

SECOND 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)

This Second Amended and Restated Revenue Sharing Agreement (“Agreement”), dated _____, 2020 (“Effective Date”), 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 the Chula Vista Bayfront Facilities Financing Authority (the “Authority”), 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 contribute certain amounts pursuant to a future plan of finance (“Plan of Finance”) to support the Revenue Bonds, as contemplated in the Financing Agreement and the Parties are currently negotiating such agreement; and

WHEREAS, Section 4.7(e) of the DDA provides that the District and the City shall reimburse RIDA in cash for any and all funds expended prior to the Close of Escrow (as defined in the DDA) by RIDA in connection with the design, architectural work, and engineering work for the Developer’s Phase 1A Infrastructure Improvements (as defined in the DDA) as set forth in Scope of Development (as defined in the DDA), prior to the Close of Escrow (as defined in the DDA) in accordance with, to the extent applicable, Chula Vista Municipal Code 2.56.160.H, including the reimbursement procedure set forth therein, and any applicable agreements implementing Chula Vista Municipal Code 2.56.160.H (“Pre-Close Design Services”); and

WHEREAS, the City has agreed to a mechanism to reimburse RIDA for the Pre-Close Design Services; and

WHEREAS, the City has negotiated and anticipates entering into a Reimbursement Agreement with RIDA that complies with Section 4.7(e) of the DDA and sets forth the mechanism to reimburse RIDA for the Pre-Close Design Services (“Pre-Close Design Services Reimbursement Agreement”); and

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

WHEREAS, the City and the District entered into 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 City and District entered into that certain Amended and Restated Revenue Sharing Agreement dated November 19, 2019 and filed in the Office of the District Clerk as Document No. 70911 (the “Amended RSA”) that amended and restated in its totality the Original RSA; and

WHEREAS, the Parties desire to amend and restate in its totality the Amended 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 “Agreement Termination Date”: (i) the expiration of the original 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. In no event shall the term of this Agreement exceed sixty-six (66) years.
3. Agreements. This Agreement amends, restates, and supersedes in its entirety the Amended 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 commencing July 1, 2018:
 - A. District
 - (i) all Ground Lease Revenues derived from:
 - (a) the Other Ground Leases; provided, however, if one or more of the Other 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 (each a “Modified Boundary Lease”), then, for purposes of this section, the

Ground Lease Revenues derived from each Modified Boundary Lease shall be calculated by multiplying the total amount of Ground Lease Revenues generated by such Modified Boundary Lease by a fraction, the numerator of which shall be an amount equal to the Modified Boundary Lease premises still within the original premises boundary, and the denominator of which shall be the total premises area of the Modified Boundary Lease as modified. For example, if the original premises of an Other Ground Lease encompasses 5.0 acres, and the Modified Boundary Lease includes 4.0 acres of the original premises, and adds 6.0 acres of premises outside the original premises, then forty percent (40%) of the revenues paid to the District under the Modified Boundary Lease shall be included as Other Ground Leases revenues under this section (collectively, the “Other Ground Leases Revenues”); to the extent District enters into any revenue generating agreement other than a Ground Lease with respect to operations on all or any portion of the Other Ground Lease premises, such revenue, net any related out-of-pocket operating costs paid by District to third parties, shall also be included as Other Ground Leases Revenues under this section;

- (b) the Tidelands Use and Occupancy Permit for the current RV Park (“RV Park TUOP”); and
 - (c) a replacement RV Park on parcel S1 (“Replacement RV Park”),
 - (d) less \$3,283,970, which is the actual amount of the existing RV Park buyout payment paid solely by the District to Chula Vista Marina/RV Park, Ltd. (the existing RV Park lessee) (“Net RV Park Buyout Credit”), such amount to be amortized over a period of eight years commencing on July 1, 2018 pursuant to the schedule of credits provided in Exhibit 1, attached hereto and incorporated herein by reference (“Net RV Park Buyout Credit Schedule”), as such Net RV Park Buyout Credit Schedule and its contents may be administratively modified from time to time with the mutual consent of the City Manager of the City and the Executive Director of the District, without further approval of the Board of Port Commissioners of the District (“District Board”) or City Council of the City (“City Council”);
- (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”); and

- (iii) any revenues committed by the District on or after the Effective Date of this Agreement to the RHCC Project, the RHCC Public Improvements, the RHCC Project Public Investment, the CVBMP Project, or the CVBMP Public Improvements through a resolution or ordinance of the District Board acknowledging that such revenues are committed to the RHCC Project, the RHCC Public Improvements, the RHCC Project Public Investment, the CVBMP Project, or the CVBMP Public Improvements, to be applied as Revenues in accordance with the terms of this Agreement.

