

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
CITY OF SAN DIEGO
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 SAN DIEGO, 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 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 San Diego; and

WHEREAS, the City has the capacity to provide police, fire, and emergency services on District property located in the City of San Diego; and

WHEREAS, this Agreement shall be in furtherance of the San Diego Bay tideland trust for the accommodation of commerce, navigation, fisheries, and recreation on trust tidelands for the benefit of the people of the State of California; and

WHEREAS, the Parties entered into a similar agreement on October 3, 2017. That Agreement is on file in the Office of the District Clerk as Document No. 67351.

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 non-ad valorem tidelands and property within the City's limits, , as depicted on Exhibit 1, Non-Tax Paying Tidelands in the City of San Diego, incorporated by reference. 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. This Agreement shall not 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(collectively, the "Services"), as the same may be adjusted in accordance with the terms of this Agreement.

2. **TERM OF AGREEMENT.** The term of this Agreement (the "Term") shall be effective as of July 1, 2021 when signed by both parties and approved by the City Attorney in accordance with San Diego Charter section 40. This Agreement shall terminate on June 30, 2026, subject to earlier termination as provided below. The term of this Contract shall not exceed five years unless approved by the San Diego City Council by ordinance. 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 \$1,550,699 (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 on the following dates (each a “Baseline Reset Date”):

First Baseline Reset: July 1, 2023

Second Baseline Reset: July 1, 2025

At least six (6) months before a Baseline Reset Date, the Parties shall meet and confer regarding fair and appropriate cost and service standards and commence good faith efforts to renegotiate the Baseline Rate and the accompanying Scope of Services, taking into account 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.

The Baseline Rate approved by the Board pursuant to this Section 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 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, 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. 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 the establishment of a new Baseline Rate as set forth in this Section, the Parties shall execute an amendment to this Agreement (which amendment may be executed by the Executive Director or his/her designee) 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 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. Each of the following events (each an “Adjustment Event”) may justify Deferred Payments as provided in Section 3.e or a level of Service adjustment as provided in Section 3.f:

- (1) Unanticipated events or needs that would require District budget cuts in the Service Year during which the events or needs occur and/or the Service Year immediately thereafter;
- (2) Acts of God, civil commotions, fire or other casualty, acts of terrorism, pandemics, and/or other force majeure type events beyond the reasonable control of a Party;

- (3) Expenses associated with bad debt, benefit cost increases, pollution remediation costs, judgments, and/or settlement costs;
- (4) Unanticipated costs associated with regulatory requirements and/or legal mandates; or
- (5) A need by the District to replenish operating reserves should reserves fall below levels required by the then current policies of the Board of Port Commissioners, but only to the extent the need is above and beyond the use of reserves the District has budgeted as of the execution of this Agreement and through the Service Year ending June 30, 2022.

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 Service 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 for one or more entire future Service Year(s). 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 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, 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 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.. Alternatively, if the District elects 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.

Subject to the limits set forth above, the District may elect to defer Annual Baseline Increases 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 shall survive the expiration or early 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, Service levels may be reasonably reduced by either the District or the City. Should either Party require a reduction in Service levels following an Adjustment Event applicable to such Party or, in the case of the City, pursuant to Section 3.c, then such Party shall notify the other Party of the request, the applicable Service level reduction, the length of the reduction, and an explanation for the reduction.

Within sixty (60) days of receiving or sending, as applicable, the Service level reduction request, the City shall provide to District a detailed summary of changes to the Service levels, the duration of the reduction, and the associated reduction in cost to the City (an "Adjustment Summary").

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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 Service levels will result in a lower cost to City to provide the Services, then amounts owed by the District shall be reduced commensurate with the reduced Service levels. Upon the District's approval of any Adjustment Summary, the corresponding adjustments to the levels of Services and amounts due shall be effective immediately and shall be incorporated into an amendment to this Agreement (which amendment may be executed by the District's Executive Director or his/her designee) solely in order to document the adjustment.

- g. Reimbursement Process.** City shall submit written requests for reimbursement to District for equal quarterly payments under this Agreement. Reimbursement requests shall include amounts due for the Service Year in question and, if applicable, any Deferred Payment or amounts due pursuant to Section 16. Written requests shall be submitted 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. Records include, but are not limited to, 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").

