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San Diego Unified Port District

Document No. **65940**Filed JAN 04 2017

Office of the District Clerk

**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
MJE MARKETING SERVICES, INC.  
for  
AS-NEEDED STRATEGIC COMMUNICATIONS  
CONSULTING SERVICES  
AGREEMENT NO. 247-2016SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MJE MARKETING SERVICES, INC., a California Corporation (Consultant). The parties agree to the following:

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

hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2019, subject to earlier termination as provided below.
  
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Consultant based on the following, subject to the limitation of the maximum expenditure provided herein:
  - a. **Maximum Expenditure.** The aggregate amount under this Agreement with Consultant and agreement with Nuffer, Smith, Tucker, Inc., District Clerk Document No. 65941, and agreement with PJM Strategies, Inc. dba Strategic Communications, District Clerk Document No. 65942 and agreement with Katz & Associates, Inc., District Clerk Document No. 65943, shall not exceed \$600,000. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
  
  - b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel

with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.

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

#### 4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant 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. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at

reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

**4. CONSULTANT'S SUB-CONSULTANTS**

- a. It may be necessary for Consultant to sub-contract for the performance of certain technical services or other services for Consultant to perform and complete the required services; provided, however, all Consultant's Sub-Consultants shall be subject to prior written approval by District. The Consultant shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Consultant or Consultant's Sub-Consultants. Consultant shall compensate each Consultant's Sub-Consultants in the time periods required by law. Any Consultant's Sub-Consultants employed by Consultant shall be independent Consultants and not agents of District. Consultant shall insure that Consultant's Sub-Consultants satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
  
- b. Listed below are the firms that the District has approved as Consultant's sub-consultants to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
MIG, Inc.	Strategic Marketing & Communications
Diego & Son Printing	Printing
Copy 2 Copy	Printing
San Diego Translation Services	Spanish Translation
Media Planning and Placement	Media Buying

- c. Consultant shall also include a clause in its Agreements with Consultant's Sub-Consultants 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 Consultant's Sub-Consultants 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 AND WARRANTY**

- a. In performance of this Agreement, Consultant and Consultant's Sub-Consultants 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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Consultant 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 and shall obtain and maintain in good standing throughout the term of this Agreement all necessary licenses and permits.
- c. Consultant warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii)

use sound engineering and/or technical principles where applicable; (iii) perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Consultant or its subcontractors shall be passed directly to District. At no cost to District, Consultant shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Consultant does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Consultant (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Consultant's expense. If Consultant fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Consultant shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Consultant such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Consultant.

7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction

of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- b. The Consultant further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Consultant pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Consultant provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the

District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Consultant provided for in this Agreement, Consultant agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-

insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
  - (3) Workers' Compensation, statutory limits, is required of the Consultant and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
  - (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
    - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
    - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant

shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.

- (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (5) 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. Consultant 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 B 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. Consultant 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 Consultant or Consultant's sub-consultants or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or Sub-Consultants.
12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant 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. Consultant 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. **CONFLICT OF INTEREST** Consultant represents and warrants the following:

- a. No current or prior conflict of interest. That Consultant has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
- b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the District in writing of such conflict.
- c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Consultant. Such termination of the Agreement shall be effective upon the receipt of such notice by Consultant.

15. **CONFIDENTIALITY**

- a. A confidential relationship is hereby created between the District and Consultant. During the course of this agreement, District may disclose to Consultant documents (including without limitation, reports, summaries, analyses, or data) and/or information. This information, disclosures, or work of Consultant may constitute confidential information. Consultant shall not disclose any confidential information or documents related to this matter without permission, and only under the conditions and restrictions

provided by the District in writing. Disclosure of such documents and information to Consultant shall not constitute waiver of any privilege or protection by District. Consultant shall not disclose the fact of Consultant's retention by the District or any information developed pursuant to this Agreement (including without limitation, reports, summaries, analyses, data, or other information) without permission, and only under the conditions and restrictions provided by the District in writing.

- b. Consultant agrees that, to the extent Consultant employs persons not party to this Agreement to perform services for Consultant in connection with or pursuant to this Agreement, Consultant will assure that all such persons are made aware the confidentiality terms of this Agreement and that, prior to performing services for Consultant, such persons shall indicate in writing that they agree to abide by such provisions. All written reports, drafts, analyses, computer programs, drawings, notes, photographs or any other work developed in the performance of this Agreement are and remain the sole property of the District.
- c. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the District, where the work may conflict with the interests of the District. Potential conflicts which should be brought to the attention of the District include, without limitation, work for other parties on matters covered by this Agreement or related matters, any work for parties adverse to District in matters covered by this Agreement, a District tenant, an applicant for District lease, agreement, permit or other discretionary decision of District, any other adverse party, or a neighboring governmental entity.
16. **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.

17. **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.
18. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Consultant pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity, except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
19. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Consultant of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option

of District be delivered by Consultant 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 Consultant other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

20. **DISPUTE RESOLUTION**

- d. 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.
- e. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-Consultant and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

f. 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.

21. **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 Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other

liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

- a. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of Consultant to: (a) ensure that all persons and/or entities (including, but not limited to, Consultant or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of the Consultant to insure that all certified payrolls are provided to the District. Consultant shall submit certified payrolls electronically via the software LCPtracker.
- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Consultant will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Consultant's request.
  - (2) The use of LCPtracker by the Consultant is mandatory. Access to LCPtracker will be provided at no cost to the Consultant.

- (3) In order to utilize LCPtracker, the Consultant needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to [www.lcptracker.com](http://www.lcptracker.com). To Login, go to [www.lcptracker.net](http://www.lcptracker.net) and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Consultant's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Consultant's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Consultant must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Consultant.
- (6) Training options can be provided to the Consultant upon request.

**23. CONSULTANT/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the

contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
  - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
  - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
24. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
25. **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 Consultant.
- a. Submit all correspondence regarding this Agreement to:

Tanya Castaneda  
 Marketing & Communications Department  
 San Diego Unified Port District  
 P.O. Box 120488  
 San Diego, CA 92112-0488  
 Tel. 619-686-6330  
 Email: tcastaneda@portofsandiego.org

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

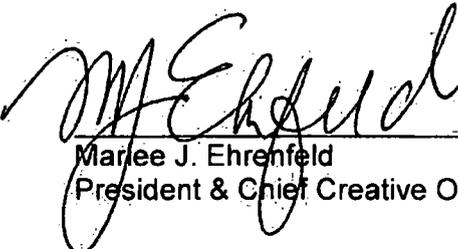
Marlee J. Ehrenfeld  
 MJE Marketing Services, Inc.  
 3111 Camino Del Rio North, Suite 100  
 San Diego, CA 92108  
 Tel. 619-682-3841  
 Email: marlee@mjemarketing.com

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

**SAN DIEGO UNIFIED PORT DISTRICT**

**MJE MARKETING SERVICES, INC.**

  
 \_\_\_\_\_  
 Jennifer Barsell Director  
 Marketing & Communications

  
 \_\_\_\_\_  
 Marlee J. Ehrenfeld  
 President & Chief Creative Officer

**Approved as to form and legality:  
 GENERAL COUNSEL**

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

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

**ATTACHMENT A  
SCOPE OF SERVICES**

**San Diego Unified Port District**

1. **SCOPE OF SERVICES** Consultant shall augment the work of the District's full-service Marketing and Communications Department. Consultant will be called upon to deliver counsel on an as-needed and per project basis in various areas including maritime, integrated planning, real estate development and other program areas requiring strategic marketing, communication and stakeholder relation counsel within the following arenas:
  - a. **Public Outreach Planning**
    - 1) Define key audience, key messages by audience, goals, objectives, strategies and tactics to be used throughout the course of each campaign.
  - b. **Key Message Development**
    - 1) Review and refine District created key messages
    - 2) Develop key message documents for new campaigns including proactive messages, reactive messages and background information for use in media interviews, presentations and other public forums.
    - 3) Write copy for an array of materials including press releases, brochures, presentations, handouts, editorials, etc.
  - c. **Outreach Material Development**
    - 1) Review and refine District created documents, provide recommendations for additional documents needed for effective outreach
    - 2) Provide counsel on the creation of collateral materials in alignment with Outreach Plan and Key Messages including but not limited to presentations, executive summaries, meeting handouts, infographics, etc. in the development phase including writing and editing written materials.
  - d. **Community Relations/Outreach/Public Engagement**
    - 1) Conduct public surveys in alignment with Outreach Plan to garner feedback from target audiences
    - 2) Facilitate visioning summit and/or other public workshops to engage community members and stakeholders in program development
    - 3) Promote and host town halls/open houses to provide information and gather public opinion for or against particular planning options

- 4) Coordinate stakeholder relations with key groups such as elected officials, public agencies, key businesses, labor groups, community organizations and environmental groups.
- 5) Interactive and social media guidance including strategy, platform usage, targeting and messaging, to maximize digital engagement.

e. **Stakeholder Relations**

- 1) Provide guidance for high level stakeholder relations including political positioning, strategic planning for lobbying purposes and facilitating communication with elected and appointed officials
- 2) Offer insight on fostering positive relationships with key stakeholders on particular issues in order to fulfill the districts mission.

f. **Media Relations**

- 1) Develop full media relations plans, identifying spokespersons and securing targeted media outreach opportunities and desk-side meetings with targeted media outlets.
- 2) Assist with press conferences, interviews, pitching, and other media outreach as necessary per outreach plan direction.

g. **Crisis Communications**

- 1) Provide strategic counsel in coordination with District legal team and executive leadership on major issues
- 2) Develop appropriate proactive and/or responsive crisis communications strategy in partnership with District communications team to build support for initiatives and minimize negative impacts of media coverage on controversial issues

h. **Media Training**

- 1) Support executive level staff with media training, interview preparation and presentation skills
- 2) Provide spokesperson training with on-camera critique, and feedback for improvement

i. **Collaboration & Communication**

- 1) Ensure fluid collaboration and strong communication by attending internal meetings with staff and other Consultants, as well as conference calls and digital communications.
- 2) Facilitation of special meetings, retreats and planning sessions as requested.

