

Attachment A to Agenda File No. 2017-0279

**AMENDED AND RESTATED
CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT**

Dated _____, 2017

Between

City of Chula Vista

and

San Diego Unified Port District

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**AMENDED AND RESTATED
CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT**

This AMENDED AND RESTATED CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT (hereinafter referred to as this "Agreement"), dated _____, 2017 (the "Effective Date"), is between the CITY OF CHULA VISTA, a charter city and municipal corporation (the "City"), and the SAN DIEGO UNIFIED PORT DISTRICT, a district formed pursuant to California Harbors and Navigation Code APPENDIX 1, Section 1 *et seq.*, and a public corporation (the "District"). This Agreement amends and restates that certain Chula Vista Bayfront Master Plan Financing Agreement dated May 8, 2012 (the "Original Agreement") by and between the same parties. The City and the District are from time to time hereinafter referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. Development of Chula Vista Bayfront Master Plan. In 2002, District, the City and the Redevelopment Agency of the City of Chula Vista, a redevelopment agency formed pursuant to California Health and Safety Code §§ 33000 *et seq.* (the "Agency") began work to create a master plan for development of the approximately 535-acre Chula Vista Bayfront (the "Chula Vista Bayfront") located on the southeastern edge of San Diego Bay in the City of Chula Vista. The purpose of the master plan was to reconfigure the 497 acres of land and 59 acres of water which comprise the Chula Vista Bayfront by connecting the land and water acres in a way that will promote public access to, and engagement with, the water while enhancing the quality and protection of key habitat areas, with the ultimate goal of creating a world-class bayfront through strong planning and design, economic feasibility and community outreach.

B. Final Environmental Impact Report. On May 18, 2010, the District, as Lead Agency of the project, as such term is defined in California Public Resources Code § 21067, certified a Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD # 83356-EIR-658; SCH # 2005081077) (the "FEIR"). City and Agency are Responsible Agencies as defined in California Public Resources Code § 21069. The project described in the FEIR is known as the Chula Vista Bayfront Master Plan ("CVBMP"). The area encompassed by the CVBMP is hereinafter referred to as the "CVBMP Project Area." A map showing the CVBMP Project Area and its constituent parcels is attached hereto as Exhibit A. This Agreement is contemplated by the CVBMP as analyzed in the FEIR.

C. Land Uses. Key components of the CVBMP include: a signature park, open space areas and cultural use; improved visual corridors to San Diego Bay; a resort hotel and convention center ("RHCC") and other hotels; residential and mixed-use office/commercial recreation uses; waterfront retail uses and public gathering spaces around the harbor; a new commercial harbor and improved navigation channel; a public promenade and bike trail through the entire bayfront; and large buffer zones to protect adjacent sensitive resources.

D. Development of District Property in CVBMP Project Area. Development of all of the real property located in the CVBMP Project Area indicated on Exhibit B attached hereto ("District Property") shall be subject to the CVBMP.

E. Residential Use. The FEIR designates a portion of the District Property commonly known as Parcels HP-5, H-13 and H-14 for residential use, such residential use to consist of up to 1,500 multi-family units, and a portion of the District Property commonly known as Parcel H-15 for a mix of office and hotel uses. The foregoing parcels, Parcels HP-5, H-13, H-14 and H-15, are hereinafter referred to as the "Residential Property." Improvements to the Residential Property in accordance with the FEIR are hereinafter referred to as the "Residential Property Improvements." In order to implement the residential use component of the Residential Property Improvements, it was necessary that the District exchange the Residential Property, which as land owned by the District is subject to the Public Trust Doctrine which precludes residential use, for certain real property owned by North C.V. Waterfront L.P., a California limited partnership ("Owner"), comprised of Parcels S-1, S-2, S-3, SP-1, SP-2 and SP-3 (hereinafter referred to as the "Owner Property").

F. Land Exchange. The California State Lands Commission ("SLC") is authorized by Division 6 of the California Public Resources Code, including § 6307, to exchange interests in real property subject to the Public Trust Doctrine for interests in other non-trust lands of equal or greater value. Pursuant to this authority the District applied to SLC for approval to exchange the Residential Property for the Owner Property, subject to receipt of evidence to the satisfaction of District and SLC that the Owner Property is of equal or greater value than the Residential Property. The concurrent transfer of the Residential Property and Owner Property to Owner and SLC, respectively, is hereinafter referred to as the "Exchange." By reason of the completion of such Exchange pursuant to the Exchange Agreement described below, the Residential Property has been released from the use restrictions of the Public Trust Doctrine and the Owner Property has become subject to such restrictions. As part of the Exchange, SLC granted the District a 49 year lease for the Owner Property pending SLC and District obtaining necessary state legislation to authorize SLC to transfer the title and interests in the Owner Property to District.

G. Exchange Agreement. In order to document the terms and provisions applicable to the Exchange, District and Owner entered into that certain Exchange Agreement and Escrow Instructions, dated as of February 2, 2010, as amended and restated, pursuant to that certain Amended and Restated Exchange Agreement dated as of May 6, 2014 (as amended from time to time pursuant to its terms, the "Exchange Agreement"). Close of the escrow created by the Exchange Agreement was conditioned upon and subject to, among other things, various actions by the District, City, SLC, the California Coastal Commission ("CCC") and the execution and effectiveness of the Original Agreement. The exchange contemplated by the Exchange Agreement occurred on February 18, 2016 ("Exchange Close of Escrow").

H. Unit Contribution. In furtherance of the Exchange Agreement, the Participation Agreement dated as of December 8, 2015 by and between Owner and District requires Owner to pay an amount equal to one-half of one percent (0.5%) of the gross sales price upon the close of escrow for the initial sale of each market rate residential condominium unit (excluding broker's commissions and costs of sale) developed on the Residential Property (other than residential units designated as affordable), such contribution being hereinafter referred to as the "Unit Contribution," such Unit Contribution to be paid to a joint powers authority (to be established) and applied in accordance with the provisions of that certain Chula Vista Bayfront Master Plan Settlement Agreement, dated as of May 4, 2010 (as amended from time to time pursuant to its terms, the "Settlement Agreement"), entered into by the District, City and Agency with the member entities of the Bayfront Coalition identified therein

I. Resort Hotel and Convention Center. The CVBMP contemplates the development of a resort hotel and convention center (the “RHCC Project”), further described in Section 5, to serve as the anchor project of the CVBMP and to be located on the site described in the FEIR and commonly known as Parcel H-3. The Parties anticipate that the RHCC Project will generate substantial benefits to the local and regional community in the form of increased tax and lease revenues, permanent jobs, and the provision of significant public amenities and will be the development catalyst for the CVBMP Project Area. The RHCC Project is also expected to generate substantial direct and indirect benefits to the San Diego region, including permanent and temporary jobs, tax revenues and public infrastructure.

J. Public Improvements Required for CVBMP. Development of the CVBMP Project Area, which is currently largely vacant land lacking in required infrastructure improvements, will require the construction of substantial public improvements early in the development and construction process (“Phase 1A”). Such public improvements include, without limitation, those listed on Exhibit C-1 attached hereto related to development of the RHCC Project and other Phase 1A development (collectively, the “RHCC Public Improvements”), and other public improvements required as part of the CVBMP Project Area, not for the RHCC Project, are generally and identified on Exhibit C-2 attached hereto.

K. RIDA Selection. On May 6, 2014, the District Board of Port Commissioners adopted a resolution authorizing the issuance of a Request for Qualifications (“RFQ”) for a resort hotel and convention center in the CVBMP Project Area. After considerable local, regional, national and international marketing efforts by District staff, City staff and District’s consultant Jones Lang LaSalle, RFQ 14-24 (District Clerk No. 62033) was issued on June 30, 2014. The responses to the RFQ were due on September 8, 2014. A response was received from RIDA Development Corporation (“RIDA”), with ARES Management, LLC as the financial partner, WELBRO Building Corporation as the general contractor and three well qualified architectural firms, as architects. On October 14, 2014, the District Board of Port Commissioners adopted a resolution selecting RIDA as the successful respondent to the RFQ.

NOW, THEREFORE, in consideration of the above promises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

AAA means the American Automobile Association.

Additional Occupancy-Based Revenues means those revenues received by the District, the City or the JEPA more fully described in Section 4.2.2(d) hereof.

Agency means the Successor Agency to the Chula Vista Redevelopment Agency a legal entity created by the State of California that succeeded the Chula Vista Redevelopment Agency and which was vested with and has all the right and obligations of the former “Chula Vista Redevelopment Agency”.

Agreement means this Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement, as modified, amended or supplemented from time to time pursuant to its terms.

Authorized Representative of the City means the City Manager of the City or the designee of the City Manager of the City.

Authorized Representative of the District means the President/CEO of the District, which is the executive director of the District as such term is used in the Port District Act, or the designee of the President/CEO of the District.

CCC means the California Coastal Commission or any successor thereto.

CEQA means the California Environmental Quality Act.

City means the City of Chula Vista, a charter city and municipal corporation.

Calendar means the dates for submittal and approval by the Parties of the Funding Sources Submittals under Section 4.1.2 of this Agreement.

Convention Center Lease means the lease of the Convention Center contemplated by Section 5.5 of this Agreement.

Convention Center means the development anticipated to consist of up to 415,000 net square feet of convention facilities to be located on the RHCC Development Site comprising a portion of the RHCC Project more fully described in the FEIR.

CVBFFA means the Chula Vista Bayfront Facilities Financing Authority, created by the Joint Exercise of Powers Agreement dated as of May 1, 2014, a joint exercise of powers entity having as members the City and the District pursuant to Section 6502 *et seq* of the California Government Code.

CVBMP means the Chula Vista Bayfront Master Plan described in the recitals hereof.

