

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)

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This Revenue Sharing Agreement (“Agreement”), dated April 24, 2018, 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 Parties are entering into a Disposition and Development Agreement (the “DDA”) of even date herewith 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 Phase 1A; 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, this Agreement and the Financing Agreement assume the participation of County of San Diego in an Enhanced Infrastructure Financing District (“EIFD”) to fund a portion of the Revenue Bonds supporting Phase 1A.

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 shall commence on the later to occur of: (a) the date first set forth above or (b) the date the DDA is effective. This Agreement 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: ~~(i) full reimbursement to the Parties~~

~~of any and all amounts provided under Section 3.3, paragraphs 1-4 and 6 below; or (iii) thirty-eight (38) years; 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. 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, a replacement RV Park on parcel S17, ("Replacement RV Park"), and the RHCC Ground Lease, less 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 \$4,929,614; 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 ~~by~~ 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. ~~84~~ (the "Conceptual Plan of Finance").

B. City

(i) the TOT attributable to the RHCC Project and the existing RV Park in the CVBMP Project Area and the ~~replacement~~Replacement RV Park to be constructed;

(ii) the Sales Tax;

(iii) incremental property tax (including EIFD Revenues) generated by the RHCC Project;

(iv) PMSA Revenues; and

(v) new Special Tax Revenues levied in a future Community Facilities District, equal to a 5% room revenue tax on the RHCC Project.

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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 ~~prior to the Close of Escrow:~~

(i) all Ground Lease Revenues derived from the Other Ground Leases and ~~at~~ the Replacement RV Park ~~on parcel S1,~~ less a credit equal to the Net RV Park Buyout Credit;

(ii) the TOT attributable to the existing RV Park in the CVBMP Project Area and the ~~replacement~~Replacement RV Park to be constructed; and

(iii) the PMSA Revenues.

3.2 Use of Existing Revenues at Close of Escrow

~~Within a reasonable time prior to the Close of Escrow (not to exceed 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 to pay financing and/or construction contingencies of the District, City, and the JEPA.

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 agreements to be entered into between the Parties. For each bond year of the Revenue Bonds, after the Revenues have been applied 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, any Revenues remaining 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; then

2. 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

3. To reimburse the City and the District on a proportionate, pro-rata basis, for each Party's contribution of ~~Revenues not generated by the RHCC Project, including Other Ground Leases and a Replacement RV Park on Parcel S1 less the Net RV Park Buyout Credit, TOT attributable to the existing RV Park in the CVBMP Project Area and the replacement RV Park to be constructed, and PMSA Revenues ("Existing Revenues")~~, the Existing Revenues, as of Close of Escrow; then

4. 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 ~~for thirty eight (38) years to the COE Termination Date~~.

5. 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

6. Any Revenues remaining after the payments described in Items (1) through (4) 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 ~~above and for such Lease Year exceeds~~ eleven percent (11%) ~~Return on 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 City 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 Operations & Maintenance Costs

The City and District agree to generally split the operation and maintenance costs ("O&M Costs") for the RHCC Public Improvements to be paid by each Party. 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 ~~maintenance~~ O&M Costs of the streets and sanitary sewers. The City and District will split the O&M ~~eosts~~ Costs payable pursuant to that certain Chula Vista Bayfront Master Plan Natural Resources Management Plan ~~by and between District and City dated~~ filed June 6, 2016 ~~filed~~ in the Office of the District Clerk as Document No. 65065 (the "NRMP") that are not the responsibility of a third 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.

3.6 EIFD Formation District agrees to use ~~its best~~ good faith efforts to secure the participation of the County of San Diego in the planned EIFD.

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 ~~any and all remedies available at law or equity. Such remedies may include an action for damages, an action or proceeding for specific performance, and an action or proceeding for injunctive relief. No right, power, or remedy given to the City or District by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the City or District by the terms of any such instrument, or by any statute or otherwise against any other person.~~ an action or proceeding for specific performance.

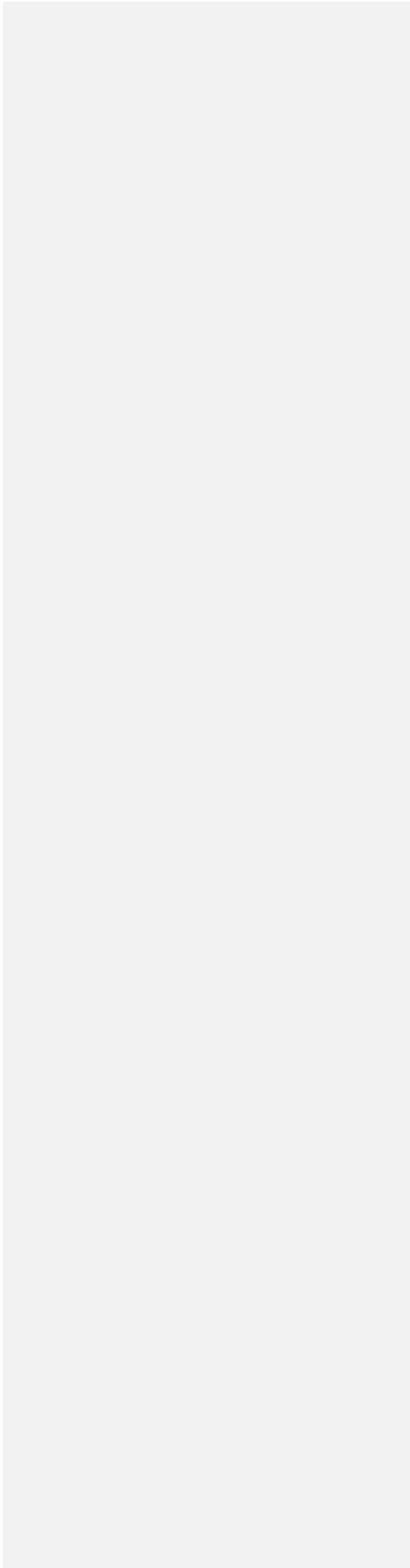
7. Notices. The notice addresses shall be the same as those set forth in the Financing Agreement and shall be sent by certified U.S. Mail (return receipt requested) and shall be deemed delivered three days after deposit in the U.S. Mail.

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.

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:

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CITY OF CHULA VISTA

By: _____
- Gary Halbert, City Manager

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ATTEST:

Kerry K. Bigelow, City Clerk

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APPROVED AS TO FORM:

Glen R. Googins, City Attorney

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DISTRICT:

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APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

SAN DIEGO UNIFIED PORT DISTRICT,
a public corporation

By: _____
Assistant/Deputy

By: _____
Name: _____
Its: _____

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