

Attachment I to Agenda File 2021-0248

Amendment No. 1 to the Amended and Restated Joint Exercise of Powers Agreement

This Amendment No. 1 to the Amended and Restated Joint Exercise of Powers Agreement (this "Amendment") dated and effective [____], 202[] ("Effective Date") is entered into by and between the CITY OF CHULA VISTA (the "City" or "Member"), a chartered municipal corporation organized and existing under the laws of the State of California (the "State"), and the SAN DIEGO UNIFIED PORT DISTRICT (the "Port District" or "Member"), a public corporation created by the State legislature in 1962 pursuant to the California Harbors and Navigation Code Appendix 1 (as amended from time to time, the "Port Act").

RECITALS

WHEREAS, the City and the Port District are the sole members of the Chula Vista Bayfront Facilities Financing Authority, a California joint exercise of powers entity ("Authority") created by that certain Joint Exercise of Powers Agreement by and between the City and Port District dated as of May 1, 2014 and filed in the Office of the Port District Clerk as Document No. 61905 ("Original Authority Agreement") as amended, restated, and superseded by that certain Amended and Restated Joint Exercise of Powers Agreement between the City and Port District dated July 25, 2019 and filed in the Office of the Port District Clerk as Document No. 70245 ("Authority Agreement").

WHEREAS, Article 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (known as the "Joint Exercise of Powers Act" and, as amended from time to time, referred to herein as the "Act") authorizes and empowers the Authority to issue bonds and to purchase bonds issued by, or to make loans to, the City or the Port District or other public or private entity for financing or providing interim financing for the acquisition, construction, installation and improvement of public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the City or the Port District. The Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sale.

WHEREAS, the Authority intends to issue certain bonds for the construction and financing of a 275,000 net usable square foot convention center to be located in the City of Chula Vista, California ("Convention Center") and public improvements for the benefit of the Convention Center and adjoining resort hotel ("Phase 1A Improvements").

WHEREAS, as part of the financing, the Authority will enter into various agreements, including without limitation, that certain Facility Lease between the Authority and the City dated as of the Closing Date ("Facility Lease"), that requires that the City administer the operations and maintenance of the Convention Center, among other things, pursuant to the terms of that certain Sublease between the City and RIDA Chula Vista, LLC, a Delaware limited liability company ("RIDA") dated as of the Closing Date ("Sublease").

WHEREAS, under the Facility Lease the Authority will assign certain rights to Wilmington Trust, National Association ("Trustee"), as the trustee under that certain Indenture of Trust between the Authority and the Trustee for certain tax and tax exempt bonds to be issued by the Authority ("Indenture") which are defined as the "Assigned Rights" under the Indenture.

WHEREAS, under the Sublease, the Authority is designated as an express third party beneficiary of certain obligations of RIDA to the City that are of particular interest to the Port District as the owner of the underlying Convention Center property.

WHEREAS, in light of the Port's particular interest as the owner of the Convention Center property, the City and Port District would like to designate the Port District as the Member that shall administer certain of the Authority's rights and obligations under the Facility Lease with respect to the operations and maintenance of the Convention Center under the Sublease.

AGREEMENT

NOW THEREFORE, for valuable consideration, receipt and sufficiency of which the City and Port District hereby acknowledge, the Authority Agreement is hereby amended in the following respects and no others, and except as expressly amended, all terms, covenants, and conditions of said Authority Agreement shall remain in full force and effect:

1. Definitions and Recitals. The Recitals are incorporated by reference. Any capitalized terms that are not defined herein shall have the same meaning ascribed to such terms under the Facility Lease.
2. Said Authority Agreement is hereby amended to add the following definitions to Section 1:

“The term “Assigned Interests” shall be as defined in that certain Indenture of Trust between the Authority and Wilmington Trust, National Association (“Trustee”) for certain tax and tax exempt bonds to be issued by the Authority (“Indenture”).”

“The term “Enforcement Agreement” shall be defined as that certain Mutual Lease and Sublease Enforcement Agreement between the Port District and the City dated as of the Closing Date.”

“The term “Facility Lease” shall be defined as that certain Facility Lease between the Authority and the City dated as of the Closing Date.”

