

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ROESLING NAKAMURA TERADA ARCHITECTS, INC.
for
AS-NEEDED ARCHITECTURE SERVICES
AGREEMENT NO. 114-2021RH**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ROESLING NAKAMURA TERADA ARCHITECTS, INC., a California Corporation (Design Professional). The parties agree to the following:

1. **SCOPE OF SERVICES.** Design Professional shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Design Professional shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services.** Design Professional is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Design Professional may or may not receive a request to provide such services, and Design Professional may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a Task Authorization (TA) has been signed by the District Representative.
 - b. Design Professional shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A: Scope of Services as requested by District by issuance of specific Task Authorization and agreed to by Design Professional.
 - c. Services rendered under this Agreement shall be undertaken by Design Professional only upon issuance of a Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered

effective until the Task Authorization has been signed by District's Director of Engineering or designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on November 1, 2021, and shall terminate on October 31, 2026, subject to earlier termination as provided below.

3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Design Professional based on the following, subject to the limitation of the maximum expenditure provided herein:
 - a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed \$800,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Design Professional shall not be required to perform further services after compensation has been expended. In the event that the Design Professional anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred. The aggregate amount under this Agreement with Service Provider and Agreements with companies listed in Table 1, Parties to Aggregate Agreements, below, shall not exceed \$800,000.00.

Table 1 – Parties to Aggregate Agreements

Agreement No.	Party to Agreement
113-2021RH	Domusstudio architecture, LLP
114-2021RH	Roesling Nakamura Terada Architects, Inc.
115-2021RH	Sillman Wright Architects

- b. **Payment Procedure.** For work performed on an hourly basis, Design Professional agrees to assign the person with the lowest hourly rate who

is fully competent to provide the services required. If Design Professional finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Design Professional shall nevertheless, bill at the lower rate.

- c. **Progress Documentation.** Design Professional shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. **RECORDS**

- a. Design Professional shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Design Professional 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. Design Professional understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Design Professional or anyone else associated with the work has prepared or which relate to the work which Design Professional is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Design

Professional shall provide District at Design Professional's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Design Professional's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Design Professional shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Design Professional's failure to provide the records within the time requested shall preclude Design Professional from receiving any compensation due under this Agreement until such documents are provided.

5. **DESIGN PROFESSIONAL'S SUB-DESIGN PROFESSIONALS**

- a. It may be necessary for Design Professional to sub-contract for the performance of certain technical services or other services for Design Professional to perform and complete the required services; provided, however, all Design Professional's Sub-Design Professionals shall be subject to prior written approval by District. The Design Professional shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Design Professional or Design Professional's Sub-Design Professionals. Design Professional shall compensate each Design Professional's Sub-Design Professionals in the time periods required by law. Any Design Professional's Sub-Design Professionals employed by Design Professional shall be independent Design Professionals and not agents of District. Design Professional shall ensure that Design Professional's Sub-Design Professionals satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

- b. Listed below are the firms that the District has approved as Service Provider's sub-contractors to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
IDS Group, Inc.	Mechanical, Electrical & Plumbing Engineering
Martin & Libby	Structural Engineering
BDS Engineering, Inc.	Civil Engineering
Hunter Pacific Group	Cost Estimation
Tov Architectural Corporation	CASp/ Accessibility Specialist
VDLA Landscape Architects	Landscape Architecture, Concepts, Irrigation Design, Plan Check, Site Inspections

- c. Design Professional shall also include a clause in its Agreements with Design Professional's Sub-Design Professionals 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 Design Professional's Sub-Design Professionals 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, Design Professional and Design Professional's Sub-Design Professionals 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. Design Professional shall comply with the prevailing

wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Design Professional 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.** Design Professional 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 provided, however, Design Professional shall possess no authority with respect to any District decision.
 8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Design Professional shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.
 9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
 - a. **Design Professional Services**
 - (1) **Duty to Indemnify, duty to defend and hold harmless for “Design Professional” services (as that term is defined pursuant to California Civil Code Section 2782.8):** To the fullest extent provided by law, Design Professional agrees to indemnify, defend, and hold harmless District, its agents, officers and employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys’ fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Design Professional’s officers, agents, and employees

(“Claim”), to the extent that the claims against the indemnitee arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design Professional. In no event shall the cost to defend charged to the Design Professional exceed the Design Professional’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Design Professional shall meet and confer with other parties regarding unpaid defense costs. The duty to indemnify, including the duty and the cost to defend, is limited as provided in California Civil Code Section 2782.8. The Design Professional’s duty to indemnify, defend, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of District, its agents, officers, or employees.

