



Legislation Details (With Text)

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|----------------------|----------------------|----------------------|---|-----------------------------|--|
| File #: | 2021-0248 | Version: | 1 | Name: | |
| Type: | Action Item | Status: | | Passed | |
| File created: | 6/7/2021 | In control: | | Board of Port Commissioners | |
| On agenda: | 6/15/2021 | Final action: | | 6/15/2021 | |
| Title: | CHULA VISTA BAYFRONT | | | | |

ORDINANCE AUTHORIZING:

(A) PROJECT IMPLEMENTATION AGREEMENT AMONG THE 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

(B) 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

(C) 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

RESOLUTION AUTHORIZING:

(D) BOND PURCHASE AGREEMENT BETWEEN JP MORGAN SECURITIES LLC, THE AUTHORITY, THE DISTRICT, THE SPECIAL DISTRICT, AND THE CITY FOR THE PURCHASE AND SALE OF TAXABLE AND TAX-EXEMPT BONDS ISSUED BY THE AUTHORITY

(E) AMENDMENT NO. 1 TO THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE DISTRICT AND CITY

(F) MUTUAL LEASE AND SUBLEASE ENFORCEMENT AGREEMENT BETWEEN THE DISTRICT AND CITY

(G) AMENDMENT INCREASING THE FY 2019-2023 CAPITAL IMPROVEMENT PROGRAM TO ADD THE SWEETWATER PARK PROJECT AND INITIAL FUNDING OF \$2,175,000 AND INCREASE CAPITAL LABOR BY \$700,000 TO BE FUNDED FROM RESTRICTED RESERVES FROM THE PACIFICA LAND EXCHANGE FEE

(H) CONTRIBUTE \$125,000 TO THE PUBLIC ART FUND FOR PUBLIC ART IN THE SWEETWATER PARK PROJECT PER BPC POLICY 609 TO BE FUNDED FROM THE PACIFICA LAND EXCHANGE FEE RESTRICTED FUNDS

(I) AGREEMENT NO. 56-2021RH WITH KTUA FOR SWEETWATER PARK DESIGN SERVICES FOR AN AMOUNT NOT TO EXCEED \$1,033,694.22 BUDGET FOR THIS AGREEMENT IS INCLUDED IN THE INITIAL FUNDING OF \$2,175,000 IN THE SWEETWATER PARK PROJECT IN THE FY 2019-2023 CAPITAL IMPROVEMENT PROGRAM

Sponsors:

Indexes:

Code sections:

Attachments: 1. 9. 2021-0248 Attachment A, 2. 9. 2021-0248 Attachment B, 3. 9. 2021-0248 Attachment C, 4. 9. 2021-0248 Attachment D, 5. 9. 2021-0248 Attachment E, 6. 9. 2021-0248 Attachment F, 7. 9. 2021-

0248 Attachment G, 8. 9. 2021-0248 Attachment H, 9. 9. 2021-0248 Attachment I, 10. 9. 2021-0248 Attachment J, 11. 9. 2021-0248 Attachment K, 12. 9. 2021-0248 Attachment L, 13. 9. 2021-0248 Draft ORDINANCE - Posted 06-14-21, 14. 9. 2021-0248 Draft RESOLUTION - Posted 06-14-21

| Date | Ver. | Action By | Action | Result |
|-----------|------|-----------------------------|---------|--------|
| 6/15/2021 | 1 | Board of Port Commissioners | adopted | Pass |

DATE: June 15, 2021

SUBJECT:

CHULA VISTA BAYFRONT

ORDINANCE AUTHORIZING:

- (A) PROJECT IMPLEMENTATION AGREEMENT AMONG THE 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**

- (B) 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**

- (C) 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**

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- (E) AMENDMENT NO. 1 TO THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE DISTRICT AND CITY**

- (F) MUTUAL LEASE AND SUBLEASE ENFORCEMENT AGREEMENT BETWEEN THE DISTRICT AND CITY**

- (G) AMENDMENT INCREASING THE FY 2019-2023 CAPITAL IMPROVEMENT PROGRAM TO ADD THE SWEETWATER PARK PROJECT AND INITIAL FUNDING OF \$2,175,000 AND INCREASE CAPITAL LABOR BY \$700,000 TO BE FUNDED FROM RESTRICTED RESERVES FROM THE PACIFICA LAND EXCHANGE FEE**

- (H) CONTRIBUTE \$125,000 TO THE PUBLIC ART FUND FOR PUBLIC ART IN THE SWEETWATER PARK PROJECT PER BPC POLICY 609 TO BE FUNDED FROM THE PACIFICA LAND EXCHANGE FEE RESTRICTED FUNDS**

- (I) AGREEMENT NO. 56-2021RH WITH KTUA FOR SWEETWATER PARK DESIGN**

SERVICES FOR AN AMOUNT NOT TO EXCEED \$1,033,694.22 BUDGET FOR THIS AGREEMENT IS INCLUDED IN THE INITIAL FUNDING OF \$2,175,000 IN THE SWEETWATER PARK PROJECT IN THE FY 2019-2023 CAPITAL IMPROVEMENT PROGRAM

EXECUTIVE SUMMARY:

The San Diego Unified Port District (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 CVBMP. The catalyst project also requires the construction of extensive public infrastructure to the areas surrounding Parcel H3 (Phase 1A Improvements). Other key projects have recently been implemented on the CVBMP such as the Sun Outdoors San Diego Bay RV Park and the Sweetwater Bike Path and Promenade. The actions before the Board at the June 15, 2021 Board Meeting are another significant milestone on the critical path toward delivering the Convention Center and Phase 1A Improvements and the Resort Hotel.

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 issue bonds to finance most of the Public Contribution.

The Public Contribution consists of approximately \$265MM toward the cost of the Convention Center and approximately \$85MM toward the Phase 1A Improvements for a total public investment of \$350MM. In support of the Public Contribution, the Authority will issue taxable and tax-exempt bonds (collectively, the Authority Bonds) and the District and the City, as the sole members of the Authority, will commit certain funds to pay the debt service. Additional funding will be provided through grants, a contribution of \$25MM from the County of San Diego, a sewer contribution from the City through the City's Bayfront Development Impact Fee (BFDIF) program, and funds from the District that have been collected over time through various projects on the Chula Vista Bayfront, such as a contribution from the North C.V. Waterfront L.P. (Pacifica).

