

JOINT COMMUNITY FACILITIES AGREEMENT
[Chula Vista Bayfront Project Special Tax Financing District]

This JOINT COMMUNITY FACILITIES AGREEMENT (“Agreement”) is entered into effective as of November ____, 2019 (“Effective Date”) by and between the City of Chula Vista, a California chartered 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, 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 (collectively, the “Project”); and

WHEREAS, the Financing Agreement and DDA contemplate a public financing tax mechanism, such as the formation of a Community Facilities District by the City, to generate special tax revenue (“Special Tax Revenues”) from the Chula Vista Bayfront Master Plan area (“CVBMP”) to pay for the debt service on the convention center and related public infrastructure improvement components of the Project (“Special Tax Contribution”); and

WHEREAS, a map showing the boundaries of the CVBMP is attached hereto as Exhibit A; and

WHEREAS, the Special Tax Contribution is an essential component of the public financing for the Project, and is also available to fund the operations and maintenance of related public infrastructure improvements; and

WHEREAS, the City has commenced the process to form a special tax financing district to be known as the Bayfront Project Special Tax Financing District (“Financing District”) pursuant to Chapter 3.61 of the City Municipal Code; and

WHEREAS, a map showing the proposed boundaries of the Financing District (“Financing District Area”) is attached hereto as Exhibit B; and

WHEREAS, the Financing District includes areas outside the CVBMP to generate Special Tax Revenues to be used for improvements and services other than the Project for the benefit of the CVBMP and the Financing District Area generally; and

WHEREAS, this Agreement sets forth some of the essential terms for the development, operation, maintenance, and servicing of various improvements within the CVBMP, and the allocation and use of Special Tax Revenues for same; and

WHEREAS, this Agreement is being entered into prior to the City's adoption of the resolution forming the Financing District as a joint community facilities agreement pursuant to California Government Code Section 53316.2; and

WHEREAS, each legislative body has determined that this Agreement will be beneficial to the residents, tenants and visitors of the Financing District Area; and

WHEREAS, the Parties contemplate entering into a more detailed version of this Agreement, materially consistent with the terms hereof, ("Implementation Agreement") prior to the special mailed ballot election to be held within the Financing District to submit to the qualified electors of the Financing District of separate propositions to authorize the levy of special taxes within the Financing District, to authorize the Financing District to incur a bonded indebtedness and to establish an appropriations limit for the Financing District.

NOW THEREFORE, in consideration of 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. Parties: The Parties to the Agreement are the District and the City.
2. Term: The term of the Agreement shall commence on the Effective Date and terminate upon the mutual execution of the Implementation Agreement.
3. Purpose: The purpose of this Agreement is to set forth the essential terms for the allocation and payment of Special Tax Revenues for the development, operation, maintenance, and servicing of various improvements (a) within the CVBMP, or (b) outside the CVBMP if required by mitigation measures specified within the Project EIR (defined below) and required to be performed by the District or City, all as more particularly set forth herein.
4. Financing District Formation Documents: The City has drafted and met and conferred with the District regarding the terms and conditions of the Financing District. A substantially final version of the Financing District documents that will be considered by the City Council at its regularly held Council meeting on November 5, 2019 is attached hereto as Exhibit C ("Financing District Formation Documents"). Once the Financing District is established, the District shall have the right to vote on any material changes to the Financing District Formation

Documents in accordance with applicable provisions of Chapter 3.61 or the Mello-Roos Community Facilities Act of 1982.

5. Allocation and Reimbursement of Special Tax Revenues:

5.1 Priorities for Allocation of Special Tax Revenues: To the extent available, Special Tax Revenues shall be used in the following priority (1) financing the construction of the convention center component of the RHCC Project (“Convention Center”); (2) financing the construction of certain public infrastructure improvements related to the RHCC Project, as more particularly described in Exhibit D attached hereto (the “Phase 1A Infrastructure”); (3) financing the construction of the 1,600-space Parking Structure intended principally to serve the convention center component of the RHCC Project (“Parking Garage”); and (4) the operation, maintenance, servicing and replacement of the Phase 1A Infrastructure (“Priority O&M”). Special Tax Revenues remaining after the funding of the above-described priority uses, if any, may be used to finance the construction of other public improvements, either within the CVBMP Area, or otherwise if required as mitigation measures in the Project EIR (defined below) to be performed by the City or the District (collectively, “Other Improvements”), or operations and maintenance services on the Other Improvements (“Other O&M”), provided that such Other Improvements or Other O&M are identified in the Financing District Formation Documents. The Convention Center, Phase 1A Infrastructure, and Parking Garage shall collectively be referred to as, the “Priority Improvements”. Upon completion of any of the Priority Improvements, any expansions, replacements or other capital enhancements thereof shall be treated as “Other Improvements” under the terms of this Agreement.

