

**CHULA VISTA BAYFRONT PROJECT FUNDING AGREEMENT BY AND
AMONG THE COUNTY OF SAN DIEGO, THE CITY OF CHULA VISTA, THE
SAN DIEGO UNIFIED PORT DISTRICT AND THE CHULA VISTA BAYFRONT
FACILITIES FINANCING AUTHORITY**

This funding agreement (“Funding Agreement” or “Agreement”) is entered into as of October __, 2019, by and among the County of San Diego (“County”), the City of Chula Vista (“City”), the San Diego Unified Port District (“Port District”) and the Chula Vista Bayfront Facilities Financing Authority (“Authority”) (collectively referred to as “Parties”).

RECITALS

A. WHEREAS, the County is a political subdivision duly organized and existing pursuant to the Constitution and the laws of the State; and

B. WHEREAS, the City is a chartered city organized and existing under the laws of the State; and

C. WHEREAS, the Port District is a public corporation created by the legislature in 1962 pursuant to the Harbors and Navigation Code Appendix 1; and

D. WHEREAS, the Authority is a public entity established pursuant to the Joint Exercise of Powers Act pursuant to a Joint Exercise of Powers Agreement by and between the City and Port District as its sole members; and

E. WHEREAS, the City, Port District and Authority (collectively, the “Receiving Parties”) have undertaken certain common efforts to create a master plan (“CVBMP”) and promote development of the approximately 535-acre Chula Vista Bayfront (“Chula Vista Bayfront Project”); and

F. WHEREAS, the Port District and the City are parties to that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017; and

G. WHEREAS, on September 9, 2019, the Receiving Parties sent a formal request to the County requesting a \$25 million dollar contribution toward the Chula Vista Bayfront Project; and

H. WHEREAS, the County desires to assist the Receiving Parties in financing the Chula Vista Bayfront Project.

NOW, THEREFORE, the County, City, Port District and Authority agree to this Funding Agreement as follows:

I. PURPOSE AND INTENT

This Funding Agreement is entered into by the Parties whereby the County will contribute up to \$25,000,000 towards the construction of the Chula Vista Bayfront Project.

II. DEFINITIONS

The terms defined in this Section shall for all purposes of this Agreement have the meanings specified below.

“Annual Inflationary Adjustment” shall mean the adjustment stated in Revenue and Taxation Code Section 51 which provides that base year values determined under Revenue and Taxation Code Section 110.1 shall be compounded annually against the Base Year by an inflation factor, not to exceed 2 percent of the prior year’s value. Section 51(a)(1)(C) states the inflation factor shall be the percentage change, rounded to the nearest one-thousandth of 1 percent, from October of the prior fiscal year to October of the current fiscal year in the California Consumer Price Index, as determined by the California Department of Industrial Relations.

“Audited Year” shall mean July 1 to June 30 of any year which includes the January 2 and June 1 distributions from the RPTTF.

“Auditor and Controller” shall mean the County of San Diego Auditor and Controller.

“Current Year Assessed Value” shall mean the value of the properties in the Project Area on the equalized roll on August 20 of that year.

“Base Year” shall mean Fiscal Year 2019-20 and be the basis of the assessed value of properties in the Project Area representing the equalized roll as of August 20, 2019.

“Base Year Assessed Value” shall be the assessed value of the properties within the Project Area as of the equalized roll on August 20, 2019 (See Revenue and Taxation Code Section 2052). The Base Year Assessed Value is a combined \$78,213,714 of which \$52,946,745 is from the secured parcels and \$25,266,969 is from unsecured accounts.

“City Credit” shall mean any credit given pursuant to Section VI.D. of this Agreement.

“County Contribution” shall mean any amount the County distributes pursuant to this Agreement, plus applicable interest as provided in Section III.

“Deemed Satisfied” shall mean that portion of the County Contribution, plus interest (if applicable), that is recouped by either the County’s receipt of Total Tax Increment, City Credit or a Port Payment.

