RESOLUTION 2019-077

RESOLUTION AUTHORIZING THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (A&R JEPA AGREEMENT) BETWEEN THE SAN DIEGO UNIFIED PORT DISTRICT (DISTRICT) AND THE CITY OF CHULA VISTA (CITY) FOR THE CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY (JEPA) TO REVISE THE JOINT EXERCISE OF POWERS AGREEMENT (ORIGINAL JEPA AGREEMENT) TO REFLECT CHANGES IN THE AMENDED AND RESTATED CHULA VISTA BAYFRONT MASTER PLAN FINANCING AGEEMENT BETWEEN THE DISTRICT AND THE CITY DATED JUNE 20, 2017, CURRENT STATUS OF THE PROPOSED DEVELOPMENT OF THE RESORT HOTEL AND CONVENTION CENTER AND RELATED PUBLIC IMPROVEMENTS, AND MAKE OTHER RELATED CHANGES, WITH CONDITIONS

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Section 21 of the Port Act allows the Board of Port Commissioners (BPC) to pass all necessary resolutions for the regulation of the District, and Section 35 of the Port Act allows the BPC to act as is necessary and convenient for the exercise of its powers; and

WHEREAS, on May 6, 2014, the BPC authorized the District to enter into the Joint Exercise of Powers Agreement (Original JEPA Agreement) that created the Chula Vista Bayfront Facilities Financing Authority (JEPA); and

WHEREAS, the District and the City of Chula Vista (City) are the sole members of the JEPA; and

WHEREAS, the JEPA was formed to undertake the financing and/or refinancing of certain public components of the resort hotel and convention center project (RHCC) that is proposed to be constructed by RIDA Chula Vista, LLC (RIDA) on the Chula Vista Bayfront (CVB); and

WHEREAS, although the Original JEPA Agreement was entered into by the District and the City in 2014, the details of the RHCC and related public

improvements (Phase 1A Improvements and together with the RHCC, the Chula Vista Project) have evolved through further due diligence efforts by the District, City and RIDA; and

WHEREAS, while the District and the City have entered into various agreements regarding the proposed economics of the Chula Vista Project since that time, the Board of the JEPA has not been seated and the Original JEPA Agreement has not been revised to reflect these changes and how such changes will affect the financing of the convention center component of the RHCC and the Phase 1A Improvements (collectively, the Public Contribution); and

WHEREAS, the District and the City entered into a financing agreement for the Chula Vista Bayfront Master Plan on May 8, 2012 (Financing Agreement); and

WHEREAS, the Financing Agreement established the framework for the financing of the public infrastructure and improvements for the CVB to promote public access to, and engagement with, the water, while enhancing the quality and protection of key habitat areas, with the ultimate goal of creating a world-class bayfront through strong planning and design, economic feasibility and community outreach; and

WHEREAS, in the Financing Agreement, the District and the City outlined various anticipated sources of funds (*i.e.*, ground lease revenues, tourism occupancy taxes) and anticipated cooperative efforts to be performed by each of the District and City; and

WHEREAS, the Financing Agreement also contemplated the use of the JEPA as the vehicle to undertake the financing for the Public Contribution; and

WHEREAS, as the design and implementation of the Chula Vista Project have evolved, the District and the City have further refined each entity's anticipated revenue sources and such changes have been memorialized in the Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017 (A&R Financing Agreement) and the Disposition and Development Agreement entered into between RIDA, the District, and the City dated May 7, 2018 (DDA); and

WHEREAS, consistent with the Financing Agreement, the A&R Financing Agreement continues to contemplate the use of the JEPA, or other similar type entity, to provide for or facilitate the financing of the Public Contribution; and

WHEREAS, the A&R Financing Agreement also contemplates execution of a future plan of finance that will further define the specific revenues that will be used to repay the debt service on a bond issuance for the Public Contribution (Plan of Finance); and

WHEREAS, the Amended and Restated Joint Exercise of Powers Agreement with the City (Amended and Restated JEPA Agreement) will revise the Original JEPA Agreement to reflect developments with respect to the Chula Vista Project that are relevant to the exercise of powers by the JEPA; and

WHEREAS, the following is a summary of the major changes to be made to the Original JEPA Agreement:

- Update provisions to reflect changes to the Joint Exercise of Powers Act and establish the JEPA's jurisdictional boundaries;
- Clarify the number of JEPA Board members (*i.e.*, 4 members) that are needed to approve resolutions and motions;
- Clarify the procedural aspects of meetings of the JEPA Board;
- Make clear that JEPA Board may adopt bylaws, policies and procedures;
- Update list of officers who will serve as officers of the JEPA. The Clerk of the District shall serve as the Secretary; the President/CEO of the District shall serve as the Executive Director; and the Director of Finance of the City shall serve as the Treasurer and Auditor;
- Include provision related to the adoption of a procurement policy, which may be the procurement policy of the City, the District, or separate from that of the City or District;
- Permit reimbursement of cost of services performed by the officers who are employed by the District or City;
- Establish the General Counsel of the District and City Attorney of the City as co-counsel of the JEPA; and
- Update "Withdrawal" provision to allow withdrawal by the City or District if approved by the BPC and City Council and provided certain conditions are met.

WHEREAS, the proposed BPC action does not constitute an "approval" of a project under the California Environmental Quality Act (CEQA) because the BPC's approval does not constitute a binding commitment to approve, adopt, or fund any of the projects that may result from the proposed agreement amendment.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners (BPC) of the San Diego Unified Port District, as follows:

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to enter into the Amended and Restated Joint Exercise of Powers Agreement (A&R JEPA Agreement) with the City of Chula Vista (City) for the Chula Vista Bayfront Facilities Financing Authority (JEPA) substantially in the form attached hereto as Exhibit A.

2019-077

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: ~~Assistant~~/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 18th day of June 2019, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet
NAYS: None.
EXCUSED: None.
ABSENT: None.
ABSTAIN: None.

Garry J. Bonelli, Chairman
Board of Port Commissioners

ATTEST:

Donna Morales
District Clerk

(Seal)

EXHIBIT A

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

(See Attached.)

AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT

by and between

CITY OF CHULA VISTA

and

SAN DIEGO UNIFIED PORT DISTRICT

For

CHULA VISTA BAYFRONT FACILITIES FINANCING AUTHORITY

TABLE OF CONTENTS

		Page
Section 1.	Definitions	2
Section 2.	Purpose	3
Section 3.	Term	4
Section 4.	The Authority	4
	A. Ratification and Confirmation of Creation of the Authority	4
	B. Governing Board	4
	C. Meetings of Board	5
	D. Officers; Duties; Other Authority Matters	6
Section 5.	Powers	9
Section 6.	Termination of Powers	9
Section 7.	Procurement Policy	9
Section 8.	Fiscal Year	9
Section 9.	Disposition of Assets	9
Section 10.	Contributions and Advances	9
Section 11.	Bonds	10
	A. Authority To Issue Bonds	10
	B. Bonds Limited Obligations	10
Section 12.	Agreement Not Exclusive	11
Section 13.	Accounts and Reports	11
Section 14.	Funds	11
Section 15.	Conflict of Interest Code	11
Section 16.	Breach	11
Section 17.	Withdrawal	11
Section 18.	Notices	12
Section 19.	Effectiveness	12
Section 20.	Severability	12
Section 21.	Successors; Assignment	12
Section 22.	Amendment of Agreement	12
Section 23.	Form of Approvals	12
Section 24.	Waiver of Personal Liability	12
Section 25.	Section Headings	13

TABLE OF CONTENTS
(continued)

Page

Section 26. Counterparts 13

Section 27. Designees of Officers of the Authority and Co-Counsel to the Authority; Vice Chair to Act for Chair 13

Section 28. Governing Law 14

Section 29. Integration 14

Section 30. Validity of Prior Actions 14

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (this "Agreement"), dated and effective June __, 2019 ("Effective Date"), is entered into by and between the CITY OF CHULA VISTA (the "City"), a charter city organized and existing under the laws of the State of California (the "State"), and the SAN DIEGO UNIFIED PORT DISTRICT (the "Port District"), a public corporation created by the State legislature in 1962 pursuant to the California Harbors and Navigation Code Appendix 1 (as amended from time to time, the "Port Act"). This Agreement amends, restates, and supersedes in its entirety that certain Joint Exercise of Powers Agreement creating the Chula Vista Bayfront Facilities Financing Authority, dated as of May 1, 2014 (the "Original Agreement"), by and between the City and the Port District (each of the City and the Port District shall be referred to individually as, a "Member," and, collectively, the "Members"), which created the Chula Vista Bayfront Facilities Financing Authority (the "Authority").

DECLARATION OF PURPOSE

A. Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the California Government Code (known as the "Joint Exercise of Powers Act" and, as amended from time to time, referred to herein as the "Act") authorizes the City and the Port District to create a joint exercise of powers entity which has the power to exercise any powers common to the City and the Port District and to exercise additional powers granted to it under the Act, including but not limited to the issuance of bonds (defined under Section 6585(c) of the Act).