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

**1. COMPENSATION**

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

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

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

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

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

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

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

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

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

<b>Labor Classification</b>	<b>Fully Burdened Hourly Billing Rate</b>
President	\$200
Senior Strategist	\$180
Director of Marketing/ Director of Public Affairs/ Creative Director/ Communications Strategist/ Public Participation Specialist	\$155
Public Relations Specialist/ Marketing Associate/ Public Outreach Specialist	\$125
Public Relations Assistant/ Marketing Assistant/ Copywriter	\$85
Administrative Coordinator	\$55

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

(3) **Reimbursable Expenses**

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

**Note:** Professional Printing and Photography Services and Expenses, other than those required during the normal course of business, are reimbursable. Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

## 2. INVOICING

- a. **Payment Documentation.** As a prerequisite to payment for services, Consultant shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- a. Consultant shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
- (1) Agreement No. 247-2016SN
  - (2) If applicable, the Task Authorization(s) (TA) number being charged.
  - (3) Summary table of total work and amount invoiced to date for the TA being charged
  - (4) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:  
  

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. 65940, and that payment has not been received."
  - (5) Dates of service provided
  - (6) Date of invoice
  - (7) A unique invoice number
- b. District shall, at its discretion, return to Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be mailed to the attention of: Tanya Castaneda, Marketing & Communications, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
- e. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Consultant within thirty (30) days after receipt by District of a proper invoice.

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



**Marketing & Communications**  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
(619) 686-\_\_\_\_

**TASK AUTHORIZATION NO. \_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

**Subject: Task Authorization for Agreement No. \_\_ - 2016SN  
As-Needed Strategic Marketing & Communications  
Consulting Services**

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

**TASK DESCRIPTION**

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

**8. Scope of Services.**

**9. Contractor Staffing (If applicable)**

Name	Classification	Hours
	Staff as needed per Agreement rates	

**10. List of Sub-Consultants (If applicable)**

N/A

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

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Firm: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Manager  
 Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Project Manager  
 Date: \_\_\_\_\_

**Director:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Director  
 Date: \_\_\_\_\_

## EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to:** **San Diego Unified Port District**  
**c/o Ebix BPO**  
**P.O. Box 12010-3**  
**Hemet, CA 92546-8010 -OR-**  
**Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.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
	<b>Commercial General Liability</b> <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: \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: _____  Expiration Date: _____	Each Occurrence: \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		Commencement Date: _____  Expiration Date: _____	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: _____  Expiration Date: _____	Each Claim \$ _____
	<b>Excess/Umbrella Liability</b>		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**

<b><u>ENDORSEMENT NO.</u></b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>POLICY NO.</u></b>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> 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)

<p><b>MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:</b></p> <p>San Diego Unified Port District                  c/o Ebix BPO                  P.O. Box 12010-3                  Hemet, CA 92546-8010 – OR –                  Email to: <a href="mailto:sdupd@prod.certificatesnow.com">sdupd@prod.certificatesnow.com</a>                  Fax: 1-866-866-6516</p>
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(3)

**RESOLUTION 2016-184**

**RESOLUTION SELECTING AND AUTHORIZING  
THREE-YEAR AGREEMENTS WITH MJE  
MARKETING SERVICES, INC.; NUFFER, SMITH,  
TUCKER, INC.; PJM STRATEGIES, INC. DBA  
STRATEGIC COMMUNICATIONS; AND KATZ &  
ASSOCIATES, INC. FOR AS-NEEDED STRATEGIC  
COMMUNICATIONS CONSULTING SERVICES  
FOR AN AGGREGATE AMOUNT NOT TO EXCEED  
\$600,000**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 establishing a procedure for the administration of contracts, solicitation of service provider agreements and the purchasing of supplies, materials, and equipment; and

**WHEREAS**, the Marketing & Communications Department uses the services of professional consulting firms to provide advanced skills and to supplement the services of the in-house resources utilizing best practices for citizen engagement, strategic marketing, public outreach, public information and stakeholder relations and these services are needed by the District to provide counsel on an as-needed and per-project basis in various areas related to public initiatives and issues, events, maritime and industrial projects, real estate development, environmental stewardship, public access and parks; and

**WHEREAS**, the Request for Qualifications (RFQ) for as-needed Strategic Communications Consulting Services was issued on August 23, 2016; and

**WHEREAS**, the District received responsive proposals from eleven firms; and

**WHEREAS**, qualifications were reviewed by a panel of District staff and six of the eleven firms were selected for interviews; and

**WHEREAS**, the evaluation panel considered the written submittals, interviews, and a decision analysis process using the criteria stated in the RFQ; and

**WHEREAS**, the selection panel found that MJE Marketing, Inc. and

2016-184

Nuffer, Smith, Tucker, Inc. and Strategic Communications, Inc. and Katz & Associates, Inc. were the highest qualified based on the experience of their staff and firm, approach to the project, capability to perform, and fair and reasonable cost.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That MJE Marketing, Inc. and Nuffer, Smith, Tucker, Inc. and Strategic Communications, Inc. and Katz & Associates, Inc. are hereby selected for Strategic Communications Consulting Services, and that the Executive Director, or her designated representative, is hereby authorized on behalf of the San Diego Unified Port District to enter into three-year agreements for as-needed Strategic Communications Consulting Services for an aggregate amount not to exceed \$600,000.

APPROVED AS TO FORM AND LEGALITY:



General Counsel / DEPUTY GENERAL COUNSEL

2016-184

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13<sup>th</sup> day of December, 2016, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Moore, Malcolm, Nelson and Valderrama.

NAYS: None.

EXCUSED: None.

ABSENT: None.

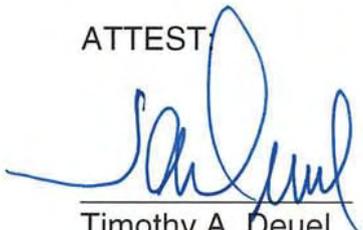
ABSTAIN: None.

RECUSED: None.



Marshall Merrifield, Chairman  
Board of Port Commissioners

ATTEST



Timothy A. Deuel  
District Clerk

(Seal)



San Diego Unified Port District

3165 Pacific Hwy.  
San Diego, CA 92101

Item No. 9

**File #:**2016-0616

**DATE:** December 13, 2016

**SUBJECT:**

**RESOLUTION SELECTING AND AUTHORIZING THREE-YEAR AGREEMENTS WITH MJE MARKETING SERVICES, INC.; NUFFER, SMITH, TUCKER, INC.; PJM STRATEGIES, INC. DBA STRATEGIC COMMUNICATIONS; AND KATZ & ASSOCIATES, INC. FOR AS-NEEDED STRATEGIC COMMUNICATIONS CONSULTING SERVICES FOR AN AGGREGATE AMOUNT NOT TO EXCEED \$600,000**

**EXECUTIVE SUMMARY:**

This action will authorize as-needed agreements for Strategic Communications Consulting Services.

The Marketing & Communications Department uses the services of professional consulting firms to provide advanced skills and to supplement the services of the in-house resources utilizing best practices for citizen engagement, strategic marketing, public outreach, public information and stakeholder relations. These services are needed by the District to provide counsel on an as-needed and per-project basis in various areas related to public initiatives and issues, events, maritime and industrial projects, real estate development, environmental stewardship, public access and parks.

Each agreement is for a three-year period. The aggregate total of all agreements will not exceed \$600,000.

Pursuant to BPC Policy No. 110, the District issued a Request for Qualifications (RFQ) on August 23, 2016. The District received 12 submittals, of which 11 were deemed responsive as shown in the following table, and selected the number of firms for interviews as shown. Based on the written submittals, interviews, and a decision analysis process using the criteria stated in the RFQ, the firms determined to be the highest qualified firms for the services solicited are listed as follows.

Category	No. of Submittals Received	No. of Firms Interviewed	Selected Firms
Strategic Marketing & Communications Consulting Services	11	6	4

Upon Board approval, Agreements No. 247-2016SN (Attachment A), and 248-2016SN (Attachment B), and 249-2016SN (Attachment C), and 250-2016SN (Attachment D) will be executed.

**File #:**2016-0616

**RECOMMENDATION:**

Adopt a resolution selecting and authorizing three-year agreements with MJE Marketing, Inc. and Nuffer, Smith, Tucker, Inc. and Strategic Communications, Inc. and Katz & Associates, Inc. for as-needed strategic communications consulting services for an aggregate amount not to exceed \$600,000.

**FISCAL IMPACT:**

Funds for the first year of expenditure are included in the the FY 16/17 Marketing & Communications Department's non-personnel expense budget. Funds required for future fiscal years will be budgeted in the appropriate fiscal year and cost account, subject to Board approval upon adoption of each fiscal year's budget.

**COMPASS STRATEGIC GOALS:**

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A vibrant waterfront destination where residents and visitors converge.
- A Port with a comprehensive vision for Port land and water uses integrated to regional plans.

**DISCUSSION:**

The Marketing & Communications Department is responsible for implementing the District's marketing, public relations, community notification and community outreach programs. In order to perform the approved work-plan on schedule and cost-effectively, the Marketing & Communications Department supplements in-house staff with professional consulting firms that provide specific technical expertise.

Staff has implemented the process for procurement of consultants in accordance with BPC Policy No. 110. The RFQ for As-Needed Strategic Marketing & Communications Consulting Services was issued on August 23, 2016 and an information exchange meeting was held on August 30, 2016. During the advertisement period, 1236 vendors were notified and 57 vendors registered for the opportunity.

