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SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE xxxx

ORDINANCE AUTHORIZING (1) PROJECT IMPLEMENTATION AGREEMENT AMONG THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT), THE CITY OF CHULA VISTA (CITY), THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY (AUTHORITY), RIDA CHULA VISTA, LLC (RIDA), AND THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT (SPECIAL TAX DISTRICT) FOR THE CONSTRUCTION OF PUBLIC INFRASTRUCTURE (PHASE 1A IMPROVEMENTS) AND A CONVENTION CENTER, WITH CONDITIONS, (2) SITE LEASE BETWEEN THE DISTRICT AND THE AUTHORITY (SITE LEASE) FOR THE LAND NECESSARY TO CONSTRUCT A CONVENTION CENTER LOCATED IN THE CITY OF CHULA VISTA, WITH CONDITIONS, AND (3) AMENDMENT TO THE FISCAL YEAR (FY) 2022 BUDGET INCREASING THE FY 2022 CAPITAL IMPROVEMENT PROGRAM (CIP) APPROPRIATION BY \$2,875,000 TO BE FUNDED FROM THE PACIFICA LAND EXCHANGE FEE RESTRICTED FUNDS

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, since 2014, the District and the City of Chula Vista (City) have been working to deliver the catalyst project for the Chula Vista Bayfront Master Plan (CVBMP), an approximately 250,000 square foot convention center (Convention Center), a parking garage (Parking Improvements), and an up to 1,600 room resort hotel (Resort Hotel) to be located on Parcel H3 of the CVBMP; and

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WHEREAS, the catalyst project also requires the construction of extensive public infrastructure to the areas surrounding Parcel H3 (Phase 1A Improvements); 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, the procurement, reimbursement, and construction provisions for the Convention Center and Phase 1A improvements, including Sweetwater Park and Harbor Park, are set forth in the Project Implementation Agreement (defined below); and

WHEREAS, construction of the Convention Center and the Phase 1A Improvements will be guided by the Project Implementation Agreement among the City, the Bayfront Project Special Tax Financing District (Special Tax District), the District, the Chula Vista Bayfront Facilities Financing Authority (Authority) and RIDA (Project Implementation Agreement); and

WHEREAS, the Project Implementation Agreement establishes the terms and conditions for the construction of the Phase 1A Improvements and Convention Center; and

WHEREAS, on May 20, 2020, the Board of Directors of the Authority (Authority Board) adopted Resolution 2020-007 ratifying the final form of a procurement policy for developer-performed public improvements for the Authority attached as Exhibit A to such resolution (Authority Procurement Policy) and ratifying the final form of Authority Resolution 2020-002 in the form presented and attached as Exhibit B to Resolution 2020-007 (Authority Resolution 2020-002) applying the Authority Procurement Policy to the construction of developer-performed public works for the Convention Center and Phase 1A Improvements; and

WHEREAS, pursuant to Authority Resolution 2020-002 and in accordance with Procurement Policy Section 2.a. (Authorization to Proceed), the Authority Board authorized RIDA to proceed with the development and construction of specific Phase 1A Improvements and the Convention Center subject to the terms, conditions, and obligations of the Authority Procurement Policy, Authority Resolution 2020-002, all applicable project agreements, including the Project Implementation Agreement, and all applicable federal, state, and local laws and regulations; and

WHEREAS, under Authority Resolution 2020-002, the Authority Board determined that the Convention Center was a “special purpose project” under Section 6 of the Authority Procurement Policy and waived certain provisions of

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the Authority Procurement Policy as in the best interest of the public provided that certain safeguards were put in place to protect the public interest; and

WHEREAS, these safeguards include: (1) cap on the public contribution to \$265MM; (2) future agreements to include appropriate insurance and bond requirements, (3) the work would be performed to the appropriate standard and in compliance with applicable laws; and (4) RIDA would indemnify the Authority, the City and the District; and

WHEREAS, the Authority Board also delegated to the Executive Director of the Authority the authority to implement the safeguards in support of the waiver; and

