

## **RESOLUTION 2019-141**

### **RESOLUTION AUTHORIZING (A) JOINT COMMUNITY FACILITIES AGREEMENT WITH THE CITY OF CHULA VISTA FOR THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, WITH CONDITIONS; AND (B) THE VOTE OF THE DISTRICT IN FAVOR OF THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT, 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**, the financing agreement (Financing Agreement) for the Chula Vista Bayfront Master Plan (CVBMP) was entered into between the District and the City of Chula Vista (City) in 2012 and subsequently amended and restated on June 20, 2017 (Amended and Restated Financing Agreement); and

**WHEREAS**, the Amended and Restated Financing Agreement sets forth the framework for the financing and development of the public improvements and infrastructure (Phase 1A Infrastructure) necessary for the development of a resort hotel and convention center (RHCC) within the CVBMP and the convention center component of the RHCC (Convention Center); and

**WHEREAS**, the Convention Center and Phase 1A Infrastructure are referred to collectively as, the Public Improvements, and the RHCC and Phase 1 Infrastructure are collectively referred to as, the Project; and

**WHEREAS**, the development of the Public Improvements is necessary for the implementation of the CVBMP in accordance with the certified Final Environmental Impact Report (FEIR) and Port Master Plan Amendment, and for other development within the CVBMP to move forward; and

**WHEREAS**, in the process of evaluating the financial feasibility of the Project, it was determined that for the Project to be developed, a public financial subsidy would be needed (Public Contribution).

**WHEREAS**, the Public Contribution is anticipated to be delivered to the Project through future bond offerings to be issued by the Chula Vista Bayfront Facilities Financing Authority (JEPA); and

**WHEREAS**, a Disposition and Development Agreement was entered into among RIDA Chula Vista, LLC (RIDA), the District, and the City dated May 7, 2018 (DDA) to set forth the necessary steps that must be completed for the parties to issue the public and private financing for the Project and commence construction of the Project, ultimately leading to a ground lease and related subleases for the development and operations of a world-class hotel and convention center; and

**WHEREAS**, the Amended and Restated Financing Agreement also contemplated that the City would contribute revenues generated by a special tax district; and

**WHEREAS**, the special tax district under consideration would be called the Bayfront Project Special Tax Financing District (Special Tax District); and

**WHEREAS**, the funds from the Special Tax District (Special Tax Revenues) were expected to be used to pay for the costs of the Public Improvements; and

**WHEREAS**, the Schedule of Performance attached to the DDA contemplated that the City would complete all documents and actions necessary to commence formation of the Special Tax District by November of 2018 and authorize the levy of the tax after certain actions had been taken by the parties to the DDA, such as the approval of the Plan of Finance and preparation of the bond documents for the bond issuance by the JEPA; and

**WHEREAS**, RIDA's development schedule contemplates that the close of escrow under the DDA will occur in 2020; and

**WHEREAS**, to make this happen, the District and City need the Special Tax Revenues from the Special Tax District to make the Project economically feasible; and

**WHEREAS**, a funding mechanism that would contribute an amount equal to 5% of room occupancy revenue from the RHCC and new recreational vehicle (RV) park is essential to the economic feasibility of the Project; and

**WHEREAS**, through ongoing discussions with the City, it has become clear that a source for payment of the operations and maintenance (O&M) of the various public improvements throughout the CVBMP is essential to reduce the general fund exposure to both the City and District; and

**WHEREAS**, it has become clear to the District and the City that the Special Tax Revenues may also be used to fund public improvements already contemplated by both parties, such as the Convention Center and 1600-space parking garage primarily serving Parcel H-3 (Parking Garage); and

**WHEREAS**, staff has engaged in conversations with City staff to refine the details of a Special Tax District covering the CVBMP and has negotiated a Joint Community Facilities Agreement (Agreement) with the City which sets forth the terms upon which the District would agree that the City can proceed with the formation of the Special Tax District and the remaining details that must be set forth in a more detailed version of this Agreement, an implementation agreement (Implementation Agreement), that would be materially consistent with the terms of this Agreement; and

**WHEREAS**, the proposed boundary map for the Special Tax District includes Parcels H-3, H-23, O-3A, O-3B and S-1, which are the sites of the RHCC (H-3), a potential overflow hotel for the RHCC and surface parking (H-23), and the new recreational vehicle (RV) park under construction by Sun Chula Vista Bayfront RV LLC (S-1, O-3A, and O-3B); and

**WHEREAS**, in addition to these parcels, the Special Tax District also includes parcels owned by the City, Pacifica, MTS, SDG&E, LDA, and the owner of Seven Mile casino, but the District is the majority landowner of the Special Tax District boundary area; and

**WHEREAS**, the parcels owned by the City are located adjacent to the CVBMP (east of the 5 Freeway) and are proposed for hotel development; and

**WHEREAS**, the term of the Special Tax District would be 40 years; and

**WHEREAS**, the proposed priority use of the Special Tax Revenues would be for the financing of the construction of the following improvements in the following order of priority (collectively the Priority Improvements): (1) approximately 275,000 net useable square foot Convention Center, (2) Phase 1A Infrastructure, and (3) Parking Garage (not to exceed \$40 million); and

**WHEREAS**, if Special Tax Revenues are remaining after the Priority Improvements, the Special Tax Revenues would be used to finance the O&M for the Phase 1A Infrastructure (Priority O&M); and