Each agreement is for a three-year period. The agreement value was determined based on previous as-needed agreements and expectation of future workloads. The agreements are for the following amounts:

Category	Maximum Aggregate Agreement Amount
Strategic Marketing & Communications Consulting Services	\$600,000

Following is a description of the selection process, results and recommendation:

**File #:2016-0616**

Surveying Services

On September 6, 2016, the District received responsive proposals from 11 firms. The firms are listed alphabetically in the following table.

Firm	Office Location
Brown Marketing Strategies, Inc.	San Diego, CA
Civilian, Inc.	San Diego, CA
Cook + Schmid, LLC	San Diego, CA
J. Walcher Communications	San Diego, CA
Katz & Associates, Inc.	San Diego, CA
MJE Marketing Services, Inc.	San Diego, CA
Nuffer, Smith, Tucker, Inc.	San Diego, CA
NV5, Inc.	San Diego, CA
PJM Strategies, Inc., dba Strategic Communications	San Diego, CA
Plume 21	La Jolla, CA
Southwest Strategies, LLC	San Diego, CA

Qualifications were reviewed by a cross-departmental panel of District staff. Six of the 11 firms were selected for interviews based on their written submittals, and interviews were conducted on October 19, 2016. The evaluation panel considered the written submittals, presentations, and responses to interview questions, and the firms were ranked based on the criteria established in the RFQ. The four top-ranked firms are described below, in the order in which they were ranked:

**#1 - MJE Marketing Services, Inc.** - MJE Marketing Services and its proposed staff demonstrated relevant experience and a full scope of services working with public agencies including the District, San Diego County, Metropolitan Transit System, SANDAG and the District's member cities. Their approach was integrated, utilizing multiple tools and key metrics that demonstrated that they understood the needs of the District and were familiar with their processes. In particular, the panel noted that MJE Marketing was the lead agency on a successful agency-to-consumer campaign for the San Diego County Parks and Recreation Department that was similar to prospective District projects. Their capability to perform was illustrated by their record and qualifications as a full-service agency. MJE Marketing's proposed costs were in the most competitive category of all the finalists.

**#2 - Nuffer, Smith, Tucker, Inc.** - Nuffer, Smith, Tucker is a well-established full-service firm with recent District experience, and they demonstrated relevant experience and a full scope of services working with public agencies including SANDAG, Civic San Diego, San Diego County Water Authority and the District. They also showcased experience with business-to-business and business-to-consumer client campaigns. Their approach was well defined and strategic, and included ideas for applying lessons from the private sector to the District. Their capability to perform was illustrated by their long-term client relationships, their record and qualifications as a full-service agency. Nuffer, Smith, Tucker's proposed costs were slightly higher than the highest rated firm.

**#3/4 (tie) - PJM Strategies, Inc., dba Strategic Communications** - Strategic Communication consists

**File #:2016-0616**

of a sole provider, Peter MacCracken, who has more than three decades of relevant experience and a strong public sector portfolio including recent District experience. As a sole provider, he provides specific services including strategic guidance and writing for publication. He showcased compelling examples of his work for the District, San Diego County Regional Airport Authority and other agencies. His approach demonstrated understanding of the District's needs, building on a record of accomplishments with the District and strategic relationships with key publics. As a sole provider, his capability to perform is based on his personal availability. His hourly costs are comparable with the executive-level tiers within the competing proposals, reflecting the level of his expertise.

#3/4 (tie) - Katz & Associates, Inc. - Katz & Associates and its proposed staff demonstrated relevant experience and a full scope of services, including District executive experience. As a full-service firm, they showcased compelling public agency projects including recent leadership of the Pure Water San Diego Campaign. Their approach demonstrated understanding of District needs and requirements and stakeholders, as well as a history of working on very high-level, high-profile campaigns. Their capability to perform was demonstrated by their well-established team based in San Diego, with subcontractor relationships geared toward needs in specific geographic areas. Katz & Associates' proposed costs were slightly higher than the highest rated firm.

#5 - Southwest Strategies, LLC and its proposed staff demonstrated relevant experience, especially with stakeholder and political outreach; however, a full scope of services was not as well articulated in comparison with other proposals. Their approach lacked a specific work plan and strategies; it did not demonstrate a strong understanding of the District's needs. Their proposed costs were the second highest of the finalists.

#6 - NV5, Inc. and its proposed staff demonstrated relevant experience with outreach but the presentation focused on facilitation of public meetings as a main vehicle for communications, to the exclusion of other areas such as media relations, website, direct mail, social media, crisis communications. Cited projects appeared to be related to municipal utilities with limited relevance to the District. Their approach did not demonstrate a strong understanding of the District's needs. Their proposed costs were in the most competitive category of all the finalists.

The selection panel found that MJE Marketing, Inc. *and* Nuffer, Smith, Tucker, Inc. *and* PJM Strategies, Inc., dba Strategic Communications *and* Katz & Associates, Inc. were the highest qualified based on the experience of their staff and firm, approach to the project, capability to perform, and fair and reasonable cost. Based on this analysis, staff concluded the proposed agreements will achieve the best value to the District. Staff recommends the Board adopt a resolution selecting and authorizing an agreement with MJE Marketing Services, Inc.; Nuffer, Smith, Tucker, Inc.; PJM Strategies, Inc. dba Strategic Communications; and Katz & Associates, Inc.

**General Counsel's Comments:**

The Office of the General Counsel has reviewed the issues set forth in this agenda and found no legal concerns as presented and has reviewed and approved the agreements for form and legality.

**Environmental Review:**

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**File #:2016-0616**

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The proposed Board action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action allows for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act, or “new development,” pursuant to Section 1.a. of the District’s Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

**Equal Opportunity Program:**

A 10% SBE goal was established for this opportunity. All four recommended firms met or exceeded the 10% SBE goal.

**PREPARED BY:**

Tanya Castaneda  
Public Information Officer, Marketing & Communications Department

**Attachment(s):**

Attachment A: Agreement 247-2016SN with MJE Marketing Services, Inc. for As-Needed Strategic Communications Consulting Services

Attachment B: Agreement 248-2016SN with Nuffer, Smith, Tucker, Inc. for As-Needed Strategic Communications Consulting Services

Attachment C: Agreement 249-2016SN with PJM Strategies, Inc. DBA Strategic Communications for As-Needed Strategic Communications Consulting Services

Attachment D: Agreement 250-2016SN with Katz & Associates, Inc. for As-Needed Strategic Communications Consulting Services

**AGREEMENT BETWEEN**  
**SAN DIEGO UNIFIED PORT DISTRICT**  
**and**  
**MJE MARKETING SERVICES, INC.**  
**for**  
**AS-NEEDED STRATEGIC COMMUNICATIONS**  
**CONSULTING SERVICES**  
**AGREEMENT NO. 247-2016SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MJE MARKETING SERVICES, INC., a California Corporation (Consultant). The parties agree to the following:

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

hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2019, subject to earlier termination as provided below.
  
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Consultant based on the following, subject to the limitation of the maximum expenditure provided herein:
  - a. **Maximum Expenditure.** The aggregate amount under this Agreement with Consultant and agreement with Nuffer, Smith, Tucker, Inc., District Clerk Document No. \_\_\_\_\_, and agreement with PJM Strategies, Inc. dba Strategic Communications, District Clerk Document No. \_\_\_\_\_ and agreement with Katz & Associates, Inc., District Clerk Document No. \_\_\_\_\_, shall not exceed \$600,000. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
  
  - b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel

with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.

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

#### 4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant 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. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at

reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

#### 4. CONSULTANT'S SUB-CONSULTANTS

- a. It may be necessary for Consultant to sub-contract for the performance of certain technical services or other services for Consultant to perform and complete the required services; provided, however, all Consultant's Sub-Consultants shall be subject to prior written approval by District. The Consultant shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Consultant or Consultant's Sub-Consultants. Consultant shall compensate each Consultant's Sub-Consultants in the time periods required by law. Any Consultant's Sub-Consultants employed by Consultant shall be independent Consultants and not agents of District. Consultant shall insure that Consultant's Sub-Consultants satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
- b. Listed below are the firms that the District has approved as Consultant's sub-consultants to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
MIG, Inc.	Strategic Marketing & Communications
Diego & Son Printing	Printing
Copy 2 Copy	Printing
San Diego Translation Services	Spanish Translation
Media Planning and Placement	Media Buying

- c. Consultant shall also include a clause in its Agreements with Consultant's Sub-Consultants 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 Consultant's Sub-Consultants 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 AND WARRANTY**

- a. In performance of this Agreement, Consultant and Consultant's Sub-Consultants 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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Consultant 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 and shall obtain and maintain in good standing throughout the term of this Agreement all necessary licenses and permits.
- c. Consultant warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii)

use sound engineering and/or technical principles where applicable; (iii) perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Consultant or its subcontractors shall be passed directly to District. At no cost to District, Consultant shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Consultant does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Consultant (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Consultant's expense. If Consultant fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Consultant shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Consultant such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Consultant.

7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction

of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

b. The Consultant further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Consultant pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Consultant provided for in this Agreement.

c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the

District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Consultant provided for in this Agreement, Consultant agrees to pay all reasonable attorneys' fees and all costs incurred by District.

## 10. **INSURANCE REQUIREMENTS**

- a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
  - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
    - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
    - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
    - (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-

insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
  - (3) Workers' Compensation, statutory limits, is required of the Consultant and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
  - (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
    - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
    - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant

shall maintain at its own expense, “tail” coverage in the same minimum amount as set forth in this paragraph.

