

**DRAFT****RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING A THIRD AMENDED  
AND RESTATED REVENUE SHARING  
AGREEMENT WITH THE CITY OF CHULA VISTA  
AND THE CHULA VISTA BAYFRONT FACILITIES  
FINANCING AUTHORITY, 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 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 District and the City of Chula Vista (City) have been working collaboratively for decades to plan and implement the Chula Vista Bayfront Master Plan (CVBMP); and

**WHEREAS**, since 2014, the District and the City have been working to deliver the catalyst project for the CVBMP, an approximately 250,000 square foot convention center (Convention Center) and an up to 1,600 room resort hotel (Resort Hotel) to be located on Parcel H3 of the CVBMP; and

**WHEREAS**, the catalyst project also requires the construction of extensive public infrastructure to the areas surrounding Parcel H3 (Phase 1A Improvements) of the CVBMP; and.

**WHEREAS**, RIDA Chula Vista, LLC (RIDA) was selected as the developer of the Resort Hotel and Convention Center through a Request for Qualifications; and

**WHEREAS**, at the early stages, and in light of an overall project cost in excess of \$1.1 billion, it was determined that in order for the Convention Center and Phase 1A Improvements to be financially feasible, the City and the District would need to make a "Public Contribution" for the construction of the Convention Center and Phase 1A Improvements; and

**WHEREAS**, the District and the City formed the Chula Vista Bayfront Facilities Financing Authority (Authority) to finance most of the Public Contribution; and

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**WHEREAS**, the Public Contribution consists of \$265MM toward the Convention Center and \$63MM toward the Phase 1A Improvements for a total investment of \$328MM; and

**WHEREAS**, the Public Contribution is anticipated to be made in part through the issuance of taxable and tax-exempt bonds by the Authority (collectively, the Authority Bonds), with the District and the City, as the sole members of the Authority, committing certain funds to repay the Authority Bonds; and

**WHEREAS**, the other portion of the funding will be provided through grants, a contribution of \$25MM from the County of San Diego, and additional funds from the District that have been collected through various projects on the Chula Vista Bayfront, such as a contribution from North C.V. Waterfront L.P. (Pacifica) and a sewer contribution from the City; and

**WHEREAS**, to implement the financing, the District will be ground leasing the Convention Center land to the Authority for construction of the Convention Center (Site Lease), the Authority will be subleasing the Convention Center and Convention Center land to the City (Facility Lease), and the City will be subleasing to RIDA the Convention Center and Convention Center land (Sublease); and

**WHEREAS**, Facility Lease and Sublease terms are expected to be approximately 38 years to provide sufficient time for repayment of the Authority Bonds; and

**WHEREAS**, after the Sublease terminates, the Convention Center and Convention Center land will automatically become part of the ground lease for the Hotel (Hotel Ground Lease) and the partnership between the District and City under the Authority and most of the financing agreements will end; and

**WHEREAS**, three financing agreements – the Amended and Restated Joint Community Facilities Agreement, the Third Amended and Restated Revenue Sharing Agreement (Third A&R Revenue Sharing Agreement) and a Support Agreement – will help move forward the financing for the Public Contribution and will memorialize key funding sources committed by both the District and the City toward paying for the debt service on the Public Contribution and paying for other public infrastructure needed for the Chula Vista Bayfront; and

**WHEREAS**, to memorialize how various funds from the City and District would be contributed and applied to the CVB and the Public Contribution, the City and the District entered into a Revenue Sharing Agreement on April 24, 2018 (Revenue Sharing Agreement); and

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**WHEREAS**, the Revenue Sharing Agreement has since been amended and restated two separate times with the objective to allocate the excess cash flow after debt service is paid; and

**WHEREAS**, on September 10, 2020, the BPC approved the Second Amended and Restated Revenue Sharing Agreement (Second A&R Revenue Sharing Agreement) and accomplished the following goals:

1. Clarified the existing revenue sources the City and District will commit to the Public Contribution and CVBMP prior to and after issuance of the Authority Bonds;
2. Simplified the process for paying expenses associated with public infrastructure-related activities occurring before the issuance of the Authority Bonds; and
3. Defined a clear, efficient process for restricting the revenues to be contributed prior to the issuance of the Authority Bonds and defining how such funds may be used through operating memoranda executed by the City Manager and Executive Director of the District; and