“Disputed Funds” shall mean the County’s portion of any amount attributable to past distributions that are ordered by a court to be repaid or reallocated to the City in the Residual Methodology Case. Disputed Funds shall not include any amounts required to be paid to the City attributable to property tax revenues generated after the date of the Final Decision in the Residual Methodology Case. The Disputed Funds are estimated to be approximately \$1.4 million as of the date of this Agreement and are estimated to increase on an annual basis until a Final Decision is issued in the Residual Methodology Case.

“Final Decision” shall mean that an order or judgment directing payment or reallocation of residual funds has been entered, and (i) if there is an appeal of the applicable order or judgment, there has been a final affirmance on appeal or dismissal of such appeal; or (ii) if no appeal is filed, the time for filing or noticing any appeal of the order or judgment has expired.

“Gaylord Hotel” shall mean the resort hotel and convention center to be constructed on a portion of the Project Area commonly known as Parcel H-3 by RIDA Chula Vista, LLC (“RIDA”).

“Port Payment” shall mean, any payment paid to the County by the Port District pursuant to this Agreement.

“Project Area” shall mean the area identified in the legal description, list of CVBMP parcels and parcel map shown in Exhibit C.

“Projected Tax Increment” shall mean the Projected Tax Increment set forth in Exhibit A.

“Property Tax Increment” for the Property Tax Increment computation shall mean an amount equal to that portion of the property tax revenue generated from the Project Area taking the difference between the Current Year Assessed Value and the Base Year Assessed Value with an Annual Inflationary Adjustment. This difference is also known as Property Tax Incremental Assessed Value. The Property Tax Incremental Assessed Value is multiplied by the one percent tax rate and multiplied by the County’s share of the one percent tax rate, which is 15.88, for the applicable Audited Year.

“Property Tax Incremental Assessed Value” shall mean the Current Year Assessed Value less Base Year Assessed Value with an Annual Inflationary Adjustment.

“RPTTF” shall mean the Redevelopment Property Tax Trust Fund established by the Auditor and Controller for the Successor Agency to the Redevelopment Agency of the City of Chula Vista pursuant to Health and Safety Code Section 34170.5(b).

“Residual Methodology Case” shall mean *City of Chula Vista et al., v. Sandoval*, Sacramento Superior Court Case No. 34-2014-80001723-CU-WM-GDS and Third District Court of Appeal No. C080711.

“Total Tax Increment” shall mean the combined Property Tax Increment and VLF Increment calculated by the Auditor and Controller in each Audited Year.

“VLF Adjustment Amount” and “VLFAA,” also defined as property tax in lieu of Vehicle License Fees (VLF), means the County’s share of prior year VLFAA plus growth as calculated per Revenue and Taxation Code Section 97.70 (C).

“VLF Increment” also described as property tax in lieu of VLF shall mean the County’s share of the VLF Adjustment Amount attributed specifically to the VLF Incremental Assessed Value for the Project Area using the County’s factor of .000793002.

“VLF Incremental Assessed Value” for the VLF Increment computation shall mean Current Year Assessed Value less Base Year Assessed Value without an Annual Inflationary Adjustment.

III. COUNTY CONTRIBUTION

A. Disbursements to be provided by the County to the Authority:

1. The County shall pay the Authority three equal distributions of \$8,333,333.00 to be used towards the payment of costs as specified in Section IV.
2. Upon receiving notice from the Authority on or before April 1, 2020, the County shall make the first of the three distributions upon the latter of: (a) within 30 days after being notified by the Port District of the commencement of construction of the Gaylord Hotel (currently anticipated for summer of 2020); or July 1, 2020 (the “First Distribution”).

