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DATE: November 5, 2019

SUBJECT:

RESOLUTION AUTHORIZING AMENDED AND RESTATED REVENUE SHARING AGREEMENT WITH THE CITY OF CHULA VISTA, WITH CONDITIONS

EXECUTIVE SUMMARY:

The Chula Vista Bayfront Master Plan[1] (CVBMP) is the result of a decade-long joint planning effort by the San Diego Unified Port District (District), the City of Chula Vista (City), and a broad coalition of stakeholders. The CVBMP was collaboratively planned through an extensive public participation program that included over 100 community meetings and resulted in a comprehensive Environmental Impact Report (EIR) and Port Master Plan Amendment, which was approved by the Board of Port Commissioners (Board) in May 2010 and certified by the California Coastal Commission (CCC) in August 2012. The Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement[2] (Financing Agreement) for the CVBMP was approved by the Board in 2017 and the Disposition and Development Agreement was entered into among RIDA Chula Vista, LLC (RIDA), the District, and the City on May 7, 2018 (DDA)[3], each setting forth the framework and mechanism to design, finance, and construct the resort hotel and convention center (RHCC) and surrounding public infrastructure (Phase 1A Infrastructure). The RHCC and the Phase 1A Infrastructure are collectively referred to herein, as the “Project”.

The RHCC, located on approximately 36 acres of land within the CVBMP (Site), is the catalyst project for the CVBMP with the goal to not only provide a world-class hotel and convention center to the region, but also provide a vehicle to build future parks, restore sensitive habitat, and construct public infrastructure. The DDA sets forth the necessary steps for the District, the City, and RIDA to issue financing for the Project and commence construction of the Project, ultimately leading to a ground lease and related subleases for development and operations of a world-class hotel and convention center. In the process of determining the financial feasibility of the Project, it was determined that in order for the RHCC to be developed a public financial subsidy would be needed, herein described as the “Public Contribution”. The Public Contribution is anticipated to be delivered to the Project through the issuance of future bond offerings. To pay for the debt service for the Public Contribution, the District and the City must commit sources of revenues, as identified in the Conceptual Outline of the Plan of Finance (Conceptual Plan of Finance) attached to the DDA that will be used to repay the Public Contribution. It is anticipated that the proposed bond financing structure will result in excess cash flow to the District and the City after debt service payments are made for the Public Contribution. The District and the City entered into a Revenue Sharing Agreement on April 24, 2018 (Revenue Sharing Agreement) describing the priority in which any excess cash flow after the debt service payments are made on the Public Contribution (Excess Funds) would be disbursed to the District and the City (Attachment A).

Since the approval of the Revenue Sharing Agreement, the District and the City have continued to refine the priority of disbursement to the District and the City of the Excess Funds. On October 8, 2019, the District and City authorized a funding agreement (Funding Agreement) (Attachment B) between the District, the City, the County of San Diego (County) and the Chula Vista Bayfront Facilities Financing Authority (JEPA) where the County agreed to contribute $25 Million toward the Phase 1A Infrastructure (County Contribution). The County Contribution would be repaid to the County through a percentage of the property tax revenue generated from the CVBMP (Property Tax Increment) that is actually received by the County, as may be supplemented by payment from the District to the County to make the County whole if such projected tax revenue is not achieved for a given year (Shortfall Payment) or from the City of contested funds currently subject to litigation with the County (Disputed Funds), as described in more detail below. The Funding Agreement required that the District and the City amend the Revenue Sharing Agreement to provide for priority reimbursement to the District and the City for any payment or contribution made by either party to the County under the Funding Agreement. On October 9, 2019, the Board of Directors of the JEPA (JEPA Board) provided direction to staff to amend the Revenue Sharing Agreement to guarantee repayment to the District for any Shortfall Payments made by the District to the County under the Funding Agreement. The contemplated form of the Amended and Restated Revenue Sharing Agreement would include a revised priority of disbursements to the District and City that requires that any funds that are contributed or paid to the County through the Funding Agreement are reimbursed pari passu to each entity as the second priority under the disbursement list. The District would remain in the first priority spot for its support payments toward the Project.

Both District and City staff have included additional clean-up items in the A&R Revenue Sharing Agreement, as well, that reflect the evolution of the Project. Staff recommends that the Board authorize the Executive Director, or her designee, to enter into the A&R Revenue Sharing Agreement substantially in the form presented to the Board at the November 5, 2019 Board meeting.

RECOMMENDATION:

Adopt resolution authorizing the A&R Revenue Sharing Agreement, with conditions

FISCAL IMPACT:

The proposed Board action to authorize the A&R Revenue Sharing Agreement between the District and the City would continue to commit the District to contribute certain existing CVBMP revenues generated and actually received by the District from and after July 1, 2018 to the Contribution Date (defined below) (Contributed Funds) thirty (30) days before the proposed close of escrow under the DDA (Contribution Date). The Contributed Funds would be applied according to the Plan of Finance. Fiscal Year (FY) 2019 amount to be funded by cumulative unrestricted resources in FY 2020.