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, excluding any increase in PMSA Revenues above the amounts described in the PMSA as may be negotiated by the Parties in future municipal service agreements until the Agreement Termination Date;
- (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; and
- (vi) any revenues committed by the City on or after the Effective Date of this Agreement to the RHCC Project, the RHCC Public Improvements, the RHCC Project Public Investment, the CVBMP Project, or the CVBMP Public Improvements through a resolution or ordinance of the City Council acknowledging that such revenues are committed to the RHCC Project, the RHCC Public Improvements, the RHCC Project Public Investment, the CVBMP Project, or the CVBMP Public Improvements, to be applied as Revenues in accordance with the terms of this Agreement.

C. As used herein, “Existing Revenues” means, collectively, moneys in an amount equivalent to each of the following sources of Revenue actually received by each Party, from and after July 1, 2018:

- (i) all Ground Lease Revenues derived from:
 - (a) the Other Ground Leases Revenues;
 - (b) the RV Park TUOP; and

- (c) the Replacement RV Park,
- (d) less from the total of (a) through (c) above, the amount of the Net RV Park Buyout Credit that shall be deducted in accordance with the Net RV Park Buyout Credit Schedule;
- (ii) the TOT attributable to the RV Park TUOP and the Replacement RV Park; and
- (iii) the PMSA Revenues.

Any Existing Revenues not already remitted to the Authority shall be remitted to the Authority by no later than the date the Preliminary Official Statement for the Revenue Bonds is posted on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website (the "Contribution Date"). No interest will accrue with respect to the Existing Revenues contributed by the City or the District prior to the Contribution Date. Should either Party elect to retain the Existing Revenues for the period from and after July 1, 2018 to the Contribution Date, such Existing Revenues shall be reported as restricted in the audited financial statements included in each Party's Comprehensive Annual Financial Report ("CAFR"), commencing with each Party's CAFR for the fiscal year ended June 30, 2020.

3.2 *Use of Existing Revenues Prior to Close of Escrow.* Existing Revenues may be expended by the Parties prior to the Contribution Date pursuant to the following terms:

- A. The City may deduct the Pre-Close Design Services paid by the City to RIDA pursuant to the Pre-Close Design Services Reimbursement Agreement;
- B. The City may deduct plan review, permitting, and inspection fees in the amount that would have been incurred by RIDA to process the work for the Developer's Phase 1A Infrastructure Improvements (as defined in the DDA) based on current schedules of fees adopted by the City for such plan review, permitting, and inspection; and
- C. The Parties may deduct such amounts necessary for the payment of existing or future obligations of the Authority, including without limitation, administrative fees, consultant and attorneys' fees, and other staff reimbursements and fees (collectively, the "Pre-Close Authority Expenses"), as such Pre-Close Authority Expenses are memorialized in one or more operating memoranda of the Parties executed by the City Manager of the City and the Executive Director of the District, without further approval of the District Board or City Council.
- D. Should Close of Escrow not occur within the timeframes provided in the DDA, and such time frames are not extended or otherwise tolled by mutual agreement of the Parties, the Parties shall each prepare an accounting of amounts deducted from the Existing Revenues pursuant to Sections 3.2(A) through (C) above to the extent that pre-closing expenses have been approved by both parties as set forth in the agreed upon administrative procedures (the "Pre-Close Expenses").

Should the Pre-Close Expenses of one Party exceed the Pre-Close Expenses of the other Party, then the Party with the lower Pre-Close Expenses shall make a reimbursement sufficient to equalize the Pre-Close Expenses between the Parties (e.g., if the City has expended \$2.0 million and the District has expended \$1.0 million, then the combined Pre-Close Expenses total \$3.0 million, with a fair-share expense of \$1.5 million per Party, and a reimbursement due from the District to the City in the amount of \$0.5 million, the “Pre-Close Expense Reimbursement”). The Pre-Close Expense Reimbursement shall be made within thirty (30) days of the Parties’ mutual agreement as to the amount of such payment.

