

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
CITY OF CORONADO
for
POLICE, FIRE, LIFEGUARD, AND EMERGENCY MEDICAL SERVICES
AGREEMENT NO.**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (“District”) and THE CITY OF CORONADO, a municipal corporation (“City”). The District and the City may each be referred to herein as a “Party” and together as the “Parties.”

RECITALS:

WHEREAS, the San Diego Unified Port District Act allows the District to contract with the municipalities whose territorial limits are adjacent or contiguous to those of the District for police, fire, lifeguard and other services; and

WHEREAS, the District and the City desire to execute an Agreement for police, fire, and emergency medical services on non-ad valorem tideland trust property located in the City of Coronado; and

WHEREAS, the City has the capacity to provide police, fire, lifeguard and emergency services to said District property.

NOW THEREFORE, the Parties agree to the following:

1. **SCOPE OF SERVICES.** This Agreement covers reimbursement of the actual costs of police, fire, lifeguard and emergency medical (EMS) services to be provided by the City upon the District's tidelands and property within the City's limits, and which do not generate ad valorem tax revenues, as more particularly depicted on Exhibit 1, Non-Tax Paying Tidelands in the City of Coronado,

incorporated by reference as though fully set forth herein (collectively, the “Properties”). The Properties include, but are not limited to, non-dedicated streets, parks and other open space, unleased developed properties, leased properties wherein the lessee is not subject to ad valorem taxes (with the exception of properties leased to the City), and unleased vacant land. Nothing herein contained shall give the City the right to use or occupy any District real or personal property, or to otherwise use the services of the District or its employees. City shall provide police, fire and emergency medical services as contained in the “Scope of Services” established as the baseline service level, attached hereto as Exhibit 2 and incorporated by reference as though fully set forth herein (collectively, the “Services”), as the same may be adjusted in accordance with the terms of this Agreement. Services under this Agreement shall be in furtherance of the San Diego Bay tideland trust for the accommodation of commerce, navigation, fisheries, and recreation on said trust tidelands for the benefit of all of the people of the State of California.

2. **TERM OF AGREEMENT.** The term of this Agreement (the “Term”) shall be effective as August 19, 2022 and shall terminate on June 30, 2030, subject to earlier termination as provided below. For purposes of this Agreement, each year beginning on July 1 and ending on June 30 of the following year shall be referred to herein as a “Service Year.”
3. **COMPENSATION.** For performance of Services, District shall compensate City as follows:
 - a. **Baseline Rate for Services Provided.** Commencing on August 19, 2022, District shall pay City one million three hundred thirty thousand one hundred eighteen dollars (\$1,330,118) (the “Initial Baseline Rate”) each Service Year for Services until the Initial Baseline Rate is adjusted in accordance with the terms of this Agreement. The Initial Baseline Rate, as adjusted in accordance with the terms of this Agreement, shall be referred to herein as the “Baseline Rate.”

- b. Periodic Baseline Rate Resets.** The Baseline Rate shall be subject to adjustment periodically on the following dates (each a “Baseline Reset Date”):

| | |
|-----------------------|--------------|
| First Baseline Reset | July 1, 2025 |
| Second Baseline Reset | July 1, 2028 |

At least six (6) months before a scheduled Baseline Reset Date, the Parties shall meet and confer regarding fair and appropriate cost and service standards and commence good faith efforts to renegotiate the Baseline Rate and the accompanying Scope of Services, taking into account relevant factors, including, but not limited to, the actual documented costs of providing the Services and the results and findings of any Performance Audit (as defined in Section 4.c below) performed prior to such time or completed at any time during such negotiations. Following such discussions and negotiations, the Parties may jointly, or each separately, present a new Baseline Rate (which shall include a Scope of Services) to the Board of Port Commissioners (the “Board”) for approval in the Board’s sole and absolute discretion. Any Baseline Rate approved by the Board pursuant to this Section 3.b may differ from a Baseline Rate presented to the Board and may ultimately be an increase or a decrease from the Baseline Rate previously in effect. If the Board fails to approve a new Baseline Rate or if the Board approves a Baseline Rate that is unacceptable to the City on or prior to a Baseline Reset Date, then the Baseline Rate shall adjust pursuant to Section 3.c below, the Scope of Services then in effect shall continue to be effective, and the Parties shall continue to negotiate in good faith; provided that if the Board, despite the Parties’ good faith efforts and each Party’s compliance with the terms of this Section 3.b, fails to approve a new Baseline Rate acceptable to the City on or before the date that is six (6) months following the Baseline Reset Date, then, subject to the second paragraph of Section 3.c below, either the Baseline Rate (as