As more fully discussed below, staff recommends the Board take the following actions:

- Approve the Bond Purchase Agreement among J.P. Morgan Securities LLC (JP Morgan), the Authority, the Special Tax District, the District, and the City (Bond Purchase Agreement) providing for the purchase and sale of the Authority Bonds by JP Morgan and the conditions to be satisfied by each party in connection with such purchase and sale, with conditions
- Approve the Project Implementation Agreement among the District, the City, the Authority, RIDA, and the Special Tax District (Project Implementation Agreement) related to construction of the Phase 1A Improvements and Convention Center, with conditions
- Approve the Site Lease between the District and the Authority (Site Lease) relating to the lease of the land on which the Authority will require RIDA to construct the Convention Center,

with conditions

- Approve Amendment No. 1 to the Amended and Restated Joint Exercise of Powers Agreement between the District and the City (Authority Amendment), with conditions
- Approve the Mutual Lease and Sublease Enforcement Agreement between the District and City (Enforcement Agreement), with conditions
- Approve an Amendment to the FY 2022 Budget increasing the FY 2022 CIP appropriation by \$2,875,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- Approve an Amendment to the FY 2019-2023 CIP to add the Sweetwater Park Project and Initial Funding of \$2,175,000 and increase Capital Labor by \$700,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- Contribute \$125,000 to the Public Art Fund for Public Art in the Sweetwater Park Project per BPC Policy 609 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- Approve Agreement No. 56-2021RH with KTUA for Sweetwater Park Design Services for an amount not to exceed \$1,033,694.22. Budget for this agreement is included in the initial funding of \$2,175,000 in the Sweetwater Park Project in the FY 2019-2023 Capital Improvement Program

RECOMMENDATION:

Adopt an Ordinance Authorizing:

- The Project Implementation Agreement, with conditions
- The Site Lease, with conditions
- Amendment to the FY 2022 Budget increasing the FY 2022 CIP appropriation by \$2,875,000 by transferring \$2,875,000 from restricted reserves from the Pacifica Land Exchange Fee

Adopt a Resolution Authorizing:

- The Bond Purchase Agreement, with conditions
- The Authority Amendment, with conditions
- The Enforcement Agreement, with conditions
- Amendment to the FY 2019-2023 CIP to add the Sweetwater Park Project and Initial Funding of \$2,175,000 and increase Capital Labor by \$700,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- Contribute \$125,000 to the Public Art Fund for Public Art in the Sweetwater Park Project per

BPC Policy 609 to be funded from the Pacifica Land Exchange Fee Restricted Funds

- Agreement No. 56-2021RH with KTUA for Sweetwater Park Design Services for an amount not to exceed \$1,033,694.22. Budget for this agreement is included in the initial funding of \$2,175,000 in the Sweetwater Park Project in the FY 2019-2023 Capital Improvement Program

FISCAL IMPACT:

Site Lease

Under the Site Lease, the Authority will pay the District \$1 for the term.

Sublease

Under the terms of the Sublease, RIDA will pay a fixed base rent schedule for the Convention Center for 37 years. The fixed base rent schedule for the Sublease is set forth in the chart below.

| | |
|-------------------|----------------|
| Lease Years 1-18 | \$0 |
| Lease Years 19-23 | \$2.1 Million |
| Lease Years 24-37 | \$2.45 Million |

Given the level of risk associated with undertaking such a major new investment on the relatively undeveloped CVB, the foregoing rent structure for the first 37 years enhances the Convention Center project feasibility.

In addition to the base rent paid by RIDA during the first 37 years, RIDA will pay Additional Rent based on surplus Net Operating Income (NOI) from the Convention Center.

Bond Purchase Agreement

The Bond Purchase Agreement sets forth JP Morgan’s obligation to purchase and sell the Authority Bonds. JP Morgan’s underwriting fee will be paid from the proceeds of the Authority Bonds when the Authority Bonds are issued.

Project Implementation Agreement

As described in the Project Implementation Agreement, the Authority will fund a portion of the costs incurred by RIDA for construction of the Phase 1A Improvements and the Convention Center. As discussed in Section 3.B below, the cost for construction of the Convention Center is capped at \$265MM. However, under certain circumstances, including payment of interest on late payments, arbitration and mediation fees, and if funds to be applied to pay costs of construction are misappropriated, additional costs could be incurred by the Authority, District, and City. Also, as described in Section [X} below, costs of the Phase1A Improvements are not capped.

Enforcement Agreement and Authority Amendment

As further discussed in Section 5 below, the District and the City intend to enter into the Enforcement

Agreement and Authority Amendment to designate the District as the “leasing manager” of the Authority. The Enforcement Agreement and Authority Amendment provide that prior to either party expending any costs related to the enforcement of its third party rights, the District and the City will enter into an agreement regarding how such costs will be reimbursed.

Authority Indenture

The Indenture of Trust (Authority Indenture) sets forth the terms and provisions of the Authority Bonds and establishes how the Authority Bonds will be repaid. Wilmington Trust, National Association, is the financial institution which will serve as trustee (Trustee) under the Authority Indenture. Under the Authority Indenture, the Authority is required to pay the Trustee its fees and expenses. These fees and expenses will be paid from the Administrative Expense Fund established under the Authority Indenture. To the extent the Authority does not have funds to make these payments, the District may be required to make contributions to make such payments.

Sweetwater Park Capital Improvement Program (CIP)

1. Capital Improvement Program for the Sweetwater Park Project
The initial funding of \$2,175,000 for the Sweetwater Park Project will be sourced from the Pacifica Land Exchange Fee Restricted Funds.
2. Capital Improvement Program for Capital Labor for the Sweetwater Park Project
The total funding of \$700,000 for Capital Labor for the Sweetwater Park project will be sourced from Pacifica Land Exchange Fee Restricted Funds.
3. Public Art Fund for Public Art in the Sweetwater Park Project
The total funding of \$125,000 for Public Art for the Sweetwater Park project will be sourced from the Pacifica Land Exchange Fee Restricted Funds.
4. With actions above this project is included in the FY 2019-2023 Capital Improvement Program (CIP) budget and the FY 2022 Capital Improvement Program budget. Approval of this item will authorize the expenditure of \$1,033,694.22 to fund the KTUA design agreement for Sweetwater Park as necessary to complete the park design.

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:

Following is an outline of the contents of this agenda sheet:

I. Overview

II. Financing

- A. Overview
- B. Authority Indenture
- C. Support Agreement
- D. Loan Agreement
- E. Convention Center Facility Lease
- F. Bond Purchase Agreement
- G. Validation Action

III. Construction

- A. Overview
- B. Project Implementation Agreement
 - (1) Developer's Phase 1A
 - (2) Convention Center
 - (3) Sweetwater Park
 - (4) Procurement
 - (5) Security Package
 - (6) Insurance

IV. Leasing and Operations

- A. Overview
- B. Hotel Ground Lease
- C. Convention Center Site Lease
- D. Convention Center Facility Lease
- E. Convention Center Sublease
- F. Management Agreement

V. Enforcement

- A. Overview
- B. Authority Amendment
- C. Enforcement Agreement

VI. Sweetwater Park

VII. Conclusion and Recommendation

I. Overview

The overall transaction can be broken into the following major categories: Financing, Construction, Leasing and Operations, and Enforcement.

An overview of the financing agreements and current approach to the financing can be found on the draft Conceptual Plan of Finance, attached as Attachment A.

In addition to the Support Agreement between the Authority and the District (Support Agreement), approved by the Board, with conditions, at the February 11, 2021 Board meeting, and the Hotel Ground Lease between the District and RIDA (Hotel Ground Lease), approved by the Board, with

conditions, at the May 11, 2021 Board meeting, the financing documents consist of (a) the Authority Indenture, (b) the Loan Agreement between the Authority and the Special Tax District to allow for the use of Special Tax District funds to pay the debt service on the Authority Bonds (Loan Agreement), (c) the Facility Lease between the Authority and the City to allow the City to incorporate its funds to pay debt service (Facility Lease), and (d) the Bond Purchase Agreement.

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. The procurement and construction provisions for the Resort Hotel are set forth in the Hotel Ground Lease.

The leasing and operations documents are (a) the Hotel Ground Lease providing for the construction and operations of the Resort Hotel and Parking Improvements; (b) the Management Agreement between RIDA and Marriott International, Inc. (Marriott) detailing Marriott's obligations to RIDA and their role in operating the Resort Hotel, Parking Improvements, and Convention Center (Management Agreement), consented to by the Board on May 11, 2021; (c) the Site Lease; and (d) the Convention Center Sublease between the City and RIDA providing for RIDA to sublease, operate and maintain the Convention Center (Sublease) (collectively, the Leasing Documents). The Site Lease, Facility Lease, and Sublease are collectively referred to as the Convention Center Leases.