B. Article 4 of the Act (known as the "Marks-Roos Local Bond Pooling Act of 1985," Government Code Section 6584 *et seq.*) authorizes and empowers the Authority to issue bonds and to purchase bonds issued by, or to make loans to, the City or the Port District or other public or private entity for financing or providing interim financing for the acquisition, construction, installation and improvement of public capital improvements, working capital, liability and other insurance needs, or projects whenever there are significant public benefits, as determined by the City or the Port District. The Marks-Roos Local Bond Pooling Act of 1985 further authorizes and empowers the Authority to sell bonds so issued or purchased to public or private purchasers at public or negotiated sale.

C. Each of the Members is empowered by law to promote economic development for the benefit of the citizens of the City and the State.

D. Each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making loans or providing subsidies for projects of public benefit that serve a public purpose.

E. Each Member is also empowered by law to acquire and dispose of real property for a public purpose.

F. The Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement, and to

exercise the additional powers granted to it in the Act and any other applicable provisions of the laws of the State.

G. A public entity established pursuant to the Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (as defined in Section 6585(c) of the Act, "Bonds"), and to otherwise undertake financing programs under the Act or other applicable provisions of the laws of the State to accomplish its public purposes.

H. The Members have determined to specifically authorize a public entity authorized pursuant to the Act to issue Bonds pursuant to the Act or other applicable provisions.

I. The Members have undertaken certain common efforts to create a master plan and promote development of the approximately 535-acre Chula Vista Bayfront depicted on Schedule 1 attached hereto ("Chula Vista Bayfront") and have entered into that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017 (as amended from time to time, the "Financing Agreement").

J. It is the desire of the Members to use a public entity established pursuant to the Act to undertake the financing and/or refinancing of portions of the Chula Vista Bayfront project contemplated by the Financing Agreement.

K. It is further the intention of the Members that the projects being undertaken in the Chula Vista Bayfront will result in significant public benefits to the inhabitants of the jurisdictions of the Members.

TERMS OF AGREEMENT

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Agreement have the meanings herein specified. Unless this Agreement specifically provides otherwise, any reference to any statute or agreement shall include amendments to such statute or agreement, and, in the case of any statute, successor legislation.

Act. The term "Act" means Articles 1, 2, 3 and 4 of Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 *et seq.*).

Agreement. The term "Agreement" means this Amended and Restated Joint Exercise of Powers Agreement, as it may be amended from time to time.

Authority. The term "Authority" means the Chula Vista Bayfront Facilities Financing Authority.

Board; Board of Directors. The terms "Board" or "Board of Directors" mean the governing board of the Authority established pursuant to, and consisting of the members selected in accordance with, Section 4.B hereof.

Board of Port Commissioners. The term "Board of Port Commissioners" means the Board of Port Commissioners of the Port District.

Bonds. The term "Bonds" has the meaning set forth in the Declaration of Purpose, Recital G above.

Brown Act. The term "Brown Act" means the Government Code provisions at Section 54950 *et seq*. governing the notice and agenda requirements for meetings of government agencies in the State and any later amendments, revisions, or successor enactments.

City. The term "City" means the City of Chula Vista, a charter city organized and existing under the laws of the State.

City Council. The term "City Council" means the City Council of the City.

Effective Date. The term "Effective Date" means June __, 2019.

Fiscal Year. The term "Fiscal Year" has the meaning set forth in Section 8.

Governing Body. The term "Governing Body" means with respect to the City, the City Council of the City, and means, with respect to the Port District, the Board of Port Commissioners.

Government Code. The term "Government Code" means the Government Code of the State.

Harbors and Navigation Code. The term "Harbors and Navigation Code" means the Harbors and Navigation Code of the State.

Indenture. The term "Indenture" means each indenture, trust agreement or other instrument or agreement pursuant to which Bonds are issued.

Marks-Roos Local Bond Pooling Act of 1985. The term "Marks-Roos Local Bond Pooling Act of 1985" means Article 4 of Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6584 and following).

Member. The term "Member" or "Members" means the City and/or the Port District, as applicable.

Port Act. The term "Port Act" means Harbors and Navigation Code Appendix 1.

Port District. The term "Port District" means the San Diego Unified Port District, a public corporation created by the State Legislature in 1962 pursuant to the Port Act.

State. The term "State" means the State of California.