**WHEREAS**, if there are Special Tax Revenues remaining after the Priority Improvements and Priority O&M, the Special Tax Revenues would be used to fund (1) construction of other improvements within the CVBMP or (2) a mitigation measure outside the CVBMP if required to be performed by the District or City pursuant to the Mitigation, Monitoring and Reporting Plan (MMRP) attached to the FEIR (collectively, Other Uses); and

**WHEREAS**, the District would have the right to be reimbursed for its contributions of general fund revenues toward the Priority Improvements, Priority O&M and Other Uses provided that such amounts would be reduced by any amounts that have already been reimbursed to the District through other sources; and

**WHEREAS**, the District may receive the reimbursement in installments and may request the reimbursement within three years after completion or delivery; and

**WHEREAS**, the District would have the right to vote on any material changes to the formation documents of the Special Tax District in accordance with Section 3.61 of the City Municipal Code or the Mello-Roos Community Facilities Act of 1982; and

**WHEREAS**, staff has determined that this Agreement will be beneficial to the residents, the tenants, and visitors of the Special Tax District area; and

**WHEREAS**, as of the date of publication, District and City staff were still negotiating the terms of the Agreement and a final version of the Agreement was to be presented to the BPC at the November 5, 2019 BPC meeting; and

**WHEREAS**, staff recommends that the BPC authorize the Executive Director, or her designee, to enter into the Agreement, in substantially the form presented to the BPC at the November 5, 2019 BPC meeting, which would lead to the Implementation Agreement to be presented to the BPC for its consideration in December 2019; and

**WHEREAS**, staff also recommends that the BPC authorize the Executive Director, or her designee, to vote in favor of the Special Tax District conditioned on the City Council authorizing the Agreement in substantially the same form presented to the BPC on November 5, 2019 and approving the formation documents for the Special Tax District substantially in the form attached to the Agreement.

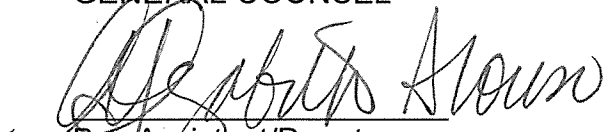
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District (BPC), that:

(A) based on the foregoing Recitals, the BPC has determined that this Agreement will be beneficial to the residents, the tenants, and visitors of the Bayfront Project Special Tax Financing District (Special Tax District); and

(B) the Executive Director, or her designee, is hereby authorized to enter into the Joint Community Facilities Agreement (Agreement) with the City of Chula Vista for the Special Tax District, in substantially the form presented to the BPC at the November 5, 2019 BPC meeting, as attached hereto as **Exhibit A**; and

(C) the Executive Director, or her designee, is hereby authorized to vote in favor of the Special Tax District conditioned on the City Council authorizing the Agreement in substantially the same form presented to the BPC on November 5, 2019, as attached hereto as **Exhibit A**, and approving the formation documents for the Special Tax District substantially in the form attached to the Agreement.

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 5th day of November 2019, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

NAYS: None.

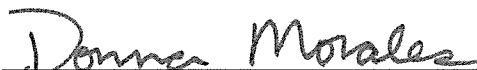
EXCUSED: None.

ABSENT: None.

ABSTAIN: None.

  
Garry J. Bonelli, Chairman  
Board of Port Commissioners

ATTEST:

  
Donna Morales  
District Clerk

(Seal)

**Exhibit A**

Form of Joint Community Facilities Agreement

(See attached.)

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

This JOINT COMMUNITY FACILITIES AGREEMENT ("Agreement") is entered into effective as of November \_\_\_\_, 2019 ("Effective Date") by and between the City of Chula Vista, a California chartered municipal corporation ("City") and the San Diego Unified Port District, a public corporation ("District"). The City and District may be individually referred to herein as, a "Party", and collectively as, the "Parties".

**RECITALS**

WHEREAS, the City and District are parties to that certain Amended and Restated Chula Vista Bayfront Master Plan Financing Agreement dated June 20, 2017, by and between the City and the District and filed in the Office of the District Clerk as Document No. 67068 (the "Financing Agreement"); and

WHEREAS, the City and District are parties to that certain Disposition and Development Agreement (the "DDA") dated May 7, 2018 and filed in the Office of the District Clerk as Document No. 68398 with RIDA Chula Vista, LLC, a Delaware limited liability company ("RIDA") which contemplates the development of a resort hotel and convention center (the "RHCC Project") and related public infrastructure improvements (collectively, the "Project"); and

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

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

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

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

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

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

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

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

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

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

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

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



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

5. Allocation and Reimbursement of Special Tax Revenues:

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

Notwithstanding the foregoing, District and City acknowledge that the primary intended funding source for the construction of the Parking Garage is the rental car fees approved by the District pursuant to Resolution No. 2018-065 ("Rental Car Revenues"). Litigation is currently pending to validate the right of the District to collect such fees ("Rental Car Fee Litigation"). District agrees to diligently pursue the Rental Car Fee Litigation in good faith, including any appeals that the District elects in its reasonable discretion to pursue or that are pursued by the plaintiff. District is collecting the Rental Car Revenues for purposes of funding the Parking Garage. Upon final resolution of the Rental Car Fee Litigation, and the availability of Rental Car Revenues, such revenues shall be used to offset the amount of any Special Tax Revenues contributed, or to be contributed, to the financing of the Parking Garage construction. The terms for such offset shall be set forth in the Amended and Restated Revenue Sharing Agreement between the Parties. To the extent the Rental Car Revenues are in excess of the Special Tax Revenues paid or reimbursed to the District for the construction of the Parking Garage, the District shall only be required to pay to the City

the Rental Car Revenues equal to the Special Tax Revenues paid or reimbursed to the District for the construction of the Parking Garage.