Subject to early termination rights, the Site Lease, Facility Lease, and Sublease will be in effect for the longer of: (a) the payment of the Authority Bonds and (b) 37 years. At the end of the term, the Hotel Ground Lease will extend to include the Convention Center and the underlying land, the Indenture will be discharged and the Project Implementation Agreement will expire, and except as to the Special Tax District, the partnership between the District and City will end.

In addition to the Hotel Ground Lease and the Support Agreement which have already been approved by the Board, there are three additional agreements that the Board needs to consider for the validation package:

- Approval of the Bond Purchase Agreement, with conditions
- Approval of the Project Implementation Agreement, with conditions
- Approval of the Site Lease to the Authority, with conditions

In addition to these agreements, the Board also needs to consider the following two agreements that will provide the roadmap as to how the District, City, and the Authority exercise their various enforcement obligations under the Convention Center Leases and the Hotel Ground Lease:

- Approval of the Authority Agreement, with conditions
- Approval of the Enforcement Agreement, with conditions

Further, the Board will consider changes to the Capital Improvement Program (CIP) that if approved by the Board will allow staff to implement the Sweetwater Park Project that the District will construct if the Project Implementation Agreement is approved by the Board and the Authority Bonds are issued.

- Approval of the Sweetwater Park Capital Improvement Program (CIP) Changes

Finally, in order to help support the issuance of the Authority Bonds, the Board will also make findings

that execution of the Authority Indenture, Loan Agreement, Facility Lease, and Sublease included in the validation package are in the best interest of the District, the Authority, and the Chula Vista Bayfront.

II. **Financing**

A. Overview

The total estimated cost to construct the Convention Center and the Phase 1A Improvements is \$690,000,000. Through the issuance of the Authority Bonds, the Authority, the District, and the City intend to fund approximately \$286,500,000 of this amount to pay for a portion of the costs of construction of the Phase 1A Improvements and the Convention Center.

- Approximately \$21,500,000 of this amount will be applied to fund the construction of the Phase 1A Improvements.
- Approximately \$265,000,000 of this amount will be applied to fund the construction of the Convention Center

District and City staff have reviewed RIDA's calculations for the cost of the Phase 1A Improvements. Based on those calculations, the amount needed to fund the Phase 1A Improvements is available using a combination of proceeds from the Authority Bonds and the anticipated \$25 million contribution from the County of San Diego as memorialized in the Chula Vista Bayfront Project Funding Agreement (Clerk's Document No. 70780) (County Agreement).

District and City staff have reviewed RIDA's calculations for the cost of the Convention Center and based on those calculations the amount needed to fund the Convention Center is available through the contribution of \$265,000,000 and RIDA's financing and equity.

Pursuant to the Authority's Debt Policy, in conjunction with the issuance of debt, the Authority will consider various factors, in connection with the proposed issuance of the Authority Bonds including but not limited to, sources of payment and security for the Authority Bonds and projected revenues and other benefits from the proposed financing.

B. Authority Indenture

The Conceptual Outline of the Plan of Finance outlines the sources of revenues that the District and the City intend to use to pay the debt service for the Authority Bonds. The Authority Bonds are expected to be issued in two series, a taxable series to finance the Convention Center (Taxable Bonds), and a tax-exempt series to finance Phase 1A Improvements (Tax-Exempt Bonds). Debt service on Taxable Bonds and the Tax-Exempt Bonds are anticipated to be payable from the various funding sources contributed by the District and the City. The Authority Indenture is attached as Attachment B.

Pursuant to the Authority Indenture, the Authority Bonds will be secured by (1) the lease payments made by the City under the Facility Lease, (2) the loan payments made by the Special Tax District under the Loan Agreement, (3) the Annual Support Payments and Other Ground Lease Revenues (defined below) made by the District under the Support Agreement (collectively, the Port District Payments), and (4) other amounts on deposit in certain of the funds and accounts maintained by the

Trustee under the Authority Indenture (collectively, Revenues). To secure the interests of the owners of the Authority Bonds, the Authority will assign to the Trustee certain rights (as defined in the Authority Indenture, the Assigned Rights), which the Authority has under the Facility Lease, Loan Agreement, and Support Agreement to allow the Trustee to enforce the Authority's right to payments under such agreements.

The Authority Bonds are considered special, limited obligations of the Authority, payable from and secured as to the payment of the principal of, redemption premium, if any, and interest thereon, in accordance with their terms and the terms of the Authority Indenture, solely from the Revenues. The Authority Bonds are not a charge against the general credit of the Authority or of the members of the Authority, the District or the City. Under no circumstances shall the Authority be obligated to pay principal of, redemption premium, if any, or interest on the Authority Bonds except from the Revenues. Neither the State of California nor any public agency (other than the Authority) nor either the District or the City (each, a Member of the Authority) is obligated to pay the principal of, redemption premium, if any, or interest on the Authority Bonds. No covenant or agreement contained in any Authority Bond or the Authority Indenture shall be deemed to be a covenant or agreement of either Member of the Authority, any of the directors of the Board of Directors of the Authority (Authority Board), or by any officer, member, agent, contractor or employee of the Authority, District, or City in his or her individual capacity and neither the City or the District as members of the Authority, nor any of the directors of the Authority Board, nor any officer or employee thereof executing the Authority Bonds shall be liable personally on any Authority Bond or be subject to any personal liability or accountability by reason of the issuance of such Authority Bonds.

Pursuant to the Authority Indenture, the Trustee will establish a Construction Fund that will hold proceeds from the Authority Bonds and funds from the County Agreement that will be used to pay or reimburse RIDA for its payment of costs of construction of the Phase 1A Improvements and the Convention Center. No amounts in the Construction Fund may be withdrawn for any other purpose or transferred to any other fund established under the Authority Indenture until all costs of the construction have been paid, at which time the Trustee shall transfer all remaining amounts in the Construction Fund to the Revenue Fund for application in accordance with the provisions of the Authority Indenture, which includes provisions permitting transfers to the Authority Surplus Fund and transfers to the Authority for deposit pursuant to the Revenue Sharing Agreement. To ensure that RIDA gets paid the costs for construction they are entitled to receive under the Project Implementation Agreement, the Authority may not be able to transfer amounts to the Revenue Sharing Agreement until any true up payments owed to RIDA under the Project Implementation Agreement are paid.

The Trustee will also create an Insurance and Condemnation Fund under the Authority Indenture that will hold any Net Proceeds (as defined in the Authority Indenture) and any insurance and condemnation payments received from RIDA. Net Proceeds deposited in the Insurance and Condemnation Fund will be used to redeem Authority Bonds in the event that RIDA terminates the Sublease due to a casualty and condemnation event or will be disbursed to RIDA if RIDA is rebuilding.

As long as any Authority Bonds remain outstanding, in order to amend the Authority Indenture, consent of the owners of the majority in aggregate principal amount of the Authority Bonds may be required. Such consent may also be required to amend or modify the Convention Center Leases and/ or the Project Implementation Agreement.

Pursuant to the Authority Indenture, the Authority is also required to pay for the costs and expenses of the Trustee (including indemnification) and such costs will be covered as priority reimbursements to the Trustee prior to the payment of debt service (interest or principal).

