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Title: ORDINANCE AUTHORIZING:

(A) AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT WITH THE CITY OF CHULA VISTA FOR THE CHULA VISTA BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, WITH CONDITIONS; AND

(B) THE VOTE OF THE DISTRICT IN FAVOR OF PROPOSITIONS A (LEVY OF SPECIAL TAXES AT RATES NOT TO EXCEED 5.5% OF RENT CHARGED ON HOTEL PROPERTY AND CAMPSITE PROPERTY) AND B (EXPANSION OF LOCATION OF IMPROVEMENTS AND SERVICES) RELATED TO THE CHULA VISTA BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT.

RESOLUTION AUTHORIZING:

(A) THIRD AMENDED AND RESTATED REVENUE SHARING AGREEMENT WITH THE CITY OF CHULA VISTA AND THE AUTHORITY, WITH CONDITIONS; AND

(B) SUPPORT AGREEMENT WITH THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY, WITH CONDITIONS, FOR THE PUBLIC FINANCING OF THE CONVENTION CENTER AND PHASE 1A IMPROVEMENTS IN THE CITY OF CHULA VISTA

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Attachments: 1. 12. 2021-0041 Attachment A, 2. 12. 2021-0041 Attachment B, 3. 12. 2021-0041 Attachment C, 4. Attachment D - Support Agreement.pdf, 5. 12. 2021-0041 Draft Ordinance, 6. 12. 2021-0041A Draft Resolution, 7. 12. 2021- 0041B Draft Resolution

Date	Ver.	Action By	Action	Result
2/11/2021	1	Board of Port Commissioners	adopted	Pass

DATE: February 11, 2021

SUBJECT:

ORDINANCE AUTHORIZING:

(A) AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT WITH THE CITY OF CHULA VISTA FOR THE CHULA VISTA BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, WITH CONDITIONS; AND

(B) THE VOTE OF THE DISTRICT IN FAVOR OF PROPOSITIONS A (LEVY OF SPECIAL TAXES AT RATES NOT TO EXCEED 5.5% OF RENT CHARGED ON HOTEL PROPERTY AND CAMPSITE PROPERTY) AND B (EXPANSION OF LOCATION OF IMPROVEMENTS AND SERVICES) RELATED TO THE CHULA VISTA BAYFRONT PROJECT SPECIAL TAX

FINANCING DISTRICT.

RESOLUTION AUTHORIZING:

(A) THIRD AMENDED AND RESTATED REVENUE SHARING AGREEMENT WITH THE CITY OF CHULA VISTA AND THE AUTHORITY, WITH CONDITIONS; AND

(B) SUPPORT AGREEMENT WITH THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY, WITH CONDITIONS, FOR THE PUBLIC FINANCING OF THE CONVENTION CENTER AND PHASE 1A IMPROVEMENTS IN THE CITY OF CHULA VISTA

EXECUTIVE SUMMARY:

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). 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 Chula Vista Bayfront Master Plan CVBMP (Attachment A). The catalyst project also requires the construction of extensive public infrastructure to the areas surrounding Parcel H3 (Phase 1A Improvements). RIDA Chula Vista, LLC (RIDA) was selected as the developer of the Resort Hotel and Convention Center through a Request for Qualifications. 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. The District and the City formed the Chula Vista Bayfront Facilities Financing Authority (Authority) to finance most of the Public Contribution.

The Public Contribution consists of \$265MM toward the cost of the Convention Center and \$63MM toward the Phase 1A Improvements for a total investment of \$328MM. 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. 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 the North C.V. Waterfront L.P. (Pacifica), and a sewer contribution from the City. 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). Facility Lease and Sublease terms are expected to be approximately 38 years to provide sufficient time for repayment of the Authority Bonds. 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.

The three agreements being presented to the Board for its consideration are the following, and are described in more detail below and in the Discussion section below:

1. Amended and Restated Joint Community Facilities Agreement (A&R JCFA);

2. Third Amended and Restated Revenue Sharing Agreement (Third A&R Revenue Sharing Agreement); and
3. Support Agreement.

These financing agreements 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.