**WHEREAS**, with the modifications to the Amended and Restated Joint Community Facilities Agreement, and the movement of the project into the validation phase, certain changes now need to be made to the Second A&R Revenue Sharing Agreement to reflect the current deal structure between the City and the District; and

**WHEREAS**, the main changes that have been made to the Second A&R Revenue Sharing Agreement in the Third A&R Revenue Sharing Agreement are:

- (1) Add the Authority as a Party to the Agreement – the Authority was added as party to the agreement to implement the direction under the Third A&R Revenue Sharing Agreement and account for any deductions that will be made in contributions to the Authority;
- (2) Clarify the Term – since the relationship between the District and City is largely dependent on the issuance of the Authority Bonds, the term has been revised to link it to the issuance of the Authority Bonds; the changes also give the Authority, City and the District the ability to extend or terminate the term of the agreement should the Authority Bonds not be issued by a date certain;
- (3) Clarify the Types of Funds - certain descriptions of the funds need to be updated to clarify their source;
- (4) Clarify How Certain Funds Will be Contributed - since the Support Agreement has now been drafted, the description of the various funds need to be revised to clarify which funds will be contributed

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before and after the Authority Bonds are issued and which funds are allocated to the debt service payments for the Authority Bonds;

- (5) Deductions Prior to the Issuance of the Authority Bonds – the list of expenses that can be deducted from funds to be contributed to the Authority was updated to cover additional costs spent, or that will be spent, by the City and District before the Authority Bonds are issued; also, a process was incorporated to review and approve expenses administratively; the changes to this provision are particularly important to the District and the City because if the Authority Bonds are not issued, the City and District can split the cost of such amounts;
- (6) Parking – under the Second A&R Agreement, the District was required to repay to the City any Special Tax Revenues it used to pay for a 1,600 space parking garage; this has been deleted from the Third A&R Revenue Sharing Agreement and the City and the District are now sharing equally in the parking payments paid by RIDA during the term of the Third A&R Revenue Sharing Agreement;
- (7) Operations and Maintenance – this provision has been revised to reflect the general agreement to split costs between the City and District for costs not covered by a third party and to clarify the City's obligations regarding the Bayfront Shuttle service; and

**WHEREAS**, staff recommends that the BPC authorize the Third A&R Revenue Sharing Agreement and authorize the Executive Director of the District, or his designee, to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the BPC at the February 11, 2021 BPC meeting, with such changes therein as the Executive Director, with the advice of the General Counsel, the Chief Financial Officer/Treasurer, and the District's Municipal Advisor, may require or approve as non-material changes, such approval to be conclusively evidenced by the execution and delivery thereof, provided that: (1) the Board of Directors of the Authority (Authority Board) authorizes the Executive Director of the Authority, or his or her designee, to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the BPC at the February 11, 2021 BPC meeting (Authority Board Approval); and (2) the City Council of the City (City Council) authorizes the Mayor of the City to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the BPC at the February 11, 2021 BPC meeting (City Council Approval); and

**WHEREAS**, "non-material changes" shall include the insertion of customary municipal bond market terms in financing documents, but shall not include terms that (i) increase the risk to the District, (ii) result in additional

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contribution of funds by the District, or (iii) substantively alter the meaning or intent of the agreement.

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

That the Third Amended and Restated Revenue Sharing Agreement by and among the San Diego Unified Port District, the City of Chula Vista, and the Chula Vista Bayfront Facilities Financing Authority (Authority) (Third A&R Revenue Sharing Agreement) is hereby authorized and the Executive Director of the District, or his designee, is hereby authorized on behalf of the San Diego Unified Port District to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to it at the February 11, 2021 BPC Meeting and attached hereto as Exhibit A, with such changes therein as the Executive Director, with the advice of the General Counsel, the Chief Financial Officer/Treasurer, and the District's Municipal Advisor, may require or approve as non-material changes, such approval to be conclusively evidenced by the execution and delivery thereof, provided that: (1) the Board of Directors of the Authority (Authority Board) authorizes the Executive Director of the Authority, or his or her designee, to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the BPC at the February 11, 2021 BPC meeting (Authority Board Approval); and (2) the City Council of the City (City Council) authorizes the Mayor of the City to enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the BPC at the February 11, 2021 BPC meeting (City Council Approval).