C. Support Agreement

At the February 11, 2021 Board meeting, the Board authorized, with conditions, a Support Agreement to provide for the terms and conditions upon which the District will be obligated to contribute Port District Payments to the Authority to pay debt service on the Authority Bonds. Under the Support Agreement, Port District Payments are comprised of annual payments set forth in the chart below (Annual Support Payments) and payments made from Other Ground Lease Revenues (defined below):

| Bond Year | Annual Payments |
|------------------|-----------------|
| Bond Years 1-4 | \$0 |
| Bond Years 5-14 | \$5MM |
| Bond Years 15-19 | \$6MM |
| Bond Years 20-24 | \$3MM |
| Bond Years 25-37 | \$3.5MM |

The District is not required to make Annual Support Payments until the Convention Center is delivered to the City. This means that if the Convention Center construction is not completed until Bond Year 6, the Annual Support 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 Support Payment in Bond Year 38 for \$5MM. In addition, if the City “abates” any Lease Payments as a result of casualty, condemnation, or title defect, the District will receive the proportionate benefit with relation to its payment of Port District Payments.

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 (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.

The District has current debt comprised of revenue bonds (District Bonds) issued under an existing 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), Pursuant to the District Indenture and the Airport Note, the District is required to pay debt service on the District Bonds and

Airport Note prior to payment of the Port District Payments.

In the event the District does not pay any District Payment, 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 will assign to the Trustee the right to collect and enforce payment of the Port District Payments, so the Trustee would enforce any obligation of the District to pay the Port District Payments under the Support Agreement.

Under the Support Agreement, the Authority and the District each make customary representations regarding the ability to enter into the Support Agreement. In addition, if the District elects to issue additional bonds under the District Indenture or incur Parity Debt or Subordinate Obligations (each as defined in the District Indenture) in the future, in addition to complying with the requirements of the District Indenture, the District has also agreed to comply with certain additional requirements set forth in the Support Agreement, including providing certain certifications to the Trustee regarding debt service coverage on the District Bonds, Parity Debt, Subordinate Obligations, the Airport Note and the Port District Payments.

D. Loan Agreement

The City formed the Special Tax District in 2020. It is expected that the Special Tax District will receive a loan (Loan) from the Authority which the Special Tax District will repay from the taxes received from an annual special tax levy (Special Taxes). The Loan Agreement is attached as Attachment C. The expected amount of the Loan, which will have a fixed repayment schedule, is \$90M. Payments on the Loan will be made to the Trustee and will be applied to pay debt service on the Authority Bonds. In the event that the amount of the special taxes collected from the special tax levy exceeds the amount of the Loan payment in any year, those excess special taxes would first be used to make up any shortfall in special tax revenues needed to pay Loan payments in prior years, and if not needed, would be available for use on other qualified expenditures of the Special Tax District. If the Authority Bonds are redeemed prior to the maturity date of the Loan, the Loan will be forgiven and the District and the City will revert to using the Special Taxes pursuant to the priority of uses set forth in the Amended and Restated Joint Community Facilities Agreement Chula Vista Bayfront Project Special Tax Financing District between the City and the District (A&R JCFA) approved by the Board, with conditions, on February 11, 2021.

E. Convention Center Facility Lease

The Authority will sublease the Convention Center to the City through the Facility Lease, included as Attachment G. The Facility Lease is the City's main financing vehicle for contributing its funds toward the payment of debt service on the Authority Bonds. The City will make payments to the Authority in accordance with the terms of the Facility Lease from the following sources of revenues actually received by the City:

- Revenues received by the City from the Municipal Services Agreement No. 88-2012 between the District and the City (MSA Revenues)
- Transient Occupancy Tax Revenues from the Resort Hotel, RV Park Lease (as defined in the Facility Lease), and Convention Center (collectively, TOT Revenues)
- Sales and Use Tax revenues from the Resort Hotel and Convention Center (Sales and Use Tax Revenues)

- Ad valorem property taxes levied by or allocated to the City from the Resort Hotel and Convention Center (Tax Increment Revenues)

The City does not have an obligation to make payments to the Authority from any source other than those listed above and only to the extent such revenues are deposited in the Lease Revenues Fund (as defined in the Facility Lease) that is held separate and apart from the City's other revenues. The obligation of the City to make the Lease Payments and Pre-Completion Lease Payments is further subject to allocation due to the constitutional debt limit. In addition, if the City does not have enough in the Lease Revenues Fund to make a Lease Payment and Pre-Completion Lease Payment, then it is not responsible for paying the amount not paid when the next lease payment is due. The City's obligation to pay the Lease Payments are also contingent on (1) the Convention Center being completed and being delivered to the City, and (2) the City's ability to use the Convention Center. The City's ability to use the Convention Center is based on the fair rental value of the leasehold that is determined by a third party appraiser. If the Convention Center is not delivered to the City or the Convention Center cannot be used by the City for its intended purposes, the City will have the right to "abate" the payment of rent up to the amount of the City's loss of use. If the City abates any payments, the City's payments related to such abatement would be payable at a later time (term is extended to cover these payments), but the City's obligation to pay would remain contingent on funds being available in the Lease Revenues Fund.

In the event the City does not pay any Lease Payments when due in accordance with the provisions of the Facility Lease, 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 will assign to the Trustee the right to collect and enforce payment of the Lease Payments, so the Trustee would enforce any obligation of the City District to pay the Lease Payments under the Facility Lease.

Since the Lease Payments are a large component of the Revenues that will be used to pay the debt service on the Authority Bonds, the Authority, City, and the District anticipate that rental interruption insurance will be purchased to cover the City's Lease Payments during a casualty or condemnation event to allow the Chula Vista Bayfront project to move forward successfully while rebuilding occurs without causing a default under the Authority Bonds. It is currently expected that the cost of the rental interruption insurance and the premium is approximately \$75K (if only premium is paid) to \$245k (if premium and base property insurance policy must be procured). The District, City, and the Authority are working with RIDA to determine the most economical way of providing such insurance and will secure such insurance prior to the issuance of the Authority Bonds.

Although some provisions of the Facility Lease and the Project Implementation Agreement will overlap, the Project Implementation Agreement will deal with the construction of the Convention Center and the Facility Lease will generally address the operations period of the Convention Center (i.e., after the completion of the Convention Center). Examples of the division between operations and construction are the insurance (RIDA will provide liability and builder's risk insurance under the Project Implementation Agreement for the Convention Center and Site and will provide liability and all-risk insurance under the Facility Lease after the Convention Center is complete), liens (operations versus construction), and prevailing wage requirements (operations versus construction).

F. Bond Purchase Agreement

The Bond Purchase Agreement sets forth JP Morgan's obligation to purchase and sell the Authority

Bonds and is included as Attachment D. The primary role of JP Morgan, as an underwriter, is to purchase the Authority Bonds, for resale to investors, in an arm's length commercial transaction between JP Morgan, as underwriter and the Authority, the City, the District and the Financing District. JP Morgan's underwriting fee will be paid from the bond proceeds as a cost of issuance of the Authority Bonds when the Authority Bonds are issued.

The terms of the Bond Purchase Agreement will include conditions for the purchase and sale of the Authority Bonds and will require that each of the Authority, City, District, Financing District and RIDA provide certain information for inclusion in the offering documents to be prepared and used in the offering of the Authority Bonds, the Preliminary Official Statement and the Official Statement. In addition, the terms of the Bond Purchase Agreement will require Authority, the City, District and Financing District to undertake an obligation to make "continuing" disclosure to the financial markets through the use of the MSRB EMMA website.