A&R JCFA

The financing model for the Public Contribution always contemplated a type of financing district that would cover portions of the CVBMP and generate revenues to help the City and District pay for the construction, operations, and maintenance of the public infrastructure needed for the 535 acre CVBMP area. On February 24, 2020, the District and the City entered into a Joint Community Facilities District Agreement (District Clerk No. 72175) (Original JCFA) to outline the priority of use for the special tax revenues (Special Tax Revenues) generated by the Bayfront Project Special Tax Financing District (Special Tax District). The Original JCFA lists the following order of priority for use of the Special Tax Revenues: (a) finance the construction of Convention Center; (b) finance the construction of Phase 1A Improvements; (c) finance the construction of a 1,600 space parking garage (Parking Garage); and (d) operation, maintenance, servicing and replacement of the Phase 1A Improvements.

District and City staff have now negotiated several changes to the Original JCFA as reflected in the A&R JCFA (Attachment B). Staff believes the following changes put the District in a better position since it will allow the District and the City to access additional Special Tax Revenues through the longer term and higher rate and use them toward the successful implementation and operation of Phase 1 of the CVBMP.

- (a) Extend the current term of approximately 40 years to 66 years to allow for the additional collection of revenues to cover continued costs of the CVBMP,
- (b) Increase the 5% rate levied to 5.5% for years 1-40, but step down the 5.5% rate levied in later years where less public infrastructure is likely to be needed, and
- (c) Revise the list of priority uses to reflect the following order of priority (further described in the Discussion below) that will continue to prioritize the Convention Center and certain public infrastructure improvements, designate revenues for the various public infrastructure that will be needed to support the development of the Chula Vista Bayfront, especially as needed to meet the requirements of any mitigation measures, project features, and agreements related to the CVBMP that are needed to operate the Hotel and Convention Center, designate revenues for the operation and maintenance of the various improvements, and allow any unused funds to be used toward further development of the Special Tax District.

To implement these changes, the Board must authorize the District's Executive Director to vote in favor of the revised formation documents for the Special District that will incorporate (a), (b), and (c)

(as to the expansion of the area where improvements can be located and services provided only). The specific propositions for the vote will be:

PROPOSITION A

(Levy of Special Taxes at Rates not to Exceed 5.5% of Rent charged on Hotel Property and Campsite Property)

Shall the measure to authorize the Bayfront Project Special Tax Financing District (the "District") to levy special taxes at rates not to exceed 5.5% of Rent annually charged on Hotel Property and Campsite Property (as such terms are defined in Resolution No. [] accompanying this ballot) within the District, until the end of the term set forth in such resolution, raising an estimated \$33,000,000 annually to finance Improvements and Services described in such resolution, be approved?

PROPOSITION B

(Expansion of Location of Improvements and Services)

Shall the measure to authorize the Bayfront Project Special Tax Financing District to expand the territory wherein the Improvements may be located and the Services may be provided (as such terms are defined in Resolution No. [] accompanying this ballot) as described in such resolution, be approved?

Third A&R Revenue Sharing Agreement

The District and the City are parties to a Second Amended and Restated Revenue Sharing Agreement (District Clerk No. 71855) (Second A&R Revenue Sharing Agreement) that outlines which funds will be contributed to the Public Contribution and how the parties will share in the revenues generated from the development of the Chula Vista Bayfront. With the modifications to the A&R JCFA, and the movement of the project into the validation phase, certain changes need to be made to the Second A&R Revenue Sharing Agreement to reflect the current deal structure between the City and the District.

The main changes that have been made to the Second A&R Revenue Sharing Agreement in the Third A&R Revenue Sharing Agreement (Attachment C) are:

- (1) Add the Authority as a Party to the Agreement - The Authority was added as a 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 (Attachment D), the description of the various funds need to be revised to clarify which funds will be contributed 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 Close of Escrow - 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 the Parking Garage. This has been deleted from the Third A&R Revenue Sharing Agreement and the City and the District will now share 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.