WHEREAS, under Authority Resolution 2020-002, the Authority Board determined that it was in the best interest of the public for the Phase 1A Improvements to be constructed through a sole source prime contract to MMJV, provided that RIDA followed the subcontractor bid and award process in the Authority Resolution 2020-002 that is included in the Project Implementation Agreement; and

WHEREAS, similar to the Convention Center, the Authority Board also delegated authority to the Executive Director of the Authority to determine RIDA's compliance with Authority Resolution 2020-002, and in particular, the subcontractor bid and award process; and

WHEREAS, the Authority Board authorized the Executive Director of the Authority to delegate its authority under Authority Resolution 2020-002 to two or more members of the staff of the Authority; provided that such delegation is made to a contingent comprised of an equal number of City and District staff members respectively; and

WHEREAS, the Project Implementation Agreement implements Authority Resolution 2020-002 by setting forth the terms and conditions that RIDA must follow to construct the Convention Center and Phase 1A Improvements in order to obtain payment from the Authority; and

WHEREAS, the Authority will be using proceeds from the revenue bonds issued by the Authority (Authority Bonds) and revenues it receives from the City and District (i.e., the City's Bayfront Development Impact Fees (BFDIF) program credits, contribution from the North C.V. Waterfront L.P. (Pacifica Land Exchange Fee) to pay for the construction; and

WHEREAS, the Project Implementation Agreement also sets forth the terms and conditions for RIDA to construct Sweetwater Park and Harbor Park and the mechanism for such reimbursement; and

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WHEREAS, the term of the Project Implementation Agreement is not to exceed sixty-six (66) years; and

WHEREAS, RIDA is responsible for providing payment and performance bonds (P&P Bonds) for the Hotel, Parking Improvements, Convention Center, and Phase 1A Improvements, along with a Completion Guaranty that covers the completion of the same components; and

WHEREAS, the Project Implementation Agreement reflects a payment from the Authority of the lesser of (a) the cost actually incurred by RIDA in procuring the P&P Bonds; and (b) \$1MM; and

WHEREAS, insurance provisions and requirements are extensively covered in the Project Implementation Agreement and will be required of RIDA as part of constructing the Phase 1A Improvements and the Convention Center; and

WHEREAS, since the construction of the Convention Center and Phase 1A Improvements is being dealt with under the Project Implementation Agreement and the operations of the Convention Center is being handled under the Sublease, RIDA has divided the insurance policies to be provided into a construction period, which policies are identified in the Project Implementation Agreement and operations period, which policies are identified in the Sublease between the City and RIDA (Sublease); and

WHEREAS, during the construction period, RIDA will provide builder's risk insurance and the various liability policies (except liquor liability) under the Project Implementation Agreement; and

WHEREAS, after completion of construction, the policies under the Sublease will come into effect for the remainder of the term of the Sublease, as the operations period; and

WHEREAS, as part of the insurance package to be provided to satisfy the requirement under the Project Implementation Agreement, the District, City, and RIDA have negotiated the possibility of RIDA increasing its builder's risk coverage to include the soft costs (capitalized interests and costs of issuance) incurred by the District and City in connection with the issuance of the Authority Bonds; and

WHEREAS, the possibility of RIDA procuring this coverage is an important coverage point for the District and City because if there is a casualty or condemnation event before completion of the Convention Center and RIDA exercises its right to terminate the Sublease, the District and City may need to fund this amount; and

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WHEREAS, if RIDA is able to procure insurance coverage to pay the Authority's soft costs identified above, the Authority, City, and District would be responsible for paying RIDA the difference in premium between RIDA's original policy premium and the policy premium as modified if the policy covers the Authority's soft costs; and

WHEREAS, staff will continue to monitor this issue as the insurance is priced in the market and will review coverage prior to RIDA binding their policy and before the Authority Bonds are issued; and

WHEREAS, under the Project Implementation Agreement, RIDA is required to complete the Convention Center within 48 months of commencement of construction (Completion Date); and