- (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (5) 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. Consultant 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 B 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. Consultant 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 Consultant or Consultant's sub-consultants or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or Sub-Consultants.
12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant 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. Consultant 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. **CONFLICT OF INTEREST** Consultant represents and warrants the following:

- a. No current or prior conflict of interest. That Consultant has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
- b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the District in writing of such conflict.
- c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Consultant. Such termination of the Agreement shall be effective upon the receipt of such notice by Consultant.

15. **CONFIDENTIALITY**

- a. A confidential relationship is hereby created between the District and Consultant. During the course of this agreement, District may disclosure to Consultant documents (including without limitation, reports, summaries, analyses, or data) and/or information. This information, disclosures, or work of Consultant may constitute confidential information. Consultant shall not disclose any confidential information or documents related to this matter without permission, and only under the conditions and restrictions

provided by the District in writing. Disclosure of such documents and information to Consultant shall not constitute waiver of any privilege or protection by District. Consultant shall not disclose the fact of Consultant's retention by the District or any information developed pursuant to this Agreement (including without limitation, reports, summaries, analyses, data, or other information) without permission, and only under the conditions and restrictions provided by the District in writing.

- b. Consultant agrees that, to the extent Consultant employs persons not party to this Agreement to perform services for Consultant in connection with or pursuant to this Agreement, Consultant will assure that all such persons are made aware the confidentiality terms of this Agreement and that, prior to performing services for Consultant, such persons shall indicate in writing that they agree to abide by such provisions. All written reports, drafts, analyses, computer programs, drawings, notes, photographs or any other work developed in the performance of this Agreement are and remain the sole property of the District.
  - c. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the District, where the work may conflict with the interests of the District. Potential conflicts which should be brought to the attention of the District include, without limitation, work for other parties on matters covered by this Agreement or related matters, any work for parties adverse to District in matters covered by this Agreement, a District tenant, an applicant for District lease, agreement, permit or other discretionary decision of District, any other adverse party, or a neighboring governmental entity.
16. **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.

17. **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.
  
18. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Consultant pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity, except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
  
19. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Consultant of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option

of District be delivered by Consultant 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 Consultant other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

## 20. **DISPUTE RESOLUTION**

- d. 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.
  
- e. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-Consultant and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

- f. 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.
21. **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 Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other

liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

- a. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of Consultant to: (a) ensure that all persons and/or entities (including, but not limited to, Consultant or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Consultant acknowledges and agrees that it is the sole and exclusive responsibility of the Consultant to insure that all certified payrolls are provided to the District. Consultant shall submit certified payrolls electronically via the software LCPtracker.
  - (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Consultant will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Consultant's request.
  - (2) The use of LCPtracker by the Consultant is mandatory. Access to LCPtracker will be provided at no cost to the Consultant.

- (3) In order to utilize LCPtracker, the Consultant needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to [www.lcptracker.com](http://www.lcptracker.com). To Login, go to [www.lcptracker.net](http://www.lcptracker.net) and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Consultant's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Consultant's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Consultant must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Consultant.
- (6) Training options can be provided to the Consultant upon request.

23. **CONSULTANT/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the

contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
  - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
  - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
24. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
25. **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 Consultant.
- a. Submit all correspondence regarding this Agreement to:

Tanya Castaneda  
 Marketing & Communications Department  
 San Diego Unified Port District  
 P.O. Box 120488  
 San Diego, CA 92112-0488  
 Tel. 619-686-6330  
 Email: tcastaneda@portofsandiego.org

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

Marlee J. Ehrenfeld  
 MJE Marketing Services, Inc.  
 3111 Camino Del Rio North, Suite 100  
 San Diego, CA 92108  
 Tel. 619-682-3841  
 Email: marlee@mjemarketing.com

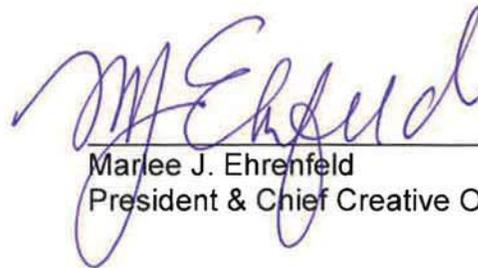
- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

**SAN DIEGO UNIFIED PORT DISTRICT**

**MJE MARKETING SERVICES, INC.**

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Jenifer Barsell, Director  
 Marketing & Communications




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Marlee J. Ehrenfeld  
 President & Chief Creative Officer

**Approved as to form and legality:  
 GENERAL COUNSEL**

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By: Assistant/Deputy

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

## ATTACHMENT A SCOPE OF SERVICES

### San Diego Unified Port District

1. **SCOPE OF SERVICES** Consultant shall augment the work of the District's full-service Marketing and Communications Department. Consultant will be called upon to deliver counsel on an as-needed and per project basis in various areas including maritime, integrated planning, real estate development and other program areas requiring strategic marketing, communication and stakeholder relation counsel within the following arenas:
  - a. **Public Outreach Planning**
    - 1) Define key audience, key messages by audience, goals, objectives, strategies and tactics to be used throughout the course of each campaign.
  - b. **Key Message Development**
    - 1) Review and refine District created key messages
    - 2) Develop key message documents for new campaigns including proactive messages, reactive messages and background information for use in media interviews, presentations and other public forums.
    - 3) Write copy for an array of materials including press releases, brochures, presentations, handouts, editorials, etc.
  - c. **Outreach Material Development**
    - 1) Review and refine District created documents, provide recommendations for additional documents needed for effective outreach
    - 2) Provide counsel on the creation of collateral materials in alignment with Outreach Plan and Key Messages including but not limited to presentations, executive summaries, meeting handouts, infographics, etc. in the development phase including writing and editing written materials.
  - d. **Community Relations/Outreach/Public Engagement**
    - 1) Conduct public surveys in alignment with Outreach Plan to garner feedback from target audiences
    - 2) Facilitate visioning summit and/or other public workshops to engage community members and stakeholders in program development
    - 3) Promote and host town halls/open houses to provide information and gather public opinion for or against particular planning options

- 4) Coordinate stakeholder relations with key groups such as elected officials, public agencies, key businesses, labor groups, community organizations and environmental groups.
- 5) Interactive and social media guidance including strategy, platform usage, targeting and messaging, to maximize digital engagement.

e. **Stakeholder Relations**

- 1) Provide guidance for high level stakeholder relations including political positioning, strategic planning for lobbying purposes and facilitating communication with elected and appointed officials
- 2) Offer insight on fostering positive relationships with key stakeholders on particular issues in order to fulfill the districts mission.

f. **Media Relations**

- 1) Develop full media relations plans, identifying spokespersons and securing targeted media outreach opportunities and desk-side meetings with targeted media outlets.
- 2) Assist with press conferences, interviews, pitching, and other media outreach as necessary per outreach plan direction.

g. **Crisis Communications**

- 1) Provide strategic counsel in coordination with District legal team and executive leadership on major issues
- 2) Develop appropriate proactive and/or responsive crisis communications strategy in partnership with District communications team to build support for initiatives and minimize negative impacts of media coverage on controversial issues

h. **Media Training**

- 1) Support executive level staff with media training, interview preparation and presentation skills
- 2) Provide spokesperson training with on-camera critique, and feedback for improvement

i. **Collaboration & Communication**

- 1) Ensure fluid collaboration and strong communication by attending internal meetings with staff and other Consultants, as well as conference calls and digital communications.
- 2) Facilitation of special meetings, retreats and planning sessions as requested.

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

**1. COMPENSATION**

- a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Consultant compensation as set forth hereunder.
- (1) Consultant shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Task Authorizations shall be Lump Sum, Fixed Fee, or Time and Materials or any combination of all three.
- (a) Each invoice for Lump Sum work shall include:
- Date work performed;  
Description of the work performed;  
Direct Costs.
- (b) Each invoice for Fixed Fee work shall include:
- Date work performed;  
Description of the work performed;  
Percent of total work being invoiced;  
Percent of total work completed;  
Direct Costs.
- (c) Each invoice for Time and Materials work shall include:
- Date work performed;  
Description of the work performed;  
Hours worked by personnel classification;  
Rate per personnel classification;  
Total personnel cost by classification; and  
Direct Costs.

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

<b>Labor Classification</b>	<b>Fully Burdened Hourly Billing Rate</b>
President	\$200
Senior Strategist	\$180
Director of Marketing/ Director of Public Affairs/ Creative Director/ Communications Strategist/ Public Participation Specialist	\$155
Public Relations Specialist/ Marketing Associate/ Public Outreach Specialist	\$125
Public Relations Assistant/ Marketing Assistant/ Copywriter	\$85
Administrative Coordinator	\$55

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

(3) **Reimbursable Expenses**

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

**Note:** Professional Printing and Photography Services and Expenses, other than those required during the normal course of business, are reimbursable. Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

## 2. INVOICING

- a. **Payment Documentation.** As a prerequisite to payment for services, Consultant shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- a. Consultant shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
- (1) Agreement No. 247-2016SN
  - (2) If applicable, the Task Authorization(s) (TA) number being charged.
  - (3) Summary table of total work and amount invoiced to date for the TA being charged
  - (4) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:  
  

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. \_\_\_\_\_, and that payment has not been received."
  - (5) Dates of service provided
  - (6) Date of invoice
  - (7) A unique invoice number
- b. District shall, at its discretion, return to Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be mailed to the attention of: Tanya Castaneda, Marketing & Communications, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
- e. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to

Consultant within thirty (30) days after receipt by District of a proper invoice.