adjusted and subject to further adjustment pursuant to Section 3.c below) and the Scope of Services then in effect shall continue to apply until the Parties are to again commence Baseline Rate negotiations in accordance with terms set forth above, or alternatively, either Party may terminate this Agreement upon six (6) months' prior written notice in accordance with Section 17 below. If a new Baseline Rate is approved by the Board, in its sole and absolute discretion, and accepted by the City on or before the date that is six (6) months following a Baseline Reset Date, then (i) in the event that the updated Scope of Services does not result in increased levels of Services as compared to the levels of Services in effect prior to the applicable Baseline Reset Date, then such new Baseline Rate (including the updated Scope of Services) shall become effective as of such Baseline Reset Date, or (ii) in the event that the updated Scope of Services results in increased levels of Services as compared to the levels of Services in effect prior to the applicable Baseline Reset Date, then such new Baseline Rate shall become the new Baseline Rate (including the updated Scope of Services) effective as of the first day of the quarter immediately following the Parties reaching an agreement. Following any establishment of a new Baseline Rate (and updated Scope of Services) pursuant to the previous sentence, the Baseline Rate shall be adjusted thereafter as described in Section 3.c below.

Following any establishment of a new Baseline Rate as set forth in this Section 3.b, the Parties shall execute an amendment to this Agreement (which amendment may be executed by the Executive Director of the District or their designee and the City Manager or their designee) solely to document (i) the new Baseline Rate, (ii) the accompanying Scope of Services, and (iii) the effective date of the new Baseline Rate and accompanying Scope of Services.

- c. Annual Baseline Rate Increases.** Commencing on July 1, 2023 and on each July 1 thereafter during the Term, the Baseline Rate shall be increased by four percent (4%) (the “Annual Baseline Increase”); provided, however, the procedures and provisions set forth in Section 3.b above shall control with respect to the effective Baseline Rate (or any adjustment thereof) on or following a Baseline Reset Date.

If the City provides the District with reasonable justification in writing that the Baseline Rate (as adjusted pursuant to an Annual Baseline Increase, distinguished from establishing a new Baseline Rate pursuant to Section 3.b above) is insufficient to cover the costs of the Services to be provided pursuant to the then applicable Scope of Services, then the City shall have the right to adjust the level of Services in accordance with the terms of Section 3.f below; provided, however, that in no event (whether pursuant to a Service level adjustment under Section 3.f or otherwise) shall Services be adjusted to a level so that the value of such level of Services is less than the corresponding Baseline Rate then in effect.

- d. Events for Deferred Payments and Service Level Adjustments.** The Parties agree that upon the occurrence of certain unforeseeable events, the District may defer certain payments due under this Agreement and/or the District or the City may adjust the level of Services being provided by the City hereunder. Each of the following events (each an “Adjustment Event”) may justify Deferred Payments as provided in Section 3.e below or a level of Service adjustment as provided in Section 3.f below:

- (1) Unanticipated events or needs that would require significant District budget cuts in the Service Year during which the events or needs occur and/or the Service Year immediately thereafter; or

- (2) Acts of God, civil commotions, fire or other casualty, acts of terrorism, pandemics, and/or other force majeure type events beyond the reasonable control of a Party that cause an unforeseen and significant reduction in District revenue;
- (3) Expenses associated with bad debt, benefit cost increases, pollution remediation costs, judgments, and/or settlement costs;
- (4) Unanticipated costs associated with regulatory requirements and/or legal mandates; or
- (5) A need by District to replenish operating reserves should reserves fall below levels required by the then current policies of the Board of Port Commissioners.