- (2) Design Professional further agrees that the duty to indemnify and the duty to defend the District as set forth in Section 9.a(1), requires that Design Professional pay all reasonable attorneys’ fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising out of, pertaining to, or related to the negligence, recklessness or willful misconduct of Design Professional, its officers, agents, or employees for services as provided for in this Agreement and as limited by California Civil Code Section 2782.8.
- (3) The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising out of, pertaining to, or related to the negligence, recklessness or willful misconduct of Design Professional, its officers, agents, or employees for services

as provided for in this Agreement, Design Professional agrees to pay all reasonable attorneys' fees and all costs incurred by District and as limited by California Civil Code Section 2782.8.

b. **Non Design Professional Services**

- (1) **Duty to Indemnify, duty to defend and hold harmless for Non Design Professional Services:** To the fullest extent provided by law, except for Design Professional Services covered under Section 9.a, Design Professional, for all non-design professional services, agrees to defend, indemnify, and hold harmless the District, its agents, officers and employees, from and against any Claim (as defined in Section 9.a above), caused by, arising out of, or related to the performance of services by Design Professional as provided for in this Agreement, or failure to act by Design Professional, its officers, agents, subcontractors and employees. The Design Professional's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- (2) Design Professional further agrees that the duty to indemnify and the duty to defend the District as set forth in 9.b(1), requires that Design Professional pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Design Professional provided for in this Agreement.
- (3) The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of

Design Professional provided for in this Agreement, Design Professional agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Design Professional shall at all times during the term of this Agreement 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 deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) 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 B, 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 Design Professional's insurance and shall not contribute to it.

- (d) The 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) Workers’ Compensation, statutory limits, is required of the Design Professional 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) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
 - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
 - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, “tail” coverage in the same minimum amount as set forth in this paragraph.

- 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 Design Professional or Design Professional's sub-contractors or any tier of Design Professional's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Design Professional shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Design Professional shall correct such deficiencies without additional compensation. Furthermore, Design Professional expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Design Professional 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 project, or any other person related to the project, including the Design Professional or its agents, employees, or Sub-Design Professionals.
12. **INDEPENDENT CONTRACTOR.** Design Professional and any agent or employee of Design Professional shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Design Professional's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Design Professional. Design Professional shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Design Professional 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. Design Professional 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. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Design Professional pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Design Professional shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Design Professional shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be

expressly authorized in writing by District. Said materials and documents prepared or acquired by Design Professional pursuant to this Agreement (including any duplicate copies kept by the Design Professional) shall not be shown to any other public or private person or entity, except as authorized by District. Design Professional shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION**. In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Design Professional of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Design Professional 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 paragraph shall release District from any further fee or claim hereunder by Design Professional other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

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, 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, 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-Design Professional 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 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.
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 Design Professional, made an exhaustive inspection to check the quality or quantity of the services performed by the Design Professional, made an examination to ascertain how or for what purpose the Design Professional has used money

previously paid on account by the District, or constitute a waiver of claims against the Design Professional by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Design Professional for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Design Professional. Upon five (5) day written notice to the Design Professional, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Design Professional to pay the same; and the amount due the Design Professional under this Agreement or the whole or so much of the money due or to become due to the Design Professional under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Design Professional at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Design Professional. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Design Professional.

20. **COMPLIANCE WITH PREVAILING WAGE LAWS (IF APPLICABLE)**

- a. Design Professional acknowledges and agrees that it is the sole and exclusive responsibility of Design Professional to: (a) ensure that all persons and/or entities (including, but not limited to, Design Professional or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine

whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.