Section 2. Purpose. This Agreement is made pursuant to the Act for the purpose of assisting in the financing and refinancing of capital improvement projects of the Members and other activities of the Members as permitted under the Act relating to the Chula Vista Bayfront,

including as contemplated by the Financing Agreement, by exercising the powers referred to in this Agreement. The Authority's jurisdiction shall be limited to the Chula Vista Bayfront (as depicted on Schedule 1 attached hereto) unless otherwise provided by amendment of this Agreement.

Section 3. Term. This Agreement shall become effective as of the Effective Date and shall continue in full force and effect until terminated by a written agreement of the Port District and the City. This Agreement shall not terminate while any Bonds or other obligations of the Authority remain outstanding under the terms of any indenture, trust agreement, contract, agreement, lease, sublease or other instrument pursuant to which such Bonds are issued or other obligations are incurred.

Section 4. The Authority.

A. Ratification and Confirmation of Creation of the Authority. Creation of the Authority pursuant to the Original Agreement and the Act is hereby ratified and confirmed. As provided in the Act, the Authority shall be a public entity separate from the City and the Port District. Except to the extent provided in Section 6508.1 of the Act, the debts, liabilities and obligations of the Authority shall not constitute debts, liabilities or obligations of the City or the Port District.

Within thirty (30) days after the Effective Date of this Agreement or any amendment hereto, the Authority will cause a notice of this Agreement or amendment, as applicable, to be prepared and filed with the office of the Secretary of State of the State and the office of the Controller of the State in the manner set forth in Section 6503.5 of the Act. Within thirty (30) days after the Effective Date of this Agreement or any amendment hereto, a full copy of this Agreement and any amendment shall be filed with the Controller of the State and the San Diego County Local Agency Formation Commission as set forth in Section 6503.6 of the Act.

B. Governing Board. The Authority shall be administered by the Board. The Board shall be comprised of five members, each of which must at all times, in the case of the Port District, be a member of the Board of Port Commissioners or an employee of the Port District, or, in the case of the City, a member of the City Council or an employee of the City. The Board shall consist of (i) two members appointed by the City Council, (ii) two members appointed by the Board of Port Commissioners, and (iii) the Port Commissioner appointed by the City Council. Board members shall be designated from time to time by action of the City Council and the Board of Port Commissioners, respectively, certified copies of which designation shall be delivered to the Secretary of the Authority (the "Secretary") designated in Section 4.D hereof. The term of office as a member of the Board shall terminate when such member of the Board (i) shall be replaced by action of the City Council (with respect to Board members appointed by it, including the Port Commissioner appointed by it) or the Board of Port Commissioners (with respect to Board members appointed by it), or (ii) shall cease to be an employee at the City or the Port District, as the case may be.

The Board may adopt such bylaws (the "Bylaws") as it deems necessary or desirable for the administration and operation of the Authority. The Board may adopt such policies and

procedures as it deems necessary or desirable for the administration and operation of the Authority, which shall include such policies and procedures as are necessary to assure compliance with the Brown Act.

C. Meetings of Board.

(1) Time and Place. The Board shall hold its regular meetings at such times and at such locations as may be established by the Bylaws or by resolution of the Board; provided that the Board shall hold at least one regular meeting each year and no regular meetings shall be scheduled at the same time as a meeting of the City Council or the Board of Port Commissioners. At all times, each regular meeting of the Authority shall take place pursuant to a 72-hour notice and agenda requirement or as otherwise provided by the Brown Act.

The Board may hold special meetings at any time and from time to time in accordance with the Brown Act. A special meeting may be called at any time by the Secretary or the Executive Director of the Authority by delivering written notice to each Board member; provided, however, no special meetings shall be scheduled at the same time as a meeting of the City Council or Board of Port Commissioners. Such written notice may be dispensed with as to any Board member who at or prior to the time the meeting convenes files with the Secretary a written waiver of notice. Such waiver may be given by telegram, telecopy or electronic mail. Such written notice may also be dispensed with as to any member who is actually present at the meeting.

Nothing contained in this Agreement shall be construed to prevent the Board from holding closed sessions during a regular or special meeting concerning any matter permitted by law to be considered in a closed session.

All public hearings held by the Board shall be held during regular or special meetings of the Board. Regular and special meetings of the Board may be held by teleconference in accordance with the provisions of the Brown Act and such procedures as the Secretary shall establish from time to time.

The Board may adjourn any meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all Board members are absent from any regular meeting or adjourned regular meeting, the Secretary may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided for special meetings unless such notice is waived as provided for special meetings. A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment. When a regular or adjourned regular meeting is adjourned as provided in this Section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings.

