

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
CITY OF NATIONAL CITY
for
POLICE, FIRE, 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 NATIONAL CITY, 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, 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 National City; and

WHEREAS, the City has the capacity to provide police, fire, 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 cost of police, fire, and emergency medical (EMS) services to be provided by the City upon the District's tidelands and property within the City's limits, which do not generate ad valorem tax revenues, as depicted on Exhibit 1, Non-Tax Paying Tidelands in the City of National City, incorporated by reference as though fully set forth herein. Those 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 of July 1, 2021 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 July 1, 2021, District shall pay City \$1,310,324 (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, 2022
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Second Baseline Reset	July 1, 2025
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No later than July 1, 2021 with respect to the first scheduled Baseline Reset Date of July 1, 2022, and at least six (6) months before the second scheduled Baseline Reset Date of July 1, 2025, 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 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 an updated Scope of Services) to the Board of Port Commissioners (the "Board") for approval in the Board's sole and absolute discretion; provided that, with respect to the first Baseline Reset Date, the Parties agree to jointly, or each separately, present a new Baseline Rate to the Board no later than the December 14, 2021 Board meeting. 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 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 on or before the date that is six (6) months following a 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, 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; provided that unless otherwise agreed to by the Parties, a new Baseline Rate (and updated Scope of Services) approved pursuant to this Section 3.b shall not become effective earlier than the applicable Baseline Reset Date. 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 a letter agreement to amend this Agreement solely in order to document (i) the new Baseline Rate, (ii) the updated Scope of Services, and (iii) the effective date of the new Baseline Rate and updated Scope of Services.

- c. **Annual Baseline Rate Increases.** Commencing on July 1, 2022 and on each July 1 thereafter during the Term, the Baseline Rate shall be increased by three percent (3%) (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 by the exercise of due care and 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 , or otherwise terminate the Agreement consistent with Section 17 herein. 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 District budget cuts in the Service Year during which the events or need occur and/or the Service Year immediately thereafter;
- (2) Acts of God, civil unrest; fire or other casualty, acts of terrorism, pandemics, and/or other force majeure type events beyond the reasonable control of a Party;

- (3) Expenses associated with bad debt, benefit cost increases, pollution remediation costs, judgements, and/or settlement costs;
- (4) Unanticipated costs associated with regulatory requirements and/or legal mandates; or
- (4) 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 equal to an Annual Baseline Increase attributable to a given future Service Year or Services Years (*i.e.*, an amount equal to a three percent (3%) increase to the Baseline Rate for the applicable Services Year(s)) by providing the City with written notice no less than sixty (60) days prior to the applicable Service Year (or the initial Service Year if the District is electing to defer an amount attributable to multiple Service Years). Any Adjustment Event may be used as a basis to defer an Annual Baseline Increase due for one or more entire future Service Year(s); provided that 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 years following the deferral based upon the length of the deferral period. For example, if the District elects, at a given time, to defer the Annual Baseline Increase due for one (1) Service Year, the associated Deferred Payment must be repaid, in equal quarterly installments, during the Service Year following the Service Year to which the Deferred Payment applies and at the same time the District makes or would otherwise be obligated to make payments pursuant to Section 3.g below for such following Service Year; or if the District elects, at a given time, to defer the Annual Baseline Increases for

three (3) Service Years, the associated Deferred Payment must be repaid, in equal quarterly installments, during the three (3) Service Years following the three (3) Service Years to which the Deferred Payment applies and at the same time the District makes or would be 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 Adjustment Event (2) 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 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 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 and such records shall be kept for at least three (3) years after the expiration or earlier termination of this Agreement. 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 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. City's failure to provide the records within the time requested shall preclude City 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, 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 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.
- e. 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 five (5) years thereafter (or, if longer than five (5) 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 work hereunder and the results of that work 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 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) 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 April 15, 2013 as Document No. 60276 (as amended or otherwise modified, 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 paragraph 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, 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 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 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.
20. **CAPTIONS.** The captions by which the paragraphs 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:

City Manager
1243 National City Blvd.
National City, California 92950

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

[SIGNATURE PAGE FOLLOWS]

SAN DIEGO UNIFIED PORT DISTRICT

CITY OF NATIONAL CITY

By: _____
Name: _____
Title: _____

Name: _____
Title: _____

Approved as to form and legality:
GENERAL COUNSEL

Attest:

By: Assistant/Deputy

By: _____
City Clerk

Approved as to Form:

By: _____
City Attorney

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.