- 5.2 District and City Responsibilities for Priority O&M: Among other things, the Implementation Agreement shall set forth in greater detail what portion of the Priority O&M will be performed by the District or the City. In general, the District shall perform any Priority O&M for the parks and all related public infrastructure located within the parks, the City shall perform any Priority O&M for the sanitary sewers and streets, and the District and the City shall share equally, in an amount not to exceed \$300,000 per year, the cost of the Priority O&M related to that certain Chula Vista Bayfront Master Plan Natural Resources Management Plan filed June 6, 2016 in the Office of the District Clerk as Document No. 65065 that are not the responsibility of a third party. The City shall be responsible for the operation of shuttle services for the CVBMP. If there are not enough Special Tax Revenues to cover some or all of the Priority O&M, each of the District and City shall be responsible for only the cost of those portions allocated to each pursuant to the Implementation Agreement.

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

- a. Convention Center and Other Developer Performed Public Works. Special Tax Revenues dedicated to the convention center portion of the RHCC Project, and to those portions of the Phase 1A Infrastructure to be constructed by RIDA or its contractors, shall be disbursed pursuant to agreements between the District, the City and/or the Chula Vista Bayfront Facilities Financing Authority (JEPA), on the one hand, and RIDA, Project lenders and/or RIDA's contractors, on the other hand.
- b. Parking Garage. If the District expends District general funds on the construction of the Parking Garage, the District shall be entitled to reimbursement out of available Special Tax Revenues upon providing the City's designated Financing District administrator with reasonable evidence that the District has completed, or has caused the completion of such construction. The District may elect to perform the work itself or contract with any third party at its election to perform the work. If Special Tax Revenues are not immediately available for reimbursement, the City shall cause the payment of Special District Revenues to the District in installment payments until such amounts are reimbursed in full. The District shall have up to three years from the time the Parking Garage is completed to request reimbursement from the City. As more particularly provided in the Implementation Agreement and/or the Amended and Restated Revenue Sharing Agreement between the Parties, to the extent Rental Car Fees or alternative (non-general fund) funding sources are available, the

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

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

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

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

8. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.
9. Governing Law. This Agreement and all of the rights and obligations of the Parties hereto and all of the terms and conditions hereof shall be construed, interpreted and applied in accordance with and governed by and enforced under the laws of the State of California.

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**[SIGNATURE PAGE TO JOINT COMMUNITY FACILITIES AGREEMENT]**

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

APPROVED AS TO FORM AND  
LEGALITY:

**SAN DIEGO UNIFIED PORT DISTRICT,**  
a public corporation

GENERAL COUNSEL

By: \_\_\_\_\_  
Assistant/Deputy

By: \_\_\_\_\_  
[ ]

**CITY OF CHULA VISTA,**  
a chartered municipal corporation

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Glen R. Googins,  
City Attorney

## EXHIBIT “A”

### Depiction of CVBMP



## EXHIBIT "B"

### Depiction of the Bayfront Project Special Financing Tax District Boundaries

(to be attached prior to execution)





## EXHIBIT “C”

### Form of Formation Documents



RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING THE FORM OF A JOINT COMMUNITY FACILITIES AGREEMENT BETWEEN THE CITY OF CHULA VISTA AND THE SAN DIEGO UNIFIED PORT DISTRICT, FORMING AND ESTABLISHING THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT AND AUTHORIZING SUBMITTAL OF THE LEVY OF SPECIAL TAX WITHIN THE BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT TO THE QUALIFIED ELECTORS OF SUCH DISTRICT

WHEREAS, the City of Chula Vista, California (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations with respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5, and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

WHEREAS, Chapter 3.61 of the Chula Vista Municipal Code (“Chapter 3.61”) was enacted for the purpose of establishing a procedure for financing certain public and private improvements and maintenance and services to serve the Chula Vista Bayfront Project through the establishment of the Bayfront Project Special Tax Financing District (the “District”), the levy and collection of special taxes within the District and the issuance of bonds of the District secured by such special taxes for the purpose of financing a Convention Center Facility (as defined in Chapter 3.61) and certain other public and/or private improvements; and

WHEREAS, the City Council of the City (the “City Council”) duly adopted its Resolution No. 2019-168 on September 10, 2019 (the “Resolution of Intention”) wherein the City Council declared its intention and initiated proceedings to consider the establishment of the District, to set forth the proposed boundaries for the District, to indicate the Improvements (as defined herein below) and the Services (as defined herein below) proposed to be financed by the District, to indicate the proposed rate and apportionment of a special tax sufficient to finance the purchase, construction, expansion, improvement, rehabilitation, replacement and upgrade, including ongoing capital repairs, of the Improvements and the Services, and the administration of the District and to repay any indebtedness incurred by the District, and to set a time and place for a public hearing relating to the establishment of the District (the “Establishment Public Hearing”); and