e. Deferred Payments. Following the occurrence of one or more Adjustment Events, the District may defer an amount less than or equal to an Annual Baseline Increase attributable to the next Service Year (*i.e.*, an amount equal to a four percent (4%) increase to the Baseline Rate for the applicable Services Year) by providing the City with written notice no less than sixty (60) days prior to the applicable Service Year. In no event over the Term may the District defer an Annual Baseline Increase(s) attributable to more than five (5) Service Years on a cumulative basis. Any amount deferred pursuant to this Section 3.e shall be referred to as a “Deferred Payment”. Any Deferred Payment(s) shall be repaid in the year following the deferral. For example, if the District elects, at a given time, to defer the Annual Baseline Increase due for the second Service Year during the Term, the associated Deferred Payment must be repaid, in equal quarterly installments, during the third Service Year at the same time the District makes or would otherwise be obligated to make payments pursuant to Section 3.g below; or in the case that the District elects to defer the Annual

Baseline Increase due for the last Service Year of the Term, then the associated Deferred Payment must be repaid, in equal quarterly installments, during the year that follows at the same time the District would otherwise have been obligated to make payments pursuant to Section 3.g below. Subject to the limits set forth above, the District may elect to defer Annual Baseline Increases in accordance with the terms hereof on one or more occasions. No interest shall accrue and be payable with respect to any Deferred Payment. The District's obligation to repay any Deferred Payment in accordance with the terms of this Section 3.e shall survive the expiration or earlier termination of this Agreement.

- f. Service Level Adjustments.** In the case of the District, following the occurrence of one or more Adjustment Events, or in the case of the City, following the occurrence of an Adjustment Event or pursuant to Section 3.c above, levels of Services may be reasonably reduced by either the District or the City. Should either Party require a reduction to the level of Services following an Adjustment Event applicable to such Party or, in the case of the City, pursuant to Section 3.c as provided above, then such Party shall notify the other Party of the request, the applicable Services to be reduced, the length of the reduction, and an explanation for the same. Within sixty (60) days of receiving or sending, as applicable, an adjustment request, the City shall provide to District a detailed summary of changes to the level of Services, the duration of such changes, and the associated reduction in cost to the City (an "Adjustment Summary"). Prior to an adjustment in Services becoming effective, an Adjustment Summary shall be subject to the Executive Director of District's prior written approval, such approval not to be unreasonably withheld, conditioned, or delayed. In connection with an Adjustment Summary, if reduced levels of Services will result in a lower cost to City to provide the Services, then amounts owed hereunder by the District shall be reduced commensurate with the reduced levels of Services. Upon the District's approval of any Adjustment Summary, (i) the corresponding

adjustments to the levels of Services and amounts due hereunder shall immediately become effective and (ii) such adjustments and amounts shall be incorporated into a letter agreement or amendment to this Agreement executed by both Parties to amend this Agreement solely in order to document the adjustments.

- g. Reimbursement Process.** City shall submit written requests for reimbursement to District for equal quarterly payments under this Agreement. Such requests shall include amounts due for the Service Year in question and, if applicable, any Deferred Payment or amounts due pursuant to Section 16 below. Written requests shall be submitted on a quarterly basis, at the end of each fiscal quarter. District agrees to make reimbursement payments to City within thirty (30) days of receipt of a properly prepared request for reimbursement. Failure to make timely demand for payment shall not limit City's right to payment or District's obligation to pay.

4. **RECORDS**

- a. In accordance with generally accepted accounting principles, City shall maintain full and complete records of the cost of Services performed under this Agreement. Such documentation, if prepared and maintained in the regular course of business, is to include time cards, contracts, receipts, original invoices, canceled checks, payroll documentation, calls for service records, dispatch records, police and fire budget data, other budget data used to calculate citywide overhead factors, periodic logs maintained by police, fire, and EMS staff, and any other documentation, information, and/or materials related to the Services (collectively, "Service Records"). Such Service Records shall be open to inspection by District at all reasonable times in the City. Notwithstanding the foregoing, City will not be required to provide Service Records that are protected by applicable law or

judicial proceedings, or that contain personal confidential information of City employees or agents (such as personnel records).