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



**Marketing & Communications**  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
(619) 686-\_\_\_\_

**TASK AUTHORIZATION NO. \_\_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

**Subject: Task Authorization for Agreement No. \_\_ - 2016SN  
As-Needed Strategic Marketing & Communications  
Consulting Services**

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

**TASK DESCRIPTION**

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

8. **Scope of Services.**

**9. Contractor Staffing (If applicable)**

Name	Classification	Hours
	Staff as needed per Agreement rates	

**10. List of Sub-Consultants (If applicable)**

N/A

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

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Firm: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Project Manager  
 Date: \_\_\_\_\_

**Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Manager  
 Date: \_\_\_\_\_

**Director:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Director  
 Date: \_\_\_\_\_

## EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to:**      **San Diego Unified Port District**  
 c/o Ebix BPO  
 P.O. Box 12010-3  
 Hemet, CA 92546-8010 –OR–  
 Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.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
	<b>Commercial General Liability</b> <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: \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date:  Expiration Date:	Each Occurrence: \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		Commencement Date:  Expiration Date:	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date:  Expiration Date:	Each Claim  \$ _____
	<b>Excess/Umbrella Liability</b>		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**

<b><u>ENDORSEMENT NO.</u></b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>POLICY NO.</u></b>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> 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 12010-3**  
**Hemet, CA 92546-8010 – OR –**  
**Email to: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.com)**  
**Fax: 1-866-866-6516**

**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
NUFFER, SMITH, TUCKER, INC.  
for  
AS-NEEDED STRATEGIC COMMUNICATIONS  
CONSULTING SERVICES  
AGREEMENT NO. 248-2016SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and NUFFER, SMITH, TUCKER, INC. a California Corporation (Consultant). The parties agree to the following:

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

hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2019, subject to earlier termination as provided below.
  
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Consultant based on the following, subject to the limitation of the maximum expenditure provided herein:
  - a. **Maximum Expenditure.** The aggregate amount under this Agreement with Consultant and agreement with MJE Marketing Services, Inc., District Clerk Document No. \_\_\_\_\_, and agreement with PJM Strategies, Inc. dba Strategic Communications, District Clerk Document No. \_\_\_\_\_ and agreement with Katz & Associates, Inc., District Clerk Document No. \_\_\_\_\_, shall not exceed \$600,000. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
  
  - b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel

with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.

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

#### 4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant 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. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at

reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

5. **CONSULTANT'S SUB-CONSULTANTS**

- a. It may be necessary for Consultant to sub-contract for the performance of certain technical services or other services for Consultant to perform and complete the required services; provided, however, all Consultant's Sub-Consultants shall be subject to prior written approval by District. The Consultant shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Consultant or Consultant's Sub-Consultants. Consultant shall compensate each Consultant's Sub-Consultants in the time periods required by law. Any Consultant's Sub-Consultants employed by Consultant shall be independent Consultants and not agents of District. Consultant shall insure that Consultant's Sub-Consultants satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
  
- b. Listed below are the firms that the District has approved as Consultant's sub-consultants to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Jerry Hara Diamond Production Group	Video Production

- c. Consultant shall also include a clause in its Agreements with Consultant's Sub-Consultants 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 Consultant's Sub-Consultants 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 AND WARRANTY**

- a. In performance of this Agreement, Consultant and Consultant's Sub-Consultants 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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Consultant 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 and shall obtain and maintain in good standing throughout the term of this Agreement all necessary licenses and permits.
- c. Consultant warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii) use sound engineering and/or technical principles where applicable; (iii) perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v)

where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Consultant or its subcontractors shall be passed directly to District. At no cost to District, Consultant shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Consultant does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Consultant (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Consultant's expense. If Consultant fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Consultant shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Consultant such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Consultant.

7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.
  
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights,

duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- b. The Consultant further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Consultant pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Consultant provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Consultant provided for in this

Agreement, Consultant agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation, statutory limits, is required of the Consultant and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
  - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
  - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.

- (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
  - (5) 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. Consultant 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 B 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. Consultant 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 Consultant or Consultant's sub-consultants or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or Sub-Consultants.
12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant 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. Consultant 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. **CONFLICT OF INTEREST** Consultant represents and warrants the following:

- a. No current or prior conflict of interest. That Consultant has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
- b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the District in writing of such conflict.
- c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Consultant. Such termination of the Agreement shall be effective upon the receipt of such notice by Consultant.

15. **CONFIDENTIALITY**

- a. A confidential relationship is hereby created between the District and Consultant. During the course of this agreement, District may disclose to Consultant documents (including without limitation, reports, summaries, analyses, or data) and/or information. This information, disclosures, or work of Consultant may constitute confidential information. Consultant shall not disclose any confidential information or documents related to this matter without permission, and only under the conditions and restrictions provided by the District in writing. Disclosure of such documents and information to Consultant shall not constitute waiver of any privilege or protection by District. Consultant shall not disclose the fact of

Consultant's retention by the District or any information developed pursuant to this Agreement (including without limitation, reports, summaries, analyses, data, or other information) without permission, and only under the conditions and restrictions provided by the District in writing.

- b. Consultant agrees that, to the extent Consultant employs persons not party to this Agreement to perform services for Consultant in connection with or pursuant to this Agreement, Consultant will assure that all such persons are made aware the confidentiality terms of this Agreement and that, prior to performing services for Consultant, such persons shall indicate in writing that they agree to abide by such provisions. All written reports, drafts, analyses, computer programs, drawings, notes, photographs or any other work developed in the performance of this Agreement are and remain the sole property of the District.
  - c. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the District, where the work may conflict with the interests of the District. Potential conflicts which should be brought to the attention of the District include, without limitation, work for other parties on matters covered by this Agreement or related matters, any work for parties adverse to District in matters covered by this Agreement, a District tenant, an applicant for District lease, agreement, permit or other discretionary decision of District, any other adverse party, or a neighboring governmental entity.
16. **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.

17. **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.
18. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Consultant pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity, except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.
19. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Consultant of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Consultant 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 Consultant other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

20. **DISPUTE RESOLUTION**

- d. 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.
  
- e. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-Consultant and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

f. 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.

21. **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 Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other

liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

- a. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of Consultant to: (a) ensure that all persons and/or entities (including, but not limited to, Consultant or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of the Consultant to insure that all certified payrolls are provided to the District. Consultant shall submit certified payrolls electronically via the software LCPtracker.
  - (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Consultant will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Consultant's request.
  - (2) The use of LCPtracker by the Consultant is mandatory. Access to LCPtracker will be provided at no cost to the Consultant.

- (3) In order to utilize LCPtracker, the Consultant needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to [www.lcptracker.com](http://www.lcptracker.com). To Login, go to [www.lcptracker.net](http://www.lcptracker.net) and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Consultant's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Consultant's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Consultant must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Consultant.
- (6) Training options can be provided to the Consultant upon request.

23. **CONSULTANT/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by

Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
  - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
  - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
24. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
25. **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 Consultant.
- a. Submit all correspondence regarding this Agreement to:

Tanya Castaneda  
Marketing & Communications Department  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
Tel. 619-686-6330  
Email: tcastaneda@portofsandiego.org

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

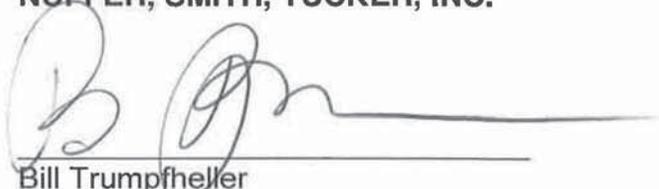
Bill Trumpfheller, President  
Nuffer, Smith, Tucker, Inc.  
4045 Third Ave., Suite 200  
San Diego, CA 92103  
Tel. (619) 296-0605  
Email: bt@nstpr.com

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

**SAN DIEGO UNIFIED PORT DISTRICT**

\_\_\_\_\_  
Jenifer Barsell, Director  
Marketing & Communications

**NUFFER, SMITH, TUCKER, INC.**

  
\_\_\_\_\_  
Bill Trumpfheller  
President

**Approved as to form and legality:  
GENERAL COUNSEL**

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

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

## ATTACHMENT A SCOPE OF SERVICES

### San Diego Unified Port District

1. **SCOPE OF SERVICES** Consultant shall augment the work of the District's full-service Marketing and Communications Department. Consultant will be called upon to deliver counsel on an as-needed and per project basis in various areas including maritime, integrated planning, real estate development and other program areas requiring strategic marketing, communication and stakeholder relation counsel within the following arenas:
  - a. **Public Outreach Planning**
    - 1) Define key audience, key messages by audience, goals, objectives, strategies and tactics to be used throughout the course of each campaign.
  - b. **Key Message Development**
    - 1) Review and refine District created key messages
    - 2) Develop key message documents for new campaigns including proactive messages, reactive messages and background information for use in media interviews, presentations and other public forums.
    - 3) Write copy for an array of materials including press releases, brochures, presentations, handouts, editorials, etc.
  - c. **Outreach Material Development**
    - 1) Review and refine District created documents, provide recommendations for additional documents needed for effective outreach
    - 2) Provide counsel on the creation of collateral materials in alignment with Outreach Plan and Key Messages including but not limited to presentations, executive summaries, meeting handouts, infographics, etc. in the development phase including writing and editing written materials.
  - d. **Community Relations/Outreach/Public Engagement**
    - 1) Conduct public surveys in alignment with Outreach Plan to garner feedback from target audiences
    - 2) Facilitate visioning summit and/or other public workshops to engage community members and stakeholders in program development
    - 3) Promote and host town halls/open houses to provide information and gather public opinion for or against particular planning options

- 4) Coordinate stakeholder relations with key groups such as elected officials, public agencies, key businesses, labor groups, community organizations and environmental groups.
- 5) Interactive and social media guidance including strategy, platform usage, targeting and messaging, to maximize digital engagement.

e. **Stakeholder Relations**

- 1) Provide guidance for high level stakeholder relations including political positioning, strategic planning for lobbying purposes and facilitating communication with elected and appointed officials
- 2) Offer insight on fostering positive relationships with key stakeholders on particular issues in order to fulfill the districts mission.

f. **Media Relations**

- 1) Develop full media relations plans, identifying spokespersons and securing targeted media outreach opportunities and desk-side meetings with targeted media outlets.
- 2) Assist with press conferences, interviews, pitching, and other media outreach as necessary per outreach plan direction.

g. **Crisis Communications**

- 1) Provide strategic counsel in coordination with District legal team and executive leadership on major issues
- 2) Develop appropriate proactive and/or responsive crisis communications strategy in partnership with District communications team to build support for initiatives and minimize negative impacts of media coverage on controversial issues

h. **Media Training**

- 1) Support executive level staff with media training, interview preparation and presentation skills
- 2) Provide spokesperson training with on-camera critique, and feedback for improvement

i. **Collaboration & Communication**

- 1) Ensure fluid collaboration and strong communication by attending internal meetings with staff and other Consultants, as well as conference calls and digital communications.
- 2) Facilitation of special meetings, retreats and planning sessions as requested.