WHEREAS, "Completion" means that RIDA has obtained from the City and delivered to the Authority a certificate of occupancy or temporary certificate of occupancy for the Convention Center; and

WHEREAS, the Completion Date can be extended for the following reasons: (1) (i) the occurrence of a force majeure event (including actual collateral effects) that delays the completion of (x) the Convention Center, Phase 1A Improvements, the Resort Hotel, or Parking Improvements or (y) Sweetwater Park (if RIDA exercises its option to construct); (ii) a breach of the District, City, Special Tax District, or Authority under the financing, operations, construction, or leasing documents that causes the delays to the completion of the Convention Center, Phase 1A Improvements, the Resort Hotel, or Parking Improvements; or (2) delays by the District in Sufficiently Completing Sweetwater Park (if RIDA does not construct); and

WHEREAS, if RIDA does not meet the Completion Date (as extended by (1) or (2) above), RIDA must pay construction late damages if it fails to complete the Convention Center, Resort Hotel, and Parking Improvements starting on the date that is one year after the Completion Date (as extended by (1) or (2) above; and

WHEREAS, the Project Implementation Agreement also sets forth the terms and conditions for the payment of construction costs for the Convention Center; and

WHEREAS, the cost of the construction of the Convention Center is currently estimated at \$340MM;

WHEREAS, the public contribution toward the construction of the Convention Center includes \$265MM from the Authority Bonds that will be paid to RIDA over time until the amount is fully disbursed; and

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WHEREAS, RIDA is responsible for covering any costs over \$265MM, except for interest payments; and

WHEREAS, to receive payments, RIDA must submit monthly payment requests based on work performed, and the Authority will review the payment requests and authorize the Trustee to issue the corresponding payments from a construction fund (Construction Fund) established by the trustee under Indenture of Trust between the trustee (Trustee) and the Authority (Authority Indenture); and

WHEREAS, as part of the payment request process, both RIDA and its architect will certify that the request is based on work performed to-date and provide supporting documentation; and

WHEREAS, in order to avoid construction delays or interruptions resulting from payment disputes, the parties have agreed to use binding arbitration to resolve payment disputes related to the payment requests in very defined circumstances, including issues related to defective work, amounts under protest, late payments, incomplete payment requests, incorrect payments, and whether the dispute qualifies for arbitration, to avoid delay in the project and increased costs to all parties (collectively, the Arbitration Disputes); and

WHEREAS, if the Arbitration Disputes are brought to arbitration, the arbitrator will have limited jurisdiction to resolve the Arbitration Disputes; and

WHEREAS, in a dispute arising from a demand involving a payment request for the Convention Center, (a) the arbitrator only has jurisdiction to determine whether any amount is owed to RIDA in accordance with the Project Implementation Agreement and to order payment to RIDA of the amount owed, and (b) the arbitrator has no power to order the Authority, the District, or the City to pay any amount to RIDA in excess of \$265MM (other than default interest in accordance with the Project Implementation Agreement); and

WHEREAS, for all Arbitration Disputes, the arbitrator shall have no authority or power to do any of the following: (i) award payment of any amount that is not consistent with the Project Implementation Agreement or expressly authorized within the terms of the Project Implementation Agreement; (ii) award any consequential, incidental or punitive damages or any amounts relating to lost profits, lost business opportunity or similar damages; (iii) commit errors of law; (iv) decide any matter related to the Project Implementation Agreement that is not specifically identified as a "Specified Dispute" arising from a "demand; (v) order injunctive relief or (vi) order the Authority, City, or District to perform any discretionary act; and

WHEREAS, for arbitration, the parties will use an approved arbitrator list to help avoid delays caused through the arbitrator selection process and proceed

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in accordance with the JAMS Expedited Construction Arbitration Rules (JAMS Rules), even for disputes greater than \$100,000; and

WHEREAS, the arbitration will be completed (whether by settlement or the issuance of an award by the arbitrator) within twenty (20) business days after the arbitrator is selected; and