Service Records shall be open to inspection by District at all reasonable times. Notwithstanding the foregoing, City is not required to provide Service Records that are protected by applicable law, 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 the termination or completion of Services performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- b. City understands and agrees that District, at all times under this Agreement and at District's cost and expense, has the right to conduct a performance audit and service study (a "Performance Audit") of all Service Records and works in progress, whether or not final, which City or anyone else associated with the Services has prepared or which related to the Services which City is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District.. The Performance Audit may not be conducted more than once per Service Year. 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. If the records requested are voluminous in nature, 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 to the District for any review and/or Performance Audit. City's failure to provide the records within the time requested shall preclude City from receiving any compensation due under this Agreement until the records 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. The City shall notify the District of all City's sub-contractors providing Services under this Agreement. 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 the Services 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 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 independent of the control and direction of District, other than normal contract monitoring.
8. **ASSIGNMENT.** This is a personal services Agreement between the Parties. Neither Party may 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.
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 provided 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. Any 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. 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 not contribute to it.
- (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 have the right to self-insure with respect to any of the insurance required to be carried by City under this Section 10. Insurance Requirements. City shall supply to District a letter of self-insurance indicating the City's self-insured status. In the event City doesn't elect to self-insure, 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.
- c. Furnishing insurance specified herein 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, and provided that the City has not elected to self-insure, 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 resulting documents 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 any technical deficiencies in documentation provided by the City as required by this Agreement. City shall make decisions and carry out its responsibilities 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 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. 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 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 of any other party, or any representative, agent or attorney of any other party not contained in this Agreement.

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 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.
16. **PRIOR AGREEMENT.** Reference is hereby made to the Agreement between the District and the City for Police, Fire and Emergency Medical Services filed in the Office of the District Clerk on October 3, 2017 as Document No. 67351 (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.

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 termination. The terminating Party must provide at least six (6) months' notice prior to the termination date.

Upon termination, and at the request of the District, all finished or unfinished documents and other materials shall be delivered by City to:

Don L. Nay Port Administration Building

3165 Pacific Highway, San Diego
California 92101

Termination of this Agreement by Executive Director (President/CEO) shall release District from any further fee or claim hereunder by City except for outstanding fees and claims 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 to this Agreement.

- 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. The Arbitration Award shall be non-binding in nature. Any resultant Agreements shall be documented and may be used as the basis for an amendment to this Agreement. 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 non-binding 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. 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 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. **REQUIRED SIGNATURES.** This 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 an 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:

Director of Purchasing & Contracting Department
City of San Diego Purchasing & Contracting Department
1200 Third Avenue, Suite 200
San Diego, CA 92101

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

SAN DIEGO UNIFIED PORT DISTRICT

CITY OF SAN DIEGO

By: _____
Name: _____
Title: _____

Name: _____
Title: _____

Approved as to form and legality:
GENERAL COUNSEL

Attest:

By: Assistant/Deputy

By: _____
City Clerk

Approved as to Form:

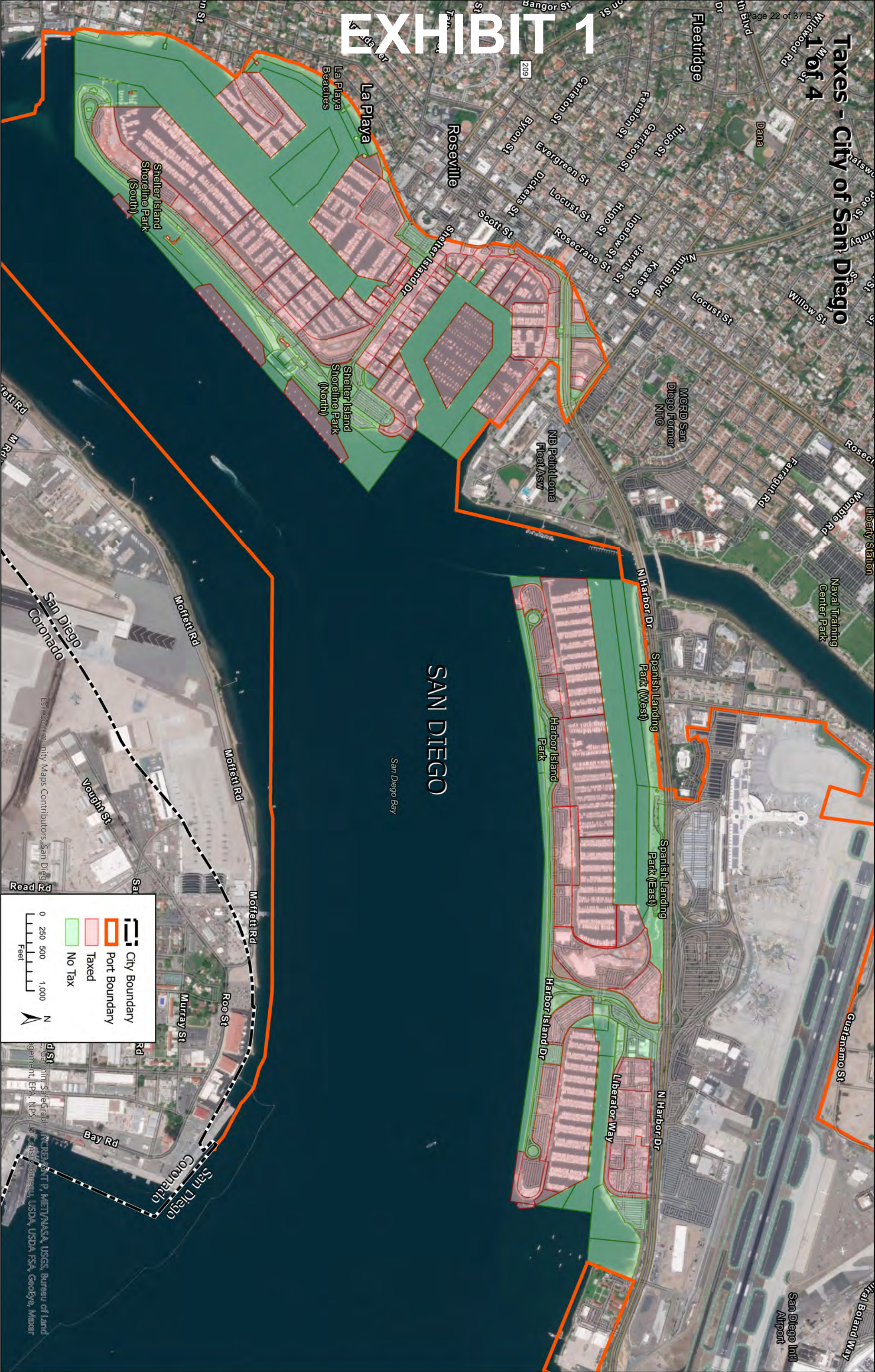
By: _____
City Attorney

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.

Taxes - City of San Diego

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EXHIBIT 1



San Diego Community Maps Contributors: San Diego, Esri, Garmin, SafeGraph, INCREMENT P, MET/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USDA FSA, GeoEye, Maxar

Taxes - City of San Diego

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Exhibit 2
Summary of Reimbursement for Police, Fire and Emergency Medical Services

Scope of Services: For police, fire and emergency medical services provided to the San Diego Unified Port District on non-ad valorem tideland trust property located in the City of San Diego. The level of service provided by the City on non-ad valorem tideland trust property will be consistent with the level of police, fire and emergency medical services provided throughout the remainder of the City.

FY 2022 Reimbursement for Police Services:	\$	225,264
FY 2022 Reimbursement for Fire and Emergency Medical Services:	\$	1,325,435
Total FY 2022 Reimbursement:	\$	1,550,699

**City of San Diego Police Department (SDPD) Services
Reimbursement Calculation Summary**

<u>Description</u>	<u>Reference/Formula</u>	<u>Amount</u>
Total Detective Costs	Exhibit 2-A	\$ 158,977
Total Property Handling & Storage Costs	Exhibit 2-B	\$ 14,838
Total Laboratory Costs	Exhibit 2-C	\$ 28,711
Total Records Costs	Exhibit 2-D	\$ 22,737
Total SDPD Services		\$ 225,264

EXHIBIT 2-A

**City of San Diego Police Department (SDPD) Services
Detective Costs (Investigations)**

<u>Description</u>	<u>Reference/Formula</u>	<u>Amount</u>
<u>Detective Costs</u>		
Harbor Police incidents:		
Crime Cases	Reference 2	392
Arrests	Reference 2	60
Sub-Total		452
Average hours per Incident		2
Total Hours	Avg. hrs x # of incidents	904
Hourly Rate for Police Detective	Reference 1	\$ 175.86
Total Detective Costs	Total hours x hourly rate	\$ 158,977
Total Police Detective (Investigations) Costs		\$ 158,977

EXHIBIT 2-B

City of San Diego Police Department (SDPD) Services Property Costs

<u>Services Provided:</u>	<u>Reference/Formula</u>	<u>Amount</u>
Property Storage - Annual impounds		
Area Station Impounds		56,674
Headquarter Impounds		51,783
Total Impounds		108,457
Annual Property Unit costs		
Salaries, Fringe, & Non-Pers Expense with labor load and overhead	Reference 3	\$1,682,047.52
Cost per impound	Property costs \ # of items	\$15.51
Harbor Police Impounds		2,855
Total Costs for Harbor Police	HP impounds x cost per imp	\$44,278
% of cases from unleased/non-dedicated tidelands		33.51%