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

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By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 11th day of February, 2021 by the following vote:

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**Exhibit A**

Form of Third Amended and Restated Revenue Sharing Agreement

(See attached.)

**THIRD AMENDED AND RESTATED REVENUE SHARING AGREEMENT**  
**By and Among**  
**CITY OF CHULA VISTA, SAN DIEGO UNIFIED PORT DISTRICT,**  
**and**  
**CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY**  
**(Chula Vista Resort Hotel, Convention Center and Public Infrastructure Improvements)**

This Third Amended and Restated Revenue Sharing Agreement (“Agreement”), dated \_\_\_\_\_, 2021, is entered into by and among the City of Chula Vista, a chartered municipal corporation (“City”), the San Diego Unified Port District, a public corporation (“District”), and the Chula Vista Bayfront Facilities Financing Authority, a California joint exercise of powers authority (“Authority”). The City, Authority, and District may be individually referred to herein as, a “Party”, and collectively as, the “Parties”.

**RECITALS**

WHEREAS, to develop certain portions of the Chula Vista Bayfront (“CVB”) for the benefit of the residents, tenants, and visitors of the CVB, the City and the District formed the Authority to fund a portion of the costs of a convention center (“Convention Center”) to be located on the CVB and a portion of the costs of certain public infrastructure improvements in the CVB to be constructed during the initial phase of development of the CVB (such public infrastructure improvements being herein referred to as the “Phase 1A Infrastructure Improvements”); and

WHEREAS, the Authority will fund such costs through issuance of the Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021A (Federally Taxable) (the “2021A Bonds”) and Chula Vista Bayfront Facilities Financing Authority Revenue Bonds (Chula Vista Bayfront Convention Center) Series 2021B (Tax-Exempt) (the “2021B Bonds” and, together with the 2021A Bonds, the “Authority 2021 Bonds”); and

WHEREAS, the Authority 2021 Bonds will be issued pursuant to the terms of an indenture of trust (“Indenture”) by and between the Authority and the corporate trustee identified therein (the “Trustee”); and

WHEREAS, it is expected that RIDA Chula Vista, LLC (“RIDA”) will finance the construction of a resort hotel (“Hotel”) to be located on the CVB; and

WHEREAS, it is expected that RIDA will make payments to the District with respect to the Hotel; and

WHEREAS, it is expected that RIDA will make payments to the City, or its assignee, with respect to the Convention Center; and

WHEREAS, the District will contribute funds to the repayment of the Authority 2021 Bonds pursuant to a Support Agreement between the Authority and the District (the “Support Agreement”) and the City will contribute funds to repayment of the Authority 2021 Bonds pursuant to a Facility Lease between the Authority and the City; and

WHEREAS, the Bayfront Project Special Tax Financing District (“Special Tax District”) will contribute funds to the repayment of the Authority 2021 Bonds pursuant to a loan agreement between the Special Tax District and the Authority (the “Loan Agreement”); and

WHEREAS, the City and the District entered into that certain Revenue Sharing Agreement dated April 24, 2018 and filed in the Office of the District Clerk as Document No. 68392 (the “Original RSA”); and

WHEREAS, the City and District entered into that certain Amended and Restated Revenue Sharing Agreement dated November 19, 2019 and filed in the Office of the District Clerk as Document No. 70911 (the “Amended RSA”) that amended and restated in its entirety the Original RSA; and

WHEREAS, the City and District entered into that certain Second Amended and Restated Revenue Sharing Agreement dated September 15, 2020 and filed in the Office of the District Clerk as Document No. 71855 (the “Second Amended RSA”) that amended and restated in its entirety the Amended RSA; and

WHEREAS, the City and the District desire to amend and restate in its entirety the Second Amended RSA as set forth herein to add the Authority as a Party to this Agreement and to describe the funds to be contributed and distributed pursuant to this Agreement.

