

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA APPROVING A PROJECT DEVELOPMENT
AGREEMENT BETWEEN THE CITY AND LMC-MILLENNIA
INVESTMENT COMPANY, L.P. FOR THE CONSTRUCTION
OF THE CINEMATIC ARTS ACADEMIC CENTER AND
LIBRARY BUILDING

WHEREAS, on December 6, 2022, the City Council of the City of Chula Vista (“City”) approved a purchase and sale agreement (“PSA”) between the City and LMC-Millenia Investment Company, L.P. (“Developer”) for the acquisition of an approximately 7.06-acre lot located directly east of Millenia Avenue, West of Montage Avenue and immediately south of Fire Station 10, commonly known as Lot 7 (the “Land”); and

WHEREAS, Developer has caused the preparation of certain building plans and specifications for the development of a multi-story Class A office building on the Land along with related improvements (collectively, the “Project”), and has obtained building permits from the City for development of the Project; and

WHEREAS, Developer has experience developing multi-story Class A office projects like the Project and has identified four experienced prime contractors that have expressed interest in submitting competitive bids to develop and construct the Project; and

WHEREAS, City desires to engage Developer to develop and construct the Project in conjunction with City’s acquisition of the Land from Developer under the terms of the PSA and the Project Development Agreement that is the subject of this resolution; and

WHEREAS, under the terms of the PSA and Project Development Agreement, the Developer will deliver to the City a “Turn Key” project consisting of a 168,000 square foot Class A office building and related improvements, 60,000 square feet of which will be for a new library with inclusive and intergenerational spaces, and subject to the terms of a pending agreement between City and San Diego State University (SDSU), 50,000 square feet will be built and programmed for a cinematic arts educational center supporting television and film production, a separate approximately 6,000 square foot amenity building, site work, and associated parking on Lot 7 (“Project Improvements”); and

WHEREAS, the Project Development Agreement provides the terms and conditions for the scope of the development and construction of the Project Improvements, the construction schedule, the procurement requirements for the prime contractor and subcontractors, the design and construction standards, warranties, Developer’s insurance requirements, and Developer’s obligations to indemnify and defend the City; and

WHEREAS, CVMC Section 2.56.160(H) (Developer-Performed Public Works) regulates the procurement of developer-performed public works within the City; and

WHEREAS, CVMC Section 2.56.160(H)(6) provides that all or portions of the developer performed public work ordinance may be waived where "the waiver is in the best interest of the public after consideration of factor 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, CVMC section 2.56.160(H)(5) provides that City Council's approval of an agreement that clarifies and establishes procedures for a developer-performed public work constitutes the City Council's determination and findings that such procedures satisfy all applicable requirements of CVMC section 2.56.160; and

WHEREAS, CVMC section 2.56.160(H)(5) provides that, 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 CVMC section 2.56.160(H) or in accordance with other obligations or restrictions applicable to the developer-performed public work, and such agreement may: (a) clarify or modify the application of or waiver of requirements of CVMC section 2.56.160(H) and/or (b) clarify, establish, or modify the procedures to be undertaken by developer for a developer-performed public work; and

WHEREAS, CVMC Section 2.56.160(H)(1)(a) provides that a Developer may award a contract for a developer-performed public work by competitive bid or solicitation in compliance with all applicable requirements of CVMC Section 2.56.160; and

WHEREAS, Developer has requested the option to award the prime contract and subcontracts for the Project to "best qualified contractors" to ensure that the Project is constructed in a timely manner by contactor teams that are best qualified to perform the work; and

WHEREAS, as provided in Exhibit G of the Project Development Agreement, Developer intends to solicit competitive bids for the prime contract from its pre-qualified shortlist after consideration of, without limitation, each bidders demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria; and

WHEREAS, Developer has represented to City staff that soliciting a prime contractor from its pre-qualified shortlist will provide for a streamlined and successful approach that will result in time and cost efficiencies, and avoid logistical coordination issues that would otherwise hinder and impede the overall schedule for the construction of the Project Improvements; and

WHEREAS, staff is satisfied with Developer's assessment that Developer's proposed solicitation process to select a prime contractor from its pre-qualified shortlist of highly experienced and qualified contractors to develop and construct the Project Improvements will enhance the implementation, quality, and timeliness of the delivery of the Project Improvements; and

WHEREAS, in accordance with CVMC Section 2.56.160(H)(2)(c), Developer has agreed to solicit competitive bids for all subcontracts for the Project Improvements; and