- b. Certified Payrolls. Design Professional acknowledges and agrees that it is the sole and exclusive responsibility of the Design Professional to ensure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.
- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Design Professional will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Design Professional's request.
 - (2) The use of LCPtracker by the Design Professional is mandatory. Access to LCPtracker will be provided at no cost to the Design Professional.
 - (3) In order to utilize LCPtracker, the Design Professional needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Design Professional's request.
 - (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Design Professional's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

- (5) Design Professional must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Design Professional.
- (6) Training options can be provided to the Design Professional upon request.

21. **DESIGN PROFESSIONAL/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- b. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless

registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

22. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

23. **EQUAL OPPORTUNITY EMPLOYMENT**

Service Provider represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, gender, gender expression, sexual orientation, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Service Provider will, within forty-five (45) days of the effectiveness of this Agreement, provide a written statement of its commitment to diversity, equity and inclusion, which shall include a commitment and brief description of its plan to implement good faith efforts to recruit subconsultants and employees in a non-discriminatory manner. If Service Provider fails to provide such written statement as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination. Service Provider shall, not later than sixty (60) days prior to the expiration of each anniversary of the effective date of this Agreement, provide a written report describing Service Provider's actions and results in furtherance of its commitment to diversity, equity, and inclusion. Service Provider's report shall not identify individual subconsultants and employees by name. If Service Provider fails to provide such report as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination.

24. **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 Design Professional.

a. Submit all correspondence regarding this Agreement to:

Christopher Brooke, Manager
Engineering-Construction
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6483
Email: cbrooke@porotfsandiego.org

b. The Design Professional's Authorized Representative assigned below has the authority to authorize changes to the scope, terms and conditions of this Agreement:

Joe Mansfield, Architect, Principal
Roesling Nakamura Terada Architects, Inc.
363 Fifth Avenue, Suite 202
San Diego, CA 92101
Tel. (619) 571-1974
Email: mansfield@rntarchitects.com

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

SAN DIEGO UNIFIED PORT DISTRICT

**ROESLING NAKAMURA TERADA
ARCHITECTS, INC.**

 Ernesto Medina
 Chief Engineer, Engineering-Construction

Joe Mansfield

 Joe Mansfield
 Architect/Principal

Approved as to form and legality:
 GENERAL COUNSEL

 By: Assistant/Deputy

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

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

- A. General Architectural Services under the resulting agreement(s) are anticipated to be general in nature and associated with smaller projects. The architectural consulting services may include but is not be limited to any of the following items:
1. Building Design: Professional and efficient development of new construction or renovation plans that will successfully resolve the District's space planning and design requirements.
 2. Facility/Building Analysis/Existing Conditions Report: Evaluation of an existing building including components such as walls, windows, roof, floor plans and room layouts,
 3. Code Analysis: Project-specific review of applicable codes including building codes, accessibility standards, energy standards, local zoning ordinance, land use plans, and other regulations.
 4. Energy-Efficient Assessments: Review of building components, insulation levels, heating and lighting systems, and operational features to assess current performance levels and opportunities for energy savings.
 5. Space Planning: Graphic Study showing arrangement of spaces, room layouts, activities making up a floor plan. Studies will show room dimensions, shapes, number and types of spaces and relationships for all desired spaces.
 6. Site Planning: Development of site plan options showing boundary lines, building locations, pedestrian access, sidewalks, parking, landscaping, lighting, and other features.
 7. Permitting: Production of drawings and permit applications to submit for building permits.
 8. Building Information Modeling (BIM): 3D Modeling that is used to generate plans, sections, elevations, details, and all other components to document the design of a building.
 9. Architectural renderings and other CAD drafting support services.
 10. Bid package preparation including specification writing and cost estimating.
 11. Construction support such as construction administration

assistance, project inspections and responses to request for information.

