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**Title:** RESOLUTION AUTHORIZING AMENDED AND RESTATED CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CITY OF CHULA VISTA

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Date	Ver.	Action By	Action	Result
6/20/2017	1	Board of Port Commissioners	adopted	Pass

**DATE:** June 20, 2017

**SUBJECT:**

### **RESOLUTION AUTHORIZING AMENDED AND RESTATED CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGREEMENT BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT AND THE CITY OF CHULA VISTA**

#### **EXECUTIVE SUMMARY:**

The financing agreement<sup>1</sup> (Financing Agreement) for the Chula Vista Bayfront Master Plan (CVB) was approved by the Board of Port Commissioners (Board) in 2012 and set forth the framework for the financing and development of the public improvements and infrastructure within the CVB by the San Diego Unified Port District (District) and the City of Chula Vista (City), known collectively as the "Parties". The development of public improvements and infrastructure is necessary for the implementation of the CVB in accordance with the certified Final Environmental Impact Report (FEIR)<sup>2</sup> and Port Master Plan Amendment, and for the resort hotel and convention center (RHCC) to move forward together with other development within the CVB project area (CVB Project Area). As contemplated in the Financing Agreement, a subsequent plan of finance would further define and implement the financing contemplated by the Financing Agreement.

On May 6, 2014, the Board adopted a resolution authorizing the issuance of a Request for Qualifications (RFQ) for a resort hotel and convention center in the CVB Project Area. After considerable local, regional, national and international marketing efforts by District staff, City staff and District's consultant, Jones Lang LaSalle, RFQ 14-24 (District Clerk No. 62033) was issued on June 30, 2014. The responses to the RFQ were due on September 8, 2014. A response was received from RIDA Development Corporation (RIDA), with ARES Management, LLC as the financial partner, WELBRO Building Corporation as the general contractor and three well-qualified architectural firms,

as architects. On October 14, 2014, the Board adopted a resolution selecting RIDA as the successful respondent to the RFQ.

Since the Financing Agreement was entered into in 2012, the Parties have been working to update the approach to the financing and development of the public improvements and infrastructure within the CVB Project Area. Specifically, new sources of revenue from both the District and the City have been identified. The Financing Agreement is now being updated and superseded through an Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement (Amended and Restated Financing Agreement) to identify these new revenue sources and differentiate between the RHCC related public infrastructure and improvements and those required for future phases. Similar to the Financing Agreement, the Amended and Restated Financing Agreement establishes that the District and the City will cooperate to develop a plan of finance (Plan of Finance) to utilize specific revenues generated from the CVB to finance the construction of public improvements and infrastructure for the RHCC, through yet to be determined mechanisms such as the issuance of revenue bonds. The Amended and Restated Financing Agreement outlines the sources of revenue that could be used by the Parties to pay off any issued revenue bonds and associated debt service. The following revenue streams are now being contemplated by the Parties (the entity noted in the parenthetical next to each stream is the source of the revenue):

1. Ground lease payments for the RHCC ground lease and other designated ground leases (existing and some future) (*District*);
2. One-time payment from North C.V. Waterfront L.P. (Pacifica) through Exchange Agreement and Escrow Instructions (District Clerk Document No. 56067), with the District (\$3,000,000) (Pacifica Land Exchange Payment) (*District*);
3. One-time payment from San Diego Gas and Electric (SDG&E) pursuant to a Right of Entry License Agreement between District and SDG&E (District Clerk Document No. 63983) (\$1,653,750) (SDG&E Fee) (*District*);
4. Transient Occupancy Tax (TOT) and sales tax revenues generated by the RHCC, existing RV Park, and future RV Park within the CVB (*City*);
5. Incremental Property Tax Revenues derived from an Enhanced Infrastructure Financing District (EIFD) if formed or if the EIFD is not formed, amounts equivalent to net amounts that would have been generated for use by an EIFD within the CVB by the RHCC (*City*);
6. Revenues from Agreement No. 88-2012 between the District and City providing for Police, Fire and Emergency Medical Services (PMSA) in an annual amount equal to the reimbursement received from the District in fiscal year 2016, plus 3% per annum increase each fiscal year thereafter (*City*);
7. Possible additional occupancy-based revenues (*City*);
8. One-time sewer facility contribution to finance specific sewer improvements for the RHCC (Sewer Facility Contribution) (*City*);
9. Public Facilities Development Impact Fee (*City*);
10. Parkland Acquisition and Development Fees (PAD Fees) pursuant to a to-be negotiated Park Agreement between the City and District which grants the City a nonexclusive joint-use right or other interest in the areas designated for public park use within the CVB Project Area (Park Agreement) (*City*);
11. Transportation Development Impact Fee covering at least the CVB Project Area to fund transportation improvements (*City*);
12. Provision of the planned Bayfront Fire Station serving the CVB Project Area (*City*); and
13. Operational costs of shuttle services contemplated by the FEIR and provided within the CVB Project Area (*City*).