- b. Service Records shall be maintained by City for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. City understands and agrees that District, at all times under this Agreement and at District's cost and expense, has the right to review and audit Service Records and work in progress and, no more than once per Service Year, to conduct a performance audit and service study (a "Performance Audit") of all Service Records, whether or not final, which City or anyone else associated with the Services has prepared or which relate to the Services which City is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. When reasonably feasible, City shall provide District at City's expense a copy of all such records within ten (10) working days of a written request by District, unless the requested records are voluminous in nature, in which case the City shall, within a reasonable timeframe, provide access to such records for inspection at reasonable times at the City's office or facilities. City shall cooperate fully and take all actions reasonably necessary to assist the District in the completion of the Performance Audit, including the disclosure of information relating to the cost, actual performance, and accounting of the Services. District's right shall also include inspection at reasonable times of the City's office or facilities, which are engaged in the performance of Services pursuant to this Agreement. City shall, at no cost to District, furnish reasonable facilities and assistance for such any review and audit conducted hereunder. In the event the City fails to provide the records within the required timeframes set forth above and such failure continues for an additional thirty (30) days after receiving written notice from District,

the City shall be precluded from receiving any compensation due under this Agreement until such documents are provided. In connection with any Performance Audit, the District shall, in cooperation with the City, seek to establish reasonable metrics to measure the costs of the Services for the Service Year that is the subject of the Performance Audit and expected costs for the Service Years that follow.

5. **CITY'S SUB-CONTRACTORS**

- a. It may be necessary for City to sub-contract for the performance of certain technical services or other services for City to perform and complete the required Services; provided, however, the City shall notify the District of all City's sub-contractors providing any services hereunder. The City shall remain responsible to District for any and all Services and obligations required under this Agreement, whether performed by City or City's sub-contractors. City shall compensate each City's sub-contractors in the time periods required by law. Any City's sub-contractors employed by City shall be independent and not agents of District. City shall ensure that City's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
- b. City shall also endeavor to include a clause in its Agreements with City's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require City's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

- a. In performance of this Agreement, City and City's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. City shall comply with the prevailing wage provisions of the Labor Code and any other prevailing wage laws, and the Political Reform Act provisions of the Government Code, as applicable.
- b. City shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** City shall provide the Services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring.

8. **ASSIGNMENT.** This is a personal services Agreement between the Parties and neither Party shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the other Party hereto.

9. **MUTUAL INDEMNITY**

- a. To the fullest extent provided by law, City agrees to defend, indemnify and hold harmless the District, its agents, officers, employees, and subcontractors (collectively, the "District Parties"), from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including

reasonable attorneys' fees) or expense, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including City's officers, agents, subcontractors and employees (collectively "Claims"), caused by, arising out of, or related to the performance of services by the City or its officers, agents, subcontractors, and/or employees (collectively, the "City Parties") as provided for in this Agreement, or failure to act by any of the City Parties. The City's duty to defend, indemnify, and hold harmless shall exclude any Claim to the extent arising from the negligence or willful misconduct of any of the District Parties.

- b. To the fullest extent permitted by law, District agrees to defend, indemnify, and hold harmless the City Parties from and against any Claims to the extent caused by or arising from the negligence or willful misconduct of any of the District Parties.
- c. Each Party further agrees that its respective duty to indemnify and defend as set forth in Sections 9.a. and 9.b above requires that District or City, as applicable, pay all reasonable attorneys' fees and costs the indemnified Party incurs associated with or related to enforcing the applicable indemnification provisions and defending any Claim indemnified pursuant to Section 9.a or 9.b above.
- d. An indemnified Party may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If an indemnified Party chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any indemnified Claim pursuant to Section 9.a or 9.b above, the indemnifying Party agrees to pay all reasonable attorneys' fees and all costs incurred by the indemnified Party.

- f. Each of the Party's indemnification obligations set forth in this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. **INSURANCE REQUIREMENTS**

- a. City shall procure and maintain for the duration of the Agreement and for three (3) years thereafter (or, if longer than three (3) years, for the then applicable statute of limitations for bodily injury and property damage claims following the expiration or earlier termination of this Agreement), insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder and the results of those Services by the City, its agents, representatives, employees, or subcontractors. City (and District unless noted to only be applicable to the City) shall at all times during the Term maintain, at its expense, the following minimum levels and types of insurance:
- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The District acknowledges that the City's deductible or self-insured retention on this Commercial General Liability exceeds \$5,000. District hereby approves of such higher deductible or self-insured retention.
 - (b) In the case of the City, the Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required

by the District. An exemplar endorsement is attached (Exhibit 3, Certificate of Insurance, attached hereto and incorporated herein).

