

**NON-BINDING LETTER OF INTENT**

June 14, 2017

RIDA Chula Vista, LLC  
1777 Walker Street, Suite 501  
Houston, Texas 77107

**Re: Chula Vista Bayfront Hotel and Convention Center Project**

The San Diego Unified Port District (“District”), the City of Chula Vista (“City”) and RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA”), are working together with the goal of creating a world-class Chula Vista Bayfront through strong planning and design, economic feasibility, protection of key habitat areas and community outreach. The District, City and RIDA shall collectively be referred to herein, as the “Parties.”

On February 10, 2015, the District entered into an Exclusive Negotiating Agreement (“ENA”) with RIDA (“Original ENA”), as modified by Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 1 dated August 9, 2016 (“First Amendment”), and Agreement for Amendment of Exclusive Negotiating Agreement Amendment No. 2 dated January 25, 2017 (“Second Amendment”) (the Original ENA, First Amendment and Second Amendment are collectively referred to herein as, the “ENA”).

The District, the City and RIDA are entering into this Letter of Intent (“LOI”) with the understanding that it is subject to the provisions of the ENA and does not supersede the terms of the ENA. This LOI represents a statement of intent by the City, the District and RIDA and, as further provided in Section 15 below, nothing set forth in this LOI shall be construed as a binding agreement or enforced against any of the Parties hereto. The particular business terms and legal obligations of the Parties will be detailed in the Definitive Agreement to be negotiated by the authorized representatives of the City, District and RIDA, and will be presented to the City Council, the Board of Port Commissioners and the authorized representative(s) of RIDA for approval and execution at a future date. This LOI sets forth the basic economic terms and conditions upon which the District, City and RIDA may enter into a future agreement related to the development of portions of the Chula Vista Bayfront under the following terms and conditions:

**KEY TERMS**

1. Purpose:

The purpose of this LOI is to facilitate the negotiation of a disposition and development agreement (“Definitive Agreement”) that sets forth the rights and obligations of the Parties with respect to the ground lease, use, occupancy, development, operation and financing of the development of certain private improvements and public infrastructure located on the Chula Vista Bayfront, to include a large scale resort hotel and convention center, to serve as the anchor project of the Chula Vista Bayfront (as further defined in Paragraph 5, “Project”), all as further

described below. Among other things, the Definitive Agreement shall set forth terms relating to the contribution of certain revenues from each of the Parties to support the financing necessary to develop the Project and timing of the development of the private improvements and public infrastructure.

2. Parties:

The Parties shall be parties to the LOI and the Definitive Agreement. The District and the City and/or a Joint Exercise of Powers Authority (“JEPA”) between the City and District shall collectively be referred to herein as, the “Public Entities”.

3. Term of Definitive Agreement:

a. The Definitive Agreement shall be for an initial 4-year term with up to 3 one-year extensions to be exercised by RIDA upon satisfaction of certain conditions precedent and the milestones set forth in a schedule of performance to be mutually agreed to by the Parties and to be included in the Definitive Agreement.

b. The Term will expire upon the execution of the ground lease for the resort hotel and convention center by RIDA and the District and of any ancillary document that may be required to document the Parties’ respective continuing obligations in respect of the development of the Project, unless the Definitive Agreement is terminated earlier due to the failure to satisfy (i) a condition precedent to the execution and close of escrow on the ground lease under the Definitive Agreement or (ii) a milestone set forth in the schedule of performance, or an uncured event of default.

4. Site for Ground Lease; Other Property:

The Definitive Agreement shall define the specific land to be ground leased from the District to RIDA, and shall include the following:

- a. Approximately 36 acres located at Parcel H-3, subject to a reservation of a portion of Parcel H-3 by the District for the construction of the Parking Improvements (as defined below) (the “Site”).
- b. District shall provide up to 15 acres of land adjacent to the Site on Parcel H-23 in a location and configuration mutually acceptable to the District and RIDA to house construction trailers, construction material, and equipment staging, and parking during the construction of the Project at no cost to RIDA.
- c. When the Definitive Agreement is executed, the Parties shall execute a one year exclusive right to negotiate agreement with RIDA concerning a definitive agreement for the lease of up to 10 acres of Parcel H-23 that are closest to Parcel H-3 to develop up to 550 hotel rooms.