CVBMP Ground Leases means the future long-term ground leases, excluding the RHCC Ground Lease and Other Ground Leases, entered into by the District contemplated by Section 5.4 of this Agreement.

CVBMP Master Calendar means the calendar for significant actions and agreements required for the implementation of the financing and other undertakings contemplated pursuant to this Agreement, as amended from time to time pursuant to the provisions of this Agreement.

CVBMP Project means the development of the Chula Vista Bayfront in accordance with the CVBMP.

CVBMP Project Area means the area encompassed by the CVBMP.

CVBMP Public Improvements means those infrastructure improvements needed to foster development of the CVBMP Project Area, including, without limitation, the infrastructure improvements summarized on Exhibit C-2 attached hereto, which are more precisely described in Document 58519 (Chula Vista Bayfront Master Plan Opinion of Probable Cost (Class iii Estimate)

Final as of October 2009) on file in the office of the District Clerk, as updated from time to time as agreed to by the Parties, which do not include the items that are needed for the RHCC Public Improvements that are set forth on Exhibit C-1 attached hereto.

Developer means RIDA Chula Vista, LLC, a Delaware limited liability company, or other developer or developers selected by the District to ground lease and develop the RHCC Development Site.

Discretionary Actions shall have the meaning assigned to such term in Section 2.2 of this Agreement.

District means the San Diego Unified Port District, a district formed pursuant to California Harbors and Navigation Code Appendix A 1, §§ 1 *et seq.* and a public corporation.

District Property means the real property located in the CVBMP Project Area identified on Exhibit B attached hereto.

Effective Date means the date this Agreement shall become effective as provided in Section 15.11 hereof.

EIFD means an enhanced infrastructure financing district sponsored by the City for that portion of the CVBMP Project Area known as the Sweetwater and Harbor districts (as identified in the FEIR) created pursuant to Chapter 2.99 (commencing with Section 53398.50) of Part 1, Division 2, Title 5 of the California Government Code or similar law pursuant to which incremental property tax revenue derived from such portion of the CVBMP Project Area may be applied to fund costs of RHCC Public Improvements and RHCC Project Public Investment to the extent eligible for funding thereunder.

EIFD Revenues means incremental property tax revenue derived from the EIFD and legally available to fund costs of RHCC Public Improvements and RHCC Project Public Investment.

Exchange Agreement means that certain Exchange Agreements specified in Recital G.

Excess Costs shall have the meaning specified in Section 6 of this Agreement.

Exchange means the concurrent transfer of the Residential Property to the Owner and the Owner Property to the SLC contemplated by the Exchange Agreement.

FEIR means the Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment certified by the District on May 18, 2010 as further defined in Recital B.

Financing Revenues means the revenues described in Section 4.2 to be applied by the District and City to pay costs of the RHCC Public Improvements and the RHCC Project Public Investment and other costs pursuant to a Plan of Finance.

Financing Sources Approval shall have the meaning described in Section 4.1.2.

Financing Sources Submittal means the submittals of the respective Parties described in Section 4.1.2 regarding the availability of individual sources of Financing Revenues.

Fire Station means the fire station serving the CVBMP Project Area which will be required in connection with the development of the CVBMP Project Area.

Force Majeure Event means any of the following events which prevent a Party from performing any obligation or achieving any milestone described in the CVBMP Master Calendar, described in this Financing Agreement or in a Plan of Finance: (i) delays in the entitlement process arising from the filing and processing of legal or administrative appeals of entitlement approvals; (ii) unanticipated processing delays by the staffs or governing bodies of the SLC, the CCC and/or the RWQCB; (iii) litigation of entitlement approvals and other governmental actions necessary for the financing, construction and implementation of the CVBMP Public Improvements and RHCC Public Improvements and/or of the Residential Property Improvements; (iv) any act of God, strike, lockout or other industrial disturbance during the construction and development of the RHCC Public Improvements, the CVBMP Public Improvements and/or of the Residential Property Improvements; (v) act of public enemy, blockade, war, insurrection, civil disturbance, explosion or riot; epidemic; (vi) landslide, earthquake, fire, storm, flood, or washout; (vii) governmental restraint, action or inaction, either federal, state, county, civil or military, including the adoption of any new law materially affecting either the ability of the Parties to proceed with implementation of the CVBMP or substantially increasing the costs of proceeding with implementation of the CVBMP (but not including any City or District laws, ordinances or regulations not mandated by federal, state or county laws or regulations); (viii) any initiative or referendum (including any such action related to actions of any of the Parties hereunder); (ix) failure to obtain any necessary federal, state or county governmental approval, and (x) failure of Owner or Developer to timely enter into a requested agreement or take a requested action.

Ground Lease Revenues means the collective ground lease payments made under the RHCC Ground Lease and Other Ground Leases, howsoever identified, including base rental, percentage rent and other rent components or amounts paid under some other agreement other than a ground lease. District shall identify in a Plan of Finance those Ground Lease Revenues, if any, that are subject to the prior pledge securing bonds issued by the District pursuant to the Indenture, dated as of October 1, 2004, as supplemented or amended, between the District and U.S. Bank National Association, as trustee or are otherwise unavailable for purposes of this Agreement.

JEPA means the CVBFFA, or other entity or financing structure authorized by applicable law agreed to by the Parties to provide for or facilitate the financing of the RHCC Public Improvements and the RHCC Public Investment.

JEPA Obligations is defined in Section 4.2.1 of this Agreement.

Lease Payments means the rental payments made by the City pursuant to a Convention Center Lease (exclusive of any Developer component described in Section 5) or lease of other public facilities, such rental payments to be in an amount up to the fair-market rental value of the Convention Center and not greater than an amount equal to (i) the revenues generated by the TOT generated by the RHCC, but not any other hotel development within the CVBMP Project Area and the existing RV Park located therein and the replacement RV Park to be constructed; (ii) all Sales Tax derived from the RHCC Project, PMSA Revenues and Additional Occupancy-Based Revenues received by the City, if any, exclusive of any Developer rent payable pursuant to any Developer sublease of the Convention Center; and (iii) any other City revenues described in a Plan of Finance, as further described in a Plan of Finance, subject to the limits described in Section 5.5.

Management Agreement means an agreement with the Developer pursuant to which the Developer assumes responsibility for the operations, management and maintenance obligations relating to the Convention Center.

O&M Costs means all costs of operation and maintenance incurred by the District and City, respectively, to provide administrative support, public safety, environmental services, and other direct and indirect operations and maintenance services resulting from the development of the CVBMP Project Area and serving the CVBMP Project Area, including, without limitation, administration of the RHCC Ground Lease, Other Ground Leases and the CVBMP Ground Leases, as more fully addressed in a Plan of Finance.

Other Ground Leases means those existing ground leases, as may be renewed or replaced, for the properties set forth on Exhibit F attached hereto.

Owner Property means Parcels S-1, S-2, S-3, SP-1, SP-2 and SP-3.

Owner means North C.V. Waterfront L.P., a California limited partnership, party to the Exchange Agreement.

Parcel H-3 shall have the meaning specified in Recital I of this Agreement.

Park Agreement means the agreement between the District and the City contemplated pursuant to Section 4.2.2(g) of this Agreement.

Parties means the City and the District.

Party means the City or the District, as applicable.

Plan of Finance shall mean one or more financings plans to be approved and entered into by the District and City setting forth, among other things, the means by which the Financing Revenues described in Section 4 shall be applied to pay the cost of the RHCC Public Improvements and the RHCC Project Public Investment. The City and District may enter into one or more plans of finance for the build-out of the CVBMP Project areas separate from the RHCC Development Site.

PMSA means that certain Agreement No. 88-2012 between the District and the City providing for Police, Fire and Emergency Medical Services.

PMSA Revenues means amounts payable by the District to the City pursuant to the PMSA, in an annual amount equal to the reimbursement received from the District in fiscal year 2016, plus three percent (3%) per annum increase each fiscal year thereafter.

Port District Act means the California Harbors and Navigation Code APPENDIX 1, Section 1 *et seq.* as amended from time to time.

Port Land Exchange Payment means that certain one-time payment in the amount of \$3,000,000 received by the District at the Exchange Close of Escrow pursuant to the Exchange Agreement.

Proposition G means Chapter 2.59 of the Chula Vista Municipal Code, approved by the voters of the City in June 2010.

Public Trust Doctrine means the concept that the property of the District is held by the District as trustee of a public trust for the benefit of the people.

Reimbursement Agreement means an agreement with a Subdivider and the City entered into in accordance with the provisions set forth in Section 6 of this Agreement.

Reimbursement Obligation shall have the meaning specified in Section 6 of this Agreement.

Residential Property Improvements means improvements to the Residential Property contemplated by Recital E of this Agreement.

Residential Property means Parcels HP-5, H-13 and H-14. In addition, although the Parties acknowledge that Parcel H-15 has not been designated for residential use in the FEIR, as more fully explained in Recital E to this Agreement, for purposes of this Agreement and certain other agreements entered into in connection with the CVBMP, Parcel H-15 has been included in the defined term Residential Property.

Revenue Bonds means tax-exempt and/or taxable revenue bonds anticipated to be issued in accordance with a Plan of Finance secured by and payable from the sources of funds described in this Agreement as more fully described in Section 4.3.

RHCC means the resort hotel and convention center contemplated by Recital C of this Agreement.

RHCC Development Site means the site selected for the RHCC Project.

RHCC Ground Lease means the long-term ground lease/sublease between the District and the Developer contemplated pursuant to Section 5.1 of this Agreement.

RHCC Hotel means a resort hotel meeting or exceeding the service quality standards of a four diamond, AAA standard hotel, to be located on the RHCC Development Site adjacent to the Convention Center.

