

AMENDED AND RESTATED REVENUE SHARING AGREEMENT By and Between **CITY OF CHULA VISTA AND SAN DIEGO UNIFIED PORT DISTRICT** (Chula Vista Bayfront Resort Hotel and Convention Center and Related Public Infrastructure)

DRAFT

This Amended and Restated Revenue Sharing Agreement (“Agreement”), dated _____, 2019, is entered into by and between the City of Chula Vista, a municipal corporation (“City”) and the San Diego Unified Port District, a public corporation (“District”). The City and District may be individually referred to herein as, a “Party”, and collectively as, the “Parties”.

RECITALS

WHEREAS, the City and District are parties to that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017, by and between the City and the District and filed in the Office of the District Clerk as Document No. 67068 (the “Financing Agreement”); and

WHEREAS, all initially capitalized terms used herein without definition have the meanings set forth in the Financing Agreement; and

WHEREAS, the City and District are parties to that certain Disposition and Development Agreement (the “DDA”) dated May 7, 2018 and filed in the Office of the District Clerk as Document No. 68398 with RIDA Chula Vista, LLC, a Delaware limited liability company (“RIDA”) which contemplates the development of a resort hotel and convention center (the “RHCC Project”) and related public infrastructure improvements; and

WHEREAS, it is expected that as part of the closing of the obligations contemplated under the DDA (“Close of Escrow”), the City and the District, through a JEPA, will issue the Revenue Bonds to support the financing of the Convention Center and the RHCC Public Improvements; and

WHEREAS, it is expected that the City and the District will be contributing the Financing Revenues pursuant to a Plan of Finance to support the Revenue Bonds; and

WHEREAS, it is expected that the RHCC Project will generate certain revenues from the operation of the RHCC Project that the Developer will share with the Parties; and

WHEREAS, the City and the District are parties to that certain Revenue Sharing Agreement dated April 24, 2018 filed in the Office of the District Clerk as Document No. 68392 (the “Original RSA”); and

WHEREAS, the Parties desire to amend and restate in its totality the Original RSA as set forth herein.

NOW THEREFORE, in consideration of One Dollar and the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated herein by reference.

2. Term. The term of the Agreement commenced on May 7, 2018 and shall terminate concurrent with the DDA if the DDA is terminated prior to Close of Escrow. If Close of Escrow occurs, this Agreement shall terminate on the later to occur of the following dates, which shall be referred to herein as the “COE Termination Date”: (i) the expiration of the term of the Revenue Bonds, regardless of whether the Revenue Bonds are paid prior to the maturity date; or (ii) thirty-eight (38) years from the date the Revenue Bonds are issued. Notwithstanding the foregoing, Section 3.4 shall remain in effect in accordance with its terms.

3. Agreements. This Agreement amends, restates, and supersedes in its entirety the Original RSA. The Parties hereby agree as follows:

3.1 Revenues and Existing Revenues “Revenues” means, collectively, moneys in an amount equivalent to each of the following sources of revenue actually received by the City or the District on a yearly basis:

A. District

(i) all Ground Lease Revenues derived from the Other Ground Leases, the Tidelands Use and Occupancy Permit for the current RV Park (“RV Park TUOP”), a replacement RV Park on parcel S1 (“Replacement RV Park”), and the RHCC Ground Lease, less (a) the Additional Rent (defined in Section 3.4 below) and (b) a credit equal to: (1) the actual amount of the existing RV Park lease buyout payment to be paid solely by the District to Chula Vista Marina/RV Park, Ltd. (the existing RV Park lessee), in an amount not to exceed \$4,329,614; less (2) any reduction in this payment negotiated by District in consideration for District’s release of Chula Vista Marina/RV Park, Ltd. from its obligation to complete all or a portion of the demolition work at the existing RV Park site that would otherwise be required under the RV Park lease (District Clerk Document No. 14243, as amended) (the “Net RV Park Buyout Credit”);

(ii) the annual payments to be made by the District (the “District Support Payments”) for repayment of the Revenue Bonds according to the schedule set forth in Section 4 of the Conceptual Outline of Joint Exercise of Powers Authority Plan of Finance attached to the DDA as Attachment No. 4 (the “Conceptual Plan of Finance”).

(iii) all Additional Rent pursuant to Section 3.4.

B. City

(i) the TOT attributable to the RHCC Project, the RV Park TUOP, and the Replacement RV Park;

(ii) the Sales Tax;

(iii) incremental property tax (including property tax in-lieu of motor vehicle license fees) generated by the RHCC Project;

(iv) PMSA Revenues; and

(v) special tax proceeds (“Special Tax Revenues”) of the Bayfront Project Special Tax Financing District (“Special Tax District”), pursuant to Section 4.2.2(d) of the Financing Agreement, equal to the annual amount used to repay the Revenue Bonds.

As used herein, “Existing Revenues” means, collectively, moneys in an amount equivalent to each of the following sources of revenue actually received by the City or the District:

(i) all Ground Lease Revenues derived from the Other Ground Leases, the RV Park TUOP, and the Replacement RV Park, less the Net RV Park Buyout Credit;

(ii) the TOT attributable to the RV Park TUOP and the Replacement RV Park; and

(iii) the PMSA Revenues.