- 3.3 *Use of Existing Revenues at Close of Escrow.* Any Existing Revenues that are not expended or deducted as permitted by this Agreement shall be applied at the Close of Escrow pursuant to the Plan of Finance.
- 3.4 *Use of Revenues Post Close of Escrow.* After the Close of Escrow, the Parties will contribute the Revenues to the Authority until the Agreement Termination Date, pursuant to the Plan of Finance. For each bond year of the Revenue Bonds, the Authority shall apply all of the Revenues 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”), together with the RIDA Lease Payments (as defined below) received by the Authority, 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 Authority; 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 3.8), not otherwise reimbursed to the City by the District as further described in Section 3.8 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 Agreement 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.

- 3.5 *RIDA Lease Payments.* Pursuant to the ground lease between the District and RIDA for the RHCC to be executed at the Close of Escrow (as defined in the DDA) (the "Ground Lease"), RIDA is expected to pay Minimum Annual Rent to the District together with any and all amounts payable by RIDA to the District under the Ground Lease, including but not limited to, Additional Rent (as defined in the Ground Lease) and the Assignment Participation Fee (as defined in the Ground Lease), but excluding any amounts paid for parking ("RIDA Lease Payments"). The District shall remit all RIDA Lease Payments actually received from RIDA under the Ground Lease to the Authority within thirty (30) days following the District's receipt of such RIDA Lease Payments. The District's obligation to remit the RIDA Lease Payments to the Authority shall cease on the Agreement Termination Date.
- 3.6 *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 Authority and the Authority shall use the Park Rent to reimburse the Parties for O&M Costs actually paid by each of the Parties, subject to the Plan of Finance.
- 3.7 *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 (“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 in accordance with the Plan of Finance.

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 in accordance with the Plan of Finance. In no event shall either Party be reimbursed for any O&M Costs that have been previously reimbursed to such Party through Special Tax Revenues or Park Rent.

- 3.8 *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”).
4. Operating Memoranda. To the extent the Parties enter into any operating memoranda pursuant to the terms of this Agreement that requires any action(s) be taken by the Authority, the Parties shall (i) specify in the operating memoranda any instructions that the Authority shall follow upon receipt of the operating memoranda; and (ii) promptly deliver the operating memoranda to the Treasurer of the Authority after the execution of the operating memoranda by the City Manager of the City and the Executive Director of the District. If the Authority is unable to comply with the instructions set forth in the operating memoranda for any reason without the adoption of administrative rules or procedures or an amendment to the Amended and Restated Joint Exercise of Powers Agreement filed on August 7, 2019 as Document No. 70245 (“Authority Incorporation Agreement”) or the Bylaws of the Authority (“Bylaws”), the Parties, as the sole members of the Authority, shall use good faith efforts to promptly adopt such administrative rules or procedures or present any modifications to the Authority Bylaws or Authority Incorporation Agreement to the Authority Board of Directors for their consideration, as necessary.
5. 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.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.
13. Electronic Signatures. The words “execution”, “execute”, “signed”, “signature”, and words of like import in or related to any document signed or to be signed in connection with this Agreement and the transaction contemplated hereby shall be deemed to include electronic signatures, contract formations on electronic platforms approved by the Parties, or the keeping of such electronic signatures and electronic contracts in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National

Commerce Act, the California Uniform Electronic Transaction Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[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: _____
Mary Casillas Salas, Mayor

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: _____
Thomas A. Russell

By: _____

Name: _____

Its: _____

Exhibit 1
Net RV Park Buyout Credit Schedule

Fiscal Year (FY)	RV Park Buyout Credit	Cumulative Credit
FY 19	\$410,500	\$410,500
FY 20	\$410,500	\$821,000
FY 21	\$410,500	\$1,231,500
FY 22	\$410,500	\$1,642,000
FY 23	\$410,500	\$2,052,500
FY 24	\$410,500	\$2,463,000
FY 25	\$410,500	\$2,873,500
FY 26	\$410,470	\$3,283,970

Note: The total rent credit was reduced from \$4,329,614 to \$3,283,970 based on a permitted rent credit applied to the Chula Vista Marina lease as partial payment of the RV Park Buyout. This therefore will reduce the Chula Vista Marina rent actually received by the District from the tenant by \$1,045,644 until November 31, 2021.