- d. District shall consult RIDA, without obligation from the District or liability to the District, and RIDA shall have the ability to comment on developments on the H-1, H-1A, H8, H9 and H23 parcels, and the District shall act in good faith when considering, accepting or rejecting any of RIDA's written comments to the District, but in no way limit the discretion of the District.

5. Role of RIDA; Project Description:

RIDA will be responsible for the design, development, construction and operation of the Project subject to terms and conditions to be negotiated in the Definitive Agreement. The Project shall include, but not be limited to, the following:

- a. Approximately 1,450 room resort hotel, which must initially be branded as a Gaylord Hotel and which must be designed, constructed and operated in accordance with the Automobile Association of America ("AAA") Four Diamond rating standards or the equivalent;
- b. Approximately 275,000 net usable square feet of meeting space in the hotel and the convention center, including all ancillary uses (including pre-function); and
- c. Associated retail and related development and resort level amenities, subject to discretionary review by regulatory entities.

6. RIDA Financial Commitment; Return on Investment; Security Deposit:

- a. The estimated total Project costs are approximately \$913 million. RIDA's contribution shall be the total Project cost less Convention Center Project Funds (as defined below) (the "RIDA Contribution"). The RIDA Contribution is currently estimated to be \$688 million and will be made up of various forms of debt and equity.
- b. RIDA's Return on Investment ("ROI") in any given year will be equal to NOI (as defined below) divided by RIDA's actual capital investment which is defined as the cost of designing, constructing and developing the Project, as certified annually:

(i) "NOI" shall mean the total Project revenues less all operating expenses derived from the uniform system of accounts to be defined in the Definitive Agreement. Operating expenses shall also include industry standard operator and franchise fees; replacement reserves and replacement costs in excess of reserves to be defined further in the Definitive Agreement; asset management fees, which shall not exceed 1% of gross revenues; gross tax receipts; insurance; property taxes; incentive management fees; and ground rent actually paid by RIDA. Such incentive management fees shall be limited to 20% of the portion of NOI that exceeds \$75.68 million; provided that solely for purposes of calculating the maximum amount of the incentive management fee that will be treated as an

operating expense, NOI shall be calculated before deductions for the incentive management fee, asset management fee, and gross receipts tax;

(ii) Operating expenses will exclude debt service (principal and interest), depreciation, and income taxes;

(iii) Shortfall in achieving the 11% ROI in a given year will not carry over to subsequent years; and

(iv) Project revenues excluding proceeds from any sale of the Project (or any portion thereof) or any refinancing of the Project (or any portion thereof).

- c. Public Entities do not guarantee ROI.
- d. RIDA shall deliver to the District a \$1 million security deposit in cash or as a letter of credit upon execution of the Definitive Agreement, which shall then become the security deposit for the ground lease for the Site upon its execution, unless the Definitive Agreement is terminated earlier due to the failure to satisfy a condition precedent or an uncured event of default. The District shall return to RIDA any unused amounts of such security deposit upon substantial completion of the Project.
- e. Prior to execution of the ground lease, RIDA shall deliver commercially normal and customary assurances and guarantees that it will complete the Project as approved and permitted and as may be reasonably required to facilitate the financing of the Public Entities Contribution.
- f. The Project is subject to RIDA's payment of all customary fees required by City and District, including but not limited to City permit processing fees, District cost recovery and Public Art requirements.

7. Public Entities Contribution:

It is expected that on June 20, 2017, the District and City shall execute the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, which identifies sources of funding and other requirements to finance the construction of public improvements or other financial assistance within the Chula Vista Bayfront ("Financing Agreement"). Subject to the Financing Agreement and a "Plan of Finance" (to be developed by the District and the City pursuant to the Definitive Agreement and subject to any Discretionary Actions (as defined below)), the financial commitment of the Public Entities ("Public Entities Contribution") will consist of the following three primary elements:

- a. Phase 1A Infrastructure, which includes those items listed on Exhibit A, attached hereto and incorporated herein by reference ("Phase 1A Infrastructure"), shall be financed by the Public Entities, collectively, through the issuance of debt that is to

be subject to the Plan of Finance and in an amount currently estimated to be Fifty-Six Million Three Hundred Thousand Dollars (\$56,300,000.00).

