

**AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT**  
**[Chula Vista Bayfront Project Special Tax Financing District]**

This AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT (“Agreement”) is entered into ~~effective~~ as of ~~November \_\_\_\_\_, 2019 (“Effective Date”)~~ February \_\_\_\_\_, 2021 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 Joint Community Facilities Agreement~~ dated ~~June 20, 2017, by and between the City and the District and~~ February 24, 2020 filed in the ~~Office~~ of the District Clerk as Document No. ~~6706872175~~ (the “~~Financing Agreement~~ Original JCFA”); 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~~ formed the Bayfront Project Special Tax Financing District (“Financing District”) pursuant to Chapter 3.61 of the City Municipal Code; ~~and to levy special taxes~~

“Special Taxes”) to generate special tax revenue (“Special Tax Revenues”) from the Financing District Area (defined below) to pay for the financing or construction of certain public infrastructure improvements and the financing of the construction of a convention center to be located on parcel H-3 of the CVBMP Area (defined below) (“Convention Center”); and

WHEREAS, RIDA Chula Vista, LLC (“RIDA”) will construct and finance a resort hotel on parcel H-3 of the CVBMP Area (“Hotel”); and

WHEREAS, a map showing the ~~proposed~~ boundaries of the Chula Vista Bayfront Master Plan (“CVBMP”) is attached hereto as Exhibit A (“CVBMP Area”); and

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

WHEREAS, the Financing District Area includes areas outside the CVBMP ~~to generate Area; and~~

~~WHEREAS, collection of 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 commenced on July 1, 2020 (“Collection Date”); 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 WHEREAS, the Parties desire to amend and restate in its totality the Original JCFA as set forth herein; and~~

~~WHEREAS, the legislative body of each Party has determined that this Agreement will be beneficial to the residents, and tenants of 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 commenced on February 24, 2020, the effective date of the Original JCFA, and terminates concurrent with the termination of the Financing District.~~
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 financing, 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, in accordance with agreed upon priorities,~~ 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 On November 5, 2019, the City Council of the City of Chula Vista ("City Council") adopted certain formation documents for the Financing District. A substantially final version of attached as Exhibit C to the Original JCFA ("Original Financing District documents that will be considered by the City Council Formation Documents"). In connection with this amendment and restatement of the Original JCFA, the City intends to propose certain revisions to the Original Financing District Formation Documents to the City Council at its regularly held Council meeting on November 5, 2019 is February 16, 2021, such revised documents to be, in substantially the form attached hereto as Exhibit C ("Revised Financing District Formation Documents"). Once approved by the City Council and the qualified electors in the Financing District is established, the, the Revised Financing District Formation Documents will result in a change in the "Maximum Annual Special Tax Rate" set forth in the Financing District Formation Documents from 5% to 5.5%, which change shall be effective following an adoption by the City Council of a revised ordinance levying the Special Taxes at the increased rate; provided that such increase shall not be retroactive to the Collection Date. The District shall have the right to vote on any in the special election to be called by the City Council with respect to the Revised Financing District Formation Documents and on any future 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) to pay for the financing of the construction of the convention center component of the RHCC Project (“Convention Center”); (2) financing the construction of and 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 financed through Authority Bonds (defined below) (collectively, the “Priority Improvements”);~~

~~(2) to pay for the construction or the financing of public improvements that are either located within the CVBMP Area or outside the CVBMP Area, but located within the City of Chula Vista, if required as mitigation measures, project design features, or otherwise required in the Project Approvals (defined below) to be performed by the City or the District as required (including obtaining permits and certificate of occupancy) to allow for the RHCC Project (“Parking Garage”); Hotel and (4) Convention Center to operate (“Other Improvements”);~~

~~(3) to pay for the operation, maintenance, servicing and replacement costs of the Phase 1A Infrastructure public infrastructure described in Item Nos. 1 and 2 above, except for the Convention Center (“Priority O&M”). Special Tax Revenues remaining after the funding of the above-described priority uses, if any, may be used”; or~~

~~(4) to finance pay for the construction or financing of other public improvements, either within the CVBMP Area, or otherwise if required as mitigation measures in as described in Exhibit D that are located in or immediately adjacent to the Financing District Area and that are not Priority Improvements or Other Improvements (“Additional Improvements”), and the operation, maintenance, servicing and replacement costs of any Additional Improvements and other “Authorized Services” as described in Exhibit E (“Additional O&M”).~~

~~The term “Project Approvals” shall mean 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”.), the Port Master Plan, any Coastal Development Permit, and any agreements related to the CVBMP Area. Upon completion of any of the Priority Improvements, any expansions, replacements, or other capital enhancements thereof to the Priority Improvements shall be treated as “Other Improvements” under the terms of this Agreement. The Priority Improvements, Other Improvements, Additional Improvements, Priority~~

O&M, and Additional O&M may be financed, performed, or constructed by the City, District, RIDA, or a third-party entity.

~~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.~~

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

~~a. Convention Center and Other Developer Performed Public Works.~~

b.a. Priority Improvements. ~~Special Tax Revenues dedicated to pay for the convention center portion financing of the RHCC Project, and to these portions construction of the Phase 1A Infrastructure to be~~



~~constructed by RIDA or its contractors, Priority Improvements shall be disbursed pursuant to agreements between one or more of the District, the City and/or, the Financing District, 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. ("Authority") and RIDA.~~

~~c. 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.~~

~~d.b. Phase 1A Infrastructure or Other Improvements and Priority O&M. If the City or District or the City expend ~~expend~~ 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 or in providing the Priority O&M, 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.~~ Other Improvements or Priority O&M. 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, as and to the extent that Special Tax Revenues become available in accordance with the priorities set forth in Section 5.1, the City shall cause the payment of Special ~~District~~ Tax 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 pursuant to a Phase 1A Infrastructure component or Other Improvement is completed to request reimbursement from the City. The separate~~~~

~~agreement between the Parties. Each Party shall set forth the priority in which be reimbursed pro rata based on the Phase 1A Infrastructure that is not constructed total annual amounts expended by RIDA, and each Party for the Other Improvements, are constructed and Priority O&M, which shall include any amounts accrued and not reimbursed pursuant to the terms of the Implementation Agreement in prior years.~~

~~e. Priority Additional Improvements & Additional O&M or Other O&M: If the District or the City expends their respective general its funds on the performance of Priority O&M or Other O&M services, such Party construction of any Additional Improvements or in providing the Additional O&M, the City 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 the City has performed completed, or has caused the performance completion of such services. Such Party Additional Improvements or Additional O&M. The City 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, as 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.~~

~~f. 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 to the extent that Special Tax Revenues become available in accordance with the procedurites set forth in Chapter 3.61 Section 5.1, the Financing District Formation Documents, and applicable law.~~

~~g.c. 5.4 Revenue Generating Improvements: Any revenues generated from improvements constructed in whole or in part with City shall cause the payment of 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 to the City in installment payments until such amounts are reimbursed in full.~~

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, Other 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~~Additional Improvements and Additional O&M, 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~~additional CEQA analysis, if any, necessary 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~~ the Original JCFA.
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.

DRAFT

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[SIGNATURE PAGE TO AMENDED AND RESTATED JOINT COMMUNITY FACILITIES AGREEMENT]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the ~~Effective Date~~ date first written above.

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