in a Task Order proposal by means of other authorized procurement methods, if the Task Order Contract Awarding Authority determines that such action is necessary or appropriate for the benefit of the public.

C. Chapter 2, Section 2.56.160.B, of the Chula Vista Municipal Code is amended to read as follows:

B. Contract Awarding Authority. Notwithstanding subsection (A) of this section, the contract awarding authority for public works contracts shall be as follows: maximum contract amount of \$100,000 or less: Purchasing Agent; maximum contract amount over \$100,000 and up to \$250,000: City Manager; maximum contract amount in excess of \$250,000: City Council (“public works awarding authority”).

D. Chapter 2 of the Chula Vista Municipal Code is amended to add subsection 2.56.160.H to read as follows:

H. Developer-Performed Public Works. This section shall apply to Public Works (as defined by 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 City of Chula Vista (“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 section.
- 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 section:
 - i. City makes findings that an award of a sole source contract is in the best interest of the public because of the particular (i) performance capabilities of the proposed entity or contractor, (ii) project characteristics, (iii) manufacturing processes, (iv) compatibility requirements, and/or (v) 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.
- 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 section:
 - i. Developer provides written notice to City 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. City determines, in City'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 City or other approved action of the City, a developer shall be required to: (i) obtain prior written approval of the City Manager, 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 City Council, 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 section may, in City's discretion, result in a waiver of all claims for payments by City, bond drawdowns, or Development Credits (as hereinafter defined) to Developer in connection with a Developer-Performed Public Work.
- b. Bid and Contract Documents. Developer shall prepare, or cause to be prepared, bid and contract documents for a Developer-Performed Public Work (except with respect to prime contracts awarded pursuant to section 2.56.160.H.1.b) in accordance with all local codes, City design guidelines, and project-specific design guidelines, subject to City 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 2.56.160.H.1.b) 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 City. A developer may combine into

one bid solicitation the construction of a Developer-Performed Public Work and other development work, but the bid documents must clearly separate the Developer-Performed Public Work from other development work to be performed, in a manner and form as approved by City. 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 a Developer-Performed Public Work.

- d. Award of Contract. Developer shall award contracts (except for contracts awarded pursuant to section 2.56.160.H.1.b), and shall, 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 City 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, than 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 ten percent (10%); and
 - ii. City approves the waiver in accordance with section 2.56.160.H.6.
- 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 sections 2.56.160.H.2.b or 2.56.160.H.2.c above, provided that developer complies with:

- i. all remaining requirements of 2.56.160.H;
- ii. the City's design-build procurement requirements set forth in Chula Vista Municipal Code section 2.57.030;
- iii. the City's qualification and selection process set forth in Chula Vista Municipal Code section 2.57.040; and
- iv. all other applicable City policies, procedures, and standards for design-build projects.

3. Construction and Acceptance.

- a. Payments. City shall have the authority to audit and determine the acceptable amounts of all payments by City, bond drawdowns, and/or Development Credits 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 City's prior written approval, except for Change Orders that: (i) result in no additional payment by City, bond drawdown, or Development Credits to Developer; (ii) result in no additional maintenance or overhead costs to the City; (iii) result in no material delay to the completion date; and (iv) result in no material modifications to the design or construction. City shall have the sole discretion to determine whether (i), (ii), (iii), and (iv) above have been satisfied. All Change Order requests shall be submitted in writing in advance of performing any Change Order work or incurring any increased costs, 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 City Manager, 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 City Council. Failure to comply with the procedures in this section may, in City's discretion, result in a waiver of all claims for additional payments by City, bond

drawdowns, or Development Credits to Developer in connection with a Change Order.

- c. Post-Construction. City shall have the discretion to accept a Developer-Performed Public Work based on City's determination of compliance with local codes, City's general design and construction standards, and project-specific design and construction standards. City shall have the discretion to release all bonds for a Developer-Performed Public Work.
4. Other Obligations. Nothing in this section 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 City's sole discretion, City 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 section and/or in accordance with other obligations or restrictions applicable to the Developer-Performed Public Work. Such agreement may: (i) clarify or modify the application of and/or waiver of the requirements of this section to a Developer-Performed Public Work, and/or (ii) clarify, establish, or modify the procedures to be undertaken by developer and City in connection with this section (including but not limited to the procedures and approvals described in section 2.56.160.H.3). City Council's approval of an agreement that clarifies and establishes such procedures constitutes the City Council's determination and finding that such procedures satisfy all applicable requirements of this section 2.56.160.H.
6. Waiver. The requirements of this section 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 resolution of the City Council 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 safe guards 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 City Manager, 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 safe guards 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 City Council and require the findings stated in 2.56.160.H.6.a . 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 City Manager, or designee, and require the findings stated in 2.56.160.H.6.b. Nothing in this section shall subject previously approved waivers to further consideration and/or approval.
- d. For a “Special Purpose Project”, by resolution of the City Council 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, City’s share of project costs, time for project completion, public benefits of the project, and other relevant criteria and circumstances, and (ii) appropriate safe guards are in place to protect the public interest. For purposes of this section, “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 City for a period of no less than ten (10) years after completion of the Developer-Performed Public Work.

E. Chapter 2, Section 2.56.170 of the Chula Vista Municipal Code is amended to read as follows:

2.56.170 Automatic Indexed Adjustments.

The limits set forth in Sections 2.56.140, 2.56.145, and 2.56.160 shall automatically increase annually based on the Engineering News Record (ENR) Construction Index. These limits will increase by administrative action of the City Manager, starting on October 1, 2018, and again on each October 1st thereafter, based on the one-year change (from July to July) in the Los Angeles Construction Cost Index as published monthly in the Engineering News Record (“LA ENR CCI”) by rounding up to the nearest \$1,000.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Richard A. Hopkins
Director of Public Works

Glen R. Googins
City Attorney