Support Agreement

Under the proposed Support Agreement (Attachment D), the District will contribute annual payments (Annual Payments) and Other Ground Lease Revenues (defined below) from four existing leases on the Chula Vista Bayfront. The Annual Payments consist of the following and would be payable based on the bond years in the indenture for the Authority Bonds (each, Bond Year), with the first Bond Year commencing on the date the Authority Bonds are issued:

Bond Year	Annual Payment
Bond Years 1-4	\$0
Bond Years 5-14	\$5MM
Bond Years 15-19	\$6MM
Bond Years 20-24	\$3MM
Bond Years 25-38	\$3.5MM

The Annual Payments do not need to be paid until after the Convention Center is complete. This means that if the Convention Center construction is not completed until Bond Year 6, the Annual Payment for Bond Year 5 would be “abated” and the amount abated would be tacked on to the end of the payment schedule such that the District would have an Annual Payment in Bond Year 39 for

\$5MM. The Support Agreement is part of a package of documents that will be part of a validation action that the District, the City, and the Authority plan to initiate soon to meet a closing schedule in 2021.

As more fully discussed below, staff recommends that the Board authorize, with conditions, the A&R JCFA, Third A&R Revenue Sharing Agreement, and Support Agreement and authorize the Executive Director or his designee to vote yes on Proposition A ((Levy of Special Taxes at Rates not to Exceed 5.5% of Rent charged on Hotel Property and Campsite Property) and Proposition B (Expansion of Location of Improvements and Services) of the Special Tax District.

RECOMMENDATION:

Adopt an Ordinance Authorizing:

- (A) A&R JCFA for the Special Tax District, With Conditions; and
- (B) The vote of the District in favor of Proposition A (Levy of Special Taxes at Rates not to Exceed 5.5% of Rent charged on Hotel Property and Campsite Property) and Proposition B (Expansion of Location of Improvements and Services) Related to the Special Tax District.

Adopt a Resolution Authorizing:

- (A) Third A&R Restated Revenue Sharing Agreement, with conditions; and
- (B) Support Agreement, with Conditions, for the Public Financing of the Convention Center and Phase 1A Improvements in the City.

FISCAL IMPACT:

A&R JCFA

The A&R JCFA identifies the priority of uses for the Special Tax Revenues. The Special Tax District is administered by the City and the District is not required to contribute to the Special Tax District because it does not operate any hotels or campsites. Under the A&R JCFA, the District will be able to recover costs it expends in the construction of Other Improvements (defined below) and Priority O&M (defined below).

Third A&R Revenue Sharing Agreement

The proposed Board action to authorize the Third A&R Revenue Sharing Agreement between the District and the City sets forth the revenue sources that the District must contribute to the Authority before and after the Authority Bonds are issued. The revenue sources to be contributed to the Authority prior to the Authority Bonds being issued consist of moneys in an amount equivalent to: (i) rent payments from four ground leases located in the Chula Vista Bayfront (see Discussion below for further details); and (ii) the Tidelands Use and Occupancy Permit (TUOP) for the current RV Park (Document No. 71068) (collectively, District Existing Revenues). From the District Existing Revenues, the District may deduct a credit for amounts paid by the District to buy out the tenant under the current RV Park totaling \$3,283,970, which would be amortized over a period of eight years commencing on July 1, 2018. The District Existing Revenues may be used to cover existing or future obligations of the Authority (as set forth in Section 3.2 of the Third A&R Revenue Sharing Agreement). Under the Third A&R Revenue Sharing Agreement, the District Existing Revenues must be remitted to the Authority by no later than the date the Preliminary Official Statement (POS) for the

Authority Bonds is posted on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (Contribution Date). The Contribution Date would be approximately 30 days prior to the date the Authority Bonds are issued. If the District elects to retain the District Existing Revenues for a period from and after July 1, 2018 to the Contribution Date, such District Existing Revenues need to be reported as restricted in the audited financial statements included in the District's Comprehensive Annual Financial Report (CAFR), commencing with the CAFR for the fiscal year that ended on June 30, 2020.

The Third A&R Revenue Sharing Agreement also requires that the District contribute additional funds to the Authority, which consist of payments made by RIDA to the District under the Hotel Ground Lease, and requires that the District split with the City any parking revenues it receive from RIDA under the Hotel Ground Lease equally.

Support Agreement

The proposed Board action to authorize the Support Agreement requires that the District make Annual Payments to the Authority commencing in Bond Year 5 unless the Convention Center is not yet complete. The Support Agreement also requires that District Existing Revenues (exclusive of revenues from the TUOP) be paid to the Authority. Based on current projections, staff estimates that the District would begin to receive a return on its investment in the Public Contribution in Bond Year 9. Under the Third A&R Revenue Sharing Agreement, the District will be reimbursed first for any payments of Annual Payments it makes.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A Port with a healthy and sustainable bay and its environment.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.
- A Port that is a safe place to visit, work and play.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The CVBMP is the result of a decade-long joint planning effort by the District, the City, and a broad coalition of stakeholders. The key project of the CVBMP is the Convention Center and Resort Hotel, which will be the catalyst project for the CVB and the region that will bring economic growth, new jobs, and extensive public amenities.