WHEREAS, pursuant to the Resolution of Intention, the City Council directed that a report (the “Report”) be filed, at or before the time of the Establishment Public Hearing, with the City Council containing a brief description of the Improvements and Services by type which will be required to adequately meet the needs of the District, an estimate of the cost of providing such Improvements and Services and, with regard to those Improvements proposed to be acquired upon the completion thereof and those Incidental Expenses (as such term is defined in Government Code Section 53317(e)) proposed to be paid for, an estimate of the fair and reasonable cost of such Improvements and Incidental Expenses; and

WHEREAS, such Report was timely filed with the City Council; and

WHEREAS, the City Council also adopted its Resolution No. 2019-169 (“Resolution Declaring Necessity to Incur Bonded Indebtedness”) on September 10, 2019, declaring that the public convenience and necessity requires that a bonded indebtedness be incurred by the District in an amount not to exceed \$175,000,000 to contribute to the financing of the Improvements; and,

WHEREAS, the Resolution Declaring Necessity to Incur Bonded Indebtedness fixed the time and place for a public hearing to be held on the intention of the City Council to incur a bonded indebtedness of the District to contribute to the financing of the Improvements, such indebtedness to be secured by all or a portion of the levy of special taxes within the District (the “Indebtedness Public Hearing” and, together with the Establishment Public Hearing, the “Public Hearings”); and

WHEREAS, pursuant to the Resolution of Intention and the Resolution Declaring Necessity to Incur Bonded Indebtedness, the Public Hearings were set by the City Council for Tuesday, October 15, 2019, at the hour of 5:00 p.m., or as soon thereafter as the City Council might reach the matters, in the Council Chambers, City Hall, 276 Fourth Avenue, Chula Vista, California; and

WHEREAS, there are on file with the City Clerk, separate proofs of publication of the Notice of Public Hearing regarding the establishment of the District and the necessity to incur bonded indebtedness of the District (the “Notice of Public Hearing”) in the Star News and a Certificate of Mailing of Notice of Public Hearings (the “Certificate of Mailing”) showing mailed notice of the Public Hearings to each property owner within the District; and

WHEREAS, at the time and place specified, the City Council consolidated and conducted the Public Hearings, and all persons interested, including, but not limited to, all taxpayers and property owners within the District were given an opportunity to appear and be heard, and to present any matters relating to the establishment of the District, the rate and method of apportionment of the special tax proposed to be levied within the District, the extent of the District, the financing of the Improvements and the Services and all other related matters, and the Report and such testimony was heard and considered by this City Council; and

WHEREAS, there has been presented to the City Council the form of an agreement entitled Joint Community Facilities Agreement (Chula Vista Bayfront Project Special Tax Financing District) (the “JCFA”) by and between the City and the San Diego Unified Port District (the “Port District”) pursuant to Government Code Section 53316.2 to set forth the essential terms for the allocation and payment of the Special Tax Revenues (as such term is defined in the JCFA) for the development, operation, maintenance and servicing of various improvements (a) within the territory of the Chula Vista Bayfront Master Plan (the “CVBMP”) and (b) outside the CVBMP as required by mitigation measures specified within the CVBMP Environmental Impact Report (UPD#83356-EIR-658; SCH No. 2005081077) (the “Project EIR”) and for which the District or City are responsible; and

WHEREAS, prior to the adoption of this resolution, the City Council did, by the adoption of Resolution No. 2019-\_\_\_\_, approve the JCFA and determine that the JCFA will be beneficial to the residents, tenants and visitors to the territory within boundaries of the District; and

WHEREAS, the City Council desires to amend the Resolution of Intention to change the term of the Special Tax (as defined in Section 8 hereinbelow) to limit such term to read as set forth in paragraph “J. Term of the Special Tax” of the Rate and Method of Apportionment of Special Taxes in Exhibit C attached hereto (the “Rate and Method of Apportionment”); and

WHEREAS, all communications relating to the establishment of the District, the financing of the Improvements and Services and the levy of the Special Tax pursuant to the Rate and Method of Apportionment have been presented, and it has further been determined by this City Council that a majority protest as specified by Chapter 3.61 has not been received against the establishment of the District, the furnishing of any of the Improvements or Services or the levy of the Special Tax pursuant to the Rate and Method of Apportionment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHULA VISTA, AS FOLLOWS:

SECTION 1. Recitals. The above recitals are all true and correct.

SECTION 2. Determinations. It is hereby determined by this City Council that:

- A. All prior proceedings pertaining to the formation of the District were valid and taken in conformity with the requirements of the law, and specifically the provisions of the Chapter 3.61, and that this finding and determination is made pursuant to the provisions of Chapter 3.61.
- B. The change in the term of the Special Tax to read as set forth in the Rate and Method of Apportionment shall not increase the maximum Special Tax or the probable Special Tax to be paid by any Operator (as such term is defined in the Rate and Method).
- B. The written protests received, if any, do not represent a majority protest as defined by the applicable provisions of Chapter 3.61 and as applied to the District, the Improvements or the Services or the levy of the Special Tax pursuant to the Rate and Method of Apportionment and, therefore, the establishment of the District, the furnishing of the Improvements and Services and the Special Tax proposed to be levied within the District have not been precluded by majority protest pursuant Chapter 3.61.
- C. The District, as proposed, conforms to the provisions of Chapter 3.61.
- D. The Registrar of Voters of the County of San Diego has certified that no person is registered to vote within the territory proposed to be included in the District.
- E. Pursuant to Chapter 3.61 the qualified electors of the District shall be the Landowners of the District as such term is defined in Chapter 3.61 and each such Landowner who is the owner of record as of the close of the Establishment Public Hearing or any subsequent owner if the City Clerk is informed, by reliable evidence, of a change in ownership after that time and at least 24 hours before the deadline to

submit ballots, or the authorized representative thereof, shall have one vote for each acre or portion of an acre of land that such Landowner owns within the District.