- (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the City's insurance and shall not contribute to it.
 - (d) The City's Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (3) In the case of the City, Workers' Compensation, statutory limits, is required of the City and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
 - (4) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This

policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.

- b. City shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit 3 and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. City shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on City or City's sub-contractors or any tier of City's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

- e. On each Baseline Reset Date, the insurance policies limits set forth in this Section 10 shall be subject to reasonable increases as determined by District in District's reasonable discretion.
11. **ACCURACY OF SERVICES.** City shall be responsible for the technical accuracy of its Services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. City shall correct such deficiencies without additional compensation. Furthermore, City expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. City shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the City or its agents, employees, or subcontractors.
12. **INDEPENDENT CONTRACTOR.** City and any agent or employee of City shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the City's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the City. City shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing and signed by the Executive Director of the District. City acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. City disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement. The formation, interpretation and

performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each Party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each Party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the Parties and supersedes all prior negotiations, discussion, obligations and rights of the Parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the Parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the Parties hereto.
16. **PRIOR AGREEMENT.** Reference is hereby made to that certain Agreement between the District and the City for Police, Fire and Emergency Medical Services filed in the Office of the District Clerk on June 30, 2022 as Document No. 74272 (the "Prior Services Agreement"). As of the mutual execution of this Agreement by the Parties, the Prior Services Agreement shall automatically terminate without the need for additional action by either Party; provided that, notwithstanding the foregoing, any obligations of District or City under the Prior Services Agreement accruing or arising on or prior to such termination, any obligations arising under Section 8 of the Prior Services Agreement, and/or any obligations which by their terms survive such termination, shall remain enforceable by District or City, as applicable.
17. **TERMINATION.** In addition to any other rights and remedies allowed by law, this Agreement may be terminated with or without cause by providing written notice to

the other Party specifying the date of such termination, which termination date shall be no less than six (6) months after to the date on which the non-terminating Party receives the termination notice.

In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by City to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this Section 17 shall release District from any further fee or claim hereunder by City other than the fee earned for services which were performed prior to termination but not yet paid.

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred or in jeopardy of becoming time barred, the Parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the Parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other Party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both Parties agree in their sole and absolute discretion, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the Parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant

Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any Party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

- c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District or City Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims. No Party shall be required to proceed with the foregoing mediation and arbitration procedures before filing a claim.
19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the City, made an exhaustive inspection to check the quality or quantity of the services performed by the City, made an examination to ascertain how or for what purpose the City has used money previously paid on account by the District, or constitute a waiver of claims against the City by the District. Acceptance of payment likewise shall not constitute a waiver of claims against the District by the City.
 20. **CAPTIONS.** The captions by which the sections of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

21. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the City.

- a. Submit all correspondence regarding this Agreement to:

President/CEO
Executive Offices
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

- b. The City's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement and receive notices regarding this Agreement:

City Manager
City Hall
1825 Strand Way
Coronado, CA 92118

- c. Written notification to the other Party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

- d. Requests for payment by City shall be remitted to:

Finance Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488

22. **Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute the single signed original as though all Parties had executed the same page.

[SIGNATURE PAGE FOLLOWS]

DRAFT

SAN DIEGO UNIFIED PORT DISTRICT

CITY OF CORONADO

By: _____
Name: _____
Title: _____

Name: Tina Friend
Title: City Manager

Approved as to form and legality:
GENERAL COUNSEL

Attest:

By: Assistant/Deputy

By: Jennifer Ekblad, MMC, CPM
City Clerk

Approved as to Form:

By: Johanna N. Canlas
City Attorney

A manually signed copy of this Agreement transmitted by email or any other means of electronic transmission or an electronically signed copy of this Agreement transmitted by DocuSign® shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

