

## Attachment B to Agenda File No. 2019-0508 FORM EASEMENT

### WHEN RECORDED, PLEASE RETURN THIS INSTRUMENT TO:

Office of the City Clerk  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 91910

### WITH A COPY TO:

General Counsel's Office  
San Diego Unified Port District  
3165 Pacific Hwy  
San Diego, CA 92101

SPACE ABOVE FOR RECORDER'S USE ONLY

Assessor's Parcel Nos. \_\_\_\_\_

Project: Chula Vista Bayfront

## GRANT OF EASEMENT

DOCUMENTARY TRANSFER TAX IS \$0. THIS DOCUMENT IS BEING RECORDED BY THE STATE, A COUNTY, MUNICIPALITY OR OTHER POLITICAL SUBDIVISION OF THE STATE. THIS CONVEYANCE IS EXEMPT FROM IMPOSITION OF DOCUMENTARY TRANSFER TAX PURSUANT TO REVENUE AND TAX CODE 11922 AND IS EXEMPT FROM THE BUILDING HOMES AND JOBS ACT FEE PER GC 27388.1(a)(2)(D).

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, subject to the terms and conditions set forth in this Grant of Easement ("**Easement**"), **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation (District), (District being the "**Grantor**"), does hereby **GRANT** to the **CITY OF CHULA VISTA**, a California chartered municipal corporation (City), (City being the "**Grantee**"), for a period of sixty six (66) years, a non-exclusive easement for a public right of way in, across and through Grantor's certain real property, which Grantor holds in trust for the people of the State of California, in the City of Chula Vista, County of San Diego, State of California (the "**Easement Area**") described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION OF THE BURDENED PROPERTY**  
**SEE ATTACHED EXHIBIT B FOR A PLAT OF THE BURDENED PROPERTY**

- 1. Term of Easement.** This Easement shall commence on the date the Easement is executed by Grantor ("**Effective Date**") and expire on the 66<sup>th</sup> anniversary of the Effective Date.
- 2. Use of the Easement Area.** The real property described in Exhibit A is dedicated as an easement for street and utility purposes only and is not a transfer of fee and shall only be used for those purposes described in this Easement that comply with the Public Trust Doctrine. Grantee shall only use the Easement Area (a) to construct, install, utilize, maintain, repair, restore, remove, replace, alter, expand, and reconstruct the public right of way ("**Right of Way**"); (b) for the construction, installation, utilization, maintenance, repair, restoration, removal, replacement, alteration, expansion, and reconstruction of subsurface utility improvements by utility companies ("**Utility Facilities**") pursuant to Ordinance Nos. 2987 and 2988 (the "**Utility Franchises**") and (c) for the construction, installation, utilization, maintenance, repair, restoration, removal, replacement, alteration, expansion, and reconstruction of subsurface utility improvements by other (non-franchise) utility companies (the "**Non-Franchise Utility Facilities**") as permitted by Grantee pursuant to a separate agreement with the owner of the Non-Franchise Utility Facilities ("**Non-Franchise Utilities**") or as provided by applicable law. Utility Facilities and Non-Franchise Utility Facilities shall be located beneath the surface of the ground, except for appurtenances and protection for such appurtenances

(such as surface markers, vault hatches, valve covers and manholes), which may be constructed on the surface of the ground. Grantee shall use commercially reasonable efforts to minimize any damage to Grantor's landscaping and other improvements in connection with the exercise of such rights. Grantee shall not otherwise unreasonably interfere with the use of Grantor's property by Grantor.

**3. Condition of Easement Area.** Grantee acknowledges and agrees that the Easement Area is intended to be used as public right of way, including but not limited to, roadway (i.e., medians, sidewalks, parkways and Class I, II or III bicycle facilities) and Utility Facilities and Non-Franchise Utility Facilities purposes. Grantee accepts its rights in the Easement Area in its current "as is" condition without any warranty (express or implied) by Grantor. Notwithstanding the previous "without warranty" provision, Grantor acknowledges that should any environmental/contamination issues arise within the Easement Area, Grantor and Grantee shall meet and confer to determine how to remedy said environmental/contamination issues. Grantor and Grantee shall conduct all of its respective activities within the Easement Area in a manner such that the Easement Area remains in a good, safe condition.