3. Upon receiving notice from the Authority on or before April 1, 2021, the second distribution shall be paid July 1, 2021 (the “Second Distribution”).
4. Upon receiving notice from the Authority on or before April 1, 2022, the third distribution shall be paid July 1, 2022 (the “Third Distribution”).
5. Once the County Contribution, or any portion thereof, is distributed, the balance of any County Contribution not recaptured by either receipt of Total Tax Increment, a City Credit, or a Port Payment each Audited Year shall accrue interest at the annual rate of 3% which is calculated annually on any outstanding balance, including interest.
6. With regard to the First Distribution, the Receiving Parties may, by written notice at least 30 days prior to April 1, 2020 inform the County that it does not want the County to make the upcoming First Distribution
7. Notwithstanding anything to the contrary in this Article III, if the County does not receive written notice from the Authority on or before April 1, 2021, in the case of the Second Distribution, and on or before April 1, 2022, in the case of the Third Distribution, as the case may be, the County shall provide written notice to the City Manager of the City and the Executive Director of the Port District that no written request has been received and the Authority shall still have the right to such distribution(s) if within ten (10) business days of receipt of the County’s notice, the Authority delivers written notice to the County requesting the applicable distribution.
8. The County shall determine, in its sole discretion, the source of any distribution to make the County Contribution. The County represents and warrants that the County shall take all lawful actions required to make the County Contribution and that the County will have the full right and authority to deliver the County Contribution to the Receiving Parties prior to making any portion of the County Contribution.

B. Conditions Precedent to Transfer of any Funds

1. The County shall not be obligated to make the County Contribution, or any portion thereof, if the Gaylord Hotel does not commence construction.
2. The Port District shall prepare the legal description and submit it to the Auditor and Controller within 90 days of the effective date of the Agreement.

C. Auditor and Controller Annual Calculation

1. Commencing with the date of the Second Distribution and on the anniversary of that date each July 1 thereafter, the Auditor and Controller shall calculate the Total Tax Increment as detailed in Exhibit B for each Audited Year during the term of this Agreement. The Auditor and Controller agrees to provide any reasonable information the Receiving Parties may request in writing to support the Auditor and Controller's calculation.
 - i. No later than July 30, 2021 and each year thereafter during the term of this Agreement, the Auditor and Controller shall notify the Receiving Parties of the Total Tax Increment to be credited towards the loan repayment for the preceding Audited Year.
 - ii. If the Total Tax Increment is equal to the Projected Tax Increment during an Audited Year, the Auditor and Controller shall Deem Satisfied the corresponding outstanding obligation for such Audited Year.
 - iii. If the Total Tax Increment is greater than the Projected Tax Increment during an Audited Year, the Auditor and Controller shall Deem Satisfied the corresponding outstanding obligation for such Audited Year and carry forward any amount in excess of the Projected Tax Increment to the next Audited Year's obligation, and each Audited Year thereafter until the excess amounts are applied toward the Projected Tax Increment for future years such that an excess no longer exists.
 - iv. If the Total Tax Increment is less than the amount of Projected Tax Increment, and there are no excess amounts of Total Tax Increment to be applied toward the obligation from prior Audited Years, the Port District agrees to pay to the County a Port Payment in the amount equal to the difference between the Total Tax Increment and

the Projected Tax Increment for such year within 90 days of receipt of notice of the shortfall from the County.

- v. Notwithstanding anything in this Agreement, in the event the Total Tax Increment is more than the amount the County actually receives in the RPTTF residual distribution and VLF Increment during an Audited Year, then the amount Deemed Satisfied shall only be for that amount actually received by the County during the Audited Year. If this event occurs, the Auditor and Controller shall inform the Receiving Parties on or before July 30 of the amount of RPTTF residual distribution and VLF Increment actually received by the County for the applicable Audited Year.
2. The Receiving Parties may pay, in whole or in part, the outstanding balance of the County Contribution without accruing additional interest on such prepaid amounts under the following circumstances:
- i. Pay in whole any outstanding amount; and
 - ii. If the excess of Total Tax Increment over Projected Tax Increment for any year is greater than the outstanding balance of the County Contribution, pay the outstanding balance with excess Total Tax Increment; and
 - iii. Any City Credit from Disputed Funds.