- B. ADA Code Compliance Review Services under the resulting agreement(s) may include but not be limited to any of the following items:
1. Review of District plans and specifications for consistency, coordination with other disciplines, constructability, code requirements, compliance, or conformance to ADA requirements and standards.
 2. Field surveys, inspection, and reconnaissance of existing field and building conditions relating to ADA Code Compliance.
 3. Preparation of reports with analysis, recommendations, and cost construction estimates for all ADA Code Compliance improvements.
 4. Attendance at ADA coordination meetings.
 5. Project presentations at Accessibility Advisory Committee meetings

**ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District**

1. **COMPENSATION**

a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Design Professional compensation as set forth hereunder.

(1) Design Professional shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Task Authorizations shall be Lump Sum, Fixed Fee, or Time and Materials or any combination of all three.

(a) Each invoice for Lump Sum work shall include:

Date work performed;
Description of the work performed;
Direct Costs.

(b) Each invoice for Fixed Fee work shall include:

Date work performed;
Description of the work performed;
Percent of total work being invoiced;
Percent of total work completed;
Direct Costs.

(c) Each invoice for Time and Materials work shall include:

Date work performed;
Description of the work performed;
Hours worked by personnel classification;
Rate per personnel classification;
Total personnel cost by classification; and
Direct Costs.

(2) Professional services shall be invoiced in accordance with the following Rate Schedules:

POSITION TITLE	11/01/2021 - 10/31/2022 Fully Burdened Hourly Billing Rate	11/01/2022 - 10/31/2023 Fully Burdened Hourly Billing Rate	11/01/2023 - 10/31/2024 Fully Burdened Hourly Billing Rate	11/01/2024 - 10/31/2025 Fully Burdened Hourly Billing Rate	11/01/2025 - 10/31/2026 Fully Burdened Hourly Billing Rate
Principal Architect	\$285.00	\$291.73	\$298.61	\$305.66	\$312.87
Designer	\$180.00	\$184.25	\$188.60	\$193.05	\$197.60
Inspector	\$125.00	\$127.95	\$130.97	\$134.06	\$137.22
Draftsperson	\$160.00	\$163.78	\$167.64	\$171.60	\$175.65
Clerical	\$100.00	\$102.36	\$104.78	\$107.25	\$109.78

- (a) The following shall be considered part of the fully burdened hourly rates stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, telecommunications, photography, and all other costs and expenses incurred in completing such services.
- (b) Additional classifications and fully burdened hourly rates not listed in the Rate Schedule above may be authorized via Task Authorization with the approval of the District's Project Manager.

(3) **Reimbursable Expenses**

Sub-Service Provider Costs	0% mark-up
Direct Costs	At Cost (zero mark-up)

Note: Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Design Professional shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- a. Design Professional shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
- (1) Agreement No. 114-2021RH
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Design Professional's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- b. District shall, at its discretion, return to Design Professional, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be e-mailed to the attention of: eng_invoices@portofsandiego.org
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Design Professional for the Services. Any overpayment discovered in such an audit may be charged against the Design Professional's future invoices and any retention funds.
- e. Design Professional shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Design Professional within thirty (30) days after receipt by District of a proper invoice.

**EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District**



(DEPARTMENT NAME)
*San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 (619) 686-____
 Fax (619) 725-____*

TASK AUTHORIZATION NO. _

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

Subject: Task Authorization for Agreement No. _ - 20_
 (Agreement Title)

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$ _____. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #_** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:		4.	WBS or IO/ Cost Center:	
2.	Date of Request:		5.	Task Start Date:	
3.	Task Budget:	\$	6.	Task End Date:	
7.	Task Title:				

8. **Scope of Services.**

9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. List of Sub-Contractors (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via mail to _____, Contracts Administrator, at the address above.