EXHIBIT 1

Non-Tax Paying Tidelands in the City of Coronado

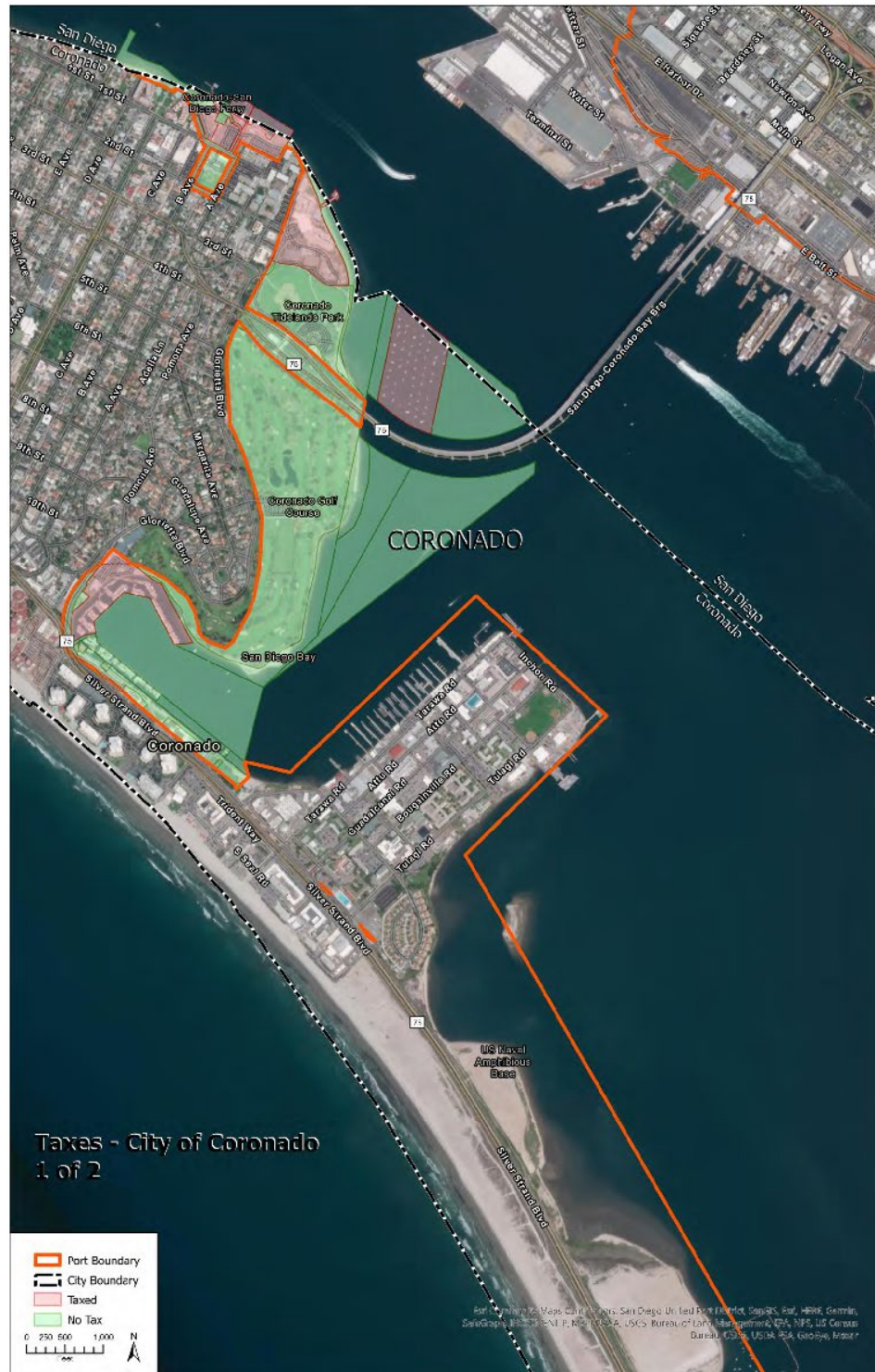




EXHIBIT 2 Scope of Services

City of Coronado Summary of Costs to Service Port Tideland

| Service | Category | Cost | Totals |
|-------------------|--------------------------------|--------------|---------------------|
| Police | Direct Services | \$ 1,061,398 | |
| | Admin/Resource Readiness (10%) | \$ 106,140 | |
| | | | \$ 1,167,537 |
| Fire / EMS | Direct Services | \$ 120,863 | |
| | Admin/Resource Readiness (10%) | \$ 12,086 | |
| | | | \$ 132,949 |
| Lifeguard | Direct Services | \$ 26,938 | |
| | Admin/Resource Readiness (10%) | \$ 2,694 | |
| | | | \$ 29,631 |
| TOTAL | | | \$ 1,330,118 |