Any public hearing being held, or any hearing noticed or ordered to be held at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting in the same manner and to the same extent set forth herein for the adjournment of the meetings; provided that, if the hearing is continued to a time less than 24 hours after the time specified in the

order or notice of hearing, a copy of the order or notice of continuance shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Brown Act.

(3) Minutes. The Secretary shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the City and the Port District.

(4) Quorum; Required Vote for Action. Four members of the Board shall constitute a quorum for the transaction of business, except that if less than a quorum is present at any meeting, the Secretary or any Board member who is present at the meeting may adjourn meetings from time to time. Any action or decision of the Authority shall be on motion duly approved by four members of the Board at a lawfully held meeting.

D. Officers; Duties; Other Authority Matters.

(1) Officers; Duties; Official Bonds. The officers of the Authority shall be the Chair, the Vice Chair, Secretary, the Executive Director, the Treasurer, and the Auditor. Terms of each of the officers of the Authority shall be established pursuant to the Bylaws.

(A) Chair. The Chair of the Authority (the "Chair") shall be a Board member selected to serve as Chair by action of the Board. The Chair shall preside at all meetings of the Authority and shall submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority.

(B) Vice Chair. The Vice Chair of the Authority (the "Vice Chair") shall be a Board member who is selected to serve as Vice Chair by action of the Board. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair. In case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair, until such time as a new Chair is selected by action of the Board.

(C) Secretary. The Secretary is not required to be a member of the Board and shall serve until a successor is designated by the Board. The Clerk of the Port District is hereby designated as the Secretary. The Secretary shall keep the records of the Authority at the offices of the Port District. The Secretary shall act as Secretary at the meetings of the Authority and record all votes, shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

(D) Executive Director. The President/CEO of the Port District, who may, but is not required to be, a member of the Board, is hereby designated Executive Director of the Authority (the "Executive Director"). The Executive Director shall be responsible for execution and supervision of the affairs of the Authority. Except as otherwise authorized by resolution of the Board, the Executive Director shall sign all agreements, contracts, deeds and other instruments requiring execution by the Authority. In addition, subject to the applicable provisions of any trust agreement, indenture or resolution providing for a trustee or other fiscal agent, the

Executive Director is designated as a public officer or person who has charge of, handles, or has access to any property of the Authority and, as such, shall file an official bond as required pursuant to Section 6505.1 of the Act, which official bond shall be in the amount of $25,000.

(E) Treasurer. The Director of Finance of the City, who may, but is not required to be, a member of the Board, is hereby designated as the Treasurer of the Authority (the "Treasurer"). The Treasurer shall have the powers, duties and responsibilities specified in Section 6505.5 of the Act. Subject to the applicable provisions of any trust agreement, indenture or resolution providing for a trustee or other fiscal agent, the Treasurer is designated as a public officer or person who has charge of, handles, or has access to any property of the Authority and, as such, shall file an official bond as required pursuant Section 6505.1 of the Act, which official bond shall be in the amount of $25,000.

(F) Auditor. The Director of Finance of the City, who may, but is not required to be, a member of the Board, is also hereby designated as the Auditor of the Authority (the "Auditor"). The Auditor shall perform the functions assigned to the auditor in Section 6505(b) of the Act relating to audits and in Section 6505.5 of the Act relating to payments. Subject to the applicable provisions of any trust agreement, indenture or resolution providing for a trustee or other fiscal agent, the Auditor is designated as a public officer or person who has charge of, handles, or has access to any property of the Authority and, as such, shall file an official bond as required pursuant Section 6505.1 of the Act, which official bond shall be in the amount of $25,000.

(2) Audits and Reports. So long as required by Section 6505 of the Act, the Auditor shall prepare or cause to be prepared a special audit as required pursuant to Section 6505 of the Act no less frequently than once in every two-year period during the term of this Agreement. The Auditor shall, within the time necessary to comply with the requirements of the Act, file a report of any audit performed pursuant to this Section 4.D (2) as required by the Act and shall send a copy of such report to the public entities required to receive such report in accordance with the requirements of the Act. So long as required by Section 6505.5 of the Act, the Treasurer shall prepare or cause to be prepared a report in writing, as required by Section 6505.5(e) of the Act, on the first day of July, October, January and April of each year, which report shall be delivered to the Board, the City and the Port District and which report shall describe the amount of money held by the Treasurer for the Board, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provides regular reports covering such amounts). Any costs of any audit required pursuant to the Act, including costs of contracts with, or employment of certified public accountants or public accountants, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for such purpose.