The District and the City have been working collaboratively to advance the catalyst project even before RIDA was selected by the District on October 14, 2014 as the successful bidder to construct a resort hotel and convention center in response to a Request for Qualifications. In May of 2014, the City and the District entered into the Joint Exercise of Powers Agreement (Original Authority Agreement) to form the Authority to assist in the financing of the Public Contribution and the Original Authority Agreement was amended and restated in 2019 through the Amended and Restated Joint Exercise of Powers Agreement (Authority Agreement).

In order for the Convention Center and Phase 1A Improvements to be financially feasible, the City and the District need to contribute the Public Contribution for the construction of the Convention Center and Phase 1A Improvements. As discussed above, the Public Contribution is anticipated to be made by the Authority through Authority Bonds, with the District and the City, as the sole members of the Authority, committing certain funds to repay the Authority Bonds. The chart below demonstrates the split of the Public Contribution between the Convention Center and Phase 1A Improvements:

Public Contribution	
Convention Center	\$265 Million
Phase 1A Improvements	\$63 Million
TOTAL	\$328 Million

The following three agreements 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 the Phase 1A Improvements and the Convention Center:

1. A&R JCFA;
2. Third A&R Revenue Sharing Agreement; and
3. Support Agreement.

A&R JCFA

In January 2020, the City Council of the City of Chula Vista (City Council) voted to form the Special Tax District pursuant to Chapter 3.61 of the City Municipal Code to levy special taxes (Special Taxes) to generate the Special Tax Revenues to construct and finance certain public infrastructure improvements and pay for the debt service on the Convention Center. The District, as the majority landowner of the Special Tax District, voted in favor of the formation of the Special Tax District to generate revenues to help the City and District pay for the construction, operations, and maintenance of the public infrastructure needed for the 535 acre CVBMP area.

The Special Taxes levied under the Special Tax District are assessed against any property within the Special Tax District that qualifies as a “Hotel Property” and “Campsite Property”. The Special Tax District includes portions of the CVBMP and a few adjoining areas to the east located in the City of Chula Vista that abut the CVBMP. The Special Tax was first levied on July 1, 2020 and the two properties currently being assessed are the existing recreational vehicle (RV) park operated by Sun Communities (CVBMP Property) and The Rambler Motel (City of Chula Vista Property). The Hotel and the Costa Vista RV park would also be subject to the tax together with any other proposed hotels in the CVBMP, such as the additional hotel contemplated by RIDA to be located on parcel H-23 of the CVBMP, and in the areas located outside the CVBMP in the City of Chula Vista that are part of the Special Tax District. The current maximum rate levied on the Special Taxes is 5% and the term of the Special Tax District cannot exceed the longer of (a) 40 years from the date the Special Tax District was formed; and (b) the date on which the Authority Bonds with respect to which Special Tax Revenues are pledged are paid in full (*i.e.*, approximately 38 years).

In connection with the discussions with the City regarding the funding and construction of the Parking Garage, the District and City considered whether Special Tax Revenues from the Special Tax District could be used to increase the Public Contribution and allow RIDA to reallocate private funds toward

the construction of the Parking Garage. In addition, the City and the District discussed what other changes could be made to the Special Tax District to reflect any changes to the deal structure since February 2020. Since the Special Tax District was formed, the City and District have continued to consider whether it makes sense to have a longer term that is coterminous with the 66 year lease for the Hotel as much of the development of the public infrastructure is expected to occur during that 66 year term and increased costs for related operations and maintenance costs are inevitable. As such, City and District staff negotiated the following changes with the City:

- (d) extend the current term to 66 years,
- (e) increase the 5% rate levied to 5.5% for years 1-40, but step down the 5.5% rate levied in later years, and
- (f) revise the list of priority uses.