WHEREAS, in accordance with CVMC Section 2.56.160(H)(2)(d), Developer has agreed to award all subcontracts to the lowest responsive and responsible bidder or the bidder that is determined to be the "best qualified contractor," subject to City approval, after evaluating, without limitation, each bidder's demonstrated competence, qualifications, ability to achieve timely completion, capacity, skill, compliance with bid documents, costs, and other relevant criteria; and

WHEREAS, as shown on Exhibit G of the PDA, Developer has presented City staff with an outline of its process for selecting "best qualified" subcontractors based upon a variety of factors including: past relevant similar project experience, customer feedback from those projects, current backlog, available trades personnel resources, proposed supervisory/management personnel, financial capability, design capabilities, schedule management plan, quality management plan, and pricing; and

WHEREAS, the subcontractor selection process outlined by Developer does not include the solicitation of sealed bids; and

WHEREAS, staff is satisfied that Developer's proposed subcontractor solicitation process meets the intent of the City's competitive bidding requirements and will result in the selection of lowest responsive and responsible subcontractors or "best qualified" subcontractors consistent with City's interests in high quality and timely construction per City requirements and the terms and conditions of the PSA and PDA; and

WHEREAS, final prime contractor and subcontractor bids for the Project Improvements will not be solicited or awarded until after the approval of this resolution; and

WHEREAS, as the prime contract and subcontracts for the Project Improvements have not been solicited or awarded, staff recommends authorizing the City Manager, or designee, to make findings and to waive the competitive bid requirements for the solicitation and award of the prime contract and subcontracts if such waivers are appropriate and meet the waiver requirements per the CVMC; and

WHEREAS, as the prime contract and subcontracts for the Project Improvements have not yet been awarded, staff recommends authorizing the City Manager, or designee, to approve the prime contract award and subcontract awards for the Project; and

WHEREAS, as the prime contract and subcontracts for the Project Improvements have not yet been awarded, staff recommends authorizing the City Manager, or designee, to make findings and approve the award of the prime contract and subcontracts for the Project to "best qualified contractors" in accordance with CVMC Section 2.56.160(H)(2)(d), and to make findings and waive those requirements if such waivers are appropriate and meet the waiver requirements per the CVMC; and

WHEREAS, CVMC Section 2.56.160(H)(2)(d) states that "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, reimbursements, and credits against developer impact fees or other developer fees or obligations ("development credits") shall not exceed the amount of the lowest responsive bidder 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) City approves the waiver in accordance with subsection (H)(6) of this section."; and

WHEREAS, Developer may request a waiver of the not-to-exceed limitation pursuant to 2.56.160(H)(2)(d) prior to award of the prime contract or subcontracts; and

WHEREAS, as the prime contract and subcontracts have not yet been awarded, staff recommends authorizing the City Manager, or designee, to make findings and waive the not-to-exceed limitation found in CVMC Section 2.56.160(H)(2)(D) if such waivers are appropriate and meet the waiver requirements per the CVMC.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista as follows:

1. The City Council approves the Project Development Agreement between the City and LMC-Millenia Investment Company, L.P. to, in the form presented, with such modifications as may be required or approved by the City Attorney, authorizes and directs the Mayor or designee to execute same, and directs a copy of the executed agreement to be kept on file in the Office of the City Clerk.
2. The City Council delegates authority to the City Manager, or designee, to oversee and implement the prime contractor and subcontractor solicitation and award processes for the Project, including without limitation the following:
 - a. Per CVMC Section 2.56.160(H)(2)(c), the authority to make determinations regarding competitive bid requirements for the prime contract and subcontracts for the Project.
 - b. Pursuant to CMVC Section 2.56.160(H)(6), the authority to make findings and approve waivers of the competitive bid requirements for the prime contract and subcontracts for the Project if such waivers meet CVMC requirements.
 - c. Pursuant to CVMC Section 2.56.160(H)(2)(d), the authority to make findings and approve the award of the prime contract and subcontracts for the Project, including awards to "best qualified contractors".
 - d. Pursuant to CMVC Section 2.56.160(H)(6), the authority to make findings and approve waivers for award of the prime contract and subcontracts for the Project if such waivers meet CVMC requirements.
 - e. Pursuant to CVMC Section 2.56.160(H)(2)(d)(i-ii), to make findings and waive the not-to-exceed limitation for award of the prime contract and subcontracts for the Project if such waivers meet CVMC requirements.
3. Where necessary or appropriate for purposes of implementing this action, the City Council delegates its authority to the City Manager, or designee, to waive requirements

and make findings as required by CVMC Section 2.56.160(H) in furtherance of the development and construction of the Project Improvements.

Presented by

Approved as to form by

Eric C. Crockett
Deputy City Manager

Glen R. Googins
City Attorney