3.2 Use of Existing Revenues at Close of Escrow Thirty (30) days before the Close of Escrow (“Contribution Date”), each of the Parties shall contribute to the Close of Escrow an amount of money equal to the Existing Revenues generated and actually received by each Party from and after July 1, 2018 to the Contribution Date. Such Existing Revenues shall be applied at the Close of Escrow pursuant to the Plan of Finance.

3.3 Use of Revenues Post Close of Escrow After the Close of Escrow, the Parties will contribute the Revenues to the JEPA until the COE Termination Date, pursuant to the Plan of Finance. For each bond year of the Revenue Bonds, the JEPA shall apply all of the Revenues, except for the Additional Rent, to the payment of debt service that is due and payable on the Revenue Bonds and any required debt service reserve of the Revenue Bonds. After such debt service has been paid, any Revenues remaining (the “Residual Revenues”) shall be applied in the following order of priority:

1. To reimburse the District for the cumulative amount of District Support Payments actually contributed by the District and not previously reimbursed to the District by the JEPA; then

2. To reimburse the City and the District *pari passu* for any amounts either Party actually paid or contributed to the County of San Diego (“County”)

pursuant to the Chula Vista Bayfront Project Funding Agreement by and among the County, the City, the District and the Chula Vista Bayfront Facilities Financing Authority (“Funding Agreement”); then

3. To reimburse the City an amount equivalent to the actual funds expended by the Special Tax District for the construction of the Parking Garage (as defined in Section 3.7), not otherwise reimbursed to the City by the District as further described in Section 3.7 below; then

4. To reimburse the City for 73.6% of the cumulative actual, direct costs incurred by the City to provide fire service within the CVBMP Project Area, which is the proportionate share of such costs attributable to the RHCC Project and not previously reimbursed to the City (provided that such 73.6% reflects amounts for which the City is entitled to reimbursement *in addition to* any payments the City receives under the PMSA for fire services, as the PMSA may be amended by the Parties; reimbursement to the City under this paragraph shall not be reduced by the amount of PMSA Revenues received by the City); then

5. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party’s contribution of the Existing Revenues, as of Close of Escrow; then

6. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party’s contribution of Existing Revenues after the Close of Escrow, continuing to the COE Termination Date; then

7. To fund an additional reserve fund or reserve fund insurance policy in the amount of one year’s debt service for the Revenue Bonds; and finally

8. Any Revenues remaining after the payments described in Items (1) through (7) above will be equally distributed between the City and the District.

No interest will accrue with respect to unreimbursed Revenues contributed by the City or the District.

3.4 Additional Rent Pursuant to Section 5.5 of the form of RHCC Ground Lease attached to the DDA as Attachment No. 9, the Developer is required to pay to the District 20% of the amount by which the Net Operating Income for such Lease Year exceeds eleven percent (11%) of the Actual Capital Investment (the “Additional Rent”) for Lease Year 1 through Lease Year 37 (as such terms are defined in the RHCC Ground Lease) (the “NOI Split Period”). The District will pay one half of all Additional Rent amounts actually received by the District from the Developer during the NOI Split Period to the JEPa as part of the Revenues to be contributed by the District pursuant to Section 3.1(A) within thirty (30) days following the District’s receipt of such Additional Rent amounts. This obligation shall continue for so long as the District receives the Additional Rent set forth in Section 5.5 of the Ground Lease and shall survive the earlier termination of other provisions of this Agreement.

3.5 Parks

Section 4.2.2(g) of the Finance Agreement provides that the District and the City will cooperate in good faith and use their respective best efforts to negotiate an agreement (“Park Agreement”) which grants the City a nonexclusive, joint-use right or other interest in the areas designated for public park use within the CVBMP Project Area (the “Park Areas”). The Park Agreement is anticipated to provide that as and when the City collects Parkland Acquisition and Development (“PAD Fees”), or other such park related impact fees as may be adopted in the future, from developments in the CVBMP Project Area (collectively, the “PAD Fees”), the City will pay the acquisition component of such PAD Fees to the District, or an amount equivalent to the acquisition component of the PAD Fees, as rent under the Park Agreement (the “Park Rent”). To the extent that the City pays the District Park Rent, the District shall contribute the Park Rent actually received to the JEPA and the JEPA shall use the Park Rent to reimburse the Parties for O&M Costs actually paid by each of the Parties, subject to the terms of an implementation agreement to be entered into by the Parties.