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

**1. COMPENSATION**

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

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

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

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

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

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

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

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

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

<b>Labor Classifications</b>	<b>Fully Burdened Hourly Billing Rate</b>
President	\$300
Vice President	\$175
Sr. Account Executive	\$150
Account Executive	\$125
Account Coordinator	\$95
Administrative Assistant	\$50

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

(3) **Reimbursable Expenses**

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

**Note:** Professional Printing and Photography Services and Expenses, other than those required during the normal course of business, are reimbursable. Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Consultant shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- a. Consultant shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:

- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) Summary table of total work and amount invoiced to date for the TA being charged
- (4) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. \_\_\_\_\_, and that payment has not been received."

- (5) Dates of service provided
  - (6) Date of invoice
  - (7) A unique invoice number
- b. District shall, at its discretion, return to Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
  - c. Invoices shall be mailed to the attention of: Tanya Castaneda, Marketing & Communications, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
  - d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
  - e. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Consultant within thirty (30) days after receipt by District of a proper invoice.

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



**Marketing & Communications**  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
(619) 686-\_\_\_\_\_

**TASK AUTHORIZATION NO. \_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

**Subject: Task Authorization for Agreement No. \_\_ - 2016SN  
As-Needed Strategic Marketing & Communications  
Consulting Services**

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

**TASK DESCRIPTION**

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

**8. Scope of Services.**

**9. Contractor Staffing (If applicable)**

Name	Classification	Hours
	Staff as needed per Agreement rates	

**10. List of Sub-Consultants (If applicable)**

N/A

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

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Project Manager

Date: \_\_\_\_\_

**Manager:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Manager

Date: \_\_\_\_\_

**Director:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Director

Date: \_\_\_\_\_

## EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to:**      **San Diego Unified Port District**  
**c/o Ebix BPO**  
**P.O. Box 12010-3**  
**Hemet, CA 92546-8010 –OR–**  
**Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.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
	<b>Commercial General Liability</b> <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: \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date:  Expiration Date:	Each Occurrence: \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		Commencement Date:  Expiration Date:	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date:  Expiration Date:	Each Claim  \$ _____
	<b>Excess/Umbrella Liability</b>		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>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> 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)

<p><b>MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:</b></p> <p>San Diego Unified Port District            c/o Ebix BPO            P.O. Box 12010-3            Hemet, CA 92546-8010 – OR –            Email to: <a href="mailto:sdupd@prod.certificatesnow.com">sdupd@prod.certificatesnow.com</a>            Fax: 1-866-866-6516</p>
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**AGREEMENT BETWEEN**  
**SAN DIEGO UNIFIED PORT DISTRICT**  
**and**  
**PJM STRATEGIES, INC. DBA STRATEGIC COMMUNICATIONS**  
**for**  
**AS-NEEDED STRATEGIC COMMUNICATIONS**  
**CONSULTING SERVICES**  
**AGREEMENT NO. 249-2016SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and PJM STRATEGIES, INC. DBA STRATEGIC COMMUNICATIONS, a California Corporation (Consultant). The parties agree to the following:

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

services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2019, subject to earlier termination as provided below.
  
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Consultant based on the following, subject to the limitation of the maximum expenditure provided herein:
  - a. **Maximum Expenditure.** The aggregate amount under this Agreement with Consultant and agreement with MJE Marketing Services, Inc., District Clerk Document No. \_\_\_\_\_, and agreement with Nuffer, Smith, Tucker, Inc., District Clerk Document No. \_\_\_\_\_ and agreement with Katz & Associates, Inc., District Clerk Document No. \_\_\_\_\_, shall not exceed \$600,000. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
  
  - b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel

with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.

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

#### 4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant 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. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at

reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

## 5. **CONSULTANT'S SUB-CONSULTANTS**

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

- a. In performance of this Agreement, Consultant and Consultant's Sub-Consultants 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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Consultant 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 and shall obtain and maintain in good standing throughout the term of this Agreement all necessary licenses and permits.
- c. Consultant warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii) use sound engineering and/or technical principles where applicable; (iii) perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Consultant or its subcontractors shall be passed directly to District. At no cost to District, Consultant shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal

and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Consultant does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Consultant (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Consultant's expense. If Consultant fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Consultant shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Consultant such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Consultant.

7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
  - a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against

any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

- b. The Consultant further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Consultant pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Consultant provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Consultant provided for in this Agreement, Consultant agrees to pay all reasonable attorneys' fees and all costs incurred by District.

## 10. **INSURANCE REQUIREMENTS**

- a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
  - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
  - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
  - (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute to it.
  - (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

- (3) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
- (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
  - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, “tail” coverage in the same minimum amount as set forth in this paragraph.
  - (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (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. Consultant 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 B 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. Consultant 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 Consultant or Consultant's sub-consultants or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or Sub-Consultants.
12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not

have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant 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. Consultant 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. **CONFLICT OF INTEREST** Consultant represents and warrants the following:
- a. No current or prior conflict of interest. That Consultant has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
  - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the District in writing of such conflict.
  - c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Consultant. Such termination of the Agreement shall be effective upon the receipt of such notice by Consultant.

## 15. CONFIDENTIALITY

- a. A confidential relationship is hereby created between the District and Consultant. During the course of this agreement, District may disclose to Consultant documents (including without limitation, reports, summaries, analyses, or data) and/or information. This information, disclosures, or work of Consultant may constitute confidential information. Consultant shall not disclose any confidential information or documents related to this matter without permission, and only under the conditions and restrictions provided by the District in writing. Disclosure of such documents and information to Consultant shall not constitute waiver of any privilege or protection by District. Consultant shall not disclose the fact of Consultant's retention by the District or any information developed pursuant to this Agreement (including without limitation, reports, summaries, analyses, data, or other information) without permission, and only under the conditions and restrictions provided by the District in writing.
- b. Consultant agrees that, to the extent Consultant employs persons not party to this Agreement to perform services for Consultant in connection with or pursuant to this Agreement, Consultant will assure that all such persons are made aware the confidentiality terms of this Agreement and that, prior to performing services for Consultant, such persons shall indicate in writing that they agree to abide by such provisions. All written reports, drafts, analyses, computer programs, drawings, notes, photographs or any other work developed in the performance of this Agreement are and remain the sole property of the District.
- c. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the District, where the work may conflict with the interests of the District. Potential conflicts which should be brought to the attention of the District include, without limitation, work for other parties on matters covered by

this Agreement or related matters, any work for parties adverse to District in matters covered by this Agreement, a District tenant, an applicant for District lease, agreement, permit or other discretionary decision of District, any other adverse party, or a neighboring governmental entity.

16. **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.
17. **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.
18. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Consultant pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity,

except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

20. **DISPUTE RESOLUTION**

- d. 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.
- e. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may

be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-Consultant and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.

- f. 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.
21. **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 Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right

to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

- a. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of Consultant to: (a) ensure that all persons and/or entities (including, but not limited to, Consultant or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Consultant acknowledges and agrees that it is the sole and exclusive responsibility of the Consultant to insure that all certified payrolls are provided to the District. Consultant shall submit certified payrolls electronically via the software LCPtracker.

- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Consultant will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Consultant's request.
- (2) The use of LCPtracker by the Consultant is mandatory. Access to LCPtracker will be provided at no cost to the Consultant.
- (3) In order to utilize LCPtracker, the Consultant needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to [www.lcptracker.com](http://www.lcptracker.com). To Login, go to [www.lcptracker.net](http://www.lcptracker.net) and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Consultant's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Consultant's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Consultant must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Consultant.
- (6) Training options can be provided to the Consultant upon request.