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:

In the process of determining the financial feasibility of the Project, it was determined that a public financial subsidy would be needed to make the Project successful, herein described as the Public Contribution. The following is a breakdown of the Public Contribution:

1. Phase 1A Infrastructure:	$63 Million
2. Convention Center:	$240 Million
3. District Owned Parking:	$40 Million

The District and the City entered into the Financing Agreement, setting forth the revenue sources and financing alternatives necessary to financially implement the development of the Project. The Board will be asked to consider the application of various District revenue sources to the Project through a future plan of finance which will detail the District's proposed contribution to the Project for the economic feasibility of the Project. The District and City will work collaboratively to prepare the Plan of Finance that if approved by the Board, would ultimately result in the issuance of debt at the close of escrow of the DDA and will be used to fund the Public Contribution component of the Project.

Under the current Revenue Sharing Agreement, it was contemplated that the District would contribute the following forms of revenues to the Project consistent with the Financing Agreement and Conceptual Plan of Finance: (1) existing and designated future lease revenues from the CVBMP (i.e., current recreational vehicle (RV) park lease, new RV park lease, various marina leases); and (2) ground rent from the RHCC. The proposed ground rent structure for the RHCC ground lease is discussed below. Additionally, it is contemplated that the District would contribute the previously received SDG&E contribution of $1.7 million and the Pacifica contribution of $3.0 million toward the Phase 1A Infrastructure cost. The District will also be responsible for an annual contribution (Annual Contribution) to be applied toward the payment of bond debt service to support the Public Contribution in an amount not to exceed the following schedule of amounts during Lease Years 5 through 38:

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

The City would contribute toward the construction of the required sewer and fire services and contribute to the Project through transient occupancy tax (TOT) for the existing and future RV Park, sales tax, property taxes, and revenues received from the District under the Municipal Services Agreement (MSA).

The proposed bond financing structure is projected to result in excess cash flow after the payment of debt service toward the Public Contribution financing, which is estimated to occur in lease year 19. The current excess cash flow distribution in the Revenue Sharing Agreement (Attachment A) is as follows:

Priority	Disbursement Description
1	To District, Reimbursement of its Annual Contribution
2	To City, Reimbursement of 73.6% of Actual Bayfront Fire Services Costs
3	To District and City, Reimbursement of General Fund Contributions (Through Close of Escrow)
4	To District and City, Reimbursement of General Fund Contributions (After Close of Escrow)
5	To JPA, One Year Additional Debt Service Reserves or Reserve Fund Insurance Policy
6	To District and City, Split Remaining Revenues 50/50

Since the approval of the Revenue Sharing Agreement, both District and City staff have continued to refine the list of priority disbursements. On October 8, 2019, the District and City authorized a Funding Agreement (Attachment B) between the District, the City, the County, and JEPA where the County agreed to contribute $25 Million toward the Phase 1A Infrastructure. The County Contribution would be repaid to the County through a percentage of the Property Tax Increment that is actually received by the County, as may be supplemented by a Shortfall Payment or Disputed Funds. The Funding Agreement required the District and the City to amend the Revenue Sharing Agreement to provide for priority reimbursement to the District and the City for any payment or contribution made by either party to the County under the Funding Agreement. On October 9, 2019, the JEPA Board provided direction to staff to amend the Revenue Sharing Agreement to guarantee repayment to the District for any Shortfall Payments made by the District to the County under the Funding Agreement.

In addition, the City plans to form a special tax district where revenues equal to 5% of room revenue on the RHCC and the replacement RV park (Special Tax Revenues) are collected to fund certain improvements and operations and maintenance (O&M) within the CVBMP (Bayfront Project Special Tax Financing District). As currently proposed, in the A&R Revenue Sharing Agreement, the District could elect to use the Special Tax Revenues in an amount not to exceed $40 Million to fund the construction of the 1,600-space parking structure primarily serving parcel H-3 (Parking Garage).

The following outlines the major changes that are being considered to the Revenue Sharing Agreement, broken down in three categories: (1) Priority Reimbursement; (2) Priority O&M; and (3) General Clean Up:

<u>Priority Reimbursement (“Waterfall”)</u>

The A&R Revenue Sharing Agreement would include a new priority distribution and is described in detail below:

(1) The District’s Annual Contribution is described above and is the first position to be reimbursed from any surplus revenues after debt service is paid.

(2) The second priority is to reimburse the City and the District pari passu for any amounts either party actually paid or contributed to the County pursuant to the Funding Agreement. *(NEW)*

(3) The third priority is the City’s contribution toward fire services. Fire services will be required for the RHCC and CVBMP as a whole with the construction of the Project. Any actual fire services contribution toward the Project by the City will be reimbursed with excess revenues after the District is reimbursed for their Annual Contribution.

(4) The fourth priority is reimbursement of both the District and City’s general fund contributions toward the Project (Before Close of Escrow), which includes the District’s existing CVBMP lease revenues and the City’s existing transient occupancy tax (TOT) and municipal services agreement revenues.