The following is a description of each of these changes:

1. Extension of the Special Tax District Term

The current term of the Special Tax District cannot exceed the longer of (a) 40 years from the date the ordinance to levy the Special Taxes was enacted; and (b) the date on which the Authority Bonds with respect to which Special Tax Revenues are pledged are paid in full (*i.e.*, approximately 38 years). In the initial negotiations for the Special Tax District in late 2019, the City and District considered a 66 year term, but it was decided at that time that not enough information was known to determine if it would be beneficial to extend the term of the Special Tax District to 66 years. Since then, the City and District have a better understanding of the scope of public infrastructure that would be needed and what sources of revenue are available to pay for the construction of such public infrastructure and the operations and maintenance of the same. Due to the volume of public infrastructure that will be needed and the cost to both agencies for the operations and maintenance (especially the District that will incur most of the costs after the Sublease expires), staff believes that it makes sense to extend the term of the Special Tax District to 66 years. Special Tax Revenues could be available in the future to fund what would otherwise be general fund expenses of the District and help the City continue to support those entities within the Special Tax District, but outside the CVBMP, to the extent additional funds are available after operations and maintenance costs on the various priority improvements are covered.

2. Revised Rates for the Special Tax District

Staff projects that a 0.5% increase in the tax rate to be levied for the Special Tax District will result in an additional \$33,000,000 annually in Special Tax Revenues. Since the bulk of the public infrastructure will need to be constructed during the early years of the Special Tax District, the City and District agreed that the increase was not needed for the entire term of 66 years and that reduction in rates was appropriate after 40 years. This was also necessary to continue to attract developers to the Chula Vista Bayfront that may not be agreeable to the maximum rate for the entire term of the Special Tax District.

As such the City and the District agreed to the following rates:

Fiscal Year	Tax Rate Levied
FY 20 - 60	5.5%
FY 61 - 75	2.5%
FY 76 - 86	1.0%

3. Reimbursement Prioritization of Special Tax Revenues

As discussed above, the Special Tax District was primarily intended to be a financing vehicle that would provide revenues to help pay for the debt service on the Authority Bonds. Other uses for the Special Tax Revenues were also contemplated but only to the extent that sufficient revenues could be generated in the future to pay for them. In the past two years, City and District staff have been successful in reducing the amount of Authority Bonds that will be needed to be issued for the Phase 1A Improvements by securing park grants, funding from the County of San Diego, and negotiating with tenants, such as RIDA and Sun Communities, to build some of the public infrastructure at their cost in exchange for rent credits and other concessions. As such, it has now become more likely that if the project performs well, Special Tax Revenues can be generated that can be allocated to other costs such as operations and maintenance on the Chula Vista Bayfront. In addition, it has become clear to the District and City that additional public improvements may be needed, such as energy improvements, to meet the City and District’s obligations under various agreements related to the Chula Vista Bayfront that must be complied with in order for the Hotel and Convention Center to receive the necessary approvals to operate. In addition, the timing of some of the public infrastructure improvements, such as the construction of a fire station, may be needed earlier than projected.

To modify the Special Tax District to make these changes, the District would need to vote in favor of Proposition A (Levy of Special Taxes at Rates not to Exceed 5.5% of Rent charged on Hotel Property and Campsite Property) and Proposition B (Expansion of Location of Improvements and Services).

When the District agreed to the formation of the Special Tax District, it did so subject to the City agreeing to certain conditions which are outlined in the Original JCFA. Among the things negotiated by the City and the District in the Original JCFA were how and where the Special Tax Revenues would be allocated. Since the formation documents for the Special Tax District are now being revised, the City and District have negotiated the A&R JCFA (Attachment B) to replace the Original JCFA.

Among other things, the Original JCFA lists the following order of priority for use of the Special Tax Revenues: (a) finance the construction of Convention Center; (b) finance the construction of Phase 1A Improvements; (c) finance the construction of the Parking Garage; and (d) operation, maintenance, servicing and replacement of the Phase 1A Improvements. The Original JCFA also requires that all improvements and services be provided within the CVBMP, unless they are needed to fulfill mitigation requirements required of the District or City, in which case they may be provided outside of the CVBMP.