G. Validation Action

Prior to issuance of Authority Bonds, the Authority, the District and the City intend to file a validation action (Validation Action). The Validation Action will help identify any challenges to the issuance of the Authority Bonds and will make the bond issuance more marketable. Nine documents listed below are expected to be included in the Validation Action (collectedly, the Validation Document Package).

1. Hotel Ground Lease
2. Site Lease
3. Facility Lease
4. Sublease
5. Project Implementation Agreement
6. Authority Indenture
7. Loan Agreement
8. Support Agreement
9. Bond Purchase Agreement

In order to file the Validation Action, each of the District, the City, and the Authority must take legislative action to approve and authorize execution of the various documents to which each is a party. If the Validation Action is successful, the parties will move forward with the issuance of the Authority Bonds. To provide for the issuance of the Authority Bonds, the parties will enter into their respective agreements, including the documents comprising the Validation Document Package. Shortly thereafter, RIDA will commence construction of the Phase 1A Improvements, the Convention Center, parking garage, and the Resort Hotel. Based on the current schedule, it is estimated that the construction could commence as early as late 2021 or early 2022. While the Validation Action is proceeding, the parties will continue to work together to prepare the Preliminary Official Statement, advance any private financing at both the mortgage and mezzanine levels, finalize other documents, such as the Revenue Sharing Agreement, the continuing disclosure undertakings and other agreements needed by the District and City related to operations and maintenance of the Chula Vista Bayfront (i.e., street easement dedications and park leases), finalize title reports for the property and prepare required opinions.

III. **Construction**

A. Overview

Construction of the Convention Center and the Phase 1A Improvements will be guided by the Project Implementation Agreement among the City, the Special Tax District, the District, the Authority and RIDA.

(1) Authority Procurement Policy and Authority Resolution 2020-002

The Project Implementation Agreement establishes the terms and conditions for the construction of the Phase 1A Improvements and Convention Center, included as Attachment E. On May 20, 2020, the 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. The Authority Procurement Policy and Authority Resolution 2020-002 are attached as Attachment L hereto. 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.

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 Authority Procurement Policy as in the best interest of the public provided that certain safeguards were put in place to protect the public interest. 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. The Authority Board also delegated to the Executive Director of the Authority the authority to implement the safeguards in support of the waiver.

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. 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.

Finally, under Authority Resolution 2020-002, 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.

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. As discussed above, the Authority will

be using proceeds from the Authority Bonds and revenues it receives from the City and District (i.e., BFDID credits, Pacifica Land Exchange Fee) to pay for the construction. In addition, the Project Implementation Agreement also sets forth the terms and conditions for RIDA to construct additional Phase 1A Improvements, Sweetwater Park and Harbor Park, and the mechanism for such reimbursement. The term of the Project Implementation Agreement is not to exceed sixty-six (66) years.

(2) Security Package

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. 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. Additionally, the City has agreed to increase reimbursements to RIDA in the amount of \$500,000 in the form of a credit through the City's Bayfront development impact fee (BFDIF) program.

(3) Insurance

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

Under the Sublease, RIDA may terminate the Sublease due to casualty and condemnation under certain circumstances, mainly involving the cost to repair (\$50MM in the case of casualty and \$70MM in the case of condemnation). To help mitigate the risk to the Authority, the City and the District (Public Entities) in the event of a termination by RIDA before completion of the Convention Center, RIDA agreed to assist the Public Entities to redeem the Authority Bonds issued to finance a portion of the costs to construct the Convention Center (2021A Bonds) as a condition to RIDA's termination. While this is a significant financial help to the Public Entities, the Public Entities would still need to find a way to redeem the remaining Authority Bonds issued to finance the Phase 1A Improvements (2021B Bonds) and cover any gap that would result after RIDA contributes insurance proceeds (in the case of a casualty) or condemnation proceeds (in the case of a condemnation) and all of the Authority's funds are expended. Based on recent calculations, staff believes that there are sufficient amounts from the funds that are being contributed by the District and City and funds from the Special Tax District to continue to pay debt service on the 2021B Bonds should this happen, but the District and City will continue to explore this possibility during validation. However, the gap creates a bigger issue and is currently approximated around \$56MM (capital interest is currently estimated at approximately \$47,465,000 and cost of issuance is currently estimated at approximately \$8,825,000).

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. This 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. If RIDA is able to procure insurance coverage to pay the Authority's soft costs identified above, the Public Entities would be responsible for paying RIDA the difference in premium between its original policy premium and the policy premium as modified if the policy cover's the Authority's soft costs.

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.

B. Project Implementation Agreement

(1) Convention Center

RIDA is required to complete the Convention Center within 48 months of commencement of construction (Completion Date). "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. 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 exercise 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). 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).

Convention Center Payments

The cost of the construction of the Convention Center is currently estimated at \$340MM. 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. RIDA is responsible for covering any costs over \$265MM, except for interest payments as further discussed below. To receive payments, RIDA must submit monthly payment requests based on work performed. The Authority will review the payment requests and authorize the Trustee to issue the corresponding payments from the Construction Fund (defined above) established under the Authority Indenture. 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.

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).

If the Arbitration Disputes are brought to arbitration, the arbitrator will have limited jurisdiction to resolve the Arbitration Disputes. For example, 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). In addition, 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.

For arbitration, the parties will use an approved arbitrator list to help avoid delays caused through the arbitrator selection process and proceed in accordance with the JAMS Expedited Construction Arbitration Rules (JAMS Rules), even for disputes greater than \$100,000. 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. 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 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.

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. To help alleviate the costs to the Authority, RIDA granted the Authority four “grace periods” each year for late payments in which interest will not accrue during the grace period.

If the Authority disputes a payment request, the Authority 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. 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 (as discussed above). The Authority’s costs of arbitration cannot be paid through the \$265MM public contribution and will need to be funded from other Authority funds. 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.

(2) Developer’s Phase 1A

The Project Implementation Agreement 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. The Project Implementation Agreement also specifies the projected costs of development and costs reporting associated with the Developer’s Phase 1A Improvements. Upon satisfactory completion, the Developer’s Phase 1A Improvements will be

accepted by the City or District based on the nature of the improvement. A general, high level list of the Developer’s Phase 1A Improvements is outlined in the chart below:

| | |
|---|---------------------------------------|
| 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 |
| 6 | Parcel H3 Utility Corridor |

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 listed below:

| | |
|---|---------------------------------------|
| 1 | Sweetwater Park |
| 2 | Harbor Park |
| 3 | Sweetwater Buffer (SP1 for Parcel S2) |

The District will construct Sweetwater Park and the Sweetwater Buffer (SP1 for Parcel S2). 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. However, 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.

The total to construct all of the Phase 1A Improvements, including work completed to date, is currently estimated at \$85MM. This amount for the remaining work on Sweetwater Park is \$13.2MM and on Harbor Park is \$19.5MM. 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 County Agreement, a grant from California Natural Resources, and other work performed by other tenants on the CVBMP. 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. 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.

(3) Sweetwater Park

Sweetwater Park is one of the improvements that is part of the Phase 1A Improvements. The description of Sweetwater Park is described more fully in Section 6 below. However, 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.

