

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING A SECOND
AMENDED AND RESTATED REVENUE SHARING
AGREEMENT WITH THE CITY OF CHULA VISTA,
WITH CONDITIONS, FOR THE PUBLIC FINANCING
FOR THE RESORT HOTEL AND CONVENTION
CENTER AND PHASE 1A INFRASTRUCTURE
IMPROVEMENTS**

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 1, (Port Act); and

WHEREAS, Section 21 of the Port Act authorizes the Board of Port Commissioners (BPC) to pass all necessary ordinances and resolutions for the regulation of the District; and

WHEREAS, the Chula Vista Bayfront Master Plan (CVBMP) is the result of a decade-long joint planning effort by the District, the City of Chula Vista (City), and a broad coalition of stakeholders; and

WHEREAS, the CVBMP was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report and Port Master Plan Amendment, which was approved by the BPC in May 2010 and certified by the California Coastal Commission (CCC) in August 2012; and

WHEREAS, the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement (Financing Agreement) for the CVBMP was approved by the BPC in 2017 and the Disposition and Development Agreement was entered into among RIDA Chula Vista, LLC (RIDA), the District, and the City on May 7, 2018 (DDA), each setting forth the framework and mechanism to design, finance, and construct the resort hotel and convention center (RHCC) and surrounding public infrastructure (Phase 1A Infrastructure); and

WHEREAS, the RHCC and the Phase 1A Infrastructure are collectively referred to herein, as the “Project”; and

WHEREAS, the RHCC, located on approximately 36 acres of land within the CVBMP (Site), is the catalyst project for the CVBMP with the goal to not only provide a world-class hotel and convention center to the region, but also provide a vehicle to build future parks, restore sensitive habitat, and construct public infrastructure; and

20xx-xxx

WHEREAS, the DDA sets forth the necessary steps for the District, the City, and RIDA to close escrow on the Project (Close Escrow), at which time public and private financing for the Project will be issued, the parties will enter into their respective leasing documents, and construction of the Project may commence towards a world-class hotel and convention center; and

WHEREAS, in the process of determining the financial feasibility of the Project, it was determined that in order for the RHCC to be developed a public financial subsidy would be needed, herein described as the “Public Contribution”; and

WHEREAS, the Public Contribution is anticipated to be delivered to the Project through the issuance of future bond offerings; and

WHEREAS, to pay for the debt service for the Public Contribution, the District and the City must commit sources of revenues, as identified in the Conceptual Outline of the Plan of Finance (Conceptual Plan of Finance) attached to the DDA that will be used to repay the Public Contribution; and

WHEREAS, it is anticipated that the proposed bond financing structure will result in excess cash flow to the District and the City after debt service payments are made for the Public Contribution; and

WHEREAS, the District and the City entered into a Revenue Sharing Agreement on April 24, 2018 (Revenue Sharing Agreement) describing the priority in which any excess cash flow after the debt service payments are made on the Public Contribution (Excess Funds) would be disbursed to the District and the City; and

WHEREAS, on October 8, 2019, the District and City authorized a funding agreement (Funding Agreement) between the District, the City, the County of San Diego (County), and the Chula Vista Bayfront Facilities Financing Authority (Authority) whereby the County agreed to contribute \$25 Million toward the Phase 1A Infrastructure (County Contribution); and

WHEREAS, the County Contribution would be repaid to the County through a percentage of the property tax revenue generated from the CVBMP (Property Tax Increment) that is actually received by the County, as may be supplemented by payment from the District to the County to make the County whole if such projected tax revenue is not achieved for a given year (Shortfall Payment) or from the City of contested funds currently subject to litigation with the County (Disputed Funds); and

WHEREAS, the Funding Agreement required that the District and the City amend the Revenue Sharing Agreement to provide for priority reimbursement to

20xx-xxx

the District and the City for any payment or contribution made by either party to the County under the Funding Agreement; and

WHEREAS, on October 9, 2019, the Board of Directors of the Authority (Authority Board) provided direction to staff to amend the Revenue Sharing Agreement to guarantee repayment to the District for any Shortfall Payments made by the District to the County under the Funding Agreement; and