WHEREAS, the arbitrator's jurisdiction will be limited to determining whether a demand is subject to arbitration as well as the amount due from one party to the other under the Project Implementation Agreement and ordering the payment of such amounts due from one party to the other party by a date certain; and

WHEREAS, if the Authority does not make a payment to RIDA on time, then RIDA will be entitled to default interest (10% per annum) on the amount of the delinquency, which must be paid by the Public Entities regardless of whether that amount is in excess of the \$265MM public contribution; and

WHEREAS, to help alleviate the costs to the Authority, RIDA has granted the Authority four "grace periods" each year for late payments in which interest will not accrue during the grace period; and

WHEREAS, if the Authority disputes a payment request, it can make the payment under protest in order to avoid potential interest accrual, in which case RIDA would be liable to return any overpayment to the Authority with interest; and

WHEREAS, in the event of any payment dispute that cannot be resolved through negotiations amongst the parties, the dispute will proceed to arbitration on an expedited basis; and

WHEREAS, the Authority's costs of arbitration cannot be paid through the \$265MM public contribution and will need to be funded from other Authority funds; and

WHEREAS, following completion of the Convention Center, there will be a final review and true-up of all payments to ensure that the Authority has not overpaid RIDA; and

WHEREAS, the Project Implementation Agreement also specifies that RIDA will cause the development and completion of the Phase 1A Infrastructure Improvements that RIDA has committed to construct under the Project Implementation Agreement (Developer's Phase 1A Improvements) within approximately 48 months of commencement of construction; and

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WHEREAS, the Project Implementation Agreement also specifies the projected costs of development and costs reporting associated with the Developer's Phase 1A Improvements; and

WHEREAS, upon satisfactory completion, the Developer's Phase 1A Improvements will be accepted by the City or District based on the nature of the improvement; and

WHEREAS, a general, high level list of the Developer's Phase 1A Improvements includes: (1) E Street (G Street to H Street), (2) G Street Connection, (3) H Street (Bay Boulevard to Street A), (4) H Street (Marina Parkway to E Street), (5) Parcel H3 Site Preparation, and (6) Parcel H3 Utility Corridor; and

WHEREAS, the remaining Phase 1A Improvements that RIDA has not committed to construct, but that RIDA may construct pursuant to the terms of the Project Implementation Agreement, are: (1) Sweetwater Park, (2) Harbor Park, and (3) Sweetwater Buffer (SP1 for Parcel S2); and

WHEREAS, the District will construct Sweetwater Park and the Sweetwater Buffer (SP1 for Parcel S2); and

WHEREAS, Harbor Park will not be a "priority" Phase 1A Improvement and the District and City have allocated the amounts for Harbor Park to be used as a contingency for payments to RIDA for the Developer's Phase 1A Improvements; and

WHEREAS, the District and City still intend to build Harbor Park and once the Developer's Phase 1A Improvements are 75% complete, the City, District, and RIDA will meet and confer to decide whether there are funds available to build Harbor Park and whether RIDA or the District will construct Harbor Park; and

WHEREAS, the total to construct all of the Phase 1A Improvements, including work completed to date, is currently estimated at \$85MM; and

WHEREAS, the amount for the remaining work on Sweetwater Park is \$13.2MM and on Harbor Park is \$19.5MM; and

WHEREAS, staff has reviewed RIDA's calculations for the cost of the Phase 1A Improvements and based on those calculations the amount needed to fund the Phase 1A Improvements is available using a combination of the BFDIF credits, sewer fees, a portion of the Authority Bonds, funds from the Chula Vista Bayfront Project Funding Agreement among the County of San Diego, the City, the District, and the Authority (County Agreement), a grant from California

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Natural Resources, and other work performed by other tenants on the CVBMP;
and

WHEREAS, the key difference in funding between the Phase 1A Improvements and the Convention Center is that RIDA will look to the Authority to pay for all of the costs of the Phase 1A Improvements; and