NOW THEREFORE, in consideration of One Dollar and the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated herein by reference.
2. Term. The term of this Agreement commenced on the effective date of the Original RSA, May 7, 2018. Amendment and restatement of the Second Amended RSA as set forth herein shall take effect on the date first set forth above. If the Authority 2021 Bonds are issued, this Agreement shall terminate on the later to occur of the following two dates, which shall be referred to herein as the “Agreement Termination Date”: (i) the first date on which no Authority 2021 Bonds remain Outstanding (as such term is defined in the Indenture); or (ii) thirty-eight (38) years from the date the Authority 2021 Bonds are issued (the “Closing Date”), provided however that in no event shall the term of this Agreement exceed sixty-six (66) years. Prior to the Closing Date, the Parties may, by mutual agreement, terminate this Agreement at any time. If the Authority 2021 Bonds are not issued on or prior to June 30, 2025, then this Agreement shall terminate on July 1, 2025 unless extended or terminated by mutual agreement of the Parties prior thereto.
3. Agreements. This Agreement amends, restates, and supersedes in its entirety the Second Amended RSA. As their interests may appear, the City, the District and the Authority hereby agree as follows:
  - 3.1 *Funds and Existing Funds.* “Funds” means, collectively, moneys in an amount equivalent to each of the following sources of funds actually received by the City or the District on a yearly basis commencing July 1, 2018:

A. District



- (i) all funds derived from the following items (a) – (b) (collectively, “Ground Lease Revenues”):
  - (a) those real estate agreements set forth in Exhibit 1 (collectively, the “Other Ground Leases”); provided, however, if one or more of the Other Ground 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 Other Ground Leases (each a “Modified Boundary Lease”), then, for purposes of this Section, the Ground Lease Revenues derived from each Modified Boundary Lease shall be calculated by multiplying the total amount of Ground Lease Revenues generated by such Modified Boundary Lease by a fraction, the numerator of which shall be an amount equal to the Modified Boundary Lease premises still within the original premises boundary, and the denominator of which shall be the total premises area of the Modified Boundary Lease as modified. The City and the Port District acknowledge and agree that a Modified Boundary Lease shall not include the modification of the RV Park Lease (listed on and as defined in Exhibit 1) to include some or all of parcel S-3 or a replacement of the RV Park TUOP (listed on and as defined in Exhibit 1) where RIDA is the tenant. For example, if the original premises of an Other Ground Lease encompasses 5.0 acres, and the Modified Boundary Lease includes 4.0 acres of the original premises, and adds 6.0 acres of premises outside the original premises, then forty percent (40%) of the lease payments paid to the District under the Modified Boundary Lease shall be included as Other Ground Leases lease payments under this Section (collectively, the “Other Ground Leases Revenues”); to the extent District enters into any revenue generating agreement other than a Ground Lease with respect to operations on all or any portion of the Other Ground Leases premises, such revenue, net any related out-of-pocket operating costs paid by District to third parties, shall also be included as Other Ground Leases Revenues under this Section;
  - (b) less \$3,283,970, which is the actual amount of the buyout payment paid solely by the District to Chula Vista Marina, LP, dba Chula Vista Marina ( “RV Park Lessee”) to terminate the lease between the RV Park Lessee and the District (“Net RV Park Buyout Credit”), such amount to be amortized over a period of eight years commencing on July 1, 2018 pursuant to the schedule of credits provided in Exhibit 2, attached hereto and incorporated herein by reference (“Net RV Park Buyout Credit Schedule”), as such Net RV Park Buyout Credit Schedule and its contents may be administratively modified from time to time with the mutual consent of the City Manager

of the City (the “City Manager”) and the Executive Director of the District (the “Executive Director”), without further approval of the Board of Port Commissioners of the District (“District Board”) or City Council of the City (“City Council”); and

- (ii) the annual payments to be made by the District (the “District Support Payments”) pursuant to the Support Agreement; and
- (iii) any funds in addition to those specified in (i) and (ii) above committed by the District to the Convention Center or the Phase 1A Infrastructure Improvements (together, the “CVB Public Improvements”) to be applied as Funds in accordance with the terms of this Agreement with the approval of the City Manager and the Executive Director, without further approval of the District Board or the City Council.