- b. The Public Entities will together finance an amount up to Two Hundred Twenty-Five Million Dollars (\$225,000,000.00) for the convention center improvements (which shall be defined in the Definitive Agreement) for the Project (the “Convention Center Project Funds”). The manner of such financing will be determined by the District and City in the Plan of Finance. The District expects that the Plan of Finance will include the District’s annual debt service commitment towards the financing of the Convention Center Project Funds not to exceed the amounts reflected in the following schedule:

- Years 1-3 \$0
- Years 4-13 \$5 million
- Years 14-18 \$6 million
- Years 19-23 \$3 million
- Years 24- 37 \$3.5 million

- c. The District will provide for the construction on Parcel H-3 of approximately 1,500 parking spaces (the “Parking Improvements”), to be financed as further defined in the Plan of Finance.
- d. The City will provide for the construction of the required sewer and fire service (together the “City Infrastructure”).

8. Participation Provisions Benefiting Public Entities:

- a. Public Entities shall provide evidence of financing based on a Plan of Finance subject to and consistent with the Financing Agreement to be agreed to by the Parties prior to the close of escrow of the ground lease for the Site, the Public Entities financing and the RIDA financing. Bond proceeds will be structured to pay for the convention center and related infrastructure which will be owned by Public Entities and the convention center shall be leased back to RIDA (“Convention Center Lease”) for \$1 per year.
- b. If total project costs fall below the current estimate of \$913 million, the Convention Center Project Funds will be reduced proportionately. For example, a Project with total Project costs of \$800 million (a 12% reduction in total Project cost) would receive \$197 million in Convention Center Project Funds, with RIDA’s Contribution making up the remaining \$603 million. However, if total project costs exceed the current estimate of \$913 million, the Convention Center Project Funds are capped at \$225 million. For example, a Project with total Project costs of \$1.1 billion would receive \$225 million in Convention Center Project Funds, with RIDA’s Contribution increasing to \$875 million.

- c. The Convention Center Project Funds will generally be utilized *pari passu* with RIDA's equity contribution (currently estimated at \$200,000,000) and before any mezzanine or mortgage debt.
  - d. Mechanisms to ensure application of the above concepts will be addressed in the Definitive Agreement.
9. Site Condition Prior to Execution of Ground Lease: The Site shall be delivered to RIDA upon ground lease execution for the Site in the following condition:
- a. Completion by the Public Entities of those portions of the Phase 1A Infrastructure to be agreed to by the Parties in the Definitive Agreement; and
  - b. District to remove, or cause to be removed, the existing RV Park.
10. Project Timing:
- a. RIDA shall complete the Project generally according to plans and specifications approved by the Public Entities. RIDA shall cause construction to commence no later than 90 days following the mutual execution of the ground lease for the Site, and shall cause construction to be completed no later than 36 months following the mutual execution of the ground lease for the Site, as each such deadline may be equitably extended from time to time subject to force majeure events to be agreed to by the Parties during the negotiation of the Definitive Agreement.
  - b. The Public Entities shall complete any remaining Phase 1A Infrastructure, and City shall complete City Infrastructure, required for the certificate of occupancy for the Project.
  - c. A detailed schedule of performance, which may include performance milestones to be completed prior to the certificate of occupancy for the Project, including financing and development milestones for all Parties, and provisions regarding force majeure and schedule extensions will be included in the Definitive Agreement.
11. Basic Ground Lease Terms:
- The basic terms of the ground lease for the Site by the District to RIDA are set forth on Exhibit B attached hereto and incorporated herein by reference. The final terms of the ground lease shall be attached to the Definitive Agreement.
12. Operations and Maintenance Cost Sharing:
- a. Public Operating & Maintenance ("O&M") Expenses to be provided by Public Entities for all offsite infrastructure.

- b. Private O&M Expenses to be provided by RIDA for O&M expenses incurred with respect to the Project and associated retail and related development on the Site.
- c. Parking O&M Expenses to be provided by District for the term of the ground lease.

13. Compliance with Laws:

Compliance with all applicable federal, state, and local laws and regulations will be RIDA's sole responsibility with respect to the Project. The Parties shall negotiate indemnities as part of the negotiation of the Definitive Agreement.