- F. The City Clerk, acting as the election official, has consented to conducting any required election on a date which is less than 125 days following the adoption of any resolution forming and establishing the District.

SECTION 3. Report. The Report, as now submitted by Willdan Financial Services, special tax consultant, shall stand as the report as required pursuant to Chapter 3.61 for all future proceedings and all terms and contents are approved as set forth therein. The Report shall be made a part of the record of the Establishment Public Hearing.

SECTION 4. Name of District. The City Council does hereby establish and declare the formation of the District known and designated as the "Bayfront Project Special Tax Financing District."

SECTION 5. Boundaries of the District. The boundaries of the District are generally described as follows:

All that property as shown on a map as previously approved by this City Council, such map entitled "Map of Proposed Boundaries of the Bayfront Project Special Tax Financing District, City of Chula Vista, County of San Diego, State of California," a copy of which is on file in the Office of the City Clerk. The boundary map of the proposed District has been filed pursuant to Sections 3111 and 3113 of the Streets and Highways Code of the State of California in the Office of the County Recorder of the County of San Diego, at Page 38-44 of Book 48 of the Book of Maps of Assessment and Community Facilities Districts for such County.

SECTION 6. Description of the Improvements. The District is authorized to finance the purchase, construction, expansion, improvement, rehabilitation, replacement and upgrade, including ongoing capital repairs, of certain public and private improvements pursuant to the provisions of Chapter 3.61 and any other method permitted by law. A general description of such improvements is set forth in Exhibit "A," attached hereto and incorporated herein by this reference (the "Improvements"). The Improvements shall be located (a) within the territory of the CVBMP or (b) outside the territory of the CVBMP as required by mitigation measures specified within the Project EIR.

All such Improvements shall have an estimated useful life of five years or longer. The Improvements are facilities that the City and/or the San Diego Unified Port District are authorized by law to construct, own, or operate, or to which they may contribute revenue.

The cost of the Improvements includes Incidental Expenses and may include, but not be limited to, the cost of planning, designing and engineering the Improvements; all costs associated with the establishment of the District, the issuance and administration of bonds to be issued by the District, including the payment of any rebate obligation due and owing to the federal government, the determination of the amount of any special taxes to be levied; the cost of collecting any special taxes; and costs otherwise incurred in order to carry out the authorized purposes of the District,

together with any other expenses incidental to the purchase, construction, expansion, improvement, rehabilitation, replacement and upgrade, including ongoing capital repairs of the Improvements, as set forth in Section 3.61.080 of Chapter 3.61.

SECTION 7. Description of Services. The District is authorized to finance maintenance and services authorized to be financed pursuant to the provisions of Chapter 3.61. A general description of the maintenance and services authorized to be financed is set forth in Exhibit "B," attached hereto and incorporated herein by this reference (the "Services"). The Services shall be provided (a) within the territory of the CVBMP or (b) outside the territory of the CVBMP as required by mitigation measures specified within the Project EIR. The Services shall include, but not be limited to, the provision of all labor, material, administration, personnel, equipment and utilities necessary to maintain such improvements.

The City Council finds that the Services are necessary to meet increased demands placed upon the City and/or the Port District, as applicable, as a result of development occurring within the boundaries of the District and the Services will not supplant services already available within the boundaries of the District.

SECTION 8. Special Tax. Except where funds are otherwise available, a special tax sufficient to pay for costs of the Improvements as specified in Section 6 above and the Services as specified in Section 7 above (the "Special Tax" or "Special Taxes"), will be levied pursuant to the provisions of Chapter 3.61. The revenues derived from the levy of the Special Taxes shall be allocated and utilized pursuant to the priorities established in the JCFA.

For further particulars as to the rate and method of apportionment of the proposed Special Taxes for the District (the "Rate and Method of Apportionment") reference is made to the attached and incorporated Exhibit "C," which sets forth in sufficient detail the rate and method of apportionment to allow each Landowner or Operator (as such terms are defined in Chapter 3.61) within the District to estimate the maximum amount that such Landowner or Operator will have to pay.

The Special Taxes will be due and remitted with the Operator's payment of transient occupancy taxes as set forth in Chapter 3.40 of the Chula Vista Municipal Code ("Chapter 3.40"). If a Landowner is not an Operator, the Landowner shall cause the Operator to remit the Special Taxes imposed with the Operator's payment of transient occupancy tax. Such Landowner obligation may be met by including a requirement to remit the Special Taxes in a lease or other real property instrument for a Campsite Property or Hotel Property (each as defined in the Rate and Method of Apportionment) and enforcing such requirement, as provided for in the real property instrument. However, the Special Tax is not imposed on the Transient (as defined in Chapter 3.40), but on the parcel or possessory interest in a parcel containing a Hotel or Campsite (as such terms are defined in Chapter 3.61). The Operator may, but is not required to, pass the Special Tax through to the Transients and collect it with Rent (as defined in Chapter 3.40). Despite the method of collection and administration, the Special Tax is distinct from the City's transient occupancy tax and, subject to the Rate and Method of Apportionment, may be enforced, in the event of nonpayment, as provided in the Mello-Roos Community Facilities Act of 1982, including through a judicial foreclosure; however, the City Council reserves the right to utilize any other lawful means of billing, collecting, and enforcing the Special Taxes, including billing on the secured property tax roll, direct and

supplemental billing, any other legal authority to collect delinquent Special Taxes, penalties and interest and when lawfully available, judicial foreclosure of the lien of the Special Taxes.