B. City

- (i) the transient occupancy taxes levied pursuant to Chula Vista Municipal Code Chapter 3.40, attributable to the Convention Center, the Hotel, the RV Park TUOP (listed on and as defined in Exhibit 1), and the RV Park Lease (listed on and as defined in Exhibit 1) (such transient occupancy taxes, the “TOT”);
- (ii) that portion of use and sales taxes 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 RV Park Lease, the Convention Center and the Hotel, exclusive of any amount so levied and allocated to the City pursuant to voter approval by the electors of the City, which portion is currently one percent (1%) of taxable transactions (the “Sales Tax”);
- (iii) incremental ad valorem property tax (including property tax in-lieu of motor vehicle license fees) generated by the Convention Center and Hotel parcels, which is that amount in excess of any ad valorem property tax levied in the fiscal year in which the Authority 2021 Bonds are issued;
- (iv) an amount equal to \$986,625.00, increasing 3% on July 1 of each year, commencing July 1, 2017, which amount is based on the payment made by the District to the City in fiscal year 2016 pursuant to that certain Municipal Services Agreement No. 88-2012 between the District and the City for the provision of Police, Fire and Emergency Medical Services;
- (v) special tax proceeds (“Special Tax Revenues”) of the Special Tax District, equal to the annual amount used to repay the Authority under

the Loan Agreement or any other indebtedness of the Special Tax District related to the Authority 2021 Bonds; and

- (vi) any funds in addition to those specified in (i) through (v) above committed by the City to the CVB Public Improvements to be applied as Funds in accordance with the terms of this Agreement, with the approval of the City Manager and the Executive Director, without further approval of the City Council or the District Board.

C. As used herein, “Existing Funds” means, collectively, moneys in an amount equivalent to each of the following sources of funds actually received by the District or the City, as applicable, from and after July 1, 2018:

- (i) the Ground Lease Revenues;
- (ii) the TOT attributable to the RV Park TUOP and the RV Park Lease; and
- (iii) amounts described in Section 3.1(B)(iv).

The City and the District shall remit any Existing Funds remaining after any expenditure permitted by Section 3.2 to the Authority by no later than the date the Preliminary Official Statement for the Authority 2021 Bonds is posted on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (the “Contribution Date”). No interest will accrue with respect to the Existing Funds contributed by the City or the District prior to the Contribution Date. The Existing Funds to be contributed by the City and by the District shall not include interest earned by the City or the District on such funds prior to the Contribution Date. Should either the City or the District elect to retain Existing Funds for the period from and after July 1, 2018 to the Contribution Date, such Existing Funds shall be reported as restricted in the audited financial statements included in such Party's Comprehensive Annual Financial Report (“CAFR”), commencing with such Party's CAFR for the fiscal year ended June 30, 2020. Funds received by the Authority on the Contribution Date shall be transferred by the Authority to the Trustee on or prior to the Closing Date as provided in Section 3.3.

3.2 *Use of Existing Funds Prior to the Contribution Date.* Existing Funds may be expended by the City and the District prior to the Contribution Date pursuant to the following terms:

- A. The City may deduct amounts reimbursed to RIDA pursuant to that certain Pre-Close Design Reimbursement Agreement, dated September 15, 2020, entered into between the City and RIDA.
- B. 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 Improvements based on current schedules of fees adopted by the City for such plan review, permitting, and inspection;

- C. The City and the District may deduct design, plan review, permitting, project/construction management, and inspection costs incurred by the City and the District, respectively, for Phase 1A Infrastructure Improvements, memorialized in one or more operating memoranda of the City and the District executed by the City Manager and the Executive Director, without further approval of the City Council or the District Board;
- D. The District or the City may deduct the cost of any Phase 1A Infrastructure Improvements constructed by or at the direction of RIDA pursuant to that certain Chula Vista Bayfront Project Phase 1A Early Work Implementation and Right of Entry License Agreement, to be entered into among the City, the District, the Authority and RIDA, including without limitation, any cost increases and delay damages, up to the amount of the budget approved by such parties;
- E. The City and the District 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 City and the District executed by the City Manager and the Executive Director, without further approval of the City Council or the District Board;
- F. Prior to the deduction of any amounts by the City or by the District pursuant to Section 3.2(A) through Section 3.2(E), the Party desiring to deduct such amount shall submit an accounting of such amounts to the other Parties and the other Parties shall review the accounting in good faith and approve or reject such accounting within thirty (30) days. If the accounting is approved, such amount shall be deducted from the Existing Funds to be delivered by such Party prior to the Contribution Date. Should the Closing Date for the Authority 2021 Bonds not occur as provided in Section 2, and such date is not extended by mutual agreement of the Parties in accordance with Section 2 of this Agreement, the City and the District shall each prepare an accounting of amounts deducted and approved by such Party from the Existing Funds pursuant to Section 3.2(A) through Section 3.2(E) above (the "Pre-Close Expenses"). Should the Pre-Close Expenses of the City exceed the Pre-Close Expenses of the District, or in the alternative, the Pre-Close Expenses of the District exceed the Pre-Close Expenses of the City, then the Party with the lower Pre-Close Expenses shall make a reimbursement sufficient to equalize the Pre-Close Expenses between the City and the District (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, the "Pre-Close Expense Reimbursement"). The Pre-Close Expense Reimbursement shall be made within thirty (30) days of the District and City's mutual agreement as to the amount of such payment; and
- G. This Section 3.2 shall survive the termination of this Agreement.