WHEREAS, this means that the District and City may need to contribute additional amounts to reimburse RIDA for the construction of the Phase 1A Improvements if the cost exceeds available funds; and

WHEREAS, Sweetwater Park is one of the improvements that is part of the Phase 1A Improvements; and

WHEREAS, since RIDA did not include the Sweetwater Park as part of its bid for the Chula Vista Bayfront project, the District determined that it might be more economical and effective for the District to do the construction; and

WHEREAS, under the Project Implementation Agreement, the District will be required to construct Sweetwater Park in 22 months in order to provide additional certainty to RIDA that Sweetwater Park will be constructed and completed at the same time as the Convention Center, Parking Improvements, and Resort Hotel; and

WHEREAS, to help ease RIDA's concerns that the District will not complete Sweetwater Park in a timely manner, the District will give RIDA two opportunities to step in and perform the work itself: first, before the District bids the contract to construct Sweetwater Park; and second, at month 23 if the District does not complete the construction within the 22 months; and

WHEREAS, if RIDA takes over the construction of Sweetwater Park, RIDA would be reimbursed in the same manner as it is being reimbursed for the other Phase 1A Improvements; and

WHEREAS, if RIDA takes over the construction, the District will assign its design contract with KTU+A to RIDA; and

WHEREAS, in addition, while RIDA will not get damages for the District's failure to complete Sweetwater Park, the District has agreed that RIDA may pursue an action under specific performance if the District unreasonably delays in providing RIDA access to the project site or delays in delivering the materials to RIDA that RIDA needs to take over the construction; and

WHEREAS, besides the ability to take over the construction and any action for specific performance to compel the District to act, RIDA would not have

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any other remedies against the District for the District's failure to timely complete Sweetwater Park; and

WHEREAS, Harbor Park will not be constructed on the same timeline as the remainder of the Phase 1A Improvements; and

WHEREAS, the District and City will use the money it would have allocated to Harbor Park as contingency money in case the costs of the remainder of the Phase 1A Improvements, including Sweetwater Park, increase beyond the amounts currently projected to be needed to construct the Phase 1A Improvements; and

WHEREAS, this decision was made to reduce risk to RIDA that RIDA would not be paid for excess costs related to the Phase 1A Improvements; and

WHEREAS, once the Phase 1A Improvements, without Harbor Park, are 75% complete, the District, the City, and RIDA will reconvene to decide whether to move forward with Harbor Park and whether RIDA or the District will perform the construction; and

WHEREAS, for the Phase 1A Improvements (including Sweetwater Park and Harbor Park if RIDA proceeds with the construction), the Project Implementation Agreement contains a similar payment request and dispute resolution process as the Convention Center; and

WHEREAS, RIDA will submit monthly payment requests, certified by a RIDA executive and a third-party architect, which will be limited to work performed to-date, and the Authority will direct the Trustee to issue payments it approves, which it can choose to issue under protest, and the parties will take any unresolved disputes that qualify for arbitration to expedited arbitration; and

WHEREAS, if an arbitrator orders RIDA to return any payments, RIDA will be liable for 10% annual interest; and

WHEREAS, the Authority will have to pay interest on any untimely payments, subject to the four free grace periods; and

WHEREAS, there will also be a final review and true-up of all the payments that the Authority made to RIDA for the Phase 1A Improvements; and

WHEREAS, the Construction Fund established under the Authority Indenture will be used to pay for the cost of the Phase 1A Improvements and the Public Contribution toward the construction of the Convention Center and the Trustee will distribute payments at the request of the Authority after the Authority receives a valid payment request from RIDA; and

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WHEREAS, if the Authority is late in issuing payments, RIDA will get paid interest and an arbitration provision has been incorporated to fast track solutions regarding payment requests; and

WHEREAS, despite these protections, RIDA has also requested that if an employee of the City or District misappropriates or transfers funds from the Construction Fund or Authority Surplus Fund (either in the capacity as an employee of the City or District or as staff of the Authority), or the BPC or City Council approves an affirmative action transferring these funds, the District or City, as applicable, will use commercially reasonable efforts to pursue recovery of these amounts and seek crime insurance coverage; and