Subject to the Rate and Method of Apportionment, any Special Taxes delinquent as of July 1 of any fiscal year, together with any penalties and interest accrued as of that date, may, at the option of the City Council, acting as the legislative body of the District, be placed on the secured property tax roll in that fiscal year and be levied on the parcel for which such Special Taxes are delinquent, where it shall be collected in the same manner as ordinary ad valorem property taxes are collected and shall be subject to the same penalties and the same procedure, sale and lien priority in case of delinquency as is provided for ad valorem taxes.

The Special Taxes are imposed by the District and not the City. The Special Tax shall be levied by the District, in any year, only on a parcel or a possessory interest in a parcel within the District for the use of such property during such year as Hotel Property or Campsite Property.

SECTION 9. Special Taxes Accountability Measures. Pursuant to and in compliance with the provisions of Government Code Section 50075.1, this City Council hereby establishes the following accountability measures pertaining to the levy by the District of the Special Taxes described in Section 8 above:

- A. Each Special Tax shall be levied for the specific purposes set forth in Section 8 above.
- B. The proceeds of the levy of each such Special Tax shall be applied only to the specific applicable purposes set forth in Sections 6, 7 and 8 above.
- C. The District shall establish a separate account into which the proceeds of each such Special Tax shall be deposited.
- D. The City Manager, or his or her designee, acting for and on behalf of the District, shall annually file a report with the City Council as required pursuant to Government Code Section 50075.3.

SECTION 10. Preparation of Annual Tax Roll. If there is an annual tax roll prepared for the District, the name, address and telephone number of the office, department or bureau which will be responsible for preparing the annual current roll of Special Tax levy obligations for the District and which shall be responsible for estimating future Special Tax levies pursuant to Chapter 3.61, are as follows:

Finance Department  
City of Chula Vista  
276 Fourth Avenue  
Chula Vista, CA 92010  
(619) 691-5250

SECTION 11. Substitution Improvements. The description of the Improvements, as set forth in Exhibit A hereto, is general in its nature. The final nature and location of the Improvements will

be determined upon the preparation of final plans and specifications therefor. Such final plans may show substitutes in lieu of, or modification to, the above described types of facilities and any such substitution shall not be a change or modification in the proceedings as long as the facilities provide a service substantially similar to that as set forth in this Resolution.

SECTION 12. Election. This City Council herewith submits the levy of the special tax to the qualified electors of the District as specified in Section 2E above, such electors being the Landowners in the District, with each Landowner having one (1) voter for each acre or portion thereof of land which he or she owns within the District.

PREPARED BY:

APPROVED AS TO FORM BY:

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Kelly G. Broughton FASLA  
Director of Developmental Services

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Glen R. Googins  
City Attorney



## EXHIBIT A

### DESCRIPTION OF THE AUTHORIZED IMPROVEMENTS

1. Convention Center Facility (as defined in Chula Vista Municipal Code Chapter 3.61);
2. Street improvements, including grading, paving, curbs, gutters, sidewalks, street signalization, signage, street lights, furnishings, and parkway and median landscaping related thereto;
3. Gateway signage;
4. Pedestrian and bicycle paths;
5. Storm drains and other water quality devices to ensure regional permit compliance;
6. Public utilities (including but not limited to water, reclaimed water, sewer, electric, gas, and telephone);
7. Public parks, open space and recreation facilities;
8. Fire protection and emergency response facilities;
9. Parking improvements;
10. Museums and cultural facilities;
11. Ecological and sustainability educational improvements;
12. Energy efficiency, water conservation, and renewable energy improvements;
13. Land, rights-of-way and easements necessary for any facilities to be financed by the District; and
14. Equipment, apparatus, facilities or fixtures with an expected useful life of 5 years or longer necessary for any of the foregoing or necessary to provide any of the services described in Exhibit B.

## EXHIBIT B

### DESCRIPTION OF THE AUTHORIZED SERVICES

Authorized Services shall include the operation, maintenance, servicing, and replacement of the authorized Improvements (see Exhibit A), together with the following additional Services:

1. Landscaping, including, but not limited to trees, shrubs, grass, other ornamental vegetation located in or on slopes, parkways and medians;
2. Facilities that are directly related to storm water conveyance, including, but not limited to pipes and drainage inlets, detention basins, linear bioretention, and parks;
3. Walls and fencing;
4. Parks, including landscaping, facilities, walls, fencing, lighting, and trails;
5. Streetscape improvements, including lighting, furnishings and appurtenances;
6. Parking improvements;
7. Transportation services;
8. Promotion of public events and tourism;
9. Security, sanitation, graffiti removal, street and sidewalk cleaning, and other municipal services supplemental to those normally provided by the City or other service provider; and
10. Repair of the authorized Improvements.