- 3.3 *Use of Existing Funds Subsequent to the Contribution Date.* Any Existing Funds collected by the City and the District subsequent to the transfer of funds on the Contribution Date shall be paid by such Parties to the Authority, for transfer by the Authority to the Trustee on or prior to the Closing Date for application in accordance with the provisions of the Indenture.
- 3.4 *Distribution of Funds Post Closing Date.* On and after the Closing Date until the Agreement Termination Date, amounts disbursed by the Trustee to the Authority pursuant to the provisions of the Indenture (the “Residual Revenues”), together with the RIDA Lease Payments (as such term is defined below) received by the Authority, shall be applied in the following order of priority:
1. To reimburse the District for the cumulative amount of District Support Payments actually contributed by the District and not previously reimbursed to the District by the Authority; then
  2. To reimburse the City and the District *pari passu* for any amounts either Party actually paid or contributed to the County of San Diego (“County”) pursuant to the Chula Vista Bayfront Project Funding Agreement (“Funding Agreement”) by and among the County, the City, the District and the Authority; then
  3. To reimburse the City for 73.6% of the cumulative actual, direct costs incurred by the City to provide fire service within the CVB, which 73.6% reflects amounts for which the City is entitled to reimbursement *in addition to* any payments the City receives pursuant to any municipal services agreement between the City and the District in effect at the time such reimbursement is being made and which is the proportionate share of costs attributable to the Convention Center and the Hotel and not previously reimbursed to the City or paid through Special Tax Revenues; then
  4. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party’s contribution of the Existing Funds, as of the Closing Date; then
  5. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party’s contribution of Existing Funds after the Closing Date, continuing to the Agreement Termination Date; then
  6. To fund an additional reserve fund or reserve fund insurance policy in the amount of one year’s debt service for the Authority 2021 Bonds; and finally
  7. Any Funds remaining after the payments described in numbered items (1) through (6) above will be equally distributed between the City and the District.

No interest will accrue with respect to unreimbursed Funds contributed by the City or the District.

- 3.5 *RIDA Lease Payments.* Pursuant to a ground lease between the District and RIDA for the Hotel (the “Hotel Ground Lease”) and a sublease between the City and RIDA for the Convention Center (the “Convention Center Sublease”), each to be executed at the Closing Date, RIDA will be obligated to pay to the District and to the City,

respectively, certain payments, which payments, exclusive of the RIDA Parking Payments (as such term is defined in Section 3.8 of this Agreement) and any Advance Rent (as such term is defined in the Convention Center Sublease) are collectively referred to herein as the “RIDA Lease Payments.” Each of the District and City shall remit to the Authority any RIDA Lease Payments such Party actually receives from RIDA within thirty (30) days following the District’s or City’s receipt of such RIDA Lease Payments. The District’s and City’s obligation to remit the RIDA Lease Payments to the Authority shall cease on the Agreement Termination Date. For purposes of this Agreement, the RIDA Lease Payments shall not be considered Funds.

- 3.6 *Parks.* The District and the City have agreed to cooperate in good faith and use their respective best efforts to negotiate an agreement (“Park Agreement”) which grants the City a nonexclusive, joint-use right or other interest in the areas designated for public park use within the CVB (the “Park Areas”). The Park Agreement is anticipated to provide as follows: as and when the City collects Parkland Acquisition and Development fees, or other such park related impact fees as may be adopted in the future, from developments in the CVB (collectively, the “PAD Fees”), the City will pay the acquisition component of such PAD Fees to the District, or an amount equivalent to the acquisition component of the PAD Fees, as rent under the Park Agreement (such amount being referred to as the “Park Rent”). To the extent that the City pays Park Rent to the District, the District shall contribute the Park Rent actually received to the Authority and the Authority shall use the Park Rent to reimburse the City and the District for O&M Costs actually paid by each of the City and the District, subject to terms of any future implementing agreements entered into by the City, the District and/or the Authority.