(3) Compensation for Services. The cost of the services performed by the officers, who are employed by the Members, may be reimbursed by the Authority in accordance with a separate agreement to be entered into between the Members and the Authority.

(4) Additional Officers, Advisors, Consultants, Counsel. The Board shall have the power to appoint such other officers as it may deem necessary and to retain such advisors, consultants and experts, including accountants, as the Board shall deem necessary or desirable. The Port Attorney of the Port District (the "Port Attorney") and the City Attorney of the City (the "City Attorney") shall act as co-counsel to the Authority; provided, however, the Board of Port Commissioners, as it relates to the Port Attorney, and the City Council, as it relates to the City Attorney, shall consent to the appointment of its respective counsel to serve as co-counsel to the Authority prior to the Port Attorney or City Attorney acting on behalf of the Authority. The Board may retain or engage such advisors, consultants, experts and counsel on such terms and at such rates of compensation as the Board may determine, for the performance of Authority business and affairs, provided that adequate sources of funds are identified for the payment of such advisors, consultants, experts and counsel.

(5) Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker's compensation and other benefits which apply to the activities of the members of the Board of Port Commissioners, members of the City Council, officers, agents or employees of the Members when performing their respective functions within the territorial limits of their respective Member, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this Agreement.

(6) No Deemed Employment. None of the officers, advisors, consultants, experts or counsel, if any, appointed or retained by the Authority in connection with the issuance of Bonds or as otherwise permitted under the Act, shall be deemed, by reason of their appointment or retention by the Authority, to be employed by either Member.

(7) Public Retirement System Contracts. Notwithstanding Section 4.A, Section 6508.2 of the Act prohibits members of authorities created pursuant to the Act from agreeing that retirement liabilities may not constitute debts, liabilities or obligations of the members if the Authority contracts with a public retirement system (as such term is defined in Section 6508.2 of the Act, a "public retirement system"). The Authority did not enter into a retirement contract with any public retirement system subsequent to the effectiveness of the Original Agreement and does not currently have any retirement contract in effect with any public retirement system. Each of the City and the Port District hereby agree that it will not amend this Agreement to provide that the Authority may enter into a retirement contract with a public retirement system.

(8) Authority Records. In any event, the Authority shall cause all records regarding the Authority's formation, existence, operations, any Bonds issued by the Authority, obligations incurred by it and proceedings pertaining to its termination to be retained for at least six (6) years following termination of the Authority or final payment of any Bonds issued by the Authority, whichever is later. Any records not described in the preceding sentence shall be maintained in accordance with the Records Retention Policy of the Port District, as it may be amended from time to time.

(9) Authority to Bind Authority. No Board member or officer of the Authority, without prior specific or general authority by the affirmative vote of four members of the Board, shall have any power or authority to bind the Authority by any contract, to pledge its credit, or to render it liable for any purpose in any amount.

Section 5. Powers. The Authority shall have any and all powers, in its own name, which are common powers of the Members and any and all powers separately conferred under applicable law, including, without limitation, by the Act, upon the Authority for any purpose authorized under this Agreement. All such powers, whether common to the Members or separately conferred by law upon the Authority, are specified as powers of the Authority to the extent permitted by law. To the extent required by Section 6509 of the Act, the Authority's exercise of its powers is subject to such restrictions imposed on the City by the Constitution of the State, City Charter, and applicable State statutes.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers for the purposes specified in this Agreement, including, but not limited to, any or all of the following: to sue and be sued, including without limitation, bringing a validation action pursuant to Section 860 of the California Code of Civil Procedure or any other applicable statute related to validation actions; to make and enter into contracts; to employ agents and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; and to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized by the Act or any other applicable provision of law; and to pledge any property or revenues or the rights thereto as security for such Bonds and other indebtedness.

Section 6. Termination of Powers. The Authority shall continue to exercise the powers herein conferred upon it until the termination of this Agreement in accordance with Section 3 hereof.

Section 7. Procurement Policy. The Authority shall, by resolution, adopt a procurement policy (the "Procurement Policy"). Such Procurement Policy may be the procurement policy of the City or the Port District or the Authority may adopt a Procurement Policy separate from that of the City or Port District.

Section 8. Fiscal Year. Unless and until changed by resolution of the Board, the Fiscal Year of the Authority shall be the period from July 1 of each year to and including the following June 30.