EXHIBIT 1



EXHIBIT 2**STATEMENT OF SERVICES
CITY OF NATIONAL CITY****SERVICES CARRIED OVER FROM Clerk's Doc No 60276**

<u>Police Services</u>	<u>Annual Cost for Services Based on Actual 2012</u>	<u>FY 2013</u>
Police Department Costs (FY 2012)	16,519,764	
Number of Patrol Officers (FTE)	<u>33</u>	
Annual Cost per Officer	500,599	
Number of Officers Required	1.18	
Cost of Police Services		<u>\$590,707.00</u>
Fire and Medical Services		<u>\$496,888.00</u>
TOTAL POLICE, FIRE AND EMERGENCY MEDICAL SERVICES		<u><u>\$1,087,595.00</u></u>

CITY OF NATIONAL CITY
Actual Total Police Department Costs - FY 2011-12

100-0000	Part time Salaries	69,967.36
101-0000	Full time Salaries	7,940,759.34
102-0000	Overtime	646,865.40
105-0000	Longevity	13,793.23
107-0000	Educational Incentive Pay	102,745.31
110-0000	Allowances & Stipends	89,463.72
120-0000	Differential Pay	215,522.71
140-0000	Workers' Compensation	779,915.17
150-0000	Health Insurance	912,835.85
151-0000	LTD Insurance	22,761.04
160-0000	Retirement Plan	3,162,480.04
161-0000	Medicare	131,805.64
199-0000	Personnel Compensation	224,157.29
205-0000	Medical Services	41,213.60
217-0000	Investigative Services	6,796.68
222-0000	Memberships & Subscriptions	6,241.33
226-0000	Training, Travel & Subsistence	40,024.96
230-0000	Printing & Binding	8,178.30
250-0000	Postage	584.15
259-0000	K-9 Care and Supplies	14,897.29
261-0000	Emergency Animal Treatment	322,737.24
269-0000	Facility Lease	487,450.00
287-0000	R & M - Communications Equipt.	21,414.18
299-0000	Contract Services	123,987.79
304-0000	Books	1,397.53
305-0000	Medical Supplies	411.89
309-0000	Photographic Supplies	104.49
316-0000	Ammunition	48,873.09
318-0000	Wearing Apparel	6,385.98
318-0002	Wearing Apparel	15,940.59
319-0000	Uniform Accessories	3,244.69
353-0000	Patrol/Crime Lab/Prop. Supplies	28,377.29
	Minor Equipment - Less Than	
355-0000	\$5,000.00	6,767.41
399-0000	Materials & Supplies	31,352.81
511-0000	Automotive Equipment	43,028.76
515-0000	Communications Equipment	3,565.80
755-0000	Info Systems Maint Charge	943,716.00

16,519,763.95

**Number of Beat Officers Required
To Staff Service Demand
For Tidelands Non-Tax Paying Areas**

Description	Reference	Amount
FY 2011-12 calls for service (CFS)	Call for Services Record	351
FY 2011-12 proactive patrol (PP)		
1.5 hours/patrol X 3 patrol/day	1.5 x 3 x 365 days	1,643
Total beat officer hours, PP+CFS		1,994
Available beat officer hours per year per officer		1,686
Number of Officers required (FTE) for PP + CFS	(1994 / 1686)	<u>1.18</u>

**CITY OF NATIONAL CITY
BEAT OFFICER
AVAILABLE FIELD TIME PER YEAR**

Description	Reference	Amount
Number of workweeks per year		52
Number of workdays per workweek		4
Gross workdays per year	52 x 4	208
Leave days per year:		
Vacation		(20)
Sick Leave		(9.5)
Available field days per year	(208 - 29.5)	198.3
Number of field hours per day:		
Work hours per day		10
Rest period		(1)
Briefing		(0.5)
Net field hours per day	(10 - 1.5)	<u>8.5</u>
Net Available field hours per year	(198.3 x 8.5)	<u><u>1685.55</u></u>

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