With the various changes discussed on the Special Tax District, City and District staff thought it would also be important to revise the priority list in the A&R JCFA to maximize the Special Tax Revenues

and update it to reflect new information known regarding the needs of the CVBMP. As such, the District and the City negotiated the following list of priorities to replace the current list, which is set forth in the A&R JCFA:

- (1) to pay for the financing of the construction of the Convention Center and certain public infrastructure improvements financed through Authority Bonds (collectively, the Priority Improvements);
- (2) to pay for the construction or the financing of public improvements that are either located within the CVBMP or outside the CVBMP, but located within the City of Chula Vista, if required as mitigation measures, project design features, or otherwise required in the FEIR (defined below), Port Master Plan, Coastal Development Permit, and any agreements related to the CVBMP to be performed by the City or the District as required (including obtaining permits and certificate of occupancy) to allow for the Hotel and Convention Center to operate (Other Improvements);
- (3) to pay for the operation, maintenance, servicing and replacement costs of the public infrastructure described in Item Nos. 1 and 2 above, except for the Convention Center (Priority O&M); or
- (4) to pay for the construction or financing of other public improvements as described in Exhibit D attached to the A&R JCFA (general description of improvements) that are located in or immediately adjacent to the Financing District Area and that are not Priority Improvements or Other Improvements (Additional Improvements), and the operation, maintenance, servicing and replacement costs of any Additional Improvements and other "Authorized Services" as described in Exhibit E attached to the A&R JCFA (general description of services) (Additional O&M).

In comparison to the original priority list, Item No. 2 above has been expanded to include requirements under Chula Vista Bayfront documents and to cover project design features and to tie the requirements to the operation of the Hotel and Convention Center. There are many requirements necessary to open and operate the first phase of the CVBMP including the completion of Sweetwater Park, the relocation of the RV park, parking improvements, energy efficiency improvements, the construction of a fire station serving the bayfront, and other items. The broadening of this priority will help ensure that these items can be covered - but only to the extent that there is any Special Tax Revenue flowing to the Special Tax District above and beyond what's necessary to finance the construction of the Priority Improvements. Also, in Item No. 4, it allows the City to use any revenues not used in the first three priority items to improve other portions of the Special Tax District (not in the CVBMP) and those areas immediately adjacent thereto; however, in all cases this is the last priority and available for use of Special Tax Revenues only if there are no other uses above them including District and City operations and maintenance expenses. This could include items such as medians, roads, parks, and sidewalks that may be located outside the CVBMP but immediately adjacent to the Special Tax District and would allow the City to access unused dollars to further the development of the Special Tax District.

Staff believes the revised priority list puts the District and the City in a better position since it will allow access to Special Tax Revenues - if they are available - to assist with the successful implementation and operation of Phase 1 of the CVBMP. Moreover, it provides an additional source of funds to pay the Authority Bonds a new means to reduce the financial burden to the District and the City from the

cost of the operations and maintenance costs beyond the original term of the Authority Bonds, and will help build more public infrastructure to continue to attract new developers and continue to grow the Chula Vista Bayfront.

Third A&R Revenue Sharing Agreement

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). Since the approval of the Revenue Sharing Agreement on April 24, 2018, the agreement has been amended and restated two separate times with the objective to allocate the excess cash flow after debt service is paid. Most recently, on September 10, 2020, the Board approved the Second A&R Revenue Sharing Agreement. The Second A&R Revenue Sharing Agreement accomplished the following goals:

1. Clarify 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. Simplify the process for paying expenses associated with public infrastructure-related activities occurring before the issuance of the Authority Bonds; and
3. Define 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.

With the modifications to the A&R JCFA, 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.

The main changes that have been made to the Second A&R Revenue Sharing Agreement in the Third A&R Revenue Sharing Agreement (Attachment C) are:

- (1) Add the Authority as a Party to the Agreement - The Authority was added as a 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 (Attachment D), the description of the various funds need to be revised to clarify which funds will be contributed 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 the Parking Garage. This has been deleted from the Third A&R Revenue Sharing Agreement and the City and the District will 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.

Support Agreement

Under the Support Agreement, the District will contribute the Annual Payments and Other Ground Lease Revenues (defined below).

The Annual Payments consist of the following:

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

However, the Annual Payments do not need to be paid until after the Convention Center is complete. This means that if the Convention Center construction is not completed until Bond Year 6, the Annual Payment for Bond Year 5 would be “abated” and the amount abated would be tacked on to the end of the schedule such that the District would have an Annual Payment in Bond Year 39 for \$5MM.