Notwithstanding the foregoing, 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 (“Rental Car Revenues”). Litigation is currently pending to validate the right of the District to collect such fees (“Rental Car Fee Litigation”). 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. District is collecting the Rental Car Revenues for purposes of funding the Parking Garage. Upon final resolution of the Rental Car Fee Litigation, and the availability of Rental Car Revenues, such revenues shall be used to offset the amount of any Special Tax Revenues contributed, or to be contributed, to the financing of the Parking Garage construction. The terms for such offset shall be set forth in the Amended and Restated Revenue Sharing Agreement between the Parties. To the extent the 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.

5.2 District and City Responsibilities for Priority O&M: Among other things, the Implementation Agreement shall set forth in greater detail what portion of the Priority O&M will be performed by the District or the City. In general, the District shall perform any Priority O&M for the parks and all related public infrastructure located within the parks, the City shall perform any Priority O&M for the sanitary sewers and streets, and the District and the City shall share equally, in an amount not to exceed \$300,000 per year, the cost of the Priority O&M related 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 City shall be responsible for the operation of shuttle services for the CVBMP. If there are not enough Special Tax Revenues to cover some or all of the Priority O&M, each of the District and City shall be responsible for only the cost of those portions allocated to each pursuant to the Implementation Agreement.

5.3 Mechanisms for Payment of Special Tax Revenues for Eligible Projects/Services:

a. Convention Center and Other Developer Performed Public Works. Special Tax Revenues dedicated to the convention center portion of the RHCC Project, and to those portions of the Phase 1A Infrastructure to be constructed by RIDA or its contractors, shall be disbursed pursuant to agreements between the District, the City and/or the Chula Vista Bayfront Facilities Financing Authority (JEPA), on the one hand, and RIDA, Project lenders and/or RIDA's contractors, on the other hand.

b. Parking Garage. If the District expends District general funds on the construction of the Parking Garage, the District shall be entitled to reimbursement out of available Special Tax Revenues upon providing the City's designated Financing District administrator with reasonable evidence that the District has completed, or has caused the completion of such construction. The District may elect to perform the work itself or contract with any third party at its election to perform the work. If Special Tax Revenues are not immediately available for reimbursement, the City shall cause the payment of Special District Revenues to the District in installment payments until such amounts are reimbursed in full. The District shall have up to three years from the time the Parking Garage is completed to request reimbursement from the City. As more particularly provided in the Implementation Agreement and/or the Amended and Restated Revenue Sharing Agreement between the Parties, to the extent Rental Car Fees or alternative (non-general fund) funding sources are available, the

District's right to reimbursement under this Section out of Special Tax Revenues shall be offset by such amounts.

- c. Phase 1A Infrastructure or Other Improvements. If the District or the City expends their respective general funds on the construction of any portion of the Phase 1A Infrastructure not constructed by RIDA, or on the construction of Other Improvements, such Party shall be entitled to reimbursement out of available Special Tax Revenues upon providing the City's designated Financing District administrator with reasonable evidence that such Party has completed, or has caused the completion of such construction. Such Party may elect to perform the work itself or contract with any third party at its election to perform the work. If Special Tax Revenues are not immediately available for reimbursement, the City shall cause the payment of Special District Revenues to such Party in installment payments until such amounts are reimbursed in full. The District and City shall have up to three years from the time either a Phase 1A Infrastructure component or Other Improvement is completed to request reimbursement from the City. The Parties shall set forth the priority in which the Phase 1A Infrastructure that is not constructed by RIDA, and the Other Improvements, are constructed and reimbursed pursuant to the terms of the Implementation Agreement.
- d. Priority O&M or Other O&M. If the District or the City expends their respective general funds on the performance of Priority O&M or Other O&M services, such Party shall be entitled to reimbursement out of available Special Tax Revenues upon providing the City's designated Financing District administrator with reasonable evidence that such Party has performed, or has caused the performance of such services. Such Party may elect to perform the work itself or contract with any third party at its election to perform the work. If Special Tax Revenues are not immediately available for reimbursement in the fiscal year in which the Priority O&M or Other O&M services are performed, the cost for such services will not be carried forward and the expending Party shall be solely responsible for the cost of such services. The Parties shall set forth the priority in which Priority O&M and Other O&M services shall be reimbursed to each of the Parties in the Implementation Agreement.
- e. Other Qualified Projects or Services. After the funding of the projects and services described in Sections 5.3.a-d, above, any and all other projects or services listed in the Financing District Formation Documents may be funded out of available Special Tax Revenues in accordance with the procedures set forth in Chapter 3.61, the Financing District Formation Documents, and applicable law.