23. **CONSULTANT/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public

Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
  - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
  - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
24. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
25. **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 Consultant.
- a. Submit all correspondence regarding this Agreement to:

Tanya Castaneda  
Marketing & Communications Department  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
Tel. (619) 686-6330  
Email: tcastaneda@portofsandiego.org

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

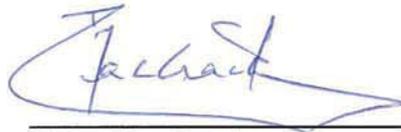
Peter MacCracken  
PJM Strategies, Inc. dba Strategic Communications  
1535 Frankfort Street  
San Diego, CA 92110  
Tel. (619) 275-4110  
Email: pjmac@strategic-communications.com

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

**SAN DIEGO UNIFIED PORT DISTRICT**

**PJM STRATEGIES, INC. DBA  
STRATEGIC COMMUNICATIONS**

\_\_\_\_\_  
Jenifer Barsell, Director  
Marketing & Communications

  
\_\_\_\_\_  
Peter MacCracken  
Principal

**Approved as to form and legality:  
GENERAL COUNSEL**

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

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

## ATTACHMENT A SCOPE OF SERVICES

### San Diego Unified Port District

1. **SCOPE OF SERVICES** Consultant shall augment the work of the District's full-service Marketing and Communications Department. Consultant will be called upon to deliver counsel on an as-needed and per project basis in various areas including maritime, integrated planning, real estate development and other program areas requiring strategic marketing, communication and stakeholder relation counsel within the following arenas:
  - a. **Public Outreach Planning**
    - 1) Define key audience, key messages by audience, goals, objectives, strategies and tactics to be used throughout the course of each campaign.
  - b. **Key Message Development**
    - 1) Review and refine District created key messages
    - 2) Develop key message documents for new campaigns including proactive messages, reactive messages and background information for use in media interviews, presentations and other public forums.
    - 3) Write copy for an array of materials including press releases, brochures, presentations, handouts, editorials, etc.
  - c. **Outreach Material Development**
    - 1) Review and refine District created documents, provide recommendations for additional documents needed for effective outreach
    - 2) Provide counsel on the creation of collateral materials in alignment with Outreach Plan and Key Messages including but not limited to presentations, executive summaries, meeting handouts, infographics, etc. in the development phase including writing and editing written materials.
  - d. **Community Relations/Outreach/Public Engagement**
    - 1) Conduct public surveys in alignment with Outreach Plan to garner feedback from target audiences
    - 2) Facilitate visioning summit and/or other public workshops to engage community members and stakeholders in program development
    - 3) Promote and host town halls/open houses to provide information and gather public opinion for or against particular planning options

- 4) Coordinate stakeholder relations with key groups such as elected officials, public agencies, key businesses, labor groups, community organizations and environmental groups.
- 5) Interactive and social media guidance including strategy, platform usage, targeting and messaging, to maximize digital engagement.

e. **Stakeholder Relations**

- 1) Provide guidance for high level stakeholder relations including political positioning, strategic planning for lobbying purposes and facilitating communication with elected and appointed officials
- 2) Offer insight on fostering positive relationships with key stakeholders on particular issues in order to fulfill the districts mission.

f. **Media Relations**

- 1) Develop full media relations plans, identifying spokespersons and securing targeted media outreach opportunities and desk-side meetings with targeted media outlets.
- 2) Assist with press conferences, interviews, pitching, and other media outreach as necessary per outreach plan direction.

g. **Crisis Communications**

- 1) Provide strategic counsel in coordination with District legal team and executive leadership on major issues
- 2) Develop appropriate proactive and/or responsive crisis communications strategy in partnership with District communications team to build support for initiatives and minimize negative impacts of media coverage on controversial issues

h. **Media Training**

- 1) Support executive level staff with media training, interview preparation and presentation skills
- 2) Provide spokesperson training with on-camera critique, and feedback for improvement

i. **Collaboration & Communication**

- 1) Ensure fluid collaboration and strong communication by attending internal meetings with staff and other Consultants, as well as conference calls and digital communications.
- 2) Facilitation of special meetings, retreats and planning sessions as requested.



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

(3) **Reimbursable Expenses**

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

**Note:** Professional Printing and Photography Services and Expenses, other than those required during the normal course of business, are reimbursable. Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Consultant shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- a. Consultant shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
  - (1) Agreement No. 249-2016SN
  - (2) If applicable, the Task Authorization(s) (TA) number being charged.
  - (3) Summary table of total work and amount invoiced to date for the TA being charged.
  - (4) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. \_\_\_\_\_, and that payment has not been received."

- (5) Dates of service provided
  - (6) Date of invoice
  - (7) A unique invoice number
- 
- b. District shall, at its discretion, return to Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
  - c. Invoices shall be mailed to the attention of: Tanya Castaneda, Marketing & Communications, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
  - d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
  - e. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Consultant within thirty (30) days after receipt by District of a proper invoice.

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



**Marketing & Communications**  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
(619) 686-\_\_\_\_

**TASK AUTHORIZATION NO. \_\_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

**Subject: Task Authorization for Agreement No. \_\_ - 2016SN  
As-Needed Strategic Marketing & Communications  
Consulting Services**

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

**TASK DESCRIPTION**

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

8. **Scope of Services.**

9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. List of Sub-Consultants (If applicable)

N/A

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

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Project Manager

Date: \_\_\_\_\_

**Manager:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Manager

Date: \_\_\_\_\_

**Director:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Director

Date: \_\_\_\_\_

## EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to:**      **San Diego Unified Port District**  
 c/o Ebix BPO  
 P.O. Box 12010-3  
 Hemet, CA 92546-8010 –OR–  
 Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.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.
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CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	<b>Commercial General Liability</b> <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: \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date:  Expiration Date:	Each Occurrence: \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		Commencement Date:  Expiration Date:	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b>  <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date:  Expiration Date:	Each Claim  \$ _____
	<b>Excess/Umbrella Liability</b>		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**

<b><u>ENDORSEMENT NO.</u></b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>POLICY NO.</u></b>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> 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)

<p><b>MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:</b></p> <p><b>San Diego Unified Port District</b>                  c/o Ebix BPO                  P.O. Box 12010-3                  Hemet, CA 92546-8010 – OR –                  Email to: <a href="mailto:sdupd@prod.certificatesnow.com">sdupd@prod.certificatesnow.com</a>                  Fax: 1-866-866-6516</p>
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**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
KATZ & ASSOCIATES, INC.  
for  
AS-NEEDED STRATEGIC COMMUNICATIONS  
CONSULTING SERVICES  
AGREEMENT NO. 250-2016SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and KATZ & ASSOCIATES, INC., a California Corporation (Consultant). The parties agree to the following:

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

hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2017 and shall terminate on December 31, 2019, subject to earlier termination as provided below.
  
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Consultant based on the following, subject to the limitation of the maximum expenditure provided herein:
  - a. **Maximum Expenditure.** The aggregate amount under this Agreement with Consultant and agreement with MJE Marketing Services, Inc., District Clerk Document No. \_\_\_\_\_, and agreement with Nuffer, Smith, Tucker, Inc., District Clerk Document No. \_\_\_\_\_ and agreement with PJM Strategies, Inc. dba Strategic Communications, District Clerk Document No. \_\_\_\_\_, shall not exceed \$600,000. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.
  
  - b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel

with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.

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

#### 4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant 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. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at

reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

5. **CONSULTANT'S SUB-CONSULTANTS**

- a. It may be necessary for Consultant to sub-contract for the performance of certain technical services or other services for Consultant to perform and complete the required services; provided, however, all Consultant's Sub-Consultants shall be subject to prior written approval by District. The Consultant shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Consultant or Consultant's Sub-Consultants. Consultant shall compensate each Consultant's Sub-Consultants in the time periods required by law. Any Consultant's Sub-Consultants employed by Consultant shall be independent Consultants and not agents of District. Consultant shall insure that Consultant's Sub-Consultants satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
  
- b. Listed below are the firms that the District has approved as Consultant's sub-consultants to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Vic Salazar Enterprises LLC	Hispanic Community Outreach
Yen C. Tu Consulting	Asian Community Outreach
Lacey Consulting	African American Community Outreach
Diego & Sons	Printing

- c. Consultant shall also include a clause in its Agreements with Consultant's Sub-Consultants 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 Consultant's Sub-Consultants 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 AND WARRANTY**

- a. In performance of this Agreement, Consultant and Consultant's Sub-Consultants 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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Consultant 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 and shall obtain and maintain in good standing throughout the term of this Agreement all necessary licenses and permits.
- c. Consultant warrants and represents that it shall (i) perform the services with competent and skilled personnel in a good and workmanlike manner consistent with applicable industry standards and practices; (ii)

use sound engineering and/or technical principles where applicable; (iii) perform the services in compliance with specifications provided or approved by District; (iv) use or furnish materials and equipment that are merchantable, fit, and new unless otherwise provided in the TA; and (v) where mutually agreed, use or furnish merchantable and fit used material and equipment. To the extent assignable, all rights and remedies available to Consultant or its subcontractors shall be passed directly to District. At no cost to District, Consultant shall remedy nonconforming workmanship or replace nonconforming material and equipment, including removal of facilities as maybe necessary to reveal and repair or replace nonconforming services, and reinstallation of such facilities removed in connection therewith. If Consultant does not remedy nonconforming service within ten (10) days written notice from company or within a time period otherwise agreed to by District and Consultant (such an agreement not to be unreasonably withheld because outside factors may impact the time), District may do so at Consultant's expense. If Consultant fails to pay this expense, District may deduct all expenses from any proceeds due to Service Provider. At no cost to District, Consultant shall diligently and promptly remedy nonconforming workmanship, material and equipment appearing within one (1) year from the date of final acceptance, or within such longer period of time warranted by the manufacturer warranty; provided, however, with respect to latent defects in equipment and material installed by Consultant such period shall be within such time as District discovers or should have discovered such latent defects under normal operating circumstances, but in no event less than four (4) years from installation by Consultant.

7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction

of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

b. The Consultant further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Consultant pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Consultant provided for in this Agreement.

- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the services of Consultant provided for in this Agreement, Consultant agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

- a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
  - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
    - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
    - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).

- (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Consultant's insurance and shall not contribute to it.
  - (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
  - (3) Workers' Compensation, statutory limits, is required of the Consultant and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
  - (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.
    - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.



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 Consultant or Consultant's sub-consultants or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or Sub-Consultants.