14. Assignment and Sublease/Exit Fee:

a. RIDA shall have the right to assign and sublease the ground lease for the Site, subject to District's prior written approval (subject to negotiated carve-outs), not to be unreasonably withheld, and subject to an Exit Fee (defined below). Upon sale of the Project or portion thereof, RIDA shall pay to Public Entities an exit fee (the "Exit Fee") equal to 1% of the difference of (a) the net proceeds from such sale minus (b) the sum of (i) the certified cost price of the Project as of the time of the completion of the construction of the Project and (ii) 100 times the amount of any Exit Fee that has previously been paid to Public Entities (which sum will be pro-rated in the case of sale of a portion of the Project); provided that RIDA shall pay no Exit Fee to Public Entities as long as one or more of the original partners in RIDA (as of the time of substantial completion of the Project), collectively, directly or indirectly, owns at least a 10% ownership interest in the Project.

b. City shall have the right, not to be unreasonably withheld, to consent to any assignment or sublease of the Convention Center Lease subject to negotiated carve-outs.

15. Non-Binding:

The Parties acknowledge that this Letter of Intent is not intended to nor shall it be interpreted to create a binding agreement between the Parties, and is subject to further analysis by the Parties. The Parties understand and acknowledge further that, while this LOI is intended to guide the Parties in their negotiations relative to the Project pursuant to the ENA, it does not waive or limit any of the rights of the District and RIDA in the ENA and does not bind the Parties to continue negotiations for any reason. Moreover, each of the Parties understands and acknowledges that, to the extent it expends funds or devotes resources in connection with, or as a result of this LOI, including without limitation, the feasibility of implementing the Project or this LOI, it shall do so at its sole cost and expense, upon its own initiative and not in reliance on this LOI or any representations of any of the other Parties.

16. Discretionary Actions:

The Parties understand and acknowledge that, notwithstanding the terms and conditions of this LOI, certain actions incidental to matters described in this LOI may require the exercise

of discretion by one or more of the Public Entities (collectively, "Discretionary Actions"), any and all Discretionary Actions may be exercised in the sole and absolute discretion of the Public Entities and the Parties assume the risk that a Discretionary Action may not be taken or taken in a manner not favorable to one or more of the Parties. By executing this LOI, the Parties do not represent by the LOI or otherwise their legal capacity to provide the financial assistance or other undertakings contemplated herein, such matters to be the subject of future actions and agreements pursuant to the Financing Agreement or otherwise, including certain Discretionary Actions.

### **CONCLUSION**

This LOI shall not be binding upon the Parties. A binding agreement shall not exist until a Definitive Agreement has been approved by the governing bodies of the respective Public Entities and executed and delivered by all parties. No party may claim any legal rights against the other by reason of actions or non-actions taken in reliance upon this non-binding LOI, including, without limitation, any partial performance of the transactions contemplated herein.

If these terms are acceptable, please sign and return to the District. We appreciate your time and consideration in this matter.

Sincerely,

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

**SAN DIEGO UNIFIED PORT DISTRICT,**  
a public corporation

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
Randa Coniglio  
President/Chief Executive Officer

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

**CITY OF CHULA VISTA,**  
a municipal corporation

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Gary Halbert  
City Manager

Dated: \_\_\_\_\_

REVIEWED AND ACCEPTED:

**RIDA CHULA VISTA, LLC,**  
a Delaware limited liability company

By:   
Ira Mitzner  
CEO and President

Dated: June 16, 2017

EXHIBIT "A"  
Phase 1A Infrastructure

[To be inserted]

EXHIBIT "B"  
Basic Ground Lease Terms

Lease Term: Lease term: 66 years

Renewal Options: None

Base Rent: Base Rent/ Increases (Graduated Flat Rent) Years 1-37\*<sup>1</sup>  
 (assumed term of debt, actual term determined during the term of the Definitive Agreement)

| Lease Years | Rent      |
|-------------|-----------|
| 1 – 18      | \$0       |
| 19 – 23     | \$3M      |
| 24 – 37*    | \$3.5M    |
| 38 – 66     | See Below |

Excess Net Operating Income:

- Annual Net Operating Income in excess of 11% of RIDA's Contribution:

| Lease Years          | Split                             |
|----------------------|-----------------------------------|
| 1 – 37* <sup>1</sup> | 80% (RIDA)/ 20% (Public Entities) |
| 38-66                | 100% RIDA                         |

- Net Operating Income for the Parking (for non-RIDA users):

|      |               |
|------|---------------|
| 1-66 | 100% District |
|------|---------------|

For each Lease Year after 37\*<sup>1</sup> and later, the greater of (i) Minimum Annual Rent which shall be calculated every five years based on 65% of the average annual gross rent payable over the previous 3 years; or (ii) Percentage Rent based on the gross revenue in the specified year.