For purposes of this description of the Services to be funded by the levy of Special Taxes within the District, "maintenance" includes, but is not limited to, the furnishing of services and materials for the ordinary and usual maintenance, operation, management and servicing of any of the authorized Improvements, including:

1. Repair, removal, or replacement of the authorized Improvements;
2. Providing for the life, growth, health, and beauty of habitat, including the cultivation, irrigation, trimming, spraying, fertilizing, or treating for disease or injury;
3. The removal of trimmings, rubbish, debris, silt, and other solid waste;
4. The cleaning, sandblasting, and painting of walls and other facilities to remove or cover graffiti;
5. The elimination, control, and removal of rodents and vermin;
6. The operation and management of open space and natural habitat, including biological monitoring and evaluation of collected data;

7. The conduct of biological activities necessary to sustain the species being protected;
8. The operation and maintenance of pedestrian bridges and community gardens within or appurtenant to such open space or habitat area(s); and
9. The maintenance and cleaning of drainage and other storm water control facilities required to provide storm water quality control.

“Service” or “servicing” means the furnishing of:

1. Electric current or energy, gas, or other illuminating agent for any public lighting facilities or for the lighting or other operation of any other Improvements; and
2. Water for the irrigation of any landscaping or the operation or maintenance of any other Improvements.

EXHIBIT C

**RATE AND METHOD OF  
APPORTIONMENT OF SPECIAL TAX**

BAYFRONT PROJECT SPECIAL TAX FINANCING DISTRICT

The Special Tax authorized by the Bayfront Project Special Tax Financing District (the "District") shall be levied on all Taxable Property and collected within the District as provided herein commencing in Fiscal Year 2020-2021, in an amount determined by the City Council of the City of Chula Vista, acting as the legislative body of the District, through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within the District, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent, and in the manner herein provided.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Act"** means the Mello-Roos Community Facilities Act of 1982, being Chapter 2.5, Part 1, Division 2 of Title 5 of the Government Code of the State of California.

**"Assessor's Parcel"** means a lot or parcel designated on an Assessor's Parcel Map with an assigned Assessor's Parcel number within the boundaries of the District.

**"Assessor's Parcel Map"** means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

**"Bond Documents"** means any indenture of trust, bond indenture, fiscal agent agreement, trust agreement, resolution or other instrument setting forth the terms of any Bonds, as modified, amended and/or supplemented from time to time, and any instrument replacing or supplementing the same.

**"Bonds"** means any binding obligation to repay a sum of money, including obligations in the form of bonds, notes, certificates of participation, long-term leases, loans from government agencies, or loans from banks, other financial institutions, private businesses, or individuals, or long-term contracts, or any refunding thereof, to which the Special Tax has been pledged.

**"Boundary Map"** means the "Map of Proposed Boundaries of the Bayfront Project Special Tax Financing District, City of Chula Vista, County of San Diego, State of California," filed September 12, 2019 in Book 48 of Maps of Assessments and Community Facilities Districts in the office of the County Recorder.

**"Calendar Year"** means the period commencing January 1 of any year and ending the following December 31.

**"Campsite"** shall have the meaning given such term in Chapter 3.61.

**"Campsite Property"** means an Assessor's Parcel of Taxable Property which consists of any Campsite or Campsites.

**"Chapter 3.61"** means Chapter 3.61 of the Chula Vista Municipal Code.

**"City"** means the City of Chula Vista.

**“City Council”** means the City Council of the City, acting as the legislative body of the District, or its designee.

**“City Manager”** means the City Manager of the City.

**“County”** means the County of San Diego.

**“Director of Finance”** means the Director of Finance of the City.

**“District”** means the Bayfront Project Special Tax Financing District established by the City pursuant to Chapter 3.61.

**“Exempt Property”** means all Assessor’s Parcels within the District which are exempt from the Special Tax pursuant to law or Section F herein.

**“Fiscal Year”** means the period commencing on July 1 of any year and ending the following June 30.

**“Hotel”** shall have the meaning given such term in Chapter 3.61.

**“Hotel Property”** means an Assessor’s Parcel of Taxable Property which consists of any Hotel or Hotels.

**“Landowner”** shall have the meaning given such term in Chapter 3.61.

**“Maximum Annual Special Tax Rate”** shall, for any Fiscal Year, not exceed five percent (5%) of all Rent charged during such Fiscal Year for the privilege of Occupancy by Transients of the Campsite(s) or Hotel(s), as applicable, located on each Assessor’s Parcel of Campsite Property or Hotel Property.

**“Occupancy”** shall have the meaning given such term in Chapter 3.61.

**“Operator”** shall have the meaning given such term in Chapter 3.61.

**“Port District”** means the San Diego Unified Port District.

**“Public Property”** means any property within the boundaries of the District that is owned or held in trust by or irrevocably dedicated to the City, the federal government, the State of California, the County, the Port District, or any other public agency.

**“Rent”** shall have the meaning given such term in Chapter 3.61.

**“Resolution of Formation”** means the resolution adopted by the City Council pursuant to Chapter 3.61 establishing the District.

**“Special Tax”** means the special tax authorized by the District to be levied by the City Council pursuant to Chapter 3.61.

**“Taxable Property”** means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to law or this Rate and Method of Apportionment of Special Tax.

**“Transient”** shall have the meaning given such term in Chapter 3.61.

## **B. CLASSIFICATION OF ASSESSOR’S PARCELS**

Each Fiscal Year, beginning with Fiscal Year 2020-2021, each Assessor’s Parcel shall be classified as Taxable Property or Exempt Property. In addition, each Assessor’s Parcel of Taxable Property shall be further classified as Campsite Property or Hotel Property. Commencing with Fiscal Year 2020-2021, all Campsite Property and Hotel Property shall be subject to the levy of the Special Tax pursuant to Section C below.