The “Other Ground Lease Revenues” consist of ground lease revenues actually received by the District from (a) the ground lease with The Marine Group LLC (dba Marine Group Boat Works) (District Clerk No. 54509, as amended from time to time), (b) the ground lease with Chula Vista Marina LP (dba Chula Vista Marina) (District Clerk No. 14244, as amended from time to time), (c) the ground lease with California Yacht Marina - Chula Vista LLC (California Yacht Club) (District Clerk No. 23924, as amended from time to time); and (d) the ground lease with Sun Chula Vista Bayfront RV LLC (dba Costa Vista RV Park) (District Clerk No. 70407, as amended from time to time). In addition, if any of the four 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 (“Modified Boundary Lease”) or the premises for such ground leases are used for other revenue generating agreements some or all of such additional revenues resulting from such Modified Boundary Lease or revenue generating agreements need to

be contributed as part of the Other Ground Lease Revenues.

Since the District has current debt comprised of bonds issued under an existing District indenture filed in the Office of the District Clerk as Document Nos. 48385, 48388, and 70956 (collectively, District Indenture) and a promissory note issued to the San Diego Airport Authority filed in the Office of the District Clerk as Document No. 47940 (Airport Note), the District's obligation to pay the Annual Payments and Other Ground Lease Revenues (collectively, the District Payments) would be subordinate to the District's obligation to pay its current debt. This means that the District has to pay the District Indenture and Airport Note first, and then the District Payments for this proposed Support Agreement. This does not mean that the District would be excused from paying the District Payments. It just means that the District has to follow the priority in the District Indenture.

In the event the District does not pay the Annual Payments or Other Ground Lease Revenues, the Authority may exercise any and all remedies available or granted to it pursuant to law, including specific performance or its equivalent remedy, including a writ of mandamus. The Authority is assigning to the trustee of the Authority Bonds (Trustee) the right to collect and enforce the District Payments, so the Trustee would enforce any obligation of the District to pay the District Payments. The Authority's remedy under the Support Agreement against the District is the same as the Authority's remedy under the Facility Lease against the City in the event of a default of payment of a lease payment (as defined in the Facility Lease). Also, similar to the Support Agreement, the Authority would also assign to the Trustee the right to collect and enforce the lease payments.

Under the Support Agreement, the Authority and the District would make customary representations to each other regarding their ability to enter into the Support Agreement. In addition, if the District elected to issue additional bonds under the District Indenture or Parity Debt (as defined in the District Indenture) in the future, in addition to having to comply with the provisions of the District Indenture, the District would also place on file with the Trustee certain certifications certifying that the District has enough funds to pay its outstanding debts and payments under the Third A&R Revenue Sharing Agreement.

The Support Agreement and Third A&R Revenue Sharing Agreement cross-reference various provisions in the indenture trust that will be entered into between the Authority and Trustee to issue the Authority Bonds (Indenture). The Indenture is not final, but will be brought to the Board prior to the validation action. As part of the staff's recommendation, staff is recommending that the Board authorize the Executive Director to enter into the Support Agreement substantially as to form, with such changes as the Executive Director, with the advice of the General Counsel, Chief Financial Officer, and the District's Municipal Advisor, may require or approve as non-material changes.

Validation Action

The Board's consideration of the A&R JCFA, the Third A&R Revenue Sharing Agreement, and the Support Agreement is a very important next step in the Public Financing. The Support Agreement is part of a package of documents that will be part of a validation action that the District, the City, and the Authority will initiate in the near future, once all of the documents in the validation package have been considered and approved by all the appropriate parties. The validation action is necessary to help identify any challenges to the issuance of the Authority Bonds and make the bond issuance more marketable. The parties have been working closely together to determine which documents need to be part of the validation action and in addition to the Support Agreement, have also identified

the Indenture and various other documents for the issuance of the Authority Bonds, the leasing and subleasing documents for the Convention Center and the Resort Hotel, including the Hotel Ground Lease, Facility Lease, and the construction and reimbursement agreements for the Phase 1A Improvements and Convention Center. If the validation action concludes successful, the parties would then move forward with issuing the Authority Bonds and the parties will enter into their respective leases to commence construction of the Phase 1A Improvements, the Convention Center, and the Resort Hotel. Based on the current schedule, it is estimated that the construction could commence as early as Summer of 2021.

