

DRAFT**SAN DIEGO UNIFIED PORT DISTRICT****ORDINANCE xxxx****ORDINANCE APPROVING SUBSTANTIALLY THE
FORM OF A 66-YEAR NON-EXCLUSIVE
EASEMENT TO THE CITY OF CHULA VISTA FOR
STREET AND UTILITY PURPOSES LOCATED IN
THE CITY OF CHULA VISTA, WITH CONDITIONS**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 87(b) of the Port Act grants authority to the District to lease the tidelands or submerged lands, or parts thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which those lands are held, by the State of California; and

WHEREAS, Section 21 of the Port Act requires that all grants, franchises, leases, permits or privileges for more than five years shall be made by ordinance; and

WHEREAS, in 2010, the Board of Port Commissioners (BPC) certified a Final Environmental Impact Report (Original FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (UPD #83356-EIR-658; SCH #2005081077; District Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), adopted the Addendum to the Original FEIR on August 13, 2013 (Resolution No. 2013-138), and adopted the Second Addendum to the Original FEIR on April 10, 2018 (Resolution No. 2018-0069) (collectively, the FEIR); and

WHEREAS, the FEIR identifies the right of way that is the subject of this ordinance within the street system located in the Sweetwater and Harbor Districts of the CVBMP; and

WHEREAS, this ordinance is for a Grant of Easement to the City that would be used for street and utility purposes (Easement); and

WHEREAS, the exact location of the Easement area has not been determined, but will be within the area circled on the "Location Map" attached to the corresponding agenda sheet as Attachment A; and

WHEREAS, the form of Easement is attached to the corresponding agenda sheet as Attachment B and Exhibit A hereto (Form Easement); and

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WHEREAS, the public right of way and utility facilities that will be constructed, maintained, and repaired as part of the Easement are crucial to the development of the resort hotel and convention center to be constructed by RIDA Chula Vista, LLC (RIDA) on parcel H-3 of the CVBMP (RHCC) and the new Costa Vista RV Park to be constructed on parcel S-1 of the CVBMP; and

WHEREAS, under the Form Easement, the City would have the right to allow utility companies to construct, install, utilize, maintain, repair, restore, remove, replace, alter, expand, and reconstruct subsurface utility improvements within the Easement area through revenue generating franchises (Franchise Agreements) or other similar types of revenue generating agreements (Non-Franchise Agreements); and

WHEREAS, the District would not share in the revenues generated from the Franchise Agreements or Non-Franchise Agreements with the utility companies, but the City would be responsible for the cost and expense to operate, maintain, and repair the Easement area, right of way, and City's utility facilities; and

WHEREAS, the City has agreed to indemnify, defend (with counsel reasonably approved by the District) and hold harmless the District 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 the City, its agents, contractors, employees, the utility companies, excluding any loss, damage, liability, expense, claim or demand that results from the sole negligence or willful misconduct of the District or its officers, directors, agents, or employees; and

WHEREAS, the City's indemnification obligation survives the expiration and termination of the Easement as to any such claim or occurrence that arose during the term of the Easement; and

WHEREAS, issues related to environmental contamination existing as of the date this Easement is executed by the District are not addressed in the indemnity provision; and

WHEREAS, due to the City's unique advantage of having established negotiated business agreements in the form of Franchise Agreements and Non-Franchise Agreements with the utility companies, and the City's strong partnership with the District in the catalyst RHCC project, staff recommends that the BPC grant the Easement to the City; and

WHEREAS, as part of the District's partnership with the City, it was envisioned that the City would be responsible for the cost and expense to operate and maintain the streets within the CVBMP; and

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WHEREAS, this Easement would facilitate the ability of the City to execute this role, in addition to providing a mechanism for the various utility companies to serve the various developments within the CVBMP in the most efficient and timely manner possible; and

WHEREAS, as part of the City's agreements with the various utility companies, the City would also be in a position to exercise its contractual rights and municipal powers, where available and feasible, to relocate the utility companies, if necessary as part of future development of the CVBMP; and

WHEREAS, while the City is not obligated to exercise this power as part of the Easement, it is not certain that the District could have obtained the same powers during negotiations with the utility companies that the City currently possesses as a result of the existing Franchise Agreements and Non-Franchise Agreements; and

WHEREAS, the District and the City have worked collaboratively on the implementation of the CVBMP and if future relocations are required, the District could request them through the City to further development of the CVBMP.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

1. That the Grant of Easement attached hereto as Exhibit A for a 66-year non-exclusive easement to the City of Chula Vista for street and utility purposes located in the City of Chula Vista (Form Easement) is hereby approved substantially in the form attached as Exhibit A.
2. The Executive Director or her designated representative is hereby authorized to execute said Form Easement as attached as Exhibit A or a Form of Easement in substantially the same form provided that (i) the Form Easement executed by the Executive Director or her designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Form Easement attached as Exhibit A; and (ii) to the extent there are any new or modified terms in the Form Easement executed by the Executive Director or her designated representative, such new or modified terms do not have the effect of increasing the term of the Form Easement or reducing any indemnity in favor of the District.
3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

XXXX

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of January 2020, by the following vote:

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Exhibit A

Form Easement

(See attached.)

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**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 66th 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

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(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.]

XXXX

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:

San Diego Unified Port District,
a public corporation

GENERAL COUNSEL

By: Assistant/Deputy

Tony Gordon
Director, Real Estate

[Signature page for Grant of Easement]

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____)

On _____ before me, _____, Notary Public, 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.

Signature _____

My Commission Expires: _____

XXXX

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.

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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.)

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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.)