“The term “Major Decision” and “Major Decisions” shall be as defined in Section 4(F).”

“The term “Leasing Manager” shall be as defined in Section 3(E).”

“The term “Sublease” shall be defined as that certain Sublease between the City and RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA”) dated as of the Closing Date.”

“The term “Sublease Operational Provisions” shall be as defined in Section 3(E).

“The term “Third Party Beneficiary Rights” shall be as defined in Section 3(E).
3. Said Authority Agreement is hereby amended to add the following “Section 4E. Managing Member for Certain Sublease Actions” to Section 4:

“E. Manager for Facility Lease Actions and Certain Sublease Actions.

The Port District is hereby designated the member of the Authority (“Leasing Manager”) that shall be responsible for the administration on behalf of the Authority of all rights of the Authority with respect to administration of the Sublease, including, without limitation, as specified in “Schedule 2” to the Enforcement Agreement (“Sublease Operational Provisions”) and the Facility Lease as it relates to the Sublease Operational Provisions; provided, however, if the administration of the Facility Lease or the Sublease Operational Provisions involves a “Major Decision”, the Leasing Manager shall consult with the City in accordance with Section 4(F) hereof prior to making a determination or taking an enforcement action, as the case may be. The Leasing Manager shall enforce the rights of the Authority under the Sublease Operational Provisions as a third party beneficiary (“Third Party Beneficiary Rights”) in the case of the Sublease, and on behalf of the Authority, in the case of the Facility Lease, without further approval of the Board. Provided that the Leasing Manager has complied with all of the requirements under this Agreement, including without limitation, the requirements under Section 4(F) (Major Decisions), the Leasing Manager shall have the power and authority to bind the Authority, initiate legal proceedings on behalf of the Authority, and enforce any and all of the rights bequeathed upon the Leasing Manager herein in any manner the Leasing Manager deems appropriate, including without limitation, through the action of the Board of the Port Commissioners.”

4. Said Authority Agreement is hereby amended to add the following “Section 4F. Major Decisions” to Section 4:

“F. Major Decisions.

While the Facility Lease and Sublease are in effect, the Port District shall consult with the City and the City shall provide its consent to the Port District prior to the Port District approving any of the following items on behalf of the Authority under the Facility Lease or the Sublease, as applicable, which shall each be defined a “Major Decision” and collectively as, the “Major Decisions”:

- (1) Discontinuance or temporary cessations of continuous operations of the Convention Center (Section 7.1 of the Facility Lease and Section 6.1(c) of the Sublease);
- (2) Property tax contest by RIDA (Section 6.19(b)(v) and (e) of the Sublease);
- (3) Revisions to plans for the Convention Center (Section 6.10(a) of the Sublease);
- (4) Consent to any Financing Encumbrance (Sections 9.1 and 9.2 of the Sublease);
- (5) Revisions to the deadlines for completion of the Convention Center (Section 9.6(b) of the Sublease);
- (6) Consent to new or revisions to existing Hotel Management Agreement (Section 6.7 of the Sublease);
- (7) Removal of additional insured status (Section 4.1 of the Sublease); and
- (8) Revisions to the general indemnity (Section 2.2(b) of the Sublease).

The process for consultation between the City and Port District shall be as set forth in the Enforcement Agreement between the Port District and City attached hereto as Exhibit A.

5. The Port District and City shall meet and confer prior to expending costs under this Amendment regarding the sharing of expenses related to the obligations in this Amendment.

6. Except as modified by this Amendment, the Authority Agreement is hereby ratified and confirmed.

[Remainder of the page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and the year first above written.

APPROVED AS TO FORM AND LEGALITY: **SAN DIEGO UNIFIED PORT DISTRICT,**
GENERAL COUNSEL a public corporation

By: _____
Thomas A. Russell, General Counsel

By: _____
Joe Stuyvesant, President/CEO

APPROVED AS TO FORM AND LEGALITY: **CITY OF CHULA VISTA,**
a charter municipal corporation

By: _____
Glen R. Googins, City Attorney

By: _____
Maria V. Kachadoorian, City Manager

Exhibit A

Enforcement Agreement

(See attached)