Section 9. Disposition of Assets. Upon termination of this Agreement pursuant to Section 3 hereof, any surplus money in possession of the Authority or on deposit in any fund or account of the Authority shall be returned in proportion to any contributions made as required by Section 6512 of the Act. The Board is vested with all powers of the Authority for the purpose of concluding and dissolving the business affairs of the Authority. After termination of this Agreement pursuant to Section 3 hereof, all property of the Authority, both real and personal, shall be distributed to the City and the Port District as they shall agree in writing, subject to Section 10 hereof.

Section 10. Contributions and Advances. Contributions or advances of public funds and of personnel, equipment or property may be made to the Authority by the City and the Port District for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance made in respect of a revenue-producing facility shall be made subject to repayment, and shall be repaid, in the manner agreed upon by the City or the Port District, as the case may be, and the Authority, at the time such advance is made as provided by Section 6512.1 of the Act. It is mutually understood and agreed that neither the City nor the Port District has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though either may do so. Each of the City or the Port District may elect to allow the use of its personnel, equipment or property in lieu of other contributions or advances to the Authority.

Section 11. Bonds.

A. Authority To Issue Bonds. When authorized by the Act or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board. Among other things, the Marks-Roos Local Bond Pooling Act of 1985 authorizes the Authority to execute and deliver or cause to be executed and delivered certificates of participation in a lease or installment sale agreement with any public or private entity, or, at its option, to issue or cause to be issued bonds, rather than certificates of participation, and enter into a loan agreement with the public or private entity. Expenses for the services of bond counsel, financial consultants and other advisors and for accounting or other services determined necessary for the successful development of a public capital project may be paid from the proceeds of the Bonds to the extent permissible under applicable law.

B. Bonds Limited Obligations. The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special limited obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under any applicable Indenture and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public instrumentality thereof, including the Port District and the City, but shall only constitute the special limited obligation of the Authority as described above. Neither the faith and credit nor the taxing power of the State or any public instrumentality thereof, including the Port District and the City, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds, nor shall the State or any public instrumentality thereof, including the Port District and the City, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any member of the Board, any member of the City Council, any member of the Board of Port Commissioners or any officer, agent or employee of the Authority, the City

or the Port District in his or her individual capacity, and no member of the Board or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

Section 12. Agreement Not Exclusive. This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of any other agreement between the City and the Port District.

Section 13. Accounts and Reports. All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent that such funds and accounts are not required to be held by a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by the City and the Port District and their representatives.

Section 14. Funds. Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to applicable provisions of the Act and generally accepted accounting principles and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

Section 15. Conflict of Interest Code. The Authority shall, by resolution, adopt a Conflict of Interest Code to the extent required by law. Such Conflict of Interest Code may be the conflict of interest code of the City or the Port District or the Authority may adopt a Conflict of Interest Code separate from that of the City or Port District.

Section 16. Breach. If default shall be made by the City or the Port District in any covenant contained in this Agreement, such default shall not excuse either the City or the Port District from fulfilling its obligations under this Agreement, and each of the City and the Port District shall continue to be responsible for compliance with all terms, covenants and conditions that apply to it set forth herein. The City and the Port District hereby declare that this Agreement is entered into for the benefit of the Authority and the City and the Port District hereby grant to the Authority the right to enforce by whatever lawful means the Authority deems appropriate all of the obligations of each of the Members. Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Authority to any or all other remedies.

Section 17. Withdrawal. Neither Member may withdraw from this Agreement if such withdrawal would result in dissolution of the Authority while any Bonds or other obligations of the Authority remain outstanding under the terms of any Indenture pursuant to which such Bonds are issued or other obligations are incurred. Notwithstanding the foregoing, either Member may withdraw from this Agreement if the Board of Port Commissioners and the City Council approve such withdrawal and concurrently with the effectiveness of such withdrawal, the Member requesting approval to withdraw from this Agreement assigns this Agreement to another public

agency (as such term is defined in the Act), which public agency shall agree to assume the obligations hereunder of the Member requesting approval to withdraw from this Agreement and have delivered to the Port District and the City: (i) an executed counterpart of this Agreement; (ii) a certified copy of the resolution adopted by the governing body of such public agency approving this Agreement and execution and delivery of a counterpart of this Agreement to the Port District and to the City; and (iii) such other documentation as shall be required by the Port District or by the City. Such executed counterpart of this Agreement shall be deemed to constitute an amendment of this Agreement and shall be filed as an amendment to this Agreement in accordance with the provisions of the Act and Section 4.A hereof.

Section 18. Notices. Notices to the City and the Port District hereunder shall be sufficient if delivered to the Director of Finance of the City and the City Manager of the City as to the City, and to the Chief Financial Officer/Treasurer of the Port District and the Director, Real Estate of the Port District as to the Port District.