## **C. SPECIAL TAX**

For each Fiscal Year commencing Fiscal Year 2020-2021, the City Council shall, by resolution adopted on or before May 31st preceding such Fiscal Year, levy the Special Tax on each Assessor's Parcel classified as Campsite Property or Hotel Property at a rate not to exceed the Maximum Annual Special Tax Rate. For each succeeding Fiscal Year, the Special Tax shall be levied at the same rate as the rate levied in the preceding Fiscal Year unless the City Council shall, by resolution adopted by May 31st of the preceding Fiscal Year, levy the Special Tax at a different rate than the rate levied in the preceding Fiscal Year not to exceed the Maximum Annual Special Tax Rate.

The Special Tax associated with Rent that is charged for Occupancy by Transients shall be considered levied at the same time the Transient ceases such Occupancy.

#### **D. MANNER OF COLLECTION**

The Special Tax shall be due and remitted pursuant to the provisions of Section 3.61.120 of Chapter 3.61.

#### **E. PREPAYMENT OF THE SPECIAL TAXES**

The Special Tax may not be prepaid.

#### **F. EXEMPTIONS**

Assessor's Parcels not classified as Campsite Property or Hotel Property shall be exempt from the levy of the Special Tax.

#### **G. FAILURE TO SUBMIT SPECIAL TAX**

If the Operator of any Campsite or Hotel located on an Assessor's Parcel of Campsite Property or Hotel Property, or the Landowner of an Assessor's Parcel of Campsite Property or Hotel Property that is not Public Property, fails or refuses to pay the Special Tax levied on such Assessor's Parcel when due, the Director of Finance shall proceed in such manner as deemed best to obtain facts and information on which to base his/her estimate of such Special Tax. As soon as the Director of Finance has acquired such facts and information upon which to base such Special Tax for such Campsite Property or Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due plus any penalties thereon, as described below ("Determination of Special Tax Due"). In the case that such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to such Operator or such Landowner, as applicable, at its last known address. Such Operator or such Landowner, as applicable, may file an appeal as provided in Section J herein.

The Special Tax on any Campsite Property or Hotel Property which is not paid within the time required shall be subject to the same penalties applicable to the transient occupancy tax in subsections A and B of Section 3.40.080 of the Chula Vista Municipal Code. For any Special Taxes and penalties that remain outstanding as of July 1 of each Fiscal Year, the City Council may direct the Director of Finance to cause the submission of any of the delinquent Special Taxes and penalties to the County for inclusion on the property tax bill for such Assessor's Parcel(s) in accordance with Section 3.61.130 of Chapter 3.61; provided, however, that any delinquent Special Taxes and penalties with respect to any Assessor's Parcel of Public Property that is classified as Campsite Property or Hotel Property due to the grant of a lease or other possessory interest in such Assessor's Parcel of Public Property to the Operator of a Campsite or Hotel thereon shall only be levied on and constitute a lien against the Operator's leasehold or possessory interest in such Assessor's Parcel of Public Property, all as contemplated by Section 53340.1 of the Act, as modified by Chapter 3.61, and shall not be an obligation for which the Landowner of such Assessor's Parcel of Public Property is billed or

responsible.

## H. MAINTENANCE OF RECORDS; SPECIAL TAX AUDIT

It shall be the duty of the Operator of any Campsite or Hotel located on any Assessor's Parcel classified as Campsite Property or Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the Director of Finance (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes levied upon such Campsite Property or Hotel Property by the City Council. The Director of Finance shall have the right to inspect such records at all reasonable times.

## I. APPEAL

Any Operator of a Campsite or Hotel located on any Campsite Property or Hotel Property or any Landowner of any Campsite Property or Hotel Property claiming that the amount or application of the Special Tax reflected in any Determination of Special Tax Due on such Campsite Property or Hotel Property is not correct, may appeal such Determination of Special Tax Due by filing a notice of appeal with the City Clerk within fifteen (15) calendar days of the serving or mailing of such Determination of Special Tax Due. If such appeal is made by an Operator that is not also the Landowner of such property, then the Operator shall also provide a copy of such notice of appeal to the Landowner at the same time the Operator files the notice of appeal with the City Clerk. Upon receipt of any such notice, the City Clerk shall forward a copy of such notice to the City Manager who shall establish as part of the proceedings and administration of the District a special three-member Appeal Committee. The Appeal Committee may establish such procedures as it deems necessary to undertake the review of any such appeal. The Appeal Committee shall interpret this Rate and Method of Apportionment and make determinations relative to the annual administration of the Special Tax and any appeals by Landowners, or Operators, as herein specified. The decision of the Appeal Committee shall be final, conclusive, binding as to all persons and shall be served upon the Operator or Landowner in writing at the last known address of such Operator or Landowner. Any amount found due shall be immediately due and payable upon service of the Appeal Committee findings. If the Appeal Committee decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Operator or Landowner, a cash refund shall not be made, but a credit shall be given against the future Special Taxes on that Assessor's Parcel.

## J. TERM OF THE SPECIAL TAXES

The Special Tax shall be levied as long as necessary to pay for authorized expenditures as specified in Section 3.61.080 of Chapter 3.61 for a period not to exceed forty Fiscal Years commencing with the first new month following formation of the District.

## EXHIBIT D

### Phase 1A Infrastructure

“Phase 1A Infrastructure” is defined as:

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