WHEREAS, to the extent, the District cannot recover the misappropriated funds, through the employee or insurance, the District would be responsible for paying the remaining amount; and

WHEREAS, staff recommends that the BPC authorize the Project Implementation Agreement and authorize the Executive Director of the District, or his designated representative, to enter into the Project Implementation Agreement substantially in the form presented to the BPC at the June 15, 2021, BPC meeting, with conditions; and

WHEREAS, the BPC approved the ground lease between the District and RIDA for the Resort Hotel and Parking Improvements (Hotel Ground Lease), with conditions, on May 11, 2021; and

WHEREAS, the Hotel Ground Lease is for a term of 66 years; and

WHEREAS, while the Sublease is in effect, the Hotel Ground Lease will only cover the Resort Hotel and the Parking Improvements; and

WHEREAS, once the term of the Sublease expires, the Convention Center will become part of the Hotel Ground Lease for the remaining term; and

WHEREAS, if RIDA terminates the Sublease early, the Convention Center will not become part of the Hotel Ground Lease; and

WHEREAS, the District will be ground leasing the Convention Center land to the Authority for construction of the Convention Center for a total rent of \$1 pursuant to the Site Lease between the District and the Authority; and

WHEREAS, as consideration for the Site Lease, the Authority will deliver the Facility Lease between the City and the Authority (Facility Lease), the Authority Indenture, the Loan Agreement between the Authority and the Special Tax District (Loan Agreement), and the Project Implementation Agreement; and

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WHEREAS, the Site Lease requires that the Authority construct the Convention Center; and

WHEREAS, given the proximity of the proposed Resort Hotel to the Convention Center, the Authority, the District and the City have determined it to be beneficial to have RIDA construct and operate the Convention Center; and

WHEREAS, once complete, the Convention Center will be owned by the Authority; and

WHEREAS, when the Site Lease expires, the District will own the Convention Center; and

WHEREAS, the term of the Site Lease is 37 years, unless terminated earlier, or extended, in accordance with the terms of the Site Lease; and

WHEREAS, the term of the Site Lease cannot be longer than 66 years; and

WHEREAS, staff recommends the BPC authorize the Site Lease and authorize the Executive Director of the District, or his designated representative, to enter into the Site Lease substantially in the form presented to the BPC at the June 15, 2021 BPC meeting, with conditions; and

WHEREAS, the BPC, by resolution, added the Sweetwater Park Project to the Fiscal Year (FY) 2019-2023 Capital improvement Program (CIP); and

WHEREAS, staff recommends the BPC increase the FY 2022 Budget, CIP Appropriation by \$2,875,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds; and

WHEREAS, prior to or in connection with the issuance of the Authority Bonds, a number of documents will be executed and delivered including the Hotel Ground Lease, the Site Lease, the Facility Lease, the Sublease, the Bond Purchase Agreement among J.P. Morgan Securities LLC, the Authority, the District, the Special Tax District, and the City (Bond Purchase Agreement), the Authority Indenture, the Loan Agreement, the Project Implementation Agreement, the Support Agreement between the District and the Authority, the Mutual Lease and Sublease Enforcement Agreement between the City and the District (Enforcement Agreement), the Amendment No. 1 to the Amended and Restated Authority Agreement (Authority Amendment), the Third Amended and Restated Revenue Sharing Agreement among the District, the City, and the Authority (Revenue Sharing Agreement), and the Amended and Restated Joint Community Facilities Agreement between the District and the City, and any exhibits thereto, such as the Completion Guaranty (as defined in the Project Implementation Agreement) (collectively, the Chula Vista Bayfront Documents); and

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WHEREAS, the BPC has determined that it would be in the best interest of the people of the State of California, including the residents of the City, which will benefit from the facilities to be constructed by RIDA on tidelands for purposes consistent with the trusts upon which such lands are held pursuant to the Port Act, and it is in the best interest of the public for the BPC to approve financing of the Phase 1A Improvements and the Convention Center in the manner described herein with the proceeds of the Authority Bonds, which financing will provide significant public benefits of the type described in Section 6586 of the California Government Code.