Conclusion

Staff recommends that the Executive Director, or his designee, be given the authority to vote in favor of Propositions A and B substantially in the following form and as needed to expand the length of the term to 66 years: (1) Yes on Proposition A (Levy Special Taxes at Rates not to Exceed 5.5% of Rent charged on Hotel Property and Campsite Property); and (2) Yes on Proposition B (Expansion of Location of Improvements and Services).

Staff also recommends that the Board authorize the A&R JCFA, Third A&R Revenue Sharing Agreement, and Support Agreement and authorize the Executive Director of the District, or his designee, to do the following:

(1) Enter into the A&R JCFA substantially in the form presented to the Board at the February 11, 2021 Board 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 City Council authorizes the A&R JCFA substantially in the form presented to the Board at the February 11, 2021 Board meeting; and (2) Proposition A and B are adopted with a "yes" vote.

(2) Enter into the Third A&R Revenue Sharing Agreement substantially in the form presented to the Board at the February 11, 2021 Board 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 Board at the February 11, 2021 Board meeting (Authority Board Approval); and (2) 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 Board at the February 11, 2021 Board meeting (City Council Approval).

(3) Enter into the Support Agreement substantially in the form presented to the Board at the February 11, 2021 Board 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 the Authority Board Approval occurs. The Authority will be considering the Support Agreement at a future meeting of the Authority Board and the Support Agreement will not be deemed accepted by the Authority until the Authority Board Approval occurs. Although the Support Agreement will exist within the meaning of California Code of

Civil Procedure Sections 860 et seq. when both the Board and Authority Board have approved it and authorized its execution, it is not effective by its terms until the Authority Bonds are issued.

For purposes of this authorization, “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 an additional contribution of funds by the District, , or (iii) substantively alter the meaning or intent of the agreement.

General Counsel’s Comments:

The Office of the General Counsel has reviewed this agenda sheet and Attachment B [A&R JCFA], C [Third A&R Revenue Sharing Agreement], and D [Support Agreement] as presented to it and approve each as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, an ordinance authorizing an amended and restated joint community facilities agreement and the vote of the District in favor of propositions A and B, and a resolution authorizing an amended and restated revenue sharing agreement and support agreement between the District and Chula Vista Bayfront Facilities Financing Authority, were adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (UPD #83356-EIR-658; SCH #2005081077; Clerk Document No. 56562), certified by the District on May 18, 2010 (Resolution No. 2010-78), the Addendum to the FEIR, which was adopted by the Board on August 13, 2013 (Resolution No. 2013-138), the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069), and the Third Addendum to the FEIR, which was adopted by the Board on December 8, 2020 (Resolution No. 2020-116). The proposed Board actions are not a separate “project” for CEQA purposes but is a subsequent discretionary approval related to a previously approved project. (CEQA Guidelines § 15378(c); Van de Kamps Coalition v. Board of Trustees of Los Angeles Comm. College Dist. (2012) 206 Cal.App.4th 1036.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board actions do not require further environmental review as: 1) no substantial changes are proposed to the project and no substantial changes have occurred that require major revisions to the FEIR and Addendums due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; 2) no new information of substantial importance has come to light that (a) shows the project will have one or more significant effects not discussed in the FEIR and Addendums, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendums, or (c) shows that mitigation measures or alternatives are now feasible that were identified as infeasible and those mitigation measures or alternatives would reduce significant impacts, and 3) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162 (b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board actions are merely a step-in furtherance of the original project for which environmental review was performed and no supplemental or subsequent CEQA has been triggered, and no further environmental review is required.

The proposed Board actions comply with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust

Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District’s CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District’s certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The proposed Board actions in no way limit the exercise of the District’s discretion under the District’s CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Shaun Sumner
Vice President Real Estate, Engineering, and Facilities

Adam Meyer
Assistant Director, Real Estate

Stephanie Shook
Department Manager, Real Estate

Sean Jones
Asset Manager, Real Estate

Attachment(s):

- Attachment A: Illustrative Map of the CVBMP
- Attachment B: Amended and Restated Joint Community Facilities Agreement
- Attachment C: Third Amended and Restated Revenue Sharing Agreement
- Attachment D: Support Agreement