- Rooms Percentage Rent based on following adjusted rent periods:

| Lease Years | % Rent |
|-------------|--------|
| 38 – 47     | 8%     |
| 48 – 66     | 9%     |

\*<sup>1</sup> 37 years is as assumed term of debt (including construction) for the Convention Center Project Funds, but the actual term of Convention Center Project Funds debt identified in the approved Plan of Finance shall be determined during the term of the Definitive Agreement and the Lease Terms will be revised accordingly.

- Banquet Percentage Rent based on following adjusted rent periods:

| Lease Years | % Rent |
|-------------|--------|
| 38 – 47     | 6%     |
| 48 – 66     | 7%     |

- Food Percentage Rent based on following adjusted rent periods:

| Lease Years | % Rent |
|-------------|--------|
| 38 – 47     | 4%     |
| 48 – 66     | 5%     |

- Beverage Percentage Rent based on following adjusted rent periods:

| Lease Years | % Rent |
|-------------|--------|
| 38 – 47     | 6%     |
| 48 – 66     | 7%     |

Percentage rent rates for the remaining categories of revenue are to be agreed during the negotiation of the Definitive Agreement.

#### Parking Revenue

Throughout the Lease Term, Tenant shall pay to the District ten percent (10%) of all parking revenue received by Tenant, including (a) if a person pays Tenant for using a parking space through the hotel valet service, or (b) if a person pays Tenant for self-parking. If an employee of the hotel management company or the Project uses a parking space, and Tenant does not charge such person for such parking space, then Tenant shall make no payment for using such parking space to the District.

If the construction of the parking is not completed at least sixty (60) days before the hotel is substantially complete, then the District will provide land in the vicinity of Parcel H-3 that is suitable for 1,000 parking spaces from such time until the construction of the parking is completed.

The amount paid to the District by Tenant shall increase to fifteen percent (15%) in the event that there is a change in ownership of the Project greater than fifty-one (51%).

#### Expenses:

Tenant will pay all expenses of the leasehold of the Site, including without limitation, (i) expenses to maintain all of the improvements (excluding the parking spaces) in first class

condition, (ii) taxes, (iii) insurance, (iv) utilities and (v) any other expenses of the leasehold.

Continuous Operation: Lease shall require a covenant of continuous operation with “no go dark” provisions, subject to negotiated exceptions.

Lease Commencement: Upon satisfaction of conditions precedent in Definitive Agreement and mutual execution of the Lease.

Rent Commencement: Per schedule of Base and Percentage Rent.

**Exhibit A****CHULA VISTA BAYFRONT INFRASTRUCTURE, PHASE 1A**

| <b>Type</b> | <b>District</b> | <b>Project Element</b>                          |
|-------------|-----------------|---|
| Street      | Sweetwater      | E Street (Bay Blvd to F Street)                 |
| Street      | Sweetwater      | E Street (Lagoon Drive to G Street)             |
| Street      | Sweetwater      | Gunpowder Point Drive (Relocation)              |
| Street      | Sweetwater      | F Street (Bay Blvd to E St) Grading & Utilities |
| Street      | Harbor          | E Street (G Street to H Street)                 |
| Street      | Harbor          | G Street Connection                             |
| Street      | Harbor          | H Street (Marina Parkway to E Street)           |
| Street      | Harbor          | H Street (Bay Blvd to Street A)                 |
|             |                 |   |
| Park        | Sweetwater      | S-2 Sweetwater Signature Park (Initial)         |
| Park        | Sweetwater      | SP-1 Sweetwater Buffer (for S-2)                |
| Park        | Sweetwater      | SP-1 Sweetwater Buffer (for S-1)                |
| Park        | Sweetwater      | SP-2 Seasonal Wetland                           |
| Park        | Harbor          | Harbor Park (Initial)                           |
|             |                 |   |
| Pad         | Sweetwater      | SP-3  |
| Pad         | Sweetwater      | S-1 RV Park Preparation                         |
| Pad         | Sweetwater      | S-3 Mixed Use Preparation                       |
| Pad         | Harbor          | H-3 Utility Corridor                            |
| Pad         | Harbor          | H-3 Hotel & Convention Center Preparation       |
|             |                 |   |
|             | <b>TOTAL</b>    | <b>\$ 56,300,000</b>                            |