IV. USE OF COUNTY CONTRIBUTION

A. Phase 1A Improvements.

The Receiving Parties agree the County Contribution shall be used solely for the construction of the public improvements set forth on Schedule 1 attached hereto (“Phase 1A”).

B. Request for Information

The Receiving Parties agree to provide any reasonable information the County may request in writing to verify the Authority’s expenditure of the County Contribution.

V. AUTHORITY ANNUAL REPORTS

Commencing on the date of the Second Distribution and on the anniversary of that date each year thereafter until the year following the Authority's last expenditure of the County's Contribution, the Authority shall supply to the County an accounting of expenditure of the County's Contribution. The Authority shall also provide any reasonable information requested by the County.

VI. THE CITY

A. In exchange for the County Contribution actually made towards the Chula Vista Bayfront Project, the City agrees to contribute to the County Disputed Funds, if any, obtained from the Residual Methodology Case to reimburse the County for the above referenced County Contribution.

B. In the event there is an order of judgment directing payment or reallocation of residual funds stemming from the Residual Methodology Case, and such order or judgment has become the Final Decision, the Auditor and Controller will distribute Disputed Funds consistent with the Final Decision in the Residual Methodology Case. The Auditor and Controller will simultaneously calculate the Disputed Funds and notify the City, in writing, of the amount of Disputed Funds. The Auditor and Controller agrees to provide any reasonable information the City may request in writing to support the Auditor and Controller's calculation.

C. By this Funding Agreement, the City agrees and authorizes the Auditor and Controller to transfer the Disputed Funds directly to the County.

D. Disputed Funds received or retained by the County pursuant to this Section shall be applied to the principal amount of the County Contribution in the year the Disputed Funds are actually received or retained by the County.

E. In the event the amount of Disputed Funds is modified because of further litigation in the Residual Methodology Case (including the filing of a separate case to challenge the amount of Disputed Funds by plaintiffs in the Residual Methodology case) the distributions and credits pursuant to this Section shall be adjusted in accordance with the Final Decision in said litigation.

VII. DEFAULT; REMEDIES

If any Party under this Agreement shall fail to perform or fulfill any obligation required of it under this Agreement and shall not have cured or commenced to cure such failure within thirty (30) days following written notice thereof from one or more of the non-

defaulting parties (or has commenced to cure such failure, but is not diligently proceeding to cure such failure), then the Party shall be in default under this Agreement (each such event or occurrence, a “Event of Default”).

In the event of an Event of Default, the non-defaulting parties may, each in its sole discretion, collectively agree to: (a) extend the time for the defaulting party to perform the applicable obligation(s) hereunder for a period of time acceptable to the non-defaulting parties beyond the cure period set forth in this Section VII, or (b) terminate this Agreement by giving written notice of such termination to the other parties.

Because of the nature of this Agreement, the Parties agree that remedies expressly set forth in this Agreement are the only remedies available to the Parties. Neither the County nor the Receiving Parties shall have any remedy for money damages against the other parties to this Agreement. Prior to electing to terminate the Agreement, the County or Receiving Parties, as applicable, may elect to compel specific performance of the other parties’ obligations under this Agreement.

The Parties shall, before the commencement of any lawsuit or court action against any other Party relating to this Agreement, attempt in good faith to settle their dispute by third-party non-binding mediation.

VIII. CITY/PORT DISTRICT REVENUE SHARING.

Subject to further negotiations between the City and the Port District, the City and the Port District shall amend that certain Revenue Sharing Agreement dated April 24, 2018 by and between the City and the Port District, to provide for priority reimbursement to the City and the Port District for any payment or contribution made by either party to the County under this Funding Agreement.