## **RECOMMENDATION:**

Adopt Resolution authorizing Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement between the San Diego Unified Port District and the City of Chula Vista.

## **FISCAL IMPACT:**

The Amended and Restated Financing Agreement identifies existing and future CVB ground lease revenue sources that might be used by the District to service revenue bonds, which would pay for public improvements and infrastructure required to implement the CVB. The Amended and Restated Financing Agreement sets forth the requirement for the preparation of a Plan of Finance, which would govern the use of the revenue sources and issuance of revenue bonds or other bonding mechanism, for the actual commitment of any funding source. The contemplated public improvements and infrastructure are set forth in the exhibits to the Amended and Restated Financing Agreement. It is anticipated that the revenue sources identified in the Amended and Restated Financing Agreement from both the District and City may be committed to pay the debt service for revenue bonds and other operational and maintenance costs, and that private developers, such as RIDA, may also bear a portion of the development cost for the public infrastructure and improvements.

## **COMPASS STRATEGIC GOALS:**

The Amended and Restated Financing Agreement is an important step towards implementation of the CVB and financing of the public improvements and infrastructure for the CVB, which will enhance and revitalize a presently underutilized waterfront area with land uses that include commercial development opportunities, new residential uses, public parks and recreation facilities.

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 financially sustainable Port that drives job creation and regional economic vitality.

## **DISCUSSION:**

### ***2012 Financing Agreement***

The Financing Agreement, approved by the Board and the City Council in 2012, established the framework for the financing of public infrastructure and improvements for the CVB to promote public access to and engagement with the waterfront, while enhancing the quality and protection of key habitat areas. Key components of the adopted Financing Agreement include:

#### **Anticipated Sources of Funds**

1. Ground lease revenues generated by the RHCC (*District*);
2. Other new, long-term ground leases in the CVB Project Area (*District*);
3. TOT generated within the CVB Project Area (*City*);
4. Tourism Marketing District Assessments (80%) (*City*);

5. PAD Fees (*City*);
6. Unit Contribution per the CVB Settlement Agreement (District Clerk No. 56523) (*Pacifica Contribution*);
7. Development Impact Fees (*City*); and
8. Transportation Development Impact Fees (*City*).

#### Anticipated Cooperative Efforts

1. Form a joint powers authority to facilitate the financing of public improvements and infrastructure for the RHCC;
2. Work cooperatively to develop a Plan of Finance;
3. Cooperate in good faith and use their respective best efforts to negotiate an agreement relating to the provision of a Fire Station serving the CVB Project Area (Bayfront Fire Station); and
4. Cooperate to develop a transit plan consistent with the FEIR (Transit Plan), including identification of funding sources for associated capital costs and operational costs.

#### ***Amended and Restated Financing Agreement***

Since the adoption of the Financing Agreement in 2012, both District and City staff have worked together to identify new and available revenue sources to be used to develop the CVB. The District and City also formed the Chula Vista Bayfront Facilities Financing Authority (CVBFFA). On November 15, 2016, the City Council approved the Amended and Restated Financing Agreement. The Amended and Restated Financing Agreement sets forth the following new and existing sources of revenue from the District and the City:

#### Sources of Revenue

##### *District Sources of Revenue:*

The District will contribute three new sources of revenue:

1. Ground lease payments of RHCC and designated future leases (EXISTING AND NEW);
2. Pacifica Land Exchange Payment (NEW); and
3. SDG&E Fee (NEW).

Subject to a Plan of Finance, the ground lease payments under the RHCC ground lease and other ground leases designated in the Amended and Restated Financing Agreement will be (i) pledged by the District to support debt service payments on obligations issued by the CVBFFA or other financing structure authorized by applicable law agreed to by the Parties (JEPA) and sold to the JEPA, an underwriter, the developer or others, or (ii) directly pledged to the JEPA, a trustee, developer or others to support debt service payments on revenue bonds. Ground lease revenue includes the rent amounts actually paid under the specified ground leases.