Under the Project Implementation Agreement, the District will be required to construct Sweetwater Park in 22 months. This time limit was added to provide additional certainty that Sweetwater Park will be constructed and completed at the same time as the Convention Center, Parking Garage, and Resort Hotel. 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. 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. If RIDA takes over the construction, the District will assign its design contract to RIDA. 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. Besides the ability to take over the construction and any action for specific performance to compel the District to act, RIDA would not have any other remedies against the District for the District's failure to timely complete Sweetwater Park.

(4) Harbor Park

As discussed earlier, Harbor Park will not be constructed on the same timeline as the remainder of the Phase 1A Improvements. Instead, 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. This decision was made to reduce risk to RIDA that RIDA would not be paid for excess costs related to the Phase 1A Improvements. 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.

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. 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. If an arbitrator orders RIDA to return any payments, RIDA will be liable for 10% annual interest. Likewise, the Authority will have to pay interest on any untimely payments, subject to the four free grace periods. 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.

As discussed above, a Construction Fund will be established under the Authority Indenture to pay for the cost of the Phase 1A Improvements and the Public Entities 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. In addition, 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 request. 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 Board or City Council approves an affirmative action transferring these

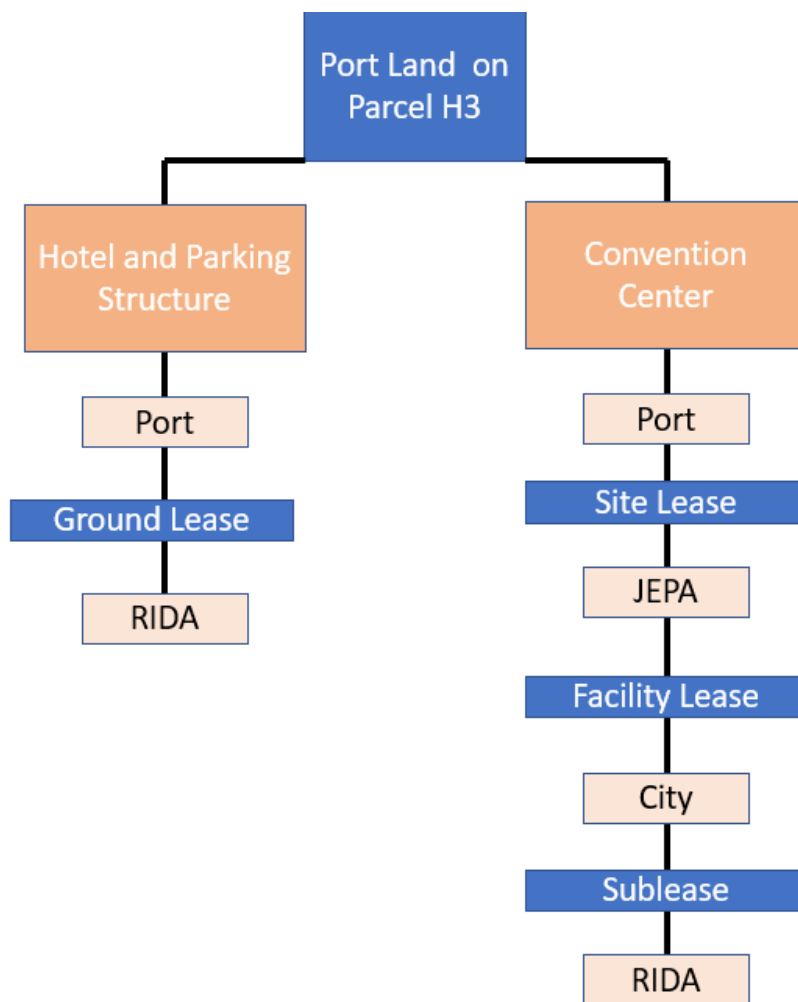
funds, the Public Entities will use commercially reasonable efforts to pursue recovery of these amounts and seek crime insurance coverage. To the extent, the District cannot recover the misappropriated funds, through the employee or insurance, the District would be responsible for paying the remaining amount.

IV. Leasing and Operations

A. Overview

The leasing documents are comprised of Site Lease, Facility Lease, Sublease, and the Hotel Ground Lease.

The chart below describes the flow of the leasing documents between the parties:



B. Hotel Ground Lease

As discussed above, the Board approved the Hotel Ground Lease, with conditions, on May 11, 2021. The Hotel Ground Lease is for a term of 66 years. While the Sublease is in effect, the Hotel Ground Lease will only cover the Resort Hotel and the Parking Improvements. Once the term of the

Sublease expires, the Convention Center will become part of the Hotel Ground Lease for the remaining term. If RIDA terminates the Sublease early, the Convention Center will not become part of the Hotel Ground Lease.

C. Convention Center Site Lease

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, included as Attachment F. As consideration for this Site Lease, the Authority will deliver the Facility Lease, the Indenture, the Loan Agreement, and the Project Implementation Agreement. The Site Lease requires that the Authority construct the Convention Center. 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. Once complete, the Convention Center will be owned by the Authority. When the Site Lease expires, the District will own the Convention Center. The term of the Site Lease is 37 years, unless terminated earlier, or extended, in accordance with the terms of the Site Lease. The term of the Site Lease cannot be longer than 66 years.

D. Convention Center Facility Lease

The Authority is subleasing the Convention Center and Convention Center land to the City pursuant to the Facility Lease. The Facility Lease is the financing vehicle that the City will use to contribute their Lease Payments and Pre-Completion Payments to the payment of debt service. As described above, the City will commit the following revenues, actually received, to pay the debt service on the Authority Bonds: (i) MSA Revenues; (ii) Sales and Use Tax Revenues; (iii) Tax Increment Revenues; and (iv) TOT Revenues. The term of the Facility Lease is concurrent with the Site Lease. Additional details regarding the Facility Lease are provided above in Discussion, Section 2.E.

E. Convention Center Sublease

The City will be subleasing to RIDA the Convention Center and Convention Center land in the form of the Sublease, included as Attachment H. RIDA will construct the Convention Center as the Authority's contractor under the Project Implementation Agreement.

The Sublease mirrors the provisions of the Hotel Ground Lease. Also, similar to the Hotel Ground Lease, where the City received certain third party beneficiary rights to enforce their interest in the success of the Convention Center, the District is receiving certain third party beneficiary rights to enforce its interest in the success of the Resort Hotel and protect its interests as landowner of the underlying land. Examples of these third-party beneficiary rights are: (1) end of term obligations (i.e., surrender provisions), (2) inspection rights, (3) insurance, (4) waivers and releases, and (5) indemnities.

F. Management Agreement

Under the Hotel Ground Lease and Sublease, RIDA is required to have a hotel operator with the "Gaylord Hotels" brand for at least three years after the opening of the Convention Center and Resort Hotel. Marriott International, Inc. is the owner of the Gaylord Hotels brand and last month, the Board considered a management agreement (Hotel Management Agreement) between RIDA and Marriott that covers the operation of the Resort Hotel, Parking Improvements, and the Convention Center. Under the Hotel Management Agreement, Marriott will supervise, direct and control the management

and operation of the Resort Hotel, parking garage, and Convention Center for an initial term of 36 full fiscal years following the opening of the Resort Hotel and Convention Center. The District consented to the Management Agreement on May 11, 2021. There are an additional two (2) successive optional renewal terms of fifteen (15) years each for a total potential term of 66 years. If there is a conflict between the Hotel Management Agreement and the Sublease, the terms of the Sublease control. Similarly, if there is a conflict between the Hotel Management Agreement and the Hotel Ground Lease, the terms of the Hotel Ground Lease control.