Total - Property Handling & Storage	% of cases x Harbor Police costs	\$	14,838
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EXHIBIT 2-C

**City of San Diego Police Department (SDPD) Services
Crime Lab Costs**

<u>Services Provided:</u>	<u>Number of hrs</u>	<u>Amount</u>	<u>Reference</u>	<u>Total</u>
<u>Lab Analyses</u>				
Narcotics cases (Presumptive) (267 cases @ 30 min/case = 133.5 hrs)	133.5	\$118.58 (Hourly rate for Criminalist II)	Reference 1	\$15,830
Narcotics cases (Court) (6 cases @ 20 min/case = 2 hrs)	2	\$118.58 (Hourly rate for Criminalist II)	Reference 1	\$237
Toxicology cases (62 blood draws for drug analysis)	62 (draws)	\$55.00 (Call-out rate per draw)		\$3,410
Toxicology cases (132 samples analyzed by contract lab)	132 (cases)	\$44.00 (min. average \$44/case)		\$5,808
Alcohol cases (52 blood draws for alcohol analysis)	52 (draws)	\$55.00 (Call-out rate per draw)		\$2,860
Alcohol cases (52 cases @ 30 min/case = 26 hrs)	26	\$118.58 (Hourly rate for Criminalist II)	Reference 1	\$3,083
Latent Print Unit cases (27 cases x 10 hours per case)	270	\$100.65 (Hrly rate, Latent Print Exam II)	Reference 1	\$27,176
Crime Scene Unit cases (13 cases x 10 hours per case)	130	\$78.88 (Hrly rate, CSS)	Reference 1	\$10,254
Forensic Biology Cases (17 cases x 4 hours per case)	68	\$118.58 (Hourly rate for Criminalist II)	Reference 1	\$8,063
Sub-Total				\$76,722
<u>Narcotics Impounds</u>				
Number of Impounds Handling & Storage (769 impounds @ 5 min/ea = 64 hrs)	64	\$58.66 (Hourly rate for PPEC)	Reference 1	\$3,754
Process for presump analyses (267 impounds @ 10 min/ea = 44.5 hrs)	44.5	\$58.66 (Hourly rate for PPEC)	Reference 1	\$2,610
Process for court analyses (6 impounds @ 10 min/ea = 1 hr)	1	\$58.66 (Hourly rate for PPEC)	Reference 1	\$59
Process for disposal (511 impounds @ 5 min/ea = 42.5 hrs)	42.5	\$58.66 (Hourly rate for PPEC)	Reference 1	\$2,493
(Prepare burn box for disposal = 1/2 hr)	50%	\$82.56 (Hourly rate for PPES)	Reference 1	\$41
Sub-Total				\$8,958
Total Laboratory Costs				\$85,680
% of cases from unleased/non-dedicated tidelands				33.51%

Total Reimbursable Lab Costs	\$ 28,711
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EXHIBIT 2-D

**City of San Diego Police Department (SDPD) Services
Records Costs**

<u>Services Provided:</u>	<u>Reference/Formula</u>		<u>Amount</u>
Harbor Police Records Processed	Reference 2	a	745
Processing Time (hrs. per record)		b	0.50
1.00 Police Records Clerk - hourly rate	Reference 1	c	\$61.04
Costs for Harbor Police Records a * b * c = total			\$ 22,737

City of San Diego Fire-Rescue Department (SDFD) Services Reimbursement Calculation Summary

FY 2021 Adopted Operating Budget *(excluding non-applicable divisions and offsetting revenue)* x % of Port Response

Adjusted FY 2021 Adopted Expenditure Budget (excludes Lifeguards, Community Risk Reduction and Air Operations)	Exhibit 2-E	\$	245,714,390
Adjusted FY 2021 Adopted Revenue Budget (offsets expenditure budget)	Exhibit 2-F	\$	7,107,204
Applicable FY 2021 Adopted Budget for services provided to the Port District		\$	238,607,186

Total SDFD Responses - Avg. of Calendar Years 2018 and 2019	132,316
Responses to Unified Port District - Avg. of Calendar Years 2018 and 2019	735
Percent of Port Responses	0.56%

Applicable FY 2021 Adopted Budget x % of Port Responses	\$	1,325,435
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Exhibit 2-E