##### *City Sources of Revenue:*

The City will contribute seven new sources of revenue:

1. TOT and sales tax revenues generated by the RHCC, existing RV Park, and future RV Park within the CVB (NEW);
2. Incremental Property Tax Revenues derived from an EIFD if formed or if the EIFD is not formed, amounts equivalent to net amounts that would have been generated for use by an EIFD within the CVB by the RHCC (NEW);
3. Revenues from Agreement No. 88-2012 between the District and City providing for PMSA in

- an annual amount equal to the reimbursement received from the District in fiscal year 2016, plus 3% per annum increase each fiscal year thereafter (NEW);
4. Possible additional occupancy-based revenues (NEW);
  5. Sewer Facility Contribution (NEW);
  6. Public Facilities Development Impact Fee (EXISTING)
  7. PAD Fees pursuant to Park Agreement (EXISTING);
  8. Transportation Development Impact Fee covering at least the CVB Project Area to fund transportation improvements (EXISTING);
  9. Provision of the planned Bayfront Fire Station serving the CVB Project Area (NEW); and
  10. Operational costs of shuttle services contemplated by the FEIR and provided within the CVB Project Area (NEW).

The City agrees to consider in good faith sponsorship of the formation of an EIFD for the purpose of applying the incremental tax revenues payable to the EIFD to the payment of the cost of RHCC related public improvements and infrastructure.

In addition, under the Park Agreement the District would maintain the public parks. If the City replaces the PAD Fees with a similar mechanism in the future, the City will contribute an amount equivalent to the amounts that would have been generated by the existing PAD Fees within the CVB Project Area as rent under the Park Agreement.

#### Terms and Conditions

The Amended and Restated Financing Agreement requires the Parties to cooperate in good faith and use their respective best efforts to develop a binding Plan of Finance. The Plan of Finance would utilize the revenue sources identified in the Amended and Restated Financing Agreement to support the construction of public improvements and infrastructure related to the RHCC together with other development within the CVB Project Area if the Parties so desire. The Parties anticipate that a JEPA will issue revenue bonds secured by and payable from the sources of revenue previously described. The District and the City will have equal roles in the governance of the JEPA. The Parties agree to support the JEPA obligations as set forth in an approved Plan of Finance for the public improvements and infrastructure to be constructed (Public Entity Contribution).

The Plan of Finance for the RHCC related public improvements and infrastructure will include evidence of the availability of the various District and City revenues, and the method by which the revenues will support the payment of debt service.

The Amended and Restated Financing Agreement also establishes that a Plan of Finance will establish the manner of payment, reimbursement and funding of District and City operations and maintenance costs resulting from the development of the CVB Project Area and serving the CVB Project Area.

Unless the Parties mutually agree otherwise, this Amended and Restated Financing Agreement will terminate upon the earlier of (i) ten years from the effective date, (ii) the failure of the District or the City to approve a Plan of Finance or timely provide the necessary evidence of revenue sources and to approve the same, (iii) the date the revenue bonds are paid in full and retired, (iv) the Amended and Restated Financing Agreement is replaced by another document, or (v) a date mutually selected by the parties. In the event of termination, the Parties agree to conduct public outreach to formulate a revised land use plan.

### Conclusion

Staff recommends that the Board approve the Amended and Restated Financing Agreement which represents an unprecedented partnership between the District and City. The Amended and Restated Financing Agreement is a necessary interim step in furtherance of the CVB, and requires the District and City to cooperate in good faith and use their respective best efforts to develop one or more Plans of Finance to support the financing of the public improvements and infrastructure needed for the RHCC and such other elements of the CVB Project Area.

### **General Counsel's Comments:**

The General Counsel's Office has reviewed this agenda sheet and the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement as presented to it and approves them as to form and legality.

### **Environmental Review:**

The proposed Board action to authorize an amended and restated financing agreement between the District and the City of Chula Vista outlining future infrastructure financing of the Chula Vista Bayfront was previously analyzed under the Chula Vista Bayfront Master Plan and Port Master Plan Amendment Final Environmental Impact Report (UPD #83356-EIR-658, SCH #2005081077) which was certified by the Board on May 18, 2010 (Resolution No. 2010-78). The proposed Board action is 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.) Accordingly, the proposed Board action is merely a step in furtherance of the original project for which environmental review was performed, and no further environmental review is required.

In addition, the proposed Board action complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of public buildings public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including, but not limited to, public golf courses, and for all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any of those uses. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action does 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 Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

### **Equal Opportunity Program:**

Not applicable.

### **PREPARED BY:**

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Attachment:

A: Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement

1. Chula Vista Bayfront Master Plan Financing Agreement, dated May 8, 2012, on file in the Office of the District Clerk bearing Document No. 59001
2. Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562