3.6 Operations & Maintenance Costs

The City and District agree to generally split the operation and maintenance costs (“O&M Costs”) for the RHCC Public Improvements. The District will be responsible for the O&M Costs of the parks and all related public infrastructure located within the parks. The City will be responsible for the O&M Costs of the streets and sanitary sewers. The City and District will split the O&M Costs payable pursuant to that certain Chula Vista Bayfront Master Plan Natural Resources Management Plan filed June 6, 2016 in the Office of the District Clerk as Document No. 65065 that are not the responsibility of a third party (the “NRMP Costs”). The NRMP Costs shall be shared equally by the District and the City and shall not exceed \$300,000 a year for each year of the term of this Agreement (“NRMP Cap”); provided, however, the NRMP Cap shall not limit the obligations of the City or the District pursuant to any other agreement to which the City or the District is a party. The City will be responsible for funding the Transit Plan and operational costs of shuttle services as set forth in Section 7.2 of the Financing Agreement, subject to the terms of an implementation agreement to be entered into by the Parties.

To the extent that the Special Tax District generates Special Tax Revenues in excess of the annual amount used to repay the Revenue Bonds, the Special Tax District shall reimburse the Parties for O&M Costs actually paid by each of the Parties, subject to the terms of an implementation agreement to be entered into by the Parties. In no event shall either Party be reimbursed for any O&M Costs that have previously been reimbursed to such Party through Special Tax Revenues or Park Rent.

3.7 Parking Garage

In the event that the District elects to construct a Parking Garage on Parcel H-3 that is intended principally to serve the convention center component of the RHCC (the “Parking Garage”), the District may elect to pay for the Parking Garage using some or all of the Special Tax Revenues in an amount not to exceed \$40,000,000. If the District elects to fund the Parking Garage using Special Tax Revenues, the District shall use such Special Tax Revenues in

accordance with a separate agreement to be entered into by the Parties. The District shall designate any funds generated by the operation of the Parking Garage for the purpose of paying for the construction of the Parking Garage or reimbursing the Special Tax District for such expense (the "Parking Garage Operating Revenue Offset").

Notwithstanding the foregoing, the District and City acknowledge that the primary intended funding source for the construction of the Parking Garage is the rental car fees approved by the District pursuant to Resolution No. 2018-065 (the "Rental Car Revenues"). Litigation is currently pending to validate the right of the District to collect such fees (the "Rental Car Fee Litigation"). The District agrees to diligently pursue the Rental Car Fee Litigation in good faith, including any appeals that the District elects in its reasonable discretion to pursue, or that are pursued by the plaintiff.

The District is collecting Rental Car Revenues for the purposes of funding the Parking Garage. Upon final resolution of the Rental Car Fee Litigation, and the availability of the Rental Car Revenues, such Rental Car Revenues shall be paid to the City in an amount equivalent to the Special Tax Revenues contributed to the District to finance the construction of the Parking Garage, less any Parking Garage Operating Revenue Offset.

To the extent that Rental Car Revenues are in excess of the Special Tax Revenues paid or reimbursed to the District for the construction of the Parking Garage, the District shall only be required to pay to the City the Rental Car Revenues equal to the Special Tax Revenues paid or reimbursed to the District for the construction of the Parking Garage.

4. Binding Agreement. The Parties agree that this Agreement is a binding agreement between the Parties. Notwithstanding the binding nature of this Agreement, the Parties contemplate that future implementing agreements may be needed to implement or clarify the terms of this Agreement. To that end, the Parties agree to meet and confer in good faith in response to a request by either Party regarding the implementation or clarification of this Agreement.

5. Event of Default. An "Event of Default" will occur under this Agreement when: (a) there is a material breach of any material condition, covenant or promise set forth herein; (b) written notice thereof has been given to the Party in breach; and (c) such breach has not been cured within ten (10) business days after such notice was given to the Party in breach. In the event the breach cannot reasonably be cured within such ten (10) business day period, the Party in breach must commence cure of the breach within such ten (10) business day period and thereafter diligently proceed to cure such breach. A waiver by either Party of any such breach shall not be construed as a waiver of any succeeding breach of the same or other condition, covenant or promise.

6. Remedies. The occurrence of an Event of Default shall give the non-defaulting Party the right to proceed with an action or proceeding for specific performance.

7. Notices. The notice addresses shall be the same as those set forth in the Financing Agreement and shall be sent by certified U.S. Mail (return receipt requested) and shall be deemed delivered three days after deposit in the U.S. Mail.

8. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with regard to the collection and priority of the Revenue sharing between the City and the District, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to the priority of the collection and priority of Revenue sharing between the City and the District, but shall not supersede, modify or amend the Financing Agreement or the DDA.

9. Drafting Presumption; Review Standard. The Parties acknowledge that this Agreement has been agreed to by both the Parties, that both City and District have consulted with attorneys with respect to the terms of this Agreement and that no presumption shall be created against the drafting Party. Any deletion of language from this Agreement prior to its execution by City and District shall not be construed to raise any presumption, canon of construction or implication, including, without limitation, any implication that the Parties intended thereby to state the converse of the deleted language.

10. Governing Law. This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and the year first set forth above.

CITY:

CITY OF CHULA VISTA

By: _____
Gary Halbert, City Manager

ATTEST:

Kerry K. Bigelow, City Clerk

APPROVED AS TO FORM:

Glen R. Googins, City Attorney

DISTRICT:

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____

By: _____

Assistant/Deputy

Name: _____

Its: _____