**City of San Diego Fire-Rescue Department Services
FY 2021 Adopted Budget - Expenditures**

Division Name	Section / Funds Center Name	FY 2021 Adopted Budget
Administrative Operations	Division Management	\$ 757,713
	Employee Services	\$ 471,539
	Fiscal Services	\$ 1,339,491
	Payroll	\$ 574,895
	Professional Standards Unit	\$ 841,205
	Administrative Operations Subtotal	\$ 3,984,843
	Department Management	\$ 382,701
	Public & Media Affairs	\$ 5,000
	Fire-Rescue (Office of Fire Chief) Subtotal	\$ 387,701
Administrative Operations Total		\$ 4,372,544
Communications	Communications	\$ 9,955,950
	Dispatch	\$ 6,743,291
	Division Management	\$ 512,488
Communications Total		\$ 17,211,729
Community Risk Reduction	Brush Management	\$ 874,526
	Division Management & Admin	\$ 738,656
	Inspection Services	\$ 7,242,167
Community Risk Reduction Total		\$ 8,855,349
Emergency Medical Services	Emergency Medical Services - Fire	\$ 4,080,778
Emergency Medical Services Total		\$ 4,080,778
Emergency Operations	Emergency Operations/Fire Suppression	\$ 210,858,938
	Training	\$ 4,301,100
Emergency Operations Total		\$ 215,160,038
Lifeguard Services	Bay & Oceanfront Operations	\$ 21,528,306
	Lifeguard Services	\$ 3,735,832
Lifeguard Services Total		\$ 25,264,138
Logistics	Apparatus	\$ 352,654
	Division Management	\$ 417,028
	Equipment	\$ 504,789
	Facilities	\$ 1,584,431
Logistics Total		\$ 2,858,902
Special Operations	Air Operations	\$ 6,989,040
	Bomb Squad	\$ 393,750
	CERT	\$ 181,587
	Division Management	\$ 533,917
	Emergency Management	\$ 148,721
	FEMA/US&R	\$ 518,753
	HAZMAT	\$ 187,372
	MAST	\$ 631,492
	Technical Rescue Team	\$ 60,081
Special Operations Total		\$ 9,644,713
Total FY 2021 Adopted Budget		\$ 287,448,191

Adjustments to FY 2021 Adopted Budget for Non-Applicable Expenditures

<i>Exclude Lifeguard Services</i>	\$ 25,264,138
<i>Exclude Community Risk Reduction (CRR)</i>	\$ 8,855,349
<i>Exclude Air Operations</i>	\$ 6,989,040
<i>Exclude Non-Applicable Expenditures Share of Administrative Operations*</i>	\$ 625,274

Adjusted FY 2021 Adopted Budget	\$ 245,714,390
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*Lifeguard Services, Community Risk Reduction (CRR) and Air Operations make up 14.3% of the total FY 2021 Adopted Budget. The Administrative Operations budget is reduced by 14.3% based on the pro-rata share for those three divisions.

**City of San Diego Fire-Rescue Department Services
FY 2021 Adopted Budget - Revenues**

Source of Revenue		FY 2021 Adopted Budget
One-time Revenue:		
CARES / State & Federal Relief	\$	38,910,106
COVID-19 Revised Revenue - Fire-Rescue Inspection Fees	\$	(2,061,958)
Subtotal - One-time Revenue	\$	36,848,148
Ongoing Revenue:		
Transient Occupancy Tax (TOT) Transfer-In	\$	21,447,490
EMS Transfer-In	\$	6,412,347
Services to Airport	\$	4,900,000
Inspections & Permit Revenue	\$	4,288,254
Safety Sales Tax Transfer-in	\$	3,907,081
Deployment Revenue	\$	2,401,601
Dispatch Revenue (5 Agencies)	\$	1,750,840
False Alarm Penalty/Permits	\$	970,000
HIRT Reimbursement	\$	952,883
Lifeguard Services (i.e. Blacks & Scripps Beaches)	\$	824,320
Ambulance Fuel Reimbursement	\$	660,000
Services to Port District	\$	593,340
SAFE Reimbursement	\$	375,000
Special Events - Standby/Permits	\$	909,193
UASI Grant Reimbursement	\$	189,000
HAZMAT Permit/Cost Recovery	\$	145,500
Other Miscellaneous Revenue	\$	101,517
Subtotal - Other Revenue	\$	50,828,366
Total FY 2021 Adopted Budget Revenue	\$	87,676,514
Adjustments to FY 2021 Adopted Expenditure Budget for Offsetting Revenues		
<i>EMS Transfer-In</i>	\$	6,412,347
<i>Services to Port District</i>	\$	593,340
<i>Other Miscellaneous Revenue</i>	\$	101,517
FY 2021 Total Offsetting Revenue	\$	7,107,204

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