Section 19. Effectiveness. This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of the Port District and the City on the Effective Date.

Section 20. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 21. Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. Except to the extent expressly provided `herein, neither Member may assign any right or obligation hereunder without the written consent of the other.

Section 22. Amendment of Agreement. This Agreement may be amended by supplemental agreement executed by the Members at any time; provided, however, that: (i) this Agreement may not be amended to provide that the Authority may enter into any retirement contract with any public retirement system for any reason; (ii) the Agreement may be terminated only in accordance with Section 3 hereof; and (iii) any such supplemental agreement shall be subject to any restrictions contained in any Bonds or documents related to any Bonds to which the Authority is a party.

Section 23. Form of Approvals. Whenever an approval is required in this Agreement, unless the context specifies otherwise, it shall be given: (A) in the case of the Port District, by resolution duly adopted by the Board of Port Commissioners of the Port District; (B) in the case of the City, by resolution duly adopted by the City Council of the City; and (C) in the case of the Authority, by resolution duly adopted by the Board. Whenever in this Agreement any approval or consent is required, unless the context specifies otherwise, the same shall not be unreasonably withheld.

Section 24. Waiver of Personal Liability. No member of the Board, no member of any committee established pursuant to the Bylaws (each, a "Committee"), no member of the City

Council, no member of the Board of Port Commissioners nor any officer, employee or agent of the Authority, the City or the Port District shall be individually or personally liable for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of the Authority or the actions undertaken pursuant to this Agreement, and the Authority shall defend such members of the Board, members of any Committee, members of the City Council, members of the Board of Port Commissioners, officers, employees or agents of the Authority or a Member against any such claims, losses, damages, costs, injury and liability. Without limiting the generality of the foregoing, no member of the Board, member of any Committee, member of the City Council, member of the Board of Port Commissioners, officer, employee or agent of the Authority or of any Member shall be personally liable on any Bonds or be subject to any personal liability or accountability by reason of the issuance of Bonds pursuant to the Act and this Agreement. To the fullest extent permitted by law, the Board shall provide for indemnification by the Authority of any person who is or was a member of the Board, a member of any Committee, a member of the City Council, a member of the Board of Port Commissioners, or an officer, employee or other agent of the Authority or any Member, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a member of the Board, a member of any Committee, a member of the City Council, a member of the Board of Port Commissioners, or an officer, employee or other agent of the Authority or a Member, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in the course and scope of his or her office, employment or agency. In the case of a criminal proceeding, the Board may provide for indemnification and defense of a member of the Board, a member of any Committee, a member of the City Council, a member of the Board of Port Commissioners, or an officer, employee or other agent of the Authority or a Member to the extent permitted by law.

Section 25. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 27. Designees of Officers of the Authority and Co-Counsel to the Authority; Vice Chair to Act for Chair. Where reference is made to duties to be performed for the Authority by an employee of the Port District who is an officer of the Authority or by an employee of the City who is an officer of the Authority, such duties may be performed by that person's duly authorized deputy as designated from time to time pursuant to the Bylaws; provided however, that all agreements, contracts, deeds and other instruments requiring execution by the Authority shall be signed by the Executive Director or by such other representative of the Authority as shall be designated in a resolution of the Board relating to execution of the agreement, contract, deed or other instrument to be executed. Where reference is made to duties to be performed for the Authority by the Port Attorney, acting as co-counsel to the Authority, or by the City Attorney, acting as co-counsel to the Authority, such duties may be performed by that person's duly authorized deputy as designated from time to time pursuant to the Bylaws. As provided Section

4.D (1) (B) of this Agreement, the Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair.

Section 28. Governing Law. This Agreement is made in the State, under the Constitution and laws of the State and is to be construed as a contract made and to be performed in the State.

Section 29. Integration. This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

Section 30. Validity of Prior Actions. The execution and delivery of this Agreement shall have no effect on any actions taken by the Board pursuant to the Original Agreement and all such actions shall remain valid and binding upon the Authority.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives, as of the date first set forth above.

CITY OF CHULA VISTA

By: _____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

SAN DIEGO UNIFIED PORT DISTRICT

By: _____
President/CEO

Approved as to Form and Legality:
General Counsel

_____
Assistant/Deputy

Schedule 1

Map of Chula Vista Bayfront

(see attached)

Chula Vista Bayfront Master Plan Illustrative Locally and State-Approved Land Use Plan by City of Chula Vista and Port of San Diego

v.01/02/13