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

1. That the foregoing recitals and findings are true and correct.
2. That the Project Implementation Agreement among the San Diego Unified Port District (District), City of Chula Vista (City), the Chula Vista Bayfront Facilities Financing Authority (Authority), RIDA Chula Vista, LLC (RIDA), and the Bayfront Project Special Tax Financing District (Special Tax District) for the construction of Public Infrastructure (Phase 1A Improvements) and a Convention Center located in the City of Chula Vista, is hereby approved substantially in the form of Exhibit A attached hereto (Project Implementation Agreement), and that the Executive Director or his designated representative is hereby authorized to enter into said Project Implementation Agreement in connection with the closing for the tax-exempt and taxable bonds to be issued by the Authority (Authority Bonds), provided that the Project Implementation Agreement executed by the Executive Director or his designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Project Implementation Agreement attached hereto as Exhibit A and Item No. 5 below.
3. That the Site Lease between the District and the Authority for the land necessary to construct a Convention Center located in the City of Chula Vista, is hereby approved substantially in the form of Exhibit B attached hereto (Site Lease) and that the Executive Director or his designated representative is hereby authorized to enter into said Site Lease in connection with the closing for the Authority Bonds, provided that the Site Lease executed by the Executive Director or his designated representative has all blanks filled in and all exhibits attached in accordance with the guidance set forth in the Site Lease attached hereto as Exhibit B and Item No. 5 below.
4. That the District's Fiscal Year (FY) 2022 Budget is hereby amended to increase the Capital Improvement Program (CIP) Appropriation by

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\$2,875,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds.

5. The BPC hereby delegates to the Authorized Officers the authority to make and consent to changes to one or more of the Chula Vista Bayfront Documents to facilitate the financing and construction of the hotel to be constructed on Parcel H3 of the Chula Vista Bayfront Master Plan (Resort Hotel), the Phase 1A Improvements, and the Convention Center which an Authorized Officer determines are needed (i) to eliminate any inconsistencies among any of the Chula Vista Bayfront Documents; (ii) to cure any ambiguity or defective provision in any of the Chula Vista Bayfront Documents; (iii) to respond to market conditions related to the structuring and marketing of the revenue bonds issued by the Authority (Authority Bonds) as identified by the underwriter of the Authority Bonds (Underwriter), including, but not limited to, rating requirements; (iv) to reflect the final terms of the sale by the Underwriter of the Authority Bonds; and (v) to facilitate the required private financing for the Resort Hotel and Convention Center or otherwise necessary to facilitate the issuance of the Authority Bonds and the construction of the Resort Hotel, Phase 1A Improvements, and the Convention Center; provided, however that such changes shall not (x) increase the indemnification obligations of the District; (y) result in an additional contribution of funds by the District (except to a de minimis amount (not to exceed \$500,000 in total)); or (z) materially increase the obligations of the District, which changes shall be based on the advice of the General Counsel, and approved by an Authorized Officer through the Authorized Officer's execution (or as to documents to which the District is not a party, such Authorized Officer's written consent) of the Chula Vista Bayfront Documents incorporating the changes proposed, and shall be conclusively evidenced by the delivery by the District of the executed Chula Vista Bayfront Documents with the changes or its written consent to such changes, as applicable. For purposes of this Section 5, the "Authorized Officer" shall mean the Executive Director and his designated representatives and the "Chula Vista Bayfront Documents" shall be as defined in the recitals above.

6. That 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

By: Assistant/Deputy General Counsel

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PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 15th day of June 2021, by the following vote:

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Exhibit A

PROJECT IMPLEMENTATION AGREEMENT

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Exhibit B
SITE LEASE