V. Enforcement

A. Overview

Originally, the Hotel Ground Lease covered both the Convention Center and Resort Hotel. As discussed previously, this structure is reflective of the District's customary structure for hotel developments on tidelands. However, as the business deal with RIDA and the City evolved, it became apparent that another structure was necessary to allow for the influx of funds needed to pay for the debt service (i.e., Facility Lease) and to recognize the contributions and roles of each of the parties in the overall Chula Vista Bayfront project. As a result, the parties ended up with the leasing structure outlined in Discussion, IV. A above and a fairly robust third party beneficiary structure where the District is getting direct third party beneficiary rights as to most interests that a typical landowner would have, the City is getting direct third party beneficiary rights as to those interests it shares in common with the District to make the Chula Vista Bayfront project successful during the time of the partnership between the District and City, the Authority is getting direct third party beneficiary rights as the owner of the Convention Center, and RIDA is getting direct third party beneficiary rights where necessary to ensure its participation in any changes to the business deal between the District, City, and Authority to help protect RIDA's interests and those of RIDA's lenders.

Some of the District's interests are memorialized within the Sublease as Direct Port Third Party Beneficiary Interest Provisions. Additionally, the District has a substantial interest in the administration and enforcement of certain of the provisions of the Sublease. These substantial interests are memorialized as JEPA Enforced Port Interest Provisions. Regarding JEPA Enforced Port Interest Provisions, the District and City agree that the District's interests in these provisions will be enforced by the JEPA as an express Third-Party Beneficiary under the Sublease. Under the Sublease, the Authority is designated as an express third-party beneficiary of certain rights that the District would enforce for the Authority as part of its administration of the operations and maintenance of the Facility Lease and Sublease. The District will be the designated entity responsible for enforcing these provisions for the Authority.

C. Enforcement Agreement

The purpose of the Enforcement Agreement (Attachment J) is to memorialize the agreement between the District and the City to provide specific rights and procedures between the parties regarding the administration and enforcement of the City's interest in the Hotel Ground Lease and the District's interest in the Sublease. The Enforcement Agreement outlines a process in the event RIDA fails to comply or there is a breach with the City's interest in the Hotel Ground Lease or District's direct third-party beneficiary interest in the Sublease. The agreement outlines a process for notification of any breach, consultation between the parties in the case of any breach, how to take an enforcement action against RIDA on any breach, how the parties enforce any action taken, and how to settle any enforcement actions.

D. Authority Amendment

The Board authorized the formation of the Authority on May 6, 2014 through the Joint Exercise of Powers Agreement filed in the Office of the District Clerk as Document No. 61905 (Original Authority Agreement). The District and the City are the sole members of the Authority. As the deal structure evolved, it became necessary to amend and restate the Original Authority Agreement to reflect developments that were relevant to the exercise of powers by the Authority. The Original Authority Agreement was amended and restated effective as of July 25, 2019 filed in the Office of the District Clerk as Document No. 70245 (Amended and Restated Authority Agreement). Under the proposed Authority Amendment (Attachment I), the District will be designated the "leasing manager" of the Authority to perform the administration of the Facility Lease and the Authority's third party beneficiary rights under the Sublease subject to certain rights of the City.

The District has a substantial interest in the administration and enforcement of certain of the provisions of the Sublease. Since the Authority is the owner of the Convention Center, it was not possible to insert the District as the direct enforcer of many of the operations and administrative type rights that the District would normally have as a landlord. As such, the City and the District agreed that the District would be placed into the role of the "leasing manager" under the Authority governing documents (similar to the role of a managing member with regard to day to day operations in a limited liability company context) with the ability to enforce these operations and administrative type issues on the Authority's behalf, except as to major decisions with respect to which the District would need to consult with the City before acting. Further, to the extent the Site Lease, Facility Lease, and the Sublease will not cover all of the District's typical rights either as a direct third party beneficiary or as the enforcer of the Authority's third party beneficiary rights, the District will receive direct contractual rights against the other parties through the Project Implementation Agreement. Prior to the District exercising its rights under the Authority Amendment, the District and City need to meet and confer regarding the costs to the District and City will be reimbursed and allocated.

VI. **Sweetwater Park**

Sweetwater Park is identified as part of the Chula Vista Bayfront Phase 1A Improvements and is required to be completed as a condition prior to the certificate of occupancy issued for the Resort Hotel and Convention Center. To date, initial planning and preliminary design of Sweetwater Park have been performed under the District's Site Preparation at Chula Vista Bayfront CIP project based on previous Board authorizations. Beginning in August 2018, staff at the District and City collaborated with design consultant KTU+A to conduct public outreach and prepare a preliminary design. The design then progressed to the 100% complete schematic level, and in April 2020, the Board authorized a Coastal Development Permit (CDP) for Sweetwater Park, District Clerk Document No 71565.

Recently, negotiations with RIDA have led to the District agreeing to construct the Sweetwater Park project within 22 months of the issuance of the Authority Bonds. RIDA has the option to step in and take over the construction of Sweetwater Park before the District bids the construction contract, but since that won't happen for another 9 months, the District needs to move forward with the expectation that it must complete Sweetwater Park within 22 months of the date when RIDA commences construction on the Convention Center, the Developer's Phase 1A Improvements, and the Resort Hotel. In addition, under the Project Implementation Agreement, the District has agreed to assign to RIDA its design contract in the event RIDA exercises the option to construct Sweetwater

Park.

The Chula Vista Bayfront Financing Agreement District Clerk Document No. 59001 required that North C.V. Waterfront L.P. (Pacifica) make a one-time payment to the Port through the Exchange Agreement and Escrow Instructions (District Clerk Document No. 56067), equal to \$3,000,000 (Pacifica Land Exchange Fee). The District and the City have contemplated these funds would be used to advance the Sweetwater Park design with any remaining funds to be used toward the cost of construction of the park. The request to establish the Sweetwater Park CIP would utilize the \$3.0M.

To meet this deadline and obligation to assign the contract, staff recommends proceeding on design of Sweetwater Park by establishing the Sweetwater Park project as an individual CIP project for clear and concise reporting, and providing an initial funding of \$3,000,000 as necessary to complete the following: 1) Provide initial funding of \$2,175,000 to the CIP budget for design, pre-construction and portions construction of the Sweetwater Park CIP project; 2) Provide \$700,000 to increase the Capital Improvement Program budget for Capital Labor related to the Sweetwater Park project; 3) Fund \$125,000 to the Public Art Program for the public art for Sweetwater Park.

To date, planning and preliminary design efforts have been funded and authorized under the separate Site Preparation at Chula Vista Bayfront CIP project. BPC Policy No. 120 - Capital Improvement Program, Section 9 "Out of Cycle Requests" indicates the Board may consider additional funding needed to complete approved CIP projects in progress. The current request will advance the Sweetwater Park to complete the design and plan for the construction. The Sweetwater Park project will be established as a new project in the CIP and provide initial funding of \$3,000,000. Establishing this new project will provide reporting specific to Sweetwater Park and progress towards meeting the deadline identified in the Project Implementation Agreement. The initial \$3,000,000 funding from the Pacifica Land Exchange Fee will provide partial funding in the amount of \$2,175,000 for the project design and construction costs, full funding in the amount of \$700,000 for District staff (Capital Labor) to administer Sweetwater Park and full funding in the amount of \$125,000 for the Public Art 1% contribution for the Sweetwater Park project.