(5) The fifth priority is to reimburse the City an amount equivalent to the actual amount paid by the City for operations and maintenance (O&M) costs from the City general fund revenues that would have been paid from Special Tax Revenues had those revenues not been used to fund the construction of some or all of the Parking Garage.

(6) The sixth priority is reimbursement of both the District and City’s general fund contributions toward the Project (After Close of Escrow), which includes the District’s existing CVBMP lease revenues, RHCC lease revenues, and the City’s TOT and municipal services agreement revenues.

(7) The seventh priority, establishing one year of additional debt reserves, is not anticipated to be required by the bondholders (as these are above and beyond those ordinarily required by the proposed debt structure, as described in more detail below); however, the District and the City believe the additional reserves would be prudent and may be covered through an insurance policy.

(8) The eighth priority would be any remaining revenues to be split evenly between the District and the City equally.

O&M

In the Revenue Sharing Agreement, the District is to generally pay for O&M for the parks and the City is to generally cover O&M for the streets and sanitary sewers. The District and the City would split the O&M costs pursuant to the Chula Vista Natural Resources Management Plan (NRMP)[4] that are not required to be paid by a third party. The proposed A&R Revenue Sharing Agreement would cap the contribution toward the NRMP O&M costs to $300,000 a year for each year of the term of the A&R Revenue Sharing Agreement provided this cap would not limit the obligations of the District or the City pursuant to any other agreements to which either is a party.

Additionally, to the extent Special Tax Revenues are available, the Bayfront Project Special Tax Financing District would reimburse the District and the City for O&M costs actually paid, subject to a future implementation agreement between the District and the City. The District's reimbursement would also be reduced by any Parkland Acquisition and Development Fees that the City pays to the District pursuant to any park use agreement that would be entered into between the District and the City as contemplated in the Financing Agreement.

General Clean Up

Additional clean-up items included in the A&R Revenue Sharing Agreement are summarized as follows:

- Term: Changed to the later of (a) 40 Years from the Close of Escrow under the DDA or (b) the expiration of the term of the bonds regardless of whether they are paid prior to the maturity date;

- New Ground Lease Revenues: Include District revenues from the temporary use and occupancy permit (TOUP) for the current RV park on Parcel H3;

- Additional Rent Revenues: According to the Ground Lease between the District and RIDA approved in form on July 17, 2018, RIDA is required to pay to the District 20% of the amount by which the net operating income exceeds 11% of the actual capital investment. The District would contribute all of the Additional Rent received from RIDA to the JEPA as a contribution toward the priority distribution.

- Enhanced Infrastructure Financing District (EIFD) Formation: Removed. This funding source has been replaced by the County Contribution.

- New City Revenues: Revenues levied from the Bayfront Project Special Tax Financing District equal to 5% room revenue tax on the RHCC and replacement RV park

As of the date of publication, District staff and City staff are continuing to negotiate the terms of the A&R Revenue Sharing Agreement and a final version of the A&R Revenue Sharing Agreement will be presented to the Board at the November 5, 2019 Board meeting.

Staff recommends that the Board authorize the Executive Director, or her designee, to enter into the A&R Revenue Sharing Agreement, in substantially the form presented to the Board at the November 5, 2019 Board meeting.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet as presented to it and approves it as to form and legality.

Environmental Review:

The proposed Board action, including without limitation, a resolution authorizing an amended and restated revenue sharing agreement for Chula Vista Bayfront, was adequately covered in the Final Environmental Impact Report (FEIR) for the Chula Vista Bayfront Master Plan (CVBMP) (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), and the Second Addendum to the FEIR, which was adopted by the Board on April 10, 2018 (Resolution No. 2018-0069). 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.) Additionally, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the FEIR and Addendums, the District finds and recommends that the proposed Board action does 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 Addendum due to the involvement of new significant environmental effects or an increase in severity of previously identified significant effects; and 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 Addendum, (b) identifies significant impacts would not be more severe than those analyzed in the FEIR and Addendum, (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 (d) no changes to mitigation measures or alternatives have been identified or are required. Pursuant to CEQA Guidelines §15162(b), the District finds and recommends that no further analysis or environmental documentation is necessary. Accordingly, the proposed Board action is 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 action complies with Sections 21 and 35 of the Port Act which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers.

The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed actions are consistent with the Public Trust Doctrine.

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

Equal Opportunity Program:

Not applicable.

PREPARED BY:

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Attachment(s):
Attachment A: Revenue Sharing Agreement
Attachment B: Chula Vista Bayfront Project Funding Agreement by and among the County of San Diego, City of Chula Vista, San Diego Unified Port District and the Chula Vista Bayfront Facilities Financing Authority

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 Chula Vista Bayfront Master Plan Financing Agreement, dated May 8, 2012, on file in the Office of the District Clerk bearing Document No. 59001, as amended
3 Disposition and Development Agreement, dated May 7, 2018, on file in the Office of the District Clerk bearing Document No. 68398
4 SDUPD Clerk’s Office Document No. 65065 filed June 6, 2016, Natural Resources Management Plan for the Chula Vista Bayfront