APPROVALS

Service Provider:

Signature: _____

Name: _____

Title: _____

Firm: _____

Date: _____

Project Manager:

Signature: _____

Name: _____

Title: Project Manager

Date: _____

Manager:

Signature: _____

Name: _____

Title: Manager

Date: _____

Director/Chief Engineer:

Signature: _____

Name: _____

Title: Director/Chief Engineer

Date: _____

EXHIBIT B 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 –
E-mail to: portofsandiego@ebix.com – OR –
Fax: 1-866-866-6516**

Name and Address of Insured (Contractor or Vendor)	SDUPD Agreement Number _____ This certificate applies to all operations of named insureds property in connection with all agreements between the District and Insured.
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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 \$ _____
	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	BEST'S 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/or any and all activities or work performed on District owned 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 TO:

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

Certificate Of Completion

Envelope Id: CC7CB1B7A72E493E899C9579D9616CC5

Status: Sent

Subject: Please DocuSign: 114-2021RH - Roesling Nakamura Terada Architects, Inc.

Source Envelope:

Document Pages: 30

Signatures: 1

Envelope Originator:

Certificate Pages: 6

Initials: 0

Ryan Harris

AutoNav: Enabled

3165 Pacific Highway

Envelope Stamping: Enabled

San Diego, CA 92101

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

rharris@portofsandiego.org

IP Address: 207.215.153.162

Record Tracking

Status: Original

Holder: Ryan Harris

Location: DocuSign

9/22/2021 4:50:24 PM

rharris@portofsandiego.org

Security Appliance Status: Connected

Pool: StateLocal

Storage Appliance Status: Connected

Pool: San Diego Unified Port District

Location: DocuSign

Signer Events**Signature****Timestamp**

Joe Mansfield

mansfield@mntarchitects.com

Security Level: Email, Account Authentication
(None)

Sent: 9/22/2021 5:42:47 PM

Viewed: 10/4/2021 12:11:53 PM

Signed: 10/4/2021 12:13:14 PM

Signature Adoption: Pre-selected Style

Using IP Address: 66.185.161.186

Electronic Record and Signature Disclosure:

Accepted: 10/4/2021 12:11:53 PM

ID: 20daff7f-ce15-40d0-b995-3b834084b0cd

Company Name: San Diego Unified Port District

Ryan Harris

Sent: 10/4/2021 12:13:18 PM

rharris@portofsandiego.org

Procurement Analyst 2

Port of San Diego

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Simon Kann

skann@portofsandiego.org

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Accepted: 9/30/2021 12:00:46 PM

ID: 045bb51a-5e20-4d5f-b8cd-84a17d11ec60

Company Name: San Diego Unified Port District

Ernesto Medina

emedina@portofsandiego.org

Security Level: Email, Account Authentication
(None)**Electronic Record and Signature Disclosure:**

Accepted: 4/29/2021 9:05:23 AM

ID: 4c6c9739-9139-4f52-9bf9-1e0ca0b0e697

Company Name: San Diego Unified Port District

Signer Events	Signature	Timestamp
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ODCDocusign

Signing Group: ODCDocusign

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Shelly Hart

srhart@portofsandiego.org

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Christopher Brooke

cbrooke@portofsandiego.org

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 10/4/2021 9:20:51 AM
ID: e86e1b83-9489-4307-9912-6f07b3c23ea6
Company Name: San Diego Unified Port District

DocuSign Core Notify Group

DocuSign_Core_Notify@portofsandiego.org

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

OGC Incoming Docs

ogcincomingdocs@portofsandiego.org

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 9/23/2021 2:51:11 PM
ID: c746fa9d-8e2c-46cf-969c-92a38351fef5
Company Name: San Diego Unified Port District

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	9/22/2021 5:42:47 PM
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Payment Events	Status	Timestamps
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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, San Diego Unified Port District (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact San Diego Unified Port District:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: rsanagus@portofsandiego.org

To advise San Diego Unified Port District of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at rsanagus@portofsandiego.org and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from San Diego Unified Port District

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to rsanagus@portofsandiego.org and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with San Diego Unified Port District

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to rsanagus@portofsandiego.org and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to ‘I agree to use electronic records and signatures’ before clicking ‘CONTINUE’ within the DocuSign system.

By selecting the check-box next to ‘I agree to use electronic records and signatures’, you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify San Diego Unified Port District as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by San Diego Unified Port District during the course of your relationship with San Diego Unified Port District.