WHEREAS, on November 5, 2019, the Board approved the Amended and Restated Revenue Sharing Agreement (A&R Revenue Sharing Agreement) which includes a revised priority of disbursements to the District and City that requires that any funds that are contributed or paid to the County through the Funding Agreement to be reimbursed *pari passu* to each entity as the second priority under the disbursement list; and

WHEREAS, after the A&R Revenue Sharing Agreement, the District remained in the first priority spot for its support payments toward the Project; and

WHEREAS, as the District and the City have discussed, it is clear that as more fully described below, revisions to the A&R Revenue Sharing Agreement are necessary to accomplish the following goals prior to proceeding with the public financing:

- (1) Clarify the existing revenue sources the City and District will commit to the Project prior to and after Close of Escrow, and if by a future action of the City Council or District's Board either party decides to contribute other sources of revenue to the Project as needed, then another amendment to the Second Amended & Restated Revenue Sharing Agreement attached as Exhibit A hereto (Second A&R Revenue Sharing Agreement) would not be required;
- (2) Simplify the process for paying expenses associated with Project-related activities occurring before the Close of Escrow such as design work performed by RIDA for the Phase 1A Infrastructure and consultant services necessary for the Authority;
- (3) Define a clear, efficient process for restricting the revenues to be contributed prior to the Close of Escrow and defining how such funds may be used through operating memoranda executed by the City Manager and Executive Director of the District without further approvals from the Board or City Council; and

WHEREAS, under the A&R Revenue Sharing Agreement, it was contemplated that the District would contribute the following sources of revenue to the Project consistent with the Financing Agreement and Conceptual Outline of the Plan of Finance attached to the DDA (Conceptual Plan of Finance): (1)

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existing and designated future lease revenues from the CVBMP (i.e., the District Existing Revenues); and (2) ground rent from the RHCC; and

WHEREAS, additionally, it was contemplated that the District would contribute the previously received SDG&E contribution of \$1.7 million and the Pacifica contribution of \$3.0 million toward the Phase 1A Infrastructure cost; and

WHEREAS, the District will also be responsible for an annual contribution (Annual Contribution) to be applied toward the payment of bond debt service to “support” the Public Contribution in an amount not to exceed the following schedule of amounts during Lease Years 5 through 38:

Lease Years 1-4	\$0
Lease Years 5-14	\$5.0 million
Lease Years 15-19	\$6.0 million
Lease Years 20-24	\$3.0 million
Lease Years 25-38	\$3.5 million

WHEREAS, the City would contribute toward the construction of the required sewer and fire services and contribute to the Project through (i) transient occupancy tax (TOT) for the RHCC, existing and future RV Park, (ii) sales tax for the RHCC, (iii) incremental property tax (including property tax in-lieu of motor vehicle license fees) generated by the RHCC, and (iv) revenues received from the District under Agreement No. 88-2012 between the District and the City providing for Police, Fire and Emergency Medical Services (PMSA); and

WHEREAS, both the District and City have been setting aside the revenues consistent with the commitments in the Financing Agreement and included in the Second A&R Revenue Sharing Agreement since July 1, 2018; and

WHEREAS, since the approval of the Revenue Sharing Agreement and A&R Revenue Sharing Agreement, both District and City staff have continued to clarify the revenue sources committed to the Project; and

WHEREAS, the Project has also incurred expenses related to design, development, permit processing, legal fees, and Authority Board actions; and

WHEREAS, RIDA has almost completed with all of the design work for the RHCC and Phase 1A Infrastructure to be constructed by RIDA; and

WHEREAS, the Second A&R Revenue Sharing Agreement will facilitate reimbursement to RIDA for the design work on the Phase 1A Infrastructure contemplated in the DDA; and

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WHEREAS, the changes proposed in the Second A&R Revenue Sharing Agreement, are broken down into three categories:

- (1) *Types of District and City Revenue Sources*: Clarify the existing revenue sources the City and District will commit to the Project prior to and after Close of Escrow, and if by a future action of the City Council or District's Board either party decides to contribute other sources of revenue to the Project as needed, then another amendment to the Second A&R Revenue Sharing Agreement would not be required;
- (2) *Use of Existing Revenues to Pay for Pre-Close Expenses*: Simplify the process for paying expenses associated with Project-related activities occurring before the Close of Escrow such as design work performed by RIDA and consultant services necessary for the Authority;
- (3) *Identify Status of Funds and Designate Contribution Date*: Define a clear, efficient process for restricting pre-Close of Escrow funds and defining how such funds may be used through operating memoranda executed by the City Manager and the Executive Director of the District; and