3.7 *Operations & Maintenance Costs and Transit Plan.*

A. The City and District agree to generally split the operation and maintenance costs (“O&M Costs”) for the CVB not otherwise maintained by a third party. The District will be responsible for the O&M Costs of the parks and all related public infrastructure located within the parks. The City will be responsible for the O&M Costs of the streets and sanitary sewers.

B. The City and District will split the O&M Costs payable pursuant to that certain Chula Vista Bayfront Master Plan Natural Resources Management Plan filed June 6, 2016 in the Office of the District Clerk as Document No. 65065 that are not the responsibility of a third party (“NRMP Costs”). The NRMP Costs shall be shared equally by the District and the City.

C. The City will be responsible for funding a transit plan for the Chula Vista Bayfront Shuttle as defined in the Chula Vista Bayfront Master Plan Public Access Program, filed in the Office of the District Clerk as Document No. 59408, as such document may be amended from time to time (the “Shuttle Transit Plan”). The City will cooperate with the District in good faith to coordinate implementation of the Shuttle Transit Plan with any other transit plan needed for the CVB. The City will also be responsible for funding the implementation of the Shuttle Transit Plan, including capital costs and operational costs of the Chula Vista Bayfront Shuttle, until such time as such

operational costs are borne by other applicable transportation providers or the City and District mutually agree that the Chula Vista Bayfront Shuttle is no longer required.

In no event shall either Party be reimbursed for any O&M Costs that have been previously reimbursed to such Party through Special Tax Revenues or Park Rent.

- 3.8 *Parking Lease Payments.* RIDA is expected to pay to the District a percentage of the gross revenues it receives for the use of parking spaces on the Hotel site and in the parking garage (collectively, the “RIDA Parking Payments”). The District shall deliver to the City fifty percent (50%) of all RIDA Parking Payments the District actually receives from RIDA under the Hotel Ground Lease within thirty (30) days following the District’s receipt of such RIDA Parking Payments. The District’s obligation to remit the RIDA Parking Payments to the City shall cease on the Agreement Termination Date. For purposes of this Agreement, the RIDA Parking Payments shall not be considered Revenues as such term is defined in the Indenture and shall not be considered Funds for purposes of this Agreement.
4. Operating Memoranda. To the extent the City and the District enter into any operating memoranda pursuant to the terms of this Agreement that requires any action(s) be taken by the Authority, the City and the District shall (i) specify in the operating memoranda any instructions that the Authority shall follow upon receipt of the operating memoranda; and (ii) promptly deliver the operating memoranda to the Treasurer of the Authority after the execution of the operating memoranda by the City Manager of the City and the Executive Director of the District. If the Authority is unable to comply with the instructions set forth in the operating memoranda for any reason, the Authority shall inform the District and the City promptly and to the extent compliance with the instructions requires the adoption of certain administrative rules or procedures or an amendment to the Amended and Restated Joint Exercise of Powers Agreement filed on August 7, 2019 in the Office of the District Clerk as Document No. 70245 (“Authority Incorporation Agreement”) or the Bylaws of the Authority (“Authority Bylaws”), the City and the District, as the sole members of the Authority, shall use good faith efforts to promptly adopt such administrative rules or procedures administratively or present any modifications to the Authority Bylaws or Authority Incorporation Agreement to the Authority Board of Directors for their consideration, as necessary.
5. Binding Agreement. The Parties agree that this Agreement is a binding agreement among the Parties. Notwithstanding the binding nature of this Agreement, the Parties contemplate that future implementing agreements between the City and the District or the Authority, between the District and the Authority and/or among the City, the District and the Authority may be needed to implement or clarify the terms of this Agreement. To that end, each of the Parties agree to meet and confer in good faith in response to a request by any other Party regarding the implementation or clarification of this Agreement.
6. Event of Default. An “Event of Default” will occur under this Agreement when: (a) there is a material breach of any material condition, covenant or promise set forth herein; (b) written notice thereof has been given to the Party in breach; and (c) such breach has not been cured within ten (10) business days after such notice was given to the Party in breach. In the event the breach cannot reasonably be cured within such ten (10) business day period, the Party in breach must commence cure of the breach within such ten (10) business day period and thereafter diligently proceed to cure such breach. A waiver by any Party of any such breach

shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise. In the event of an Event of Default, the non-defaulting Parties may, in their sole and absolute discretion, elect to either: (a) extend the time beyond the cure period set forth in this Section 6 for the defaulting Party to perform the applicable obligation(s) hereunder for a period of time acceptable to the non-defaulting Parties, or (b) proceed with an action or proceeding for specific performance.

7. Remedies. The occurrence of an Event of Default shall give the non-defaulting Parties the right to proceed with an action or proceeding for specific performance.
8. Notices. The notice addresses shall be the same as those set forth in the Authority Incorporation Agreement and shall be sent by certified U.S. Mail (return receipt requested) and shall be deemed delivered three days after deposit in the U.S. Mail.
9. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the City and the District with respect to the subject matter hereof.
10. Drafting Presumption; Review Standard. The Parties acknowledge that this Agreement has been agreed to by all the Parties, that each Party 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 City, District and Authority 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.
11. Governing Law. This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.
12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.
13. Electronic Signatures. The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document signed or to be signed in connection with this Agreement and the transaction contemplated hereby shall be deemed to include electronic signatures, contract formations on electronic platforms approved by the Parties, or the keeping of such electronic signatures and electronic contracts in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the California Uniform Electronic Transaction Act, or any other similar state laws based on the Uniform Electronic Transactions Act.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and the year first set forth above.

**CITY:**

CITY OF CHULA VISTA

By: \_\_\_\_\_  
Mary Casillas Salas, Mayor

ATTEST:

\_\_\_\_\_  
Kerry K. Bigelow, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Glen R. Googins, City Attorney

**DISTRICT:**

APPROVED AS TO FORM AND LEGALITY:  
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT,  
a public corporation

By: \_\_\_\_\_  
Thomas A. Russell

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**AUTHORITY:**

APPROVED AS TO FORM AND LEGALITY:  
CO-COUNSEL

CHULA VISTA BAYFRONT FACILITIES  
FINANCING AUTHORITY,  
a California joint exercise of powers authority

By: \_\_\_\_\_  
Glen R. Googins  
City of Chula Vista City Attorney

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas A. Russell  
San Diego Unified Port District General  
General Counsel

## **Exhibit 1**

### **Listing of Other Ground Leases**

1. Amended, Restated and Combined Lease between the San Diego Unified Port District (the "District") and The Marine Group LLC for property at the North Side of G Street 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 District and Chula Vista Marina, LP, 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.
3. Lease between the District and California Yacht Marina-Chula Vista, LLC, 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.
4. Lease between the District and Sun Chula Vista Bayfront RV LLC for property located at 825 E Street in Chula Vista (Costa Vista RV Park) which lease is on file in the Office of the District Clerk as Document No. 70407, as amended and may be amended from time to time ("RV Park Lease").
5. Tideland Use and Occupancy Permit between the District and Sun Chula Vista Existing Park RV LLC for property located at 460 Sandpiper Way in Chula Vista which tideland use and occupancy permit is on file in the Office of the District Clerk as Document No. 69412, as amended and may be amended from time to time ("RV Park TUOP").

**Exhibit 2****Net RV Park Buyout Credit Schedule**

<b>Fiscal Year (FY)</b>	<b>RV Park Buyout Credit</b>	<b>Cumulative Credit</b>
FY 19	\$410,500	\$410,500
FY 20	\$410,500	\$821,000
FY 21	\$410,500	\$1,231,500
FY 22	\$410,500	\$1,642,000
FY 23	\$410,500	\$2,052,500
FY 24	\$410,500	\$2,463,000
FY 25	\$410,500	\$2,873,500
FY 26	\$410,470	\$3,283,970

Note: The total rent credit was reduced from \$4,329,614 to \$3,283,970 based on a permitted rent credit applied to the Chula Vista Marina lease as partial payment of the RV Park Buyout. This therefore will reduce the Chula Vista Marina rent actually received by the District from the tenant by \$1,045,644 until November 30, 2021.