12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant 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. Consultant 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. **CONFLICT OF INTEREST** Consultant represents and warrants the following:

- a. No current or prior conflict of interest. That Consultant has no business, professional, personal or other interest, including but not limited to, the representation of clients, that would conflict in any manner or degree with the performance of its obligations under this agreement.
- b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Consultant shall immediately inform the District in writing of such conflict.
- c. Termination for Conflict. If the District determines that such conflict poses a material conflict to and with the performance of Consultant's obligations under this Agreement, then the District, in its sole and absolute discretion, may terminate the Agreement immediately upon written notice to Consultant. Such termination of the Agreement shall be effective upon the receipt of such notice by Consultant.

15. **CONFIDENTIALITY**

- a. A confidential relationship is hereby created between the District and Consultant. During the course of this agreement, District may disclosure to Consultant documents (including without limitation, reports, summaries, analyses, or data) and/or information. This information, disclosures, or

work of Consultant may constitute confidential information. Consultant shall not disclose any confidential information or documents related to this matter without permission, and only under the conditions and restrictions provided by the District in writing. Disclosure of such documents and information to Consultant shall not constitute waiver of any privilege or protection by District. Consultant shall not disclose the fact of Consultant's retention by the District or any information developed pursuant to this Agreement (including without limitation, reports, summaries, analyses, data, or other information) without permission, and only under the conditions and restrictions provided by the District in writing.

- b. Consultant agrees that, to the extent Consultant employs persons not party to this Agreement to perform services for Consultant in connection with or pursuant to this Agreement, Consultant will assure that all such persons are made aware the confidentiality terms of this Agreement and that, prior to performing services for Consultant, such persons shall indicate in writing that they agree to abide by such provisions. All written reports, drafts, analyses, computer programs, drawings, notes, photographs or any other work developed in the performance of this Agreement are and remain the sole property of the District.
  
- c. During the term hereof, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the District, where the work may conflict with the interests of the District. Potential conflicts which should be brought to the attention of the District include, without limitation, work for other parties on matters covered by this Agreement or related matters, any work for parties adverse to District in matters covered by this Agreement, a District tenant, an applicant for District lease, agreement, permit or other discretionary decision of District, any other adverse party, or a neighboring governmental entity.

16. **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.
  
17. **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.
  
18. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Consultant pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity, except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

20. **DISPUTE RESOLUTION**

- d. 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.
- e. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

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

- f. 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.

21. **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 Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be

considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

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

b. Certified Payrolls. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of the Consultant to insure that all certified payrolls are provided to the District. Consultant shall submit certified payrolls electronically via the software LCPtracker.

(1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Consultant will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Consultant's request.

- (2) The use of LCPtracker by the Consultant is mandatory. Access to LCPtracker will be provided at no cost to the Consultant.
- (3) In order to utilize LCPtracker, the Consultant needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to [www.lcptracker.com](http://www.lcptracker.com). To Login, go to [www.lcptracker.net](http://www.lcptracker.net) and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Consultant's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Consultant's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Consultant must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Consultant.
- (6) Training options can be provided to the Consultant upon request.

23. **CONSULTANT/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public

work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

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

25. **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 Consultant.

- a. Submit all correspondence regarding this Agreement to:

Tanya Castaneda  
Marketing & Communications Department  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
Tel. 619-686-6330  
Email: tcastaneda@portofsandiego.org

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

Sara M. Katz, CEO  
Katz & Associates, Inc.  
5440 Morehouse Drive, Suite 1000  
San Diego, CA 92121  
Tel. (858) 926-4001  
Email: skatz@katzandassociates.com

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

**SAN DIEGO UNIFIED PORT DISTRICT**

**KATZ & ASSOCIATES, INC.**

\_\_\_\_\_  
Jenifer Barsell, Director  
Marketing & Communications

  
\_\_\_\_\_  
Sara M. Katz  
Chief Executive Officer

**Approved as to form and legality:  
GENERAL COUNSEL**

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

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

## ATTACHMENT A SCOPE OF SERVICES

### San Diego Unified Port District

- (1) **SCOPE OF SERVICES** Consultant shall augment the work of the District's full-service Marketing and Communications Department. Consultant will be called upon to deliver counsel on an as-needed and per project basis in various areas including maritime, integrated planning, real estate development and other program areas requiring strategic marketing, communication and stakeholder relation counsel within the following arenas:
- a. **Public Outreach Planning**
    - 1) Define key audience, key messages by audience, goals, objectives, strategies and tactics to be used throughout the course of each campaign.
  - b. **Key Message Development**
    - 1) Review and refine District created key messages
    - 2) Develop key message documents for new campaigns including proactive messages, reactive messages and background information for use in media interviews, presentations and other public forums.
    - 3) Write copy for an array of materials including press releases, brochures, presentations, handouts, editorials, etc.
  - c. **Outreach Material Development**
    - 1) Review and refine District created documents, provide recommendations for additional documents needed for effective outreach
    - 2) Provide counsel on the creation of collateral materials in alignment with Outreach Plan and Key Messages including but not limited to presentations, executive summaries, meeting handouts, infographics, etc. in the development phase including writing and editing written materials.
  - d. **Community Relations/Outreach/Public Engagement**
    - 1) Conduct public surveys in alignment with Outreach Plan to garner feedback from target audiences
    - 2) Facilitate visioning summit and/or other public workshops to engage community members and stakeholders in program development
    - 3) Promote and host town halls/open houses to provide information and gather public opinion for or against particular planning options

- 4) Coordinate stakeholder relations with key groups such as elected officials, public agencies, key businesses, labor groups, community organizations and environmental groups.
- 5) Interactive and social media guidance including strategy, platform usage, targeting and messaging, to maximize digital engagement.

e. **Stakeholder Relations**

- 1) Provide guidance for high level stakeholder relations including political positioning, strategic planning for lobbying purposes and facilitating communication with elected and appointed officials
- 2) Offer insight on fostering positive relationships with key stakeholders on particular issues in order to fulfill the districts mission.

f. **Media Relations**

- 1) Develop full media relations plans, identifying spokespersons and securing targeted media outreach opportunities and desk-side meetings with targeted media outlets.
- 2) Assist with press conferences, interviews, pitching, and other media outreach as necessary per outreach plan direction.

g. **Crisis Communications**

- 1) Provide strategic counsel in coordination with District legal team and executive leadership on major issues
- 2) Develop appropriate proactive and/or responsive crisis communications strategy in partnership with District communications team to build support for initiatives and minimize negative impacts of media coverage on controversial issues

h. **Media Training**

- 1) Support executive level staff with media training, interview preparation and presentation skills
- 2) Provide spokesperson training with on-camera critique, and feedback for improvement

i. **Collaboration & Communication**

- 1) Ensure fluid collaboration and strong communication by attending internal meetings with staff and other Consultants, as well as conference calls and digital communications.
- 2) Facilitation of special meetings, retreats and planning sessions as requested.

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

**1. COMPENSATION**

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

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

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

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

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

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

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

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

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

Labor Classification	Fully Burdened Hourly Billing Rate
CEO/President	\$250
Vice President/ Senior Account Supervisor	\$175
Account Supervisor	\$165
Account Executive II	\$135
Account Coordinator	\$75
Account Executive I	\$125
Project Support	\$65

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

(3) **Reimbursable Expenses**

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

**Note:** Professional Printing and Photography Services and Expenses, other than those required during the normal course of business, are reimbursable. Reimbursement for direct costs in excess of \$50.00 shall require the advance written approval by District's Project Manager. All other project related direct costs shall require appropriate documentation for reimbursement.

2. **INVOICING**

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

- a. Consultant shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
  - (1) Agreement No. 250-2016SN
  - (2) If applicable, the Task Authorization(s) (TA) number being charged.
  - (3) Summary table of total work and amount invoiced to date for the TA being charged
  - (4) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. \_\_\_\_\_, and that payment has not been received."
  - (5) Dates of service provided
  - (6) Date of invoice
  - (7) A unique invoice number
- b. District shall, at its discretion, return to Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be mailed to the attention of: Tanya Castaneda, Marketing & Communications, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
- e. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Consultant within thirty (30) days after receipt by District of a proper invoice.

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



**Marketing & Communications**  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
(619) 686-\_\_\_\_

**TASK AUTHORIZATION NO. \_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

**Subject: Task Authorization for Agreement No. \_\_ - 2016SN  
As-Needed Strategic Marketing & Communications  
Consulting Services**

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

**TASK DESCRIPTION**

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

8. **Scope of Services.**

**9. Contractor Staffing (If applicable)**

Name	Classification	Hours
	Staff as needed per Agreement rates	

**10. List of Sub-Consultants (If applicable)**

N/A

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

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Firm: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Project Manager  
 Date: \_\_\_\_\_

**Manager:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Manager  
 Date: \_\_\_\_\_

**Director:**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: Director  
 Date: \_\_\_\_\_

## EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to:**      **San Diego Unified Port District**  
**c/o Ebix BPO**  
**P.O. Box 12010-3**  
**Hemet, CA 92546-8010 –OR–**  
**Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.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
	<b>Commercial General Liability</b> <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: \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date:  Expiration Date:	Each Occurrence: \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		Commencement Date:  Expiration Date:	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date:  Expiration Date:	Each Claim  \$ _____
	<b>Excess/Umbrella Liability</b>		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**

<b><u>ENDORSEMENT NO.</u></b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>POLICY NO.</u></b>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> 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 12010-3  
Hemet, CA 92546-8010 – OR –  
Email to: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.com)  
Fax: 1-866-866-6516

**DRAFT****RESOLUTION 20xx-xxx****RESOLUTION SELECTING AND AUTHORIZING THREE-YEAR AGREEMENTS WITH MJE MARKETING SERVICES, INC.; NUFFER, SMITH, TUCKER, INC.; PJM STRATEGIES, INC. DBA STRATEGIC COMMUNICATIONS; AND KATZ & ASSOCIATES, INC. FOR AS-NEEDED STRATEGIC COMMUNICATIONS CONSULTING