WHEREAS, additional clarity is needed to define revenues committed by the District and City to the Project, specifically with respect to the existing ground lease revenue, calculation of the credit for the buyout of the tenant under the prior lease for the existing RV Park, the hotel ground lease revenues and the PMSA; and

WHEREAS, this additional clarity is necessary prior to entering the public financing market; and

WHEREAS, the Second A&R Revenue Sharing Agreement provides clarity regarding the existing ground lease revenues, which include the revenues for the lease for the Marine Group Boat Works, lease for the Chula Vista Marina, lease for the California Yacht Marina, TUOP for the Chula Vista RV Park and lease for the Costa Vista RV Park (District Leases); and

WHEREAS, the Second A&R Revenue Sharing Agreement provides that if one or more of the District Leases are renewed, replaced, or amended in such a way as to change the size or configuration of the original premises to include premises outside of the original premises boundaries of all the District Leases, the revenues derived from each such renewed, replaced, or amended District Lease shall be calculated by multiplying the total amount of the revenues generated by such District Lease by a fraction, the numerator of which shall be in an amount equal to the District Lease premises still within the original premises boundary, and the denominator of which shall be the total premises area of the District Lease as modified. Similarly, if the District enters into any revenue generating agreement other than a ground lease with respect to operations of all

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or any portion of the District Leases premises, such revenue, net any related out-of-pocket operating costs paid by the District to third parties, shall also be included as revenues contributed to the Authority; and

WHEREAS, the Second A&R Revenue Sharing Agreement provides the buyout credit paid to the prior tenant of the existing RV Park will be amortized over a period of eight years, starting in July 1, 2018, in annual installments of \$410,500 and deducted from the District's contribution of revenues; and

WHEREAS, the Second A&R Revenue Sharing Agreement provides that the District's contribution of revenues under the ground lease with RIDA has been consolidated into one section to more accurately reflect the anticipated flow of revenues in the future Plan of Finance and include minimum annual rent, the additional rent equivalent to 20% of the amount by which the Net Operating Income (defined in the ground lease) for such Lease Year (defined in the ground lease) exceeds eleven percent (11%) of the Actual Capital Investment (defined in the ground lease), assignment participation fees if any, together with any other amounts payable to the District by RIDA except for parking revenues which remain with the District; and

WHEREAS, the Second A&R Revenue Sharing Agreement provides that the City is required to contribute "PMSA Revenues" defined as an annual amount payable by the District to the City pursuant to the PMSA which is currently in effect, and which as of July 1, 2018 is identified as \$1,059,364 (payment received in fiscal year 2016) increasing annually at the rate of 3% per annum each fiscal year thereafter until the termination of the Second A&R Revenue Sharing Agreement; and

WHEREAS, the existing PMSA expires June 30, 2021 and a new PMSA is currently under negotiations; and

WHEREAS, to avoid confusion, the Second A&R Revenue Sharing Agreement clarifies that the City's commitment remains the same, and that if a new, higher payment to the City is negotiated in a future PMSA or amendment to the current PMSA, those future increases are not committed to the Project, only its previous commitment; and

WHEREAS, the Second A&R Revenue Sharing Agreement adds language on how the revenues from each party are to be used prior to the Close of Escrow for the Project, including to meet the requirements of the DDA to reimburse RIDA for design work for the Phase 1A Infrastructure; and

WHEREAS, the uses for the revenues contemplated prior to the Close of Escrow and what would occur if escrow is not closed are as follows:

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- (1) The City may deduct amounts reimbursed to RIDA for the design, architectural work, and engineering work for the Phase 1A Infrastructure to be constructed by RIDA (Pre-Close Design Services) through a reimbursement agreement. The thirty percent design of the Phase 1A Infrastructure was delivered to RIDA in June 2019, and RIDA has continued to advance the design work up to this point. No further design work can be completed on this portion of the Project until the reimbursement is approved. Fees associated with review of the Phase 1A Infrastructure design were already advanced by the City and would be deducted from the City's contribution of Existing Revenues through this Second A&R Revenue Sharing Agreement;
- (2) The City may deduct plan review, permitting, and inspection fees in the amount that would have been incurred by RIDA to process the work for the Phase 1A Infrastructure to be constructed by RIDA based on current schedules of fees adopted by the City for such plan review, permitting, and inspection;
- (3) The District and City may deduct such amounts necessary for the payment of existing or future obligations of the Authority, including without limitation, administrative fees, consultant and attorneys' fees, and other staff reimbursements and fees (collectively, the Pre-Close Authority Expenses), as such Pre-Close Authority Expenses are memorialized in one or more operating memoranda of the parties executed by the City Manager of the City and the Executive Director of the District, without further approval of the Board or City Council. The District could advance up to \$2.3 Million for Pre-Close Authority Expenses; and
- (4) If escrow doesn't close for some reason, then the District and City will each prepare an accounting of amounts they have deducted from the revenues to be contributed under the Second A&R Revenue Sharing Agreement pursuant to the above described criteria and requirements (the Pre-Close Expenses); and
- (5) Should the Pre-Close Expenses of one party exceed the Pre-Close Expenses of the other party, then the party with the lower Pre-Close Expenses shall make a reimbursement sufficient to equalize the other party's contribution (e.g. if the City has expended \$2.0 million and the District has expended \$1.0 million, then the combined Pre-Close Expenses total \$3.0 million, with a fair-share expense of \$1.5 million per party, and a reimbursement due from the District to the City in the amount of \$0.5 million) (Pre-Close Expense Reimbursement); and

WHEREAS, the Second A&R Revenue Sharing Agreement requires certain revenues consisting of the District Existing Revenues and the equivalent

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revenues from the City to be contributed to the Authority by no later than the date the POS for the Revenue Bonds is posted which would be approximately thirty (30) days before the Close of Escrow. It further defines that such revenues shall be identified as restricted in the audited financial statements included in each of the District and City's Comprehensive Annual Financial Report (CAFR), commencing with the fiscal year that ended on June 30, 2020; and

WHEREAS, the Second A&R Revenue Sharing Agreement introduces the concept of using an operating memorandum to be executed by the City Manager and Executive Director of the District, without further approval by the Board or City Council, to help the parties validate pre-Close of Escrow expenses made to the Authority by either party; and

WHEREAS, the operating memorandum would not commit additional funds to the Project, nor would it obligate the District to contribute new sources of revenue. Instead, it would allow for the District and the City to memorialize the flow of funds to pay for Pre-Close Expenses using the revenues to be contributed by the parties before the Close of Escrow; and

WHEREAS, since the operating memorandum would relate to the Authority, the operating memorandum would (1) include specifics on any instructions that the Authority shall follow upon receipt of the operating memorandum; and (2) require prompt delivery of the operating memorandum to the Treasurer of the Authority after the execution of the operating memorandum by the City Manager of the City and the Executive Director of the District; and

WHEREAS, if the Authority is unable to comply with the instructions set forth in the operating memoranda for any reason without the adoption of administrative rules or procedures or an amendment to the Amended and Restated Joint Exercise of Powers Agreement filed on August 7, 2019 as Document No. 70245 (Authority Incorporation Agreement) or the Bylaws of the Authority (Bylaws), the District and City, as the sole members of the Authority, agree to use good faith efforts to promptly adopt such administrative rules or procedures or present any modifications to the Authority Bylaws or Authority Incorporation Agreement to the Authority Board of Directors for their consideration, as necessary; and

WHEREAS, staff recommends that the BPC authorize the Executive Director, or her designee, to enter into the Second A&R Revenue Sharing Agreement in substantially the form presented to the BPC at the September 10, 2020 meeting.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District (BPC), as follows:

That the Executive Director, or her designee, is hereby authorized on behalf of

20xx-xxx

the San Diego Unified Port District to enter into the Second Amended and Restated Revenue Sharing Agreement with the City of Chula Vista for the public financing for the resort hotel and convention center and Phase 1A infrastructure improvements, in substantially the form presented to the BPC at the September 10, 2020 meeting, and attached hereto as Exhibit A.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of September, 2020 by the following vote:

20xx-xxx

Exhibit A

Form of Second Amended and Restated Revenue Sharing Agreement

(See attached.)