Currently, the anticipated total budget for the Sweetwater Park project is \$12,500,000, comprised of \$12,375,000 for CIP project design and construction costs and \$125,000 for Public Art as determined by BPC Policy 609, plus \$700,000 for Capital Labor related to the Sweetwater Park project. Additional funding in the future will be required to complete the construction of Sweetwater Park. Completion of design and preparation of a construction cost estimate will take place in Spring 2022. At that time staff plans to request an additional \$10,200,000 to fund the overall anticipated project budget amount of \$12,375,000 necessary to complete construction of Sweetwater Park. The additional \$10,200,000 amount will be reimbursed from the County funds under the County Agreement.

Sweetwater Park Design Agreement with KTU+A

In July 2016, the Board authorized selection of KTU+A for Chula Vista Bayfront park design services including the design of Sweetwater Park as part of the Site Preparation at Chula Vista Bayfront CIP. That authorization also provided the initial funding to initiate planning of the park. In July 2018, the Board authorized additional funding to proceed on outreach and schematic design of Sweetwater Park. That effort led to issuance of the Coastal Development Permit, Clerk Document No. 71565 (CDP) for Sweetwater Park which the Board authorized in April 2020.

With the establishment of the Sweetwater Park project, staff recommends a standalone design agreement with KTU+A for the completion of the project design. This agreement will provide the services for the balance of the design, contract documents, and construction phase support for the park project.

In the event RIDA exercises its option to construct Sweetwater Park, the design agreement allows RIDA, upon providing notice to District and KTU&A, to take an assignment of all of District's rights and obligations under the agreement.

The project objective for Sweetwater Park is to develop a new, resource based passive recreation park that will serve as a regional, coastal destination. The park is designed to comply with the CVBMP and associated development policies including the Sweetwater Park CDP. Park improvements include parking for 216 vehicles, a new park restroom, plazas and informal small group gathering areas, a nature-themed play area, an adventure dunes play area, a large multi-use meadow with perimeter walkway and picnic areas, a shade pavilion, multiple trail and path routes for walking, jogging, and bicycling, and elevated scenic overlook areas that will provide sweeping views of San Diego Bay. The park will be designed in compliance with ADA accessibility standards. The park will include District provided Public Art integrated into the park improvements.

The design contract with KTU+A (Attachment K) would be for a term of approximately 3 years in the amount of \$1,033,694.22 and would require that KTU+A complete the design, produce plans specifications (contract documents) and provide construction support services for Sweetwater Park that comply with the CVBMP, associated development policies, and the Sweetwater Park CDP.

VII. Conclusion and Recommendation

If the Board approves the Project Implementation Agreement, Site Lease, Bond Purchase Agreement, Enforcement Agreement, and Authority Amendment on June 15, 2021, the City Council will consider the financing, construction, leasing and operations and enforcement documents to which the City and the Special Tax District is a party on the evening of June 15 and the Authority Board will consider the financing, construction, leasing and operations and enforcement documents to which the Authority is party on June 28, 2021.

The documents to be approved by the City Council include:

- Bond Purchase Agreement;
- Loan Agreement;
- Project Implementation Agreement;
- Facility Lease;
- Sublease;
- Authority Amendment; and
- Enforcement Agreement.

The documents to be approved by the Authority Board include:

- Authority Indenture;
- Loan Agreement;
- Bond Purchase Agreement;
- Project Implementation Agreement;
- Site Lease;

- Facility Lease; and
- Authority Amendment.

If the Validation Documents Package is approved by the District Board, the City Council and the Authority on this schedule, the District, the City, and the Authority will be in a position to file the Validation Action in July 2021. If the Validation Action is successful, the parties will then move forward with issuing the Authority Bonds, enter into their respective financing, construction, leasing and operations, and enforcement agreements at the time of issuance of the Authority Bonds, and RIDA would commence construction of the Phase 1A Improvements, the Convention Center, parking garage, and the Resort Hotel shortly thereafter. Based on the current schedule, it is estimated that the construction could commence as early as the end of 2021. In addition, if the Board approves the various changes to the budget related to Sweetwater Park, the District will be in an optimal position to commence construction of the Sweetwater Park in parallel with RIDA's commencement of construction on the Phase 1A Improvements, and will put the District in the best position to sufficiently complete Sweetwater Park within 22 months.

As more fully discussed above, staff recommends the Board:

- (1) Approve the Bond Purchase Agreement, with conditions
- (2) Approve the Project Implementation Agreement, with conditions
- (3) Approve the Site Lease, with conditions
- (4) Approve the Authority Amendment, with conditions
- (5) Approve the Enforcement Agreement, with conditions
- (6) Approve an Amendment to the FY 2022 Budget increasing the FY 2022 CIP appropriation by \$2,875,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- (7) Approve an Amendment to the FY 2019-2023 CIP to add the Sweetwater Park Project and Initial Funding of \$2,175,000 and increase Capital Labor by \$700,000 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- (8) Contribute \$125,000 to the Public Art Fund for Public Art in the Sweetwater Park Project per BPC Policy 609 to be funded from the Pacifica Land Exchange Fee Restricted Funds
- (9) Approve Agreement No. 56-2021RH with KTUA for Sweetwater Park Design Services for an amount not to exceed \$1,033,694.22. Budget for this agreement is included in the initial funding of \$2,175,000 in the Sweetwater Park Project in the FY 2019-2023 Capital Improvement Program

General Counsel's Comments:

The Office of the General Counsel has approved this agenda sheet as presented to it and Attachments D-F and I-K as presented to it and approves each as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, an ordinance authorizing a project implementation agreement, site lease, and amendment to FY 2022 budget, and a resolution authorizing a bond purchase agreement, joint exercise of powers agreement amendment, mutual lease and sublease enforcement agreement, amendment to FY 2019-2023 CIP, contribute to the public art fund, and agreement for Sweetwater Park design services, was previously analyzed 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 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 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, 35, and 87 of the Port Act which allow for the Board to pass resolutions, to do all acts necessary and convenient for the exercise of its powers, and for all visitor-serving commercial and industrial uses and purposes, and the construction, reconstruction, repair, and maintenance of commercial and industrial buildings, plants, and facilities. 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 were covered in the Coastal Development Permit (CDP) for the Resort Hotel and Convention Center, Parking, Infrastructure and Phase 1A Improvements (CDP-2019-03; Clerk Document No. 70152) approved by the Board on June 18, 2019 (Resolution No. 2019-080). The proposed Board actions are consistent with the project in the CDP. No additional action under the California Coastal Act is required at this time.

Diversity, Equity, and Inclusion Program:

It is a goal to have RIDA provide an SBE plan prior to advertising for construction.

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Attachment(s):

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| Attachment A | Conceptual Plan of Finance |
| Attachment B | Authority Indenture |
| Attachment C | CFD Loan Agreement |
| Attachment D | Bond Purchase Agreement |
| Attachment E | Project Implementation Agreement |
| Attachment F | Form of Convention Center Site Lease |
| Attachment G | Form of Convention Center Facility Lease |
| Attachment H | Form of Convention Center Sublease |
| Attachment I | JEPA Amendment No. 1 |
| Attachment J | Enforcement Agreement |
| Attachment K | KTUA Agreement |
| Attachment L | Authority Procurement Policy and Authority Resolution |