Port Calls for Service Costs: Police, Fire/EMS, Lifeguard Services

| Police Services | FY 2023 | Subtotals | Totals |
|---|------------------|------------------|-----------------|
| Operating Budget | \$ 17,197,168.00 | | |
| Vehicle Equipment Replacement Budget (Avg Annualized) | \$ 381,090.71 | | |
| Capital Improvement Program (Avg Annualized) | \$ 229,808.14 | | |
| Police Services Total Budget | | \$ 17,808,066.85 | |
| % Port Calls for Service | 5.96% | | |
| Police Costs Allocated to Tidelands | | | \$ 1,061,397.62 |

| Fire/Emergency Medical Services (Net of Lifeguards Operations) | FY 2023 | Subtotals | Totals |
|--|-----------------|-----------------|---------------|
| Operating Budget | \$ 9,251,894.00 | | |
| Less Revenues (5200-Ambulance Svcs) | \$ (550,000.00) | | |
| Vehicle Equipment Replacement Budget (Avg Annualized) | \$ 480,918.42 | | |
| Capital Improvement Program (Avg Annualized) | \$ 248,117.71 | | |
| Fire/EMS Total Budget | | \$ 9,430,930.14 | |
| % Port Calls for Service | 1.28% | | |
| Fire/EMS Costs Allocated to Tidelands | | | \$ 120,862.63 |

| Lifeguard Services | FY 2023 | Subtotals | Totals |
|---|-----------------|------------------------|--------------|
| Operating Budget | \$ 1,687,364.00 | | |
| Vehicle Equipment Replacement Budget (Avg Annualized) | | Included with Fire/EMS | |
| Lifeguard Services Total Budget | | \$ 1,687,364.00 | |
| % Port Calls for Service | 1.6% | | |
| Lifeguard Services Costs Allocated to Tidelands | | | \$ 26,937.73 |

EXHIBIT 3

CERTIFICATE OF INSURANCE

San Diego Unified Port District

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate**.
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

Return this form to:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email: portofsandiego@ebix.com
Fax: 1-866-866-6516

| Name and Address of Insured (Consultant) | | | SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured. | |
|---|---|------------|--|--|
| CO LTR | TYPE OF INSURANCE | POLICY NO. | DATES | LIMITS |
| | Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____ | | Commencement Date: Expiration Date: | Each Occurrence: \$ _____ General Aggregate: \$ _____ |
| | Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos | | Commencement Date: Expiration Date: | Each Occurrence: \$ _____ |
| | Workers Compensation – Statutory Employer's Liability | | Commencement Date: Expiration Date: | E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____ |
| | Police Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____ | | Commencement Date: Expiration Date: | Each Claim \$ _____ \$ _____ |
| | Excess/Umbrella Liability | | Commencement Date: Expiration Date: | Each Occurrence: \$ _____ General Aggregate: \$ _____ |
| CO LTR | COMPANIES AFFORDING COVERAGE | | A. M. BEST RATING | |
| A | | | | |
| B | | | | |
| C | | | | |
| D | | | | |
| A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District. | | | | |
| Name and Address of Authorized Agent(s) or Broker(s) | | | E-mail Address: | |

| | | |
|--|---|-------------|
| | Phone: | Fax Number: |
| | Signature of Authorized Agent(s) or Broker(s) | |
| | Date: | |

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

| | | |
|--|------------------------------|--------------------------|
| <u>ENDORSEMENT NO.</u> | <u>EFFECTIVE DATE</u> | <u>POLICY NO.</u> |
| NAMED INSURED: | | |
| GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES): All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises | | |

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

 (NAME OF INSURANCE COMPANY)

 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email to: portofsandiego@ebix.com
Fax: 1-866-866-6516

DRAFT