**4. Maintenance and Repair.** Grantee has accepted the improvements in the Easement Area pursuant to Resolution No. 15645. Pursuant to existing and any future facilities, improvements, financing and/or maintenance agreements between the District and City, Grantee shall bear all responsibility to operate, maintain and repair the Easement Area, Right of Way and City's utility facilities (i.e., public sewer and City/District communications facilities) at its sole cost and expense, or as provided for in a separate Maintenance Agreement. Grantor shall not be responsible for any cost and expense related to the Easement Area and Right of Way. Further, Grantor and Grantee acknowledge that neither shall be responsible to operate, maintain or repair or contribute to any costs for operating, maintaining or repairing the Utility Facilities and Non-Franchise Utility Facilities; provided, however, Grantee shall be responsible for requiring that the Utility Franchises and Non-Franchise Utilities perform all required work pursuant to the Utility Franchises, or in the case of the Non-Franchise Utility Facilities, as required under the applicable agreement between the City and the Non-Franchise Utilities or as provided by applicable law. In undertaking work within the Easement Area, Grantee shall (a) complete all construction, maintenance or repair activities in an expeditious and diligent manner; and (b) minimize disruption to land adjoining the Easement Area. Upon completion of any construction, maintenance or repair work, Grantee shall, at its cost, restore the surface of the Easement Area to the same condition prior to the commencement of the work and leave the work site in a neat and clean condition.

**5. Reserved Rights.** Grantor reserves the right to make use of the Easement Area in such manner that does not unreasonably interfere with this Grant of Easement, including, at Grantor's sole cost and expense, the right to install and maintain private utility lines, conduits and other utility equipment and facilities and landscaping, irrigation systems, roadways, pathways, and other similar improvements (excluding trees and structures) within the Easement Area. No permanent structure shall be installed within the Easement Area by Grantor or anyone claiming a right under Grantor during the time this Grant of Easement is in effect without the advance written consent and approval of Grantee, which shall not be unreasonably withheld, conditioned or delayed.

**6. Indemnity.** Grantee shall comply, and require that the Utility Franchises and Non-Franchise Utilities comply, with applicable policies, regulations, and procedures related to utility infrastructure located within the public right of way and all applicable laws. Grantee shall indemnify, defend (with counsel reasonably approved by Grantor) and hold harmless Grantor and its officers, directors, agents, and employees from and against any and all claims, liabilities, losses, costs, damages, and expenses, including without limitation, injury or death of persons or damage to or loss of property, arising out of the use of the Easement Area by Grantee, its agents, contractors, employees, the Utility Franchises and Non-Franchise Utilities, excluding any loss, damage, liability, expense, claim or demand that results from the sole negligence or willful misconduct of Grantor or its officers, directors, agents, or employees. Notwithstanding anything to the contrary, Grantee's indemnification obligation shall survive the expiration and termination of this Easement as to any such claim or occurrence that arose during the term of the Easement. Issues related to environmental contamination existing as of the date this Easement is executed by Grantor are not addressed in this indemnity provision.

**7. Successors and Assigns.** This Easement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns for the term of this Easement.

**8. Acceptance.** With this Easement, Grantee has accepted this Easement over the Property legally described in Exhibit A.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, Grantor has executed this Grant of Easement as of the day and year set forth below.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GRANTOR:

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

San Diego Unified Port District,  
a public corporation

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

\_\_\_\_\_  
Tony Gordon  
Director, Real Estate

My Commission Expires: \_\_\_\_\_

This is to certify that the interest in real property conveyed herein to the City of Chula Vista, a governmental agency, is hereby accepted by the undersigned, City Clerk, on behalf of the Chula Vista City Council pursuant to authority conferred by Resolution No. 15645 of said Council adopted on June 5, 1990, and the grantee(s) consent(s) to the recordation thereof by its duly authorized officer.

KERRY BIGELOW, CITY CLERK

By: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATE OF ACKNOWLEDGMENT**  
(Civil Code § 1189)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA                     )  
COUNTY OF SAN DIEGO                 )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said County, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

## **Exhibit A**

### **Easement Legal Description**

**(To be inserted prior to execution and should reflect area within the area shown in the Location Map attached as Attachment A to the agenda sheet.)**

**Exhibit B**

**Easement Plat**

**(To be inserted prior to execution and should reflect area within the area shown in the Location Map attached as Attachment A to the agenda sheet.)**