- 5.4 Revenue Generating Improvements: Any revenues generated from improvements constructed in whole or in part with Special Tax Revenues shall (a) in the case of the Parking Garage, be applied by the District to pay for the cost of constructing the Parking Garage, or (b) otherwise, be disbursed to the Parties in accordance with the terms of the Amended and Restated Revenue Sharing Agreement and/or Implementation Agreement between the Parties.
6. Binding: The Parties agree that this Agreement is a binding agreement between the Parties that require that the Parties use commercially reasonable efforts to negotiate the remaining terms of the Implementation Agreement during the term of this Agreement. Moreover, each Party agrees that, to the extent it expends funds or devotes resources to discussions relative to this Agreement, it shall do so at its sole cost and expense, without expectation of reimbursement, upon its own initiative and not in reliance on this Agreement or any representations of the other Parties. If either Party to this Agreement shall fail to perform or fulfill any obligation required of it under this Agreement and shall not have cured or commenced to cure such failure within thirty (30) days following written notice thereof from the non-defaulting party (or has commenced to cure such failure, but is not diligently proceeding to cure such failure), then the Party shall be in default under this Agreement (each such event or occurrence, a “Event of Default”). In the event of an Event of Default, the non-defaulting Party may, in its sole and absolute discretion, elect to either: (a) extend the time for the defaulting Party to perform the applicable obligation(s) hereunder for a period of time acceptable to the non-defaulting Party beyond the cure period set forth in this Section 6, or (b) proceed with an action or proceeding for specific performance.
7. Discretionary Actions: The Parties anticipate that the Priority Improvements and Priority O&M (collectively “Special Tax Revenue Projects”) have been analyzed in the Final Environmental Impact Report for the Chula Vista Bayfront Master Plan and Port Master Plan Amendment (UPD #83356-EIR-658, SCH #2005081077), dated June 18, 2010, on file in the Office of the District Clerk bearing Document No. 56562 (“Project EIR”) in accordance with the California Environmental Quality Act (“CEQA”). However, to the extent that any future improvements, including without limitation the Other Improvements, have not been identified as of the date of this Agreement, such improvements may require further environmental review in accordance with CEQA. This Agreement shall not bind the District and/or City, as applicable, to approving any Special Tax Revenue Projects, or any necessary CEQA analysis for the same, including feasible mitigation measures, project alternatives (without limitation the a “no project alternative”) or a statements of overriding considerations, if required. The Parties understand, acknowledge and agree that, notwithstanding the terms and conditions of this Agreement, the Special Tax Revenue Projects may require discretionary approvals, including without limitation, agreements related to real property or operation, maintenance, servicing or replacement of improvements, California Coastal Act approvals, conditional project approvals and other discretionary permits and entitlements (collectively, “Discretionary Actions”). Nothing in this Agreement shall commit the

respective Party to a definite course of action or in any way diminish the respective Party's exercise of its discretion for any Discretionary Action. Any and all Discretionary Actions may be exercised in the sole and absolute discretion of the respective Party exercising such direction. The Parties assume the risk that a Discretionary Action may not be taken or approved.

8. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties, 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 all or any part of the subject matter hereof.
9. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO JOINT COMMUNITY FACILITIES AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

APPROVED AS TO FORM AND
LEGALITY:

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

GENERAL COUNSEL

By: _____
Assistant/Deputy

By: _____
[_____]

CITY OF CHULA VISTA,
a chartered municipal corporation

By: _____

APPROVED AS TO FORM:

By: _____
Glen R. Googins,
City Attorney

EXHIBIT "A"

Depiction of CVBMP

EXHIBIT "B"

Depiction of the Bayfront Project Special Financing Tax District Boundaries

(to be attached prior to execution)

EXHIBIT "C"

Form of Formation Documents

(to be attached prior to execution.)

EXHIBIT D

Phase 1A Infrastructure

“Phase 1A Infrastructure” is defined as:

- Harbor Park (Initial Phase)
- S-2 Sweetwater Signature Park (Initial Phase)
- SP-1 Sweetwater Buffer (for S-1)
- SP-1 Sweetwater Buffer (for S-2)
- SP-2 Seasonal Wetlands
- E Street (G Street to H Street)
- G Street Connection
- H Street (Bay Boulevard to Street A)
- H Street (Marina Pkwy to E Street)
- H-3 Site Preparation
- H-3 Utility Corridor
- E Street (Bay Boulevard to F Street)
- E Street (Lagoon Drive to G Street)
- F Street (Bay Boulevard to E Street)
- F Street (E Street to Gunpowder Point Drive)
- G Street Sewer Pump Station
- Gunpowder Point Drive Relocation
- SP-4 SDG&E