RHCC Project means the Convention Center and RHCC Hotel contemplated by Recital I of this Agreement.

RHCC Project Public Investment means amounts agreed by the Parties to be contributed to the financing of the RHCC Project over and above amounts contributed for the RHCC Public Improvements, for the Convention Center or otherwise, as may be determined from time to time as part of a Finance Plan.

RHCC Public Improvements means those CVBMP Public Improvements to be constructed in connection with development of the RHCC Project, consisting generally of those Phase IA improvements described in Exhibit C-1 attached hereto and as may be more fully described in a Plan of Finance but specifically excluding the Convention Center.

RWQCB means the California Regional Water Quality Control Board.

Sales Tax means that portion of sales tax levied pursuant to the Bradley-Burns Uniform Local Use and Sales Tax Law (California Revenue and Taxation Code Section 7000, *et seq.*) and allocated to the City pursuant to applicable law attributable to the RHCC Project, exclusive of any amount so levied and allocated to the City pursuant to voter approval by the electors of the City.

SDGE Relocation Fees means fees received by the District from San Diego Gas & Electric pursuant to a Right of Entry Agreement between the District and San Diego Gas and Electric, filed in the office of the District Clerk on September 24, 2015 as Document No. 63983, in the amount of \$1,653,750.

Settlement Agreement means the Chula Vista Bayfront Master Plan Settlement Agreement, entered into as of May 4, 2010, by and among the Bayfront Coalition Member Organizations identified therein, the District, the City and the Agency, as amended from time to time pursuant to its terms.

Sewer Facility Contribution means the one-time contribution by the City to fund specific sewer facility improvements comprising part of the RHCC Public Improvements described in Exhibit E-1 attached hereto and as may be more fully described in a Plan of Finance.

SLC means the California State Lands Commission.

Subdivider means a developer or builder in the CVBMP Project Area (other than the Owner) which is required by the City to oversize or supplement the size, capacity, number or length of an improvement for the benefit of property(ies) in addition to the property owned or leased by such Subdivider.

TOT means transient occupancy tax attributable to the RHCC Project and the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed; provided that TOT generated from other portions of the CVBMP Project Area may be included with respect to development of subsequent phases of the CVBMP Project Area to the extent described in Section 4.2.2(a).

2. Findings, Purpose, Acknowledgements of the Parties, Reservation of Discretion.

2.1 Findings, Purpose and Intent. The Parties hereby find and determine that the recitals set forth above are true and correct. The purpose and intent of this Agreement is to provide for the obligations of each Party with respect to implementation of the financing, development and construction to support the build-out of the CVBMP Project Area in accordance with the FEIR and such other and further actions of the Parties as may be necessary and appropriate for the build-out of the CVBMP Project Area, including without limitation, the buildout of the RHCC Public Improvements related to the RHCC Project, subject in all cases to Section 2.2 and 2.3 of this Agreement. It is also the intent of the Parties that the requirements of the California Environmental Quality Act ("CEQA"), as certified in the FEIR, be fully complied with in the implementation of the matters set forth in this Agreement. The Parties intend that the planning, development and construction of the CVBMP Project Area be a cooperative, mutual endeavor in which the Parties actively participate and work together, in good faith and with due diligence.

2.2 Reservation of Discretion Regarding Actions Subject to CEQA and Other Applicable Laws. The Parties to this Agreement understand, acknowledge and agree that,

notwithstanding any other terms and conditions of this Agreement, (i) certain actions (collectively, "Discretionary Actions") incidental to matters described in this Agreement or required by this Agreement or a Plan of Finance may require the exercise of discretion by one or more of the Parties which may require review under and compliance with CEQA, other laws pertaining to the City's or District's commitment of the revenue sources described herein (including, without limitation, the Constitution of the State of California, the City Charter, the Port District Act, respectively, and other laws relating to the formation or implementation of the EIFD and (ii) such Discretionary Actions shall require CEQA review, or review under such other laws prior to the occurrence of said Discretionary Action and cannot lawfully be committed to by contract prior to compliance with CEQA and cases interpreting CEQA or such other laws, respectively. The Parties acknowledge that each of the matters set forth in this Agreement, are subject to future Discretionary Actions and other actions constituting conditions precedent; provided, however, this Agreement does not commit the Parties to a definite course of action, including, but not limited to, approval or commencement of a lease, permit or other agreement prior to CEQA review and review under such other laws being conducted. Rather, this Agreement sets forth the Parties' intent to further explore, design, and evaluate the CVBMP Project and RHCC Project. The FEIR has been certified for the CVBMP and the Parties don't anticipate the need for supplemental CEQA review. Nothing in this Agreement will be construed as circumscribing or limiting the District's or City's exercise of discretion with respect to all and any future Discretionary Actions in connection with the CVBMP or this Agreement, including without limitation, to the adoption of any and all feasible mitigation measures, alternatives to the CVBMP Project or RHCC Project, including a no project alternative, a statement of overriding consideration, (if applicable and subsequent CEQA review is required), approval of the CVBMP Project, RHCC Project, land use entitlements, the exercise of eminent domain, the implementation of code enforcement, commitment of Financing Revenues, entry into any leases or other agreements, and the making of findings and determinations required by law with respect to a Discretionary Action. Any and all Discretionary Actions may be exercised in the sole and absolute discretion of the Parties and the Parties assume the risk that a Discretionary Action may not be taken. The Parties do not represent by this Agreement or otherwise their legal capacity to provide the Financing Revenues or other undertakings contemplated herein, such matters to be the subject of future actions and agreements, including certain Discretionary Actions. Accordingly, each of District and City reserve their discretion to approve or disapprove such Discretionary Actions. Such reservation of discretion will apply to all future contemplated legislative and quasi-judicial actions, including, without limitation, approval of land use entitlements, CEQA compliance, EIFD formation, the exercise of eminent domain, the implementation of code enforcement, commitment of Financing Revenues and approval of any controls or other agreements related thereto, development of a Plan of Finance, entry into the Convention Center Lease or other leases, and the making of findings and determinations required by law with respect to a Discretionary Action, and the failure to take any such future Discretionary Action will not constitute a breach of such Party's obligations under this Agreement. The foregoing notwithstanding, nothing in this Section will be interpreted to impair or limit any Party's obligation to perform any action on its part to be performed under this Agreement with respect to which the requirements of CEQA or such other laws were satisfied prior to the Effective Date or which become satisfied after the Effective Date.

2.3 Acknowledgements of the Parties.

2.3.1 Due to the importance of developing residential uses on the Residential Property to accomplishing goals of the CVBMP identified in the FEIR, each of the Parties acknowledges that: (i) the District would not proceed with the undertaking of its obligations herein without the assurances from City contained in this Agreement that certain revenue streams

under the control of the City as set forth in Section 4.2.2 (together with certain revenue streams under control of District as set forth in Section 4.2.1 below, along with the contemplated Fire Station and Sewer Facility Contribution) will be available to pay for public infrastructure and long-term operations and maintenance for the CVBMP Project Area, the assurances from City that the Residential Property Improvements will be entitled and required to be developed and constructed by Owner in an expeditious manner, and other City undertakings hereunder, in each case subject to the provisions of this Agreement, including the conditions precedent set forth in this Agreement; and (ii) the City would not proceed with the undertaking of its obligations herein without the assurances of the District with respect to the development of the RHCC Project, the District commitment of Ground Lease Revenues, and other District undertakings hereunder, in each case subject to the provisions of this Agreement, including the conditions precedent set forth in this Agreement.

2.3.2 Each of the Parties hereby further acknowledges that: (i) the ability of each Party to apply Financing Revenues under its control to the cost of RHCC Public Improvements, and the RHCC Project Public Investment, a Financing Sources Submittal and a Plan of Finance or otherwise under this Agreement are subject to all applicable laws and nothing in this Agreement shall be construed as a representation of any Party regarding the availability (legal or otherwise) of such Financing Revenues for the contemplated purpose; (ii) actions contemplated in a Plan of Finance described in Section 4 to be undertaken in connection with tax-exempt financing or other financing entitled to federal tax benefits are subject to compliance with the applicable federal requirements in effect at the time such financing is entered into; (iii) other actions contemplated by this Agreement may also require modification in order to comply with applicable federal requirements related to tax-exempt financing or other financing entitled to federal tax benefits; (iv) depending on the facts and circumstances, tax-exempt financing or other financing entitled to federal tax benefits may be unavailable for some or all RHCC Public Improvements, RHCC Project Public Investment or other CVBMP Project costs; (v) all actions contemplated to be taken subsequent to the Effective Date are subject to modification to comply with all applicable laws at the time such actions are undertaken; and (vi) actions contemplated by a Plan of Finance or a Financing Sources Submittal may be subject to certain Discretionary Actions.

2.3.3 The Parties agree to cooperate in good faith to identify ways to minimize the publicly-funded cost of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements to be funded from Financing Revenues, and to identify other sources of funding of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements contemplated to be funded from Financing Revenues (including, without limitation, private sector, federal and other governmental sources) so as to minimize the required investment of Financing Revenues hereunder, provided in no event shall any Party be obligated to consider application of any of its general revenues or special revenues not specifically contemplated hereunder for such purpose.

2.3.4 Each of the Parties hereby further acknowledges that there may be costs associated with the construction or acquisition of the RHCC Public Improvements, CVBMP Public Improvements and any other improvements to be funded from Financing Revenues which relate to certain costs of site preparation and/or site remediation not anticipated as of the Effective Date of this Agreement. The Parties agree that a Plan of Finance shall address this issue.

2.4 Termination of Original Agreement. Except as set forth in Section 3, the Original Agreement is hereby superseded and terminated as of the Effective Date and of no further force and effect.

3. CVBMP Master Calendar. A master calendar for significant actions and agreements currently known to the Parties required for the entitlement, design, financing, construction and implementation of the CVBMP was attached as an exhibit to the Original Agreement ("CVBMP Master Calendar"). The Parties agree, notwithstanding any master calendar maintained by the Parties for any other purpose, the CVBMP Master Calendar shall not be maintained by the Parties for purposes of this Agreement, however, subject to the Exchange Agreement, a calendar related to the implementation of a Plan of Finance and other undertakings of the Parties pursuant to this Agreement shall be developed and maintained as part of a Plan of Finance. To the extent required by the Exchange Agreement, Section 3 of the Original Agreement (and related provisions applicable to such section) is not terminated or modified in any way by reason of this Agreement.

4. Development of Plan of Finance; Acknowledgement of Factors Potentially Impacting Plan of Finance. The Parties will cooperate in good faith and use their respective best efforts to develop a binding Plan of Finance which (a) utilizes all of the Financing Revenues described in Section 4.2 to support financing of the construction of the RHCC Public Improvements and the financing of the RHCC Project Public Investment and such other elements of the CVBMP Public Improvements as may be addressed in a Plan of Finance, (b) identifies the specific legal mechanisms by which such utilization will be accomplished, (c) identifies O & M Costs of the parties related to the RHCC Project and, to the extent applicable, the CVBMP Project more generally, and allocates financial responsibility for such O & M Costs among the parties, and (d) identifies a calendar for the timely implementation of a Plan of Finance in light of the anticipated dates by which funds are needed to accomplish the RHCC Project.

The Parties currently anticipate that such Plan of Finance will involve as issuer the CVBFFA, but acknowledge that such Plan of Finance may involve amendments to the CVBFFA or the creation of an entity other than a joint powers authority and/or another type of financing structure authorized by applicable law. The Parties anticipate that: (i) the Parties will cause the execution and delivery of obligations, which may include the issuance of Revenue Bonds by the JEPA and/or other obligations to provide loan proceeds, the repayment of which will be secured by and payable from the Financing Revenues; and (ii) the District on one hand and the City on the other hand will have equal roles in the governance of the JEPA absent agreement by both Parties to a different governance arrangement.

The Parties acknowledge that the timing and structure of the issuance of Revenue Bonds and the commitment of the Parties' respective funding sources to the payment of cost of CVBMP Public Improvements, RHCC Public Improvements or other RHCC Project Public Investment, and/or the payment of debt service with respect to Revenue Bonds and other obligations is subject to a number of legal requirements, some of which are Discretionary Actions, and other variables.

The Parties agree to proceed in good faith to approve a Plan of Finance prior to execution of the RHCC Ground Lease. The Parties also agree to proceed in good faith to approve any future plan(s) of finance related to any other CVBMP Public Improvements, not included in a Plan of Finance, which are contemplated by this Agreement.

4.1 Anticipated Sources of Funds; Plan of Finance.

4.1.1 Subject to the further provisions of this Agreement, the Parties agree that a Plan of Finance will address the manner in which Financing Revenues will be used directly or indirectly to pay debt service on the Revenue Bonds or otherwise pay the cost of RHCC

Public Improvements or other RHCC Project Public Investment and shall also address the manner in which Financing Revenues not needed for such purposes shall be applied to or by the Parties.

4.1.2 Evidence of availability of the funding sources described in Section 4.2 is referred to herein as a “Financing Sources Submittal” and the Parties shall agree on the dates by which each such submittal shall be made and approved by the other Party (the “Calendar”) so that a Plan of Finance may be developed and approved prior to the execution of the RHCC Ground Lease. As and to the extent applicable, the District and the City will approve the Financing Sources Submittal of the other Party (the “Financing Sources Approval”) prior to the execution of the RHCC Ground Lease. However, each of the Parties acknowledges that each of the Financing Sources Submittals may be subject to Discretionary Actions.

4.1.3 To the extent described in a Plan of Finance, such amounts comprising Financing Revenues may be used to pay the CVBFFA, JEPA, or its designee: (a) debt service on JEPA Obligations ; and (b) other amounts pledged to the CVBFFA or JEPA to support payment on the Revenue Bonds. A Plan of Finance may identify other financing arrangements including Developer financing pursuant to which Financing Revenues may be applied to the cost of public improvements related to the RHCC Project or other RHCC Project Public Investment. Following approval of a Plan of Finance, the Parties will cooperate in good faith to implement a Plan of Finance.

4.2 Sources of Funds.

4.2.1 District Sources of Revenue:

Ground Lease Revenues. Ground lease payments under the RHCC Ground Lease and Other Ground Leases, which are a portion of the Ground Lease Revenues will be (i) pledged by the District to support debt service payments on obligations to be issued by the JEPA (hereinafter referred to as the “JEPA Obligations”) and sold to the JEPA, an underwriter, the Developer or others, or (ii) directly pledged to the JEPA, a trustee, the Developer or others to support debt service payments on Revenue Bonds, as determined by the District in its reasonable discretion in accordance with a Plan of Finance. The Parties acknowledge the Ground Lease Revenues may support separate JEPA Obligations. The District will submit evidence of the availability of the Ground Lease Revenues and of the method by which the JEPA Obligations is expected to support payment of debt service on the Revenue Bonds in accordance with the Financing Sources Submittal described in Section 4.1.2.

(a) **Port Land Exchange Payment.** The District is expected to contribute the Port Land Exchange Payment to the cost of RHCC Public Improvements or the CVBMP Public Improvements in accordance with a Plan of Finance.

(b) **SDGE Relocation Fee.** The District is expected to contribute the SDGE Relocation Fee to fund eligible elements of the RHCC Public Improvements or the CVBMP Public Improvements in accordance with a Plan of Finance.

4.2.2 City Sources of Revenue.

(a) **TOT Revenues; Sales Tax Revenues.** The City is expected to provide an amount equivalent to the TOT and the Sales Tax generated from the RHCC Project and RV Parks, to support debt service payments on the Revenue Bonds. It is anticipated that such

amount will be provided in the form of Lease Payments or other arrangement the provision of which does not constitute a debt of the City within any constitutional debt limitation applicable to the City. The City will submit evidence of the availability of the Lease Payments (including the items described in Section 5.5) or other arrangement and of the method by which such payments will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2.

(b) Enhanced Infrastructure Financing District Revenues.

The City agrees to consider in good faith sponsorship of the formation of an EIFD for the purpose of applying the incremental tax revenues payable to the EIFD under applicable law to the payment of the cost of RHCC Public Improvements or other RHCC Project Public Investment to the extent permitted by law. The Parties acknowledge that an EIFD, if formed, will be a separate legal entity from the City, and may not be controlled by the City. The City will consider causing the EIFD Revenues to include incremental tax revenues payable to the City, with respect to the City's share of the basic 1% ad valorem tax levy and property taxes paid in-lieu of motor vehicle license fees, and the County of San Diego and other taxing entities to the extent such other entities agree with respect thereto. The District agrees to pursue in good faith the participation of the County of San Diego in the formation of an EIFD. The Parties acknowledge that EIFD Revenues may be pledged to bonds of the EIFD on a separate, stand-alone basis as part of a Plan of Finance. The City will submit evidence of the availability of the EIFD Revenues, and of the method by which the EIFD Revenues will support payment of debt service on the Revenue Bonds or bonds of the EIFD, in accordance with the Calendar described in Section 4.1.2. The manner of the City's commitment under this Section is subject to Discretionary Actions and may be limited by applicable law as may be set forth in the Financing Sources Submittal. Nothing in this Section requires the City to form an EIFD if it determines it will be the only participant. Even if an EIFD is not formed, the City will treat as Financing Revenues available for application in accordance with a Plan of Finance an amount equivalent to the net amounts that would have been generated for use by an EIFD within the CVBMP Project by the RHCC Project should an EIFD have been formed including tax revenues of the City and no other taxing entities. The City will submit evidence of the availability of the EIFD Revenues or other arrangement and of the method by which such revenues will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2

(c) PMSA Revenues. The City and the District expect to cause PMSA Revenues to be contributed to pay costs of financing the RHCC Public Improvements and/or the RHCC Project Public Investment whether as part of the Lease Payments or other payments described in Section 4 or otherwise. The City will submit evidence of the availability of the PMSA Revenues and of the method by which the PMSA Revenues will support payment of debt service on the Revenue Bonds in accordance with the Calendar described in Section 4.1.2.

(d) Additional Occupancy-Based Revenues. The Parties acknowledge a mutual desire to explore the creation of a vehicle by which Additional Occupancy-Based Revenues in an amount up to one-half of the currently projected revenue generated from the TOT revenues described in Section 4.2.2(a) above may be applied to the cost of the RHCC Public Improvements and/or the RHCC Project Public Investment. The Parties agree that the mechanism by which such revenues may be generated may include a public financing mechanism such as that provided under the Mello-Roos Community Facilities Act of 1982, as amended (California Government Code Section 53311 *et seq.*), applicable state or charter city assessment laws, District charges or surcharges related to the RHCC Ground Lease or other Developer-sponsored or imposed charges or surcharges with respect to hotel guests or RHCC Project users. The Parties agree to

consider in good faith the creation of such financing sources, subject to Discretionary Actions, and subject to existing law. To the extent any such Additional Occupancy-Based Revenues are created, the Parties agree to apply such revenues to the cost of RHCC Public Improvements and/or the RHCC Project Public Investment including to support payments with respect to Revenue Bonds.

(e) **Sewer Facility Contribution.** The City is expected to make the Sewer Facility Contribution available to fund the elements of the RHCC Public Improvements described in Exhibit E-1 attached hereto. The City will submit evidence of the availability of the Sewer Facility Contribution and of the method by which the Sewer Facility Contribution will support construction of the eligible RHCC Public Improvements in accordance with the Calendar described in Section 4.1.2. Other sewer facilities required as part of the CVBMP Project Area, not for the RHCC Project, are generally identified on Exhibit E-2 attached hereto.

(f) **Development Impact Fees.** The Parties acknowledge that all future tenants of District in the CVBMP Project Area will be required to comply with all requirements of the City relating to development impact fees assessed by the City, including, without limitation, a Public Facilities Development Impact Fee, a Transportation Development Impact Fee described in paragraph (h) below, and a Parkland Acquisition and Development Fee ("PAD Fees") described in paragraph (g) below, in each instance, as applicable, and subject to applicable law, as well as any future development impact fees as shall be authorized by City ordinance. Each of the Parties further acknowledges that the levy, maintenance, adjustment and expenditure of such development impact fees is regulated by State law.

(g) **Park Areas; Joint Use and Improvement Fees.** The District and City will cooperate in good faith and use their respective best efforts to negotiate an agreement (hereinafter referred to as the "Park Agreement") which grants the City a nonexclusive, joint-use right or other interest in the areas designated for public park use within the CVBMP Project Area (such areas being hereinafter referred to as the "Park Areas"). The Parties agree that such Park Agreement will provide that all maintenance obligations related to the Park shall be the sole responsibility of the District and will include the following terms: (i) a term of sixty-six (66) years; (ii) as and when City collects PAD Fees, or such other park related impact fees as may be adopted in the future, from developments in the CVBMP Project Area, the City will separately account for and pay the Acquisition Component of the PAD Fees to the District as rent under the Park Agreement; (iii) upon receipt by District, all rent or other payment comprised of the Acquisition Component of PAD Fees will be deposited into an interest bearing, restricted reserve controlled by the District to be used for any lawful purpose under California Government Code § 66477 or other applicable California Government Code provisions and upon the earlier of the end of the term of the Park Agreement or the date on which the Revenue Bonds, as they may be re-issued or refinanced from time to time, are paid in full and retired, any funds remaining in such restricted reserve will be returned to the City. The parties will approve the Park Agreement in accordance with a Plan of Finance. Should the City replace the PAD Fees with a similar fee mechanism in the future, City will contribute an amount equivalent to the amounts that would have been generated by the existing PAD Fees within the CVBMP Project as rent under the Park Agreement.

(h) **Transportation Development Impact Fees.** The City has enacted a separate Transportation Development Impact Fee ("TDIF") covering at least the CVBMP Project Area to fund transportation improvements, and such TDIF will be applied to the cost of transportation improvements to be identified in the proceedings enacting the TDIF.

4.2.3 RIDA Support Payments. The Parties shall agree to support the JEPA Obligations in such time and amounts as set forth in the agreed upon a Plan of Finance.

4.3 Revenue Bonds.

4.3.1 Issuance of Revenue Bonds. As of the Effective Date, the Parties anticipate that the financing of the cost of the RHCC Public Improvements and other RHCC Project Public Investment will be provided through a combination of timely contributions of the Financing Revenues described in Section 4.2 to the payment of such costs, the issuance of Revenue Bonds to finance such amounts including, if applicable, periodic payments to the Developer or Developer designee, subject in all respects to a Plan of Finance. The Revenue Bonds may take a variety of forms, including variable rate obligations, senior/subordinate obligations, Developer-financed obligations or other arrangements to be described in a Plan of Finance. The Revenue Bonds may be issued as taxable bonds or tax-exempt bonds in such combinations as may be described in a Plan of Finance. The Parties will cooperate in good faith and use their best efforts to cause the JEPA to issue Revenue Bonds in amounts sufficient, together with other Financing Revenues, to finance the RHCC Public Improvements and the RHCC Project Public Investment. The Parties acknowledge that issuance of Revenue Bonds will be subject in all respects to a Plan of Finance and other provisions of this Agreement.

4.3.2 Security and Sources of Payment for Revenue Bonds. The Revenue Bonds are expected to be secured by the Financing Revenues described in Sections 4.2.1 and 4.2.2 in substantially the manner described in the Financing Sources Approval as set forth in Section 4.1.2 above and a Plan of Finance described in Section 4. Any contribution of revenues not specifically contemplated in this Agreement by either Party, whether to address gaps in funding identified by the Developer or otherwise, and any discussions or negotiations with respect to such matters, are expressly outside the scope of this Agreement. However, the Parties may agree to sources of revenue not identified in this Agreement if agreed to in a Plan of Finance.

4.3.3 Issuance of Revenue Bonds; CVBMP Public Improvements. The Parties anticipate that the financing of the cost of the CVBMP Public Improvements may be provided through the issuance of Revenue Bonds, subject in all respects to a Plan of Finance.

4.4 Anticipated Application of Revenue Bond Proceeds; Flow of Funds; Release of Financing Revenues.

4.4.1 Application of Revenue Bond Proceeds. The Parties anticipate that proceeds from the Revenue Bonds issued by the JEPA will be used to finance the costs of construction and related costs for the RHCC Public Improvements and RHCC Project Public Investment, either directly (by using Revenue Bond proceeds to pay such costs) or indirectly (by using the Revenue Bond proceeds to purchase obligations of the City or District, the proceeds of which are used to pay such costs), or both.

4.4.2 Operations and Maintenance Costs ("O&M Costs"). Subject to a Plan of Finance, the manner of payment, reimbursement and funding of District and City O&M Costs will be addressed in a Plan of Finance

4.4.3 Release of Financing Revenues. The Parties contemplate, subject to compliance with any financial covenants associated with the Revenue Bonds or other elements of

a Plan of Finance, amounts held by the JEPA in excess of amounts necessary to comply with such covenants shall be returned by the JEPA to the Parties, such return to be made on such basis as shall be set forth in a Plan of Finance.

5. Resort Hotel and Convention Center Project Leasing and Operations; Opportunity for Cultural/Retail Use on Parcel H-23.

5.1 Lease of Resort Hotel and Convention Center Development Site. The Parties anticipate that the Developer will lease the RHCC Development Site from the District pursuant to the terms of a long-term ground lease (the "RHCC Ground Lease").

5.2 Resort Hotel and Convention Center Project. The Parties anticipate that the RHCC Project will consist of an integrated project, comprised of a hotel (such hotel being hereinafter referred to as the "RHCC Hotel") meeting or exceeding the service quality standards of a four diamond, AAA standard, with up to 2,000 rooms (provided that the Parties acknowledge that any proposal to construct more than 1,600 rooms shall require evaluation of (i) impact areas to determine if additional analysis is needed and (ii) additional mitigation measures to reduce significant impacts, if any, associated with the increase in rooms above 1,600), and a Convention Center, and potential parking structure in the sole discretion of the District, each located adjacent to one another on the RHCC Development Site. The RHCC Ground Lease may consist of a ground lease of the RHCC site from the District or other leasing arrangement described in Section 5.5. below, or otherwise, all as may be identified in a Plan of Finance. Rent under the Convention Center Lease may consist of Lease Payments and amounts payable by the Developer under a sublease of the Convention Center, as determined by the District and the City.

5.3 Review of Developer Proposal(s). With respect to the District's processing of its transaction with Developer the District will: (i) utilize its usual and customary public process with respect to the design of the RHCC Project; and (ii) share with the City all financial terms of the RHCC Ground Lease to be entered into with the Developer or Developer(s), such financial information to be shared on a confidential basis, prior to submission of such proposed option to lease to the governing body of the District for approval and prior to submission of such terms to the governing body of the City, relative to their commitment of the Financing Revenues identified in Section 4.2 of this Agreement.

Each of the Parties acknowledges that it is such Party's expectation that approval of the any agreements by the governing body of the District and commitment of the Financing Revenues of City and District funds referred to above by the governing body of the City and District will occur substantially contemporaneously, taking into account differences in regularly scheduled meeting dates for the governing body of each of the Parties.

5.4 Future District Projects within Chula Vista Bayfront Master Plan. The Parties anticipate that various other developers, selected by District through RFQ/RFP processes and other methods, will lease other parcels of the District Property other than the RHCC Development Site pursuant to the terms of other future long-term ground leases and those revenues may be contributed, by the District, to development of subsequent phases of the CVBMP Project Area pursuant to a Plan of Finance.

5.5 Lease of Convention Center. The Parties anticipate that financing of all or part of the Convention Center as part of the RHCC Project Public Investment may involve a lease of

all or a portion of the Convention Center or other public asset by the City from the District or other lessor pursuant to the terms of a long-term lease (such lease being hereinafter referred to as the "Convention Center Lease"). If such financing method is utilized, the term of the Convention Center Lease will equal or exceed the maturity date of the Revenue Bonds and lease payments made pursuant to such Convention Center Lease will not be greater than the Lease Payments. The City and the District will submit evidence of the Convention Center Lease and the City will submit evidence of the availability of the Lease Payments and of the method by which the Lease Payments will support payment of debt service on the Revenue Bonds prior to the execution of the RHCC Ground Lease and such submittal will comprise a part of the Financing Sources Submittal required under Section 4.1.2.

5.6 Management Agreement. If a Convention Center Lease is utilized as part of a Plan of Finance, the Parties anticipate that the Developer will be responsible for all construction, operation, management, and maintenance obligations related to the Convention Center pursuant to a management agreement (a "Management Agreement") or sublease in a form approved by the City and the District, and as and to the extent, applicable, the JEPA. As between the Developer and the City, the Developer will assume all risks and obligations associated with constructing, operating, maintaining and managing the Convention Center. The Parties do not intend for a Management Agreement to restrict Developer's leasing or operation of the Convention Center, provided that all provisions of applicable anti-discrimination laws are satisfied and other applicable City, District or JEPA requirements are met. The parties will approve a Management Agreement at the times and in accordance with a Plan of Finance.

5.7 Opportunity for Cultural/Retail Use on Parcel H-23. Each of the Parties acknowledges that the project described in the FEIR provides for up to 200,000 square feet of cultural/retail use on Parcel H-23 in accordance with the Public Trust Doctrine and the Port District Act and each of the Parties agrees to preserve the opportunity to develop such cultural/retail use on Parcel H-23 notwithstanding other uses on Parcel H-23, including, without limitation, the development of a hotel or hotels on Parcel H-23.

6. Reimbursement Agreement for Oversizing. Separate from the RHCC Project, in the event that City requires Owner, Developer or other developer or builder (hereinafter referred to as a "Subdivider") in the CVBMP Project Area to oversize or supplement the size, capacity, number or length of an improvement for the benefit of property(ies) in addition to the property owned by the Subdivider, City agrees that City may enter into an agreement (hereinafter referred to as a "Reimbursement Agreement") with the Subdivider whereby the City agrees to reimburse the Subdivider from fees paid by subsequent developers for the portion of the cost of those improvements, including to the extent permitted by law an amount attributable to interest, in excess of the construction required solely to serve the property of the Subdivider (such costs being hereinafter referred to as "Excess Costs") by collecting from other persons or entities making use of such improvements for the benefit of real property not within the property owned, or formerly owned, by the Subdivider, an allocable portion of Excess Costs (such allocable portion of the Excess Costs being hereinafter referred to as a "Reimbursement Obligation") pursuant to applicable provisions of the Chula Vista Municipal Code. The Parties agree that any tenant of District Property in the CVBMP Project Area will be required to honor such Reimbursement Obligations pursuant to any Reimbursement Agreements entered into by City.

7. Miscellaneous RHCC Project Obligations.

7.1 Fire Station. Each of the Parties acknowledges that a fire station serving the CVBMP Project Area (the “Fire Station”) will be required in connection with the development of the CVBMP Project Area and that, as between the Parties, provision of the Fire Station will be the responsibility of the City. The City will submit evidence of the method and means by which it will cause the Fire Station to be constructed in the Financing Source Submittal.

7.2 Transit Plan. Each of the Parties acknowledges that the FEIR identifies the potential for a shuttle service that would link various destinations within the western portion of the City, including the CVBMP Project Area (the “Transit Plan”) and that, as between the Parties, funding for the Transit Plan will be the responsibility of the City. Each of the Parties acknowledges that it will cooperate to develop a Transit Plan consistent with the FEIR, including, without limitation, identification of funding sources for capital costs and operational costs and identification of operational responsibilities and further acknowledges that O&M Costs payable by the City are anticipated to include operational costs of shuttle services contemplated by the FEIR and provided within the CVBMP Project Area until such time as such operational costs are borne by other applicable transportation providers.

7.3 [Intentionally left blank]

7.4 Reimbursements for Remediation and Other Costs.

7.4.1 Remediation Costs. Each of the Parties acknowledges that some elements of the cost of RHCC Public Improvements and/or the Convention Center may involve costs of environmental remediation which costs may be the responsibility of third parties pursuant to applicable law or administrative order or other determination or agreement. Nothing in this Agreement is intended to diminish any such responsibility or impose such cost on any Party hereto solely by reason of its participation in this Agreement, it being intended that such costs will be borne by the responsible party in accordance with such law, order, other determination or agreement.

7.4.2 Other Costs. Each of the Parties acknowledges that if a Party advances funds to pay specific costs for a portion of the RHCC Public Improvements (e.g., if, for example, the District advances funds required to pay specific costs for a portion of the RHCC Public Improvements required to be completed prior to securing financing), reimbursement for such advances of funds may be provided for in a Plan of Finance on such basis as may be set forth in a Plan of Finance.

7.4.3 Pacifica Insurance Commitment. The Parties agree that there shall be paid from the Financing Revenues to the extent permitted by law, an amount not to exceed \$300,000 in total for a period not to exceed ten years from the close of escrow on the Exchange Parcel, to address insurance costs associated with certain soil conditions which Owner may encounter during its development of the Residential Property as follows: (a) \$200,000 to be used solely for any deductibles for the referenced insurance policy and (b) \$100,000 for the following three items only: (1) any environmental cleanup not covered by the insurance policy but required pursuant to the Regional Water Quality Control Board approved cleanup levels as detailed in the Final Cleanup and Abatement Completion Report, Soil Remediation, Exchange Parcel – Former South Campus, Chula Vista, California, prepared by Haley & Aldrich, Inc. and dated February 2015; (2) to pay for costs set forth in (1) above but only in the event that the insurance company goes out of business; or (3) to pay

for costs set forth in (1) above but only in the event the environmental cleanup exceeds the total amount covered by the insurance policy.

7.5 Application of Unit Contribution. The Parties agree that the Unit Contribution will be used in conformance with the terms of the Settlement Agreement.

8. Modifications or Amendments; Waivers. No modification, amendment, change, waiver, discharge or termination of this Agreement will be valid unless it is in writing and signed by each of the Parties hereto.

9. Additional Agreements, Actions; Further Assurances. Each of the Parties will cooperate with and provide reasonable assistance to the other to the extent necessary to implement and achieve the purposes and objectives of this Agreement.

10. Authorized Representatives. The Authorized Representative of the City is hereby designated to be the single point-of-contact with respect to such Party's obligations under this Agreement. The Authorized Representative of the District is hereby designated to be the single point-of-contact with respect to such Party's obligations under this Agreement.

11. Dispute Resolution; Attorneys' Fees and Costs.

11.1 Dispute Resolution. In the event of a dispute or disagreement between the Parties relating to the terms, conditions, interpretation, performance, default or any other aspect of this Agreement, each of the Parties will use its best efforts to resolve the dispute informally.

11.2 Attorneys' Fees and Costs. If any Party commences a lawsuit for the interpretation, reformation, enforcement or rescission of this Agreement, each Party shall bear its own costs resulting from such lawsuit.

12. Conditions Precedent to Performance of the Parties. Each of the Parties hereby acknowledges that (i) development of a Plan of Finance contemplated by Section 4 of this Agreement, including, without limitation, (x) identification of the Financing Revenues and the terms affecting application of those Financing Revenues to the purposes described in this Agreement, (y) identification of the issuer, or issuers, of the Revenue Bonds contemplated by this Agreement, and (z) the development of the Calendar which identifies a critical path under which sources of funds identified in Section 4 of this Agreement are committed and which takes into account performance of the Developer and Owner, and (ii) development of a RHCC Ground Lease acceptable to the District are conditions precedent to the performance of each Party's obligations under this Agreement.

Each of the Parties hereby further acknowledges that (i) satisfaction of each of the foregoing conditions precedent may result in identification of further conditions precedent to eventual performance (e.g., issuance of JEPA Revenue Bonds, Developer performance parameters), which shall also constitute conditions precedent to performance hereunder and (ii) the sole remedy of any party for failure of any condition precedent shall be termination of this Agreement.

13. Termination; Consequences of Termination; Subsequent Action. Unless the Parties mutually agree otherwise, this Agreement will terminate upon the earlier of: (i) failure of the City or District to provide the Financing Sources Submittal or Financing Sources Approval or of the Parties to approve a Plan of Finance, within the times set forth in this Agreement or, if applicable, the

CVBMP Master Calendar; (ii) the date that the Revenue Bonds, as they may be re-issued or refinanced from time to time or other binding financing commitments arising from a Plan of Finance, are paid in full and retired; (iii) the date the Parties execute a further agreement regarding the Revenue Bonds or other binding financing commitments arising from a Plan of Finance, provided such agreement expressly supersedes this Agreement; (iv) ten years from the Effective Date or such other date as shall be agreed to by the Authorized Representative of each Party if on such date neither an RHCC Ground Lease is in effect nor any Revenue Bonds shall have been issued; or (v) the date the Parties shall agree that this Agreement shall be terminated. Any such termination will not affect other legally binding obligations which may have been entered into by the Parties pursuant to other binding contracts with respect to the same or similar subject matter.

Each of the Parties hereby acknowledges that upon the termination of this Agreement, no Party to this Agreement shall incur any further financial liability to any other Party as a result of such termination nor will any Party be entitled to receive monetary damages as a result of the failure of any Party to perform its obligations under this Agreement.

In the event of termination of this Agreement pursuant to clause (iv) of this Section 13, the Parties will conduct a public outreach process to assist the Parties in formulating a revised land use plan for submission to the governing body of each of the Parties, which revised land use plan will be formulated and submitted in accordance with applicable law, including, without limitation, environmental and coastal analysis.

14. Proposition G. The Parties acknowledge that the obligations of the City hereunder shall be subject in all respects to the terms of Proposition G, to the full extent permitted by law. In no event shall the City be required to take any action under this Agreement which violates Proposition G.

15. General Provisions.

15.1 Prompt Performance. Time is of the essence with respect to the performance of each obligation, covenant and condition set forth in this Agreement.

15.2 Further Assurances. The Parties hereto agree to cooperate with each other and execute any documents reasonably necessary to carry out the intent and purpose of this Agreement.

15.3 Entire Agreement; Subsequent Agreements. This Agreement contains the entire agreement between the Parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into and superseded by this Agreement. To the extent the Parties enter into any agreement subsequent to this Agreement relating to the subject matter of this Agreement and there is a conflict between a provision set forth in this Agreement and in such subsequent agreement, the provision in such subsequent agreement shall control.

15.4 Captions. Captions in this Agreement are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.

15.5 Successors. All terms of this Agreement will be binding upon, inure to the benefit of and be enforceable by, the Parties hereto and their respective successors and assigns.

15.6 Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been delivered upon (i) personal delivery to City or District or (ii) as of the second business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to District, to: President/CEO
San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488

with a copy to: Port Attorney
San Diego Unified Port District
P.O. Box 120488
San Diego, California 92112-0488

If to City, to: City of Chula Vista
Attention: City Manager
276 Fourth Avenue
Chula Vista, California 91910

with a copy to: City Attorney
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

or to such other address or to such other person as any Party will designate to the others for such purpose in the manner hereinabove set forth. Notices may also be provided by electronic means, receipt of which shall be confirmed by the Party delivering the Notice.

15.7 Limitation of Rights; Third Party Rights. Nothing in this Agreement, express or implied, is intended to confer upon any person other than the Parties any rights or remedies under or by reason of this Agreement. Without limiting the preceding sentence, in no event will the City or District incur any liability hereunder to any third party, including, without limitation, any potential developer, the Developer, the Owner or any Subdivider.

15.8 Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provisions or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. .

15.9 Execution Authorized. Each Party hereto hereby warrants and represents to each of the other Parties hereto that it has legal authority to enter into this Agreement and that all resolutions or other actions necessary to enable it to enter into this Agreement have been taken.

15.10 Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.

15.11 Effective Date. This Agreement will be effective upon approval and execution by both the District and the City. The date so determined is indicated on Page 1 of this Agreement and is referred to herein as the "Effective Date."

15.12 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and of which together will constitute one instrument.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto and shall take effect on the Effective Date.

CITY:

CITY OF CHULA VISTA,
a municipal corporation

By: Mary Casillas-Salas
Mary Casillas-Salas, Mayor

Attest:

Donna R. Norris
Donna Norris, City Clerk

Approved as to form:

Glen R. Googins
Glen R. Googins, City Attorney

DISTRICT:

SAN DIEGO UNIFIED PORT DISTRICT, a
public corporation

By: _____

Approved as to form and legality:

GENERAL COUNSEL

By: Assistant/Deputy

EXHIBIT A

CVBMP Project Area



EXHIBIT A **CVBMP Project Area – Sweetwater District**

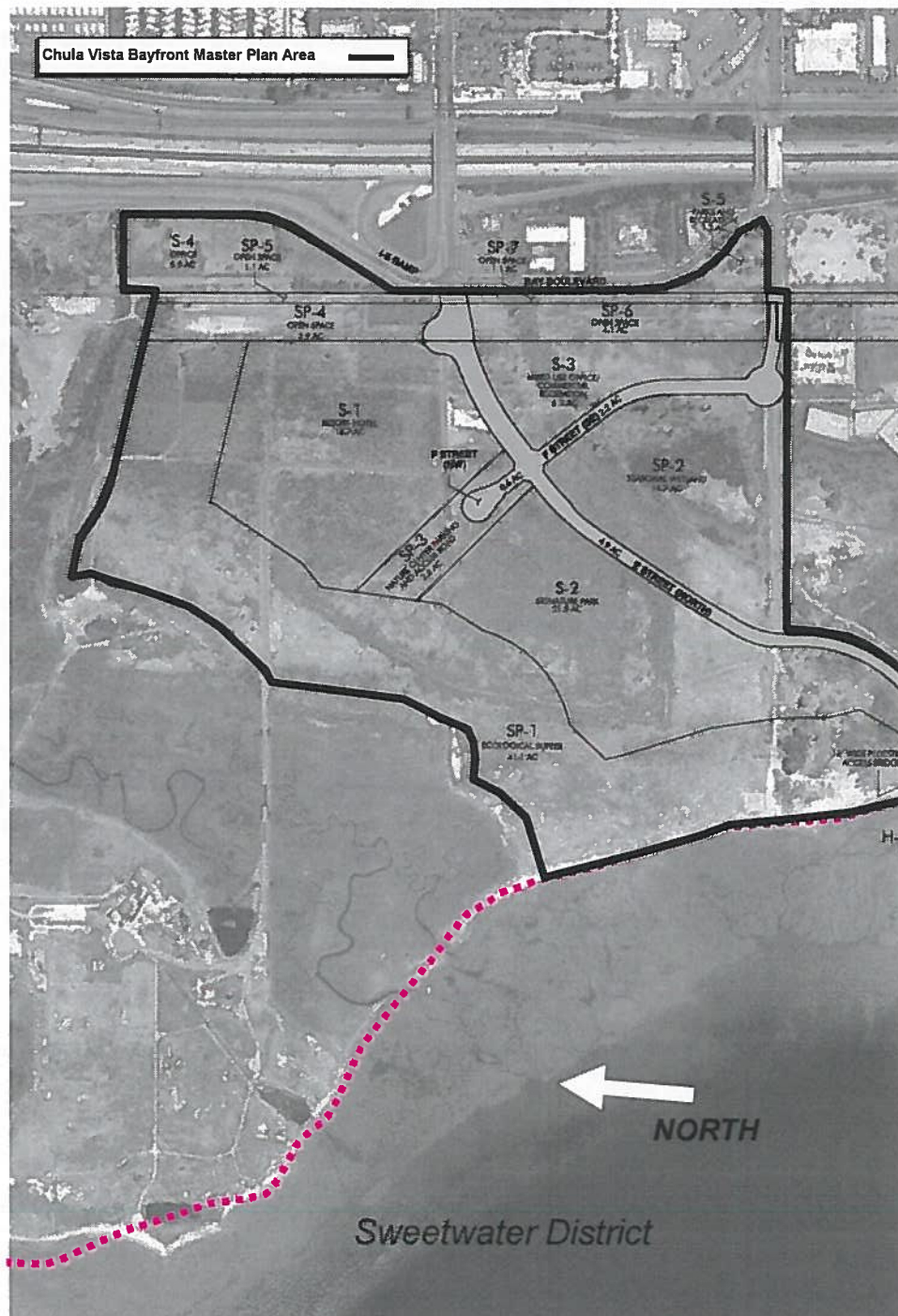




EXHIBIT A **CVBMP Project Area – Otay District**

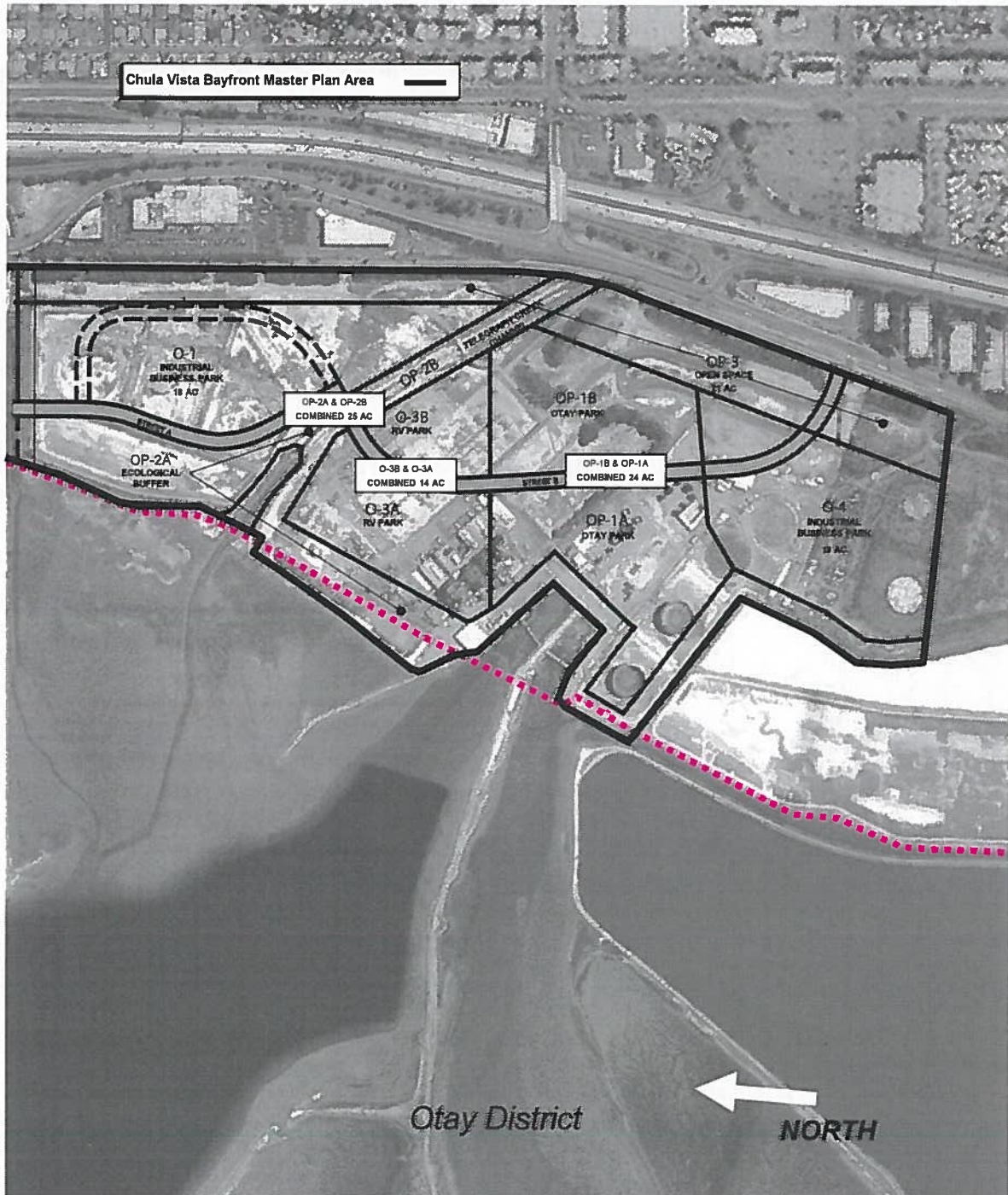


EXHIBIT B CVBMP District Property



EXHIBIT C
PUBLIC IMPROVEMENTS

C

EXHIBIT C-1**PHASE 1A PUBLIC IMPROVEMENTS**

	TYPE	LOCATION OR DESCRIPTION
1	Street & Utilities	E Street (I-5 Ramps to F Street)
2	Street & Utilities	E Street (Lagoon Drive to G Street) - Rehabilitation
3	Street & Utilities	F Street (Bay Blvd to E St) - Grading, drainage & utilities only
4	Street & Utilities	F Street (NW) and Gunpowder Point Drive Relocation to access Living Coast Discovery Center
5	Street & Utilities	E Street (G Street to H Street)
6	Street & Utilities	G Street Connection to UTAS Gate 66
7	Street & Utilities	H Street (Marina Parkway to E Street)
8	Street & Utilities	H Street (Bay Blvd to Marina Parkway, excluding 2014 street improvements)
9	Street & Utilities	H-3 Utility Corridor (existing Marina Parkway)
10	Parks & Open Space	S-2 Sweetwater Signature Park (partial)
11	Parks & Open Space	SP-3 Living Coast Discovery Center Parking Relocation
12	Parks & Open Space	SP-1 Sweetwater Buffer (partial)
13	Parks & Open Space	SP-2 Seasonal Wetland (bio-retention)
14	Parks & Open Space	HP-1/H-8 Harbor Park (partial)
15	Parks & Open Space	HP-3 Harbor District Baywalk (partial)
16	Misc.	Storm Drain Systems, in public parcels (additional improvements)
17	Misc.	Pedestrian access, in public parcels (additional improvements)
18	Misc.	Bayshore Bikeway Bayfront Loop (E Street to H Street)
19	Misc.	Parking, in public parcels (additional improvements)
20	Misc.	Fire Station
21	Misc.	Centralized facilities related to energy standards
22	Misc.	Adaptation improvements related to sea level rise
23	Misc.	Public facilities related to NRMP
24	Misc.	Mitigation for impacts from CVB projects
<p>Source Abbreviations</p> <p>CCDP: Coastal Commission Development Policies</p> <p>CCPAP: Coastal Commission Public Access Program</p> <p>MM: Mitigation Measure from Mitigation, Monitoring and Reporting Program</p> <p>NRMP: Natural Resource Management Plan</p> <p>PMP: Port Master Plan</p> <p>In accordance with Documents and laws and regulations in effect at the time of development.</p>		

EXHIBIT C-2**PUBLIC IMPROVEMENTS - ULTIMATE, EXCLUDING PHASE 1A**

	TYPE	LOCATION OR DESCRIPTION
1	Street & Utilities	E Street (I-5 Ramps to H Street) (additional improvements)
2	Street & Utilities	F Street (Bay Blvd to E St)
3	Street & Utilities	H Street (I-5 Ramps to Street A, excluding 2014 street improvements)
4	Street & Utilities	Marina Parkway (H Street to J Street)
5	Street & Utilities	Street A (H Street to J Street)
6	Street & Utilities	Street C (Marina Parkway to H-18)
7	Street & Utilities	J Street (I-5 Ramps to Marina Parkway)
8	Street & Utilities	Marina Way Reconfiguration
9	Street & Utilities	Street A (Otay)
10	Street & Utilities	Street B (Otay)
11	Parks & Open Space	S-2 Sweetwater Signature Park (additional improvements)
12	Parks & Open Space	SP-1 Sweetwater Buffer (additional improvements)
13	Parks & Open Space	SP-2 Seasonal Wetland (additional improvements)
14	Parks & Open Space	HP-1/H-8/H-1A(N) Harbor Park (additional improvements)
15	Parks & Open Space	HP-3 Harbor District Baywalk (additional improvements)
16	Parks & Open Space	HP-12, HP-13, OP-3 Open Space (SDG&E and SD&AE)
17	Parks & Open Space	Bayfront Park (additional improvements)
18	Parks & Open Space	Marina View Park (additional improvements)
19	Parks & Open Space	OP-1 Otay Park
20	Parks & Open Space	OP-2 Otay Buffer
21	Misc.	Storm Drain Systems, in public parcels (additional improvements)
22	Misc.	Pedestrian access, in public parcels (additional improvements)
23	Misc.	Bayshore Bikeway Bayfront Loop (additional improvements)
24	Misc.	Parking, in public parcels (additional improvements)
25	Misc.	H-18 Collector Parking
26	Misc.	H Street Pier
27	Misc.	Navigation channel realignment
28	Misc.	HW-3 Harbor improvements
29	Misc.	HW-1 and HW-4 Marina redevelopment
30	Misc.	Centralized facilities related to energy standards
31	Misc.	Adaptation improvements related to sea level rise
32	Misc.	Public facilities related to NRMP
33	Misc.	Mitigation for impacts from CVB projects
34	Misc.	J Street & I-5 Northbound Ramp
35	Misc.	J Street and Bay Boulevard
36	Misc.	H Street (I-5 Ramps to Broadway)
37	Misc.	H Street at Woodlawn Avenue

EXHIBIT C-2**PUBLIC IMPROVEMENTS - ULTIMATE, EXCLUDING PHASE 1A**

	TYPE	LOCATION OR DESCRIPTION
38	BFDIF	I-5-1: I-5/ E Street NB off-ramp restriping add lane
39	BFDIF	I-5-2: I-5/ E Street/ Bay Blvd SD off-ramp restriping add lane
40	BFDIF	I-5-4: E Street bridge widening over I-5
41	BFDIF	I-5-5: F Street bridge widening over I-5
42	BFDIF	I-5-6: I-5/ H Street NB off-ramp restriping add lane
43	BFDIF	I-5-7: I-5/ H Street SB off-ramp restriping add lane
44	BFDIF	I-5-8: H Street bridge widening over I-5
45	BFDIF	I-5-9: I-5/ J Street NB off-ramp restriping add lane
46	BFDIF	I-5-11: L Street bridge widening over I-5
47	BFDIF	I-5-12: I-5/ Bay Blvd (south of L St.) SB on/off ramps traffic signal
48	BFDIF	I-5-13: I-5/ Industrial Blvd NB on/off ramps traffic signal
49	BFDIF	I-5-14: I-5/ Palomar Street bridge widening
50	BFDIF	I-5-16: I-5/ Main Street bridge widening
51	BFDIF	I-5-17: I-5 HOV & Managed Lanes from SR-905 to SR-54
52	BFDIF	RAS-5: E Street LRT grade separation (underpass LRT option)
53	BFDIF	RAS-6: H Street LRT grade separation (underpass LRT option)
54	BFDIF	RAS-9: H Street widening to 6-lanes from I-5 to Broadway
55	BFDIF	BP-1: Bayshore Bikeway (bike path) between E & F Streets
56	BFDIF	BP-9: Bayshore Bikeway (bike path) between F & H Streets
<p>Source Abbreviations</p> <p>BFDIF: Bayfront Transportation Development Impact Fee</p> <p>CCDP: Coastal Commission Development Policies</p> <p>CCPAP: Coastal Commission Public Access Program</p> <p>MM: Mitigation Measure from Mitigation, Monitoring and Reporting Program</p> <p>NRMP: Natural Resource Management Plan</p> <p>PMP: Port Master Plan</p> <p>In accordance with Documents and laws and regulations in effect at the time of development.</p>		

EXHIBIT D

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D

EXHIBIT E-1**PUBLIC SEWER IMPROVEMENTS - PHASE 1A**

	LOCATION	DESCRIPTION
1	F Street	Sweetwater District sewer pump station and sewer lines. New meter to South Metro Interceptor.
2	E Street	Sewer lines
3	G Street Connection	Sewer lines
4	H Street	Sewer lines
5	H-3 Utility Corridor	Sewer lines
6	G Street Sewer Pump Station	Upgrade and improvements, including force main and emergency storage

EXHIBIT E-2**PUBLIC SEWER IMPROVEMENTS - ULTIMATE, WITHOUT PHASE 1A**

	LOCATION	DESCRIPTION
1	Marina Parkway	Extend sewer line in H-3 utility corridor across H Street. Relocate and upgrade pump station #11 and sewer lines.
2	Street A	Sewer lines
3	J Street	Sewer lines, junction structure and upgrade
4	Marina Way	Upgrade pump station #12 and relocate sewer lines
5	Street A (Otay)	Sewer line
6	Street B (Otay)	Sewer lines, pump station and connection to South

EXHIBIT F

OTHER GROUND LEASES

1. Amended and Restated and Combined Lease between the San Diego Unified Port District and The Marine Group, LLC for property at the North Side of G St. at the terminus of both Quay Avenues and Sandpiper Way in Chula Vista, which lease is on file in the Office of the District Clerk as Document No. 54509, as amended and may be amended from time to time
2. Lease between the San Diego Unified Port District and Chula Vista Marina/RV Park, LTD., dba Chula Vista RV Park for property located at 460 Sand Piper Way in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 14243, as amended and may be amended from time to time
3. Lease between the San Diego Unified Port District and Chula Vista Marina/RV Park, LTD., dba Chula Vista Marina for property located at 550 Marina Parkway in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 14244, as amended and may be amended from time to time
4. Lease between the San Diego Unified Port District and California Yacht Marina, Inc. for property located at 640 Marina Parkway in Chula Vista which lease is on file in the Office of the District Clerk as Document No. 23924, as amended and may be amended from time to time