IX. GENERAL TERMS AND CONDITIONS

A. INDEMNIFICATION

The City, Port District and Authority hereby collectively agree to defend and indemnify the County, its officers, directors, employees and agents (“Indemnified Parties”) for, and hold them harmless against any loss, cost, claim, liability or expense (including reasonable attorneys’ fees) directly arising out of the County’s funding of the Chula Vista Bayfront Project pursuant to the Funding Agreement (“Indemnified Claims”) (except any loss, cost, claim, liability or expense (including attorneys’ fees) as may be adjudged by a court of competent jurisdiction to be attributable to the negligence or willful misconduct of one or more of the Indemnified Parties). At its sole discretion, the County may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve Receiving Parties of any obligation

imposed by this Funding Agreement. The County shall notify the Receiving Parties promptly of any claim, action or proceeding and cooperate fully in the defense.

B. TERM

This Funding Agreement shall be effective on the date on which the last of the Parties sign it, and shall terminate 30 days after the later to occur of (i) the date the County Contribution has been Deemed Satisfied in its entirety (including applicable interest); (ii) the Residual Methodology Case is subject to a Final Decision; and (iii) Disputed Funds are actually received or retained, if applicable.

C. AMENDMENTS

Amendments to the Funding Agreement may be made at any time only upon written approval of all of the Parties.

D. NOTICES

Any notices required or permitted hereunder shall be in writing and may be personally delivered; or by mail by depositing such notice in the United States mail, first-class postage prepaid, return receipt requested; or by reputable overnight delivery service (such as Federal Express, UPS or DHL); addressed as follows or to such other place as each party may designate by subsequent written notice to each other.

To the COUNTY: Chief Administrative Officer
1600 Pacific Highway, Room 201
San Diego, California 92101

To the City: City Manager
276 Fourth Avenue
Chula Vista, California 91910

To the Port: President/CEO
3165 Pacific Highway
San Diego, California 92101

With copy to: General Counsel
3165 Pacific Highway
San Diego, California 92101

To the Authority: Executive Director
3165 Pacific Highway
San Diego, California 92101

A notice shall be effective on the date of personal delivery, if personally delivered before 5:00 p.m. on a business day, or otherwise on the business day following personal delivery; or two (2) business days following the date the notice is postmarked, if mailed; or on the day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery; and otherwise when received. The term “business day” shall mean a date on which the Port District is open for business.

E. Partial Invalidity

If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

F. Attorneys’ Fees

Should any suit or action be commenced to enforce, protect, or establish any right or remedy of any of the terms and conditions hereof, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys’ fees and costs of suit, including, without limitation, any and all costs incurred in enforcing, perfecting and executing such judgment.

G. Governing Law

Venue for any legal proceeding shall be in San Diego County, California. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

H. Drafting Presumption.

The Parties acknowledge that this Agreement has been agreed to by the Parties and that each of the Parties has consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting party. Any deletion of language from this Agreement prior to its execution by the Parties shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

I. Section Headings

The captions of articles and sections are for convenience only and shall not be deemed to limit, construe, affect, or alter the meaning of such articles and sections.

IN WITNESS THEREOF, the authorized representatives of each of the Parties hereto have executed this Funding Agreement as of the last date and year set forth below.

COUNTY OF SAN DIEGO

By: _____ Date: _____
HELEN ROBBINS-MEYER
Chief Administrative Officer

Approved as to form and legality:
Thomas E. Montgomery, County Counsel

By: _____
Rachel H. Witt
Chief Deputy

CITY OF CHULA VISTA

By: _____ Date: _____
MARY CASILLAS SALAS
Mayor

Attest: _____ Approved as to form and legality:
City Attorney

By: _____ By: _____
Kerry Bigelow, MMC
City Clerk
Glen R. Googins
City Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By: _____ Date: _____
RANDA J. CONIGLIO
President/CEO

Approved as to form and legality:
General Counsel

By: _____
Assistant/Deputy

CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY

By: _____ Date: _____
RANDA J. CONIGLIO
Executive Director

Approved as to form and legality:
Co-General Counsel

By: _____
Assistant/Deputy

Approved as to form and legality:
Co-General Counsel

By: _____
Assistant/Deputy

Schedule 1

List of Phase 1A Improvements

- Harbor Park
- S-2 Sweetwater Signature Park
- SP-1 Sweetwater Buffer (for S-1)
- SP-1 Sweetwater Buffer (for S-2)
- SP-2 Seasonal Wetlands
- E Street (G Street to H Street)
- G Street Connection
- H Street (Bay Boulevard to Street A)
- H Street (Marina Pkwy to E Street)
- H-3 Site Preparation
- H-3 Utility Corridor
- E Street (Bay Boulevard to F Street)
- E Street (Lagoon Drive to G Street)
- F Street (Bay Boulevard to E Street)
- F Street (E Street to Gunpowder Point Drive)
- G Street Sewer Pump Station
- Gunpowder Point Drive Relocation
- SP-4 SDG&E

Exhibit A
Projected Tax Increment - Schedule

Year	Fiscal Year	Projected Tax Increment	Date Calculated
0	FY2019-2020		
1	FY2020-2021	\$ -	
2	FY2021-2022	\$ -	
3	FY2022-2023	\$ -	
4	FY2023-2024	\$ -	
5	FY2024-2025	\$ 1,524,000	July 1, 2025
6	FY2025-2026	\$ 1,554,000	July 1, 2026
7	FY2026-2027	\$ 1,586,000	July 1, 2027
8	FY2027-2028	\$ 1,617,000	July 1, 2028
9	FY2028-2029	\$ 2,591,000	July 1, 2029
10	FY2029-2030	\$ 3,066,577	July 1, 2030
11	FY2030-2031	\$ 3,912,000	July 1, 2031
12	FY2031-2032	\$ 3,992,000	July 1, 2032
13	FY2032-2033	\$ 4,136,000	July 1, 2033
14	FY2033-2034	\$ 4,695,000	July 1, 2034
15	FY2034-2035	\$ 5,114,524	July 1, 2035

Exhibit B
Sample Total Tax Increment Calculation

Property Tax Increment:

Current Year Assessed Value	100,000,000
Less: Base Year Assessed Value	20,000,000
Less: Annual Inflationary Adjustment	1,000,000
Equals: Property Tax Incremental Assessed Value	79,000,000
Tax Increment from 1% Property Tax	\$790,000
County Share of Property Tax Increment Revenue (15.88%)	\$125,452

VLF Increment:

Current Year Assessed Value	100,000,000
Less: Base Year Assessed Value	20,000,000
Equals: VLF Incremental Assessed Value	80,000,000
County Share of VLF Increment Revenue (.000793002)	\$63,440

Total Tax Increment to be credited for the Repayment Amount:

Property Tax Increment	\$125,452
VLF Increment	<u>\$63,440</u>
Total Tax Increment	<u><u>\$188,892</u></u>

Exhibit C
Project Area Legal Description, List of Project Area Parcels and Parcel Map

List of Secured Parcels

Number	APN	Total AV Less AOE
1	5650103000	-
2	5670101800	-
3	5670101900	-
4	5670102800	3,422,109
5	5670110400	-
6	5670110500	-
7	5711600600	-
8	5711600700	-
9	5711600800	-
10	5712400100	-
11	5713301200	-
12	5713301500	-
13	5713302100	-
14	5713302300	-
15	5713302800	-
16	5713303100	-
17	5713303200	3,555,046
18	5713303300	20,109,891
19	6170110100	-
20	6170110800	-
21	6170111000	-
22	7600480001	-
23	7600480002	-
24	7600480003	-
25	7600480004	-
26	7600480101	9,783,650
27	7600480102	895,658
28	7600480300	-
29	7600481000	-
30	7600481700	7,579,352
31	7600481900	7,578,039
32	7600482400	-
33	7600482500	-
34	7600482600	-
35	7600482700	12,000
36	7600482800	5,000
37	7600482900	6,000
38	7602355500	-

39	7602356700	-
Total AV		52,946,745

Unsecured Accounts Associated to Secured Parcels

Total unsecured accounts: 1,240

Total unsecured AV Net AOE: 25,266,969

In addition to the parcels identified above, the Auditor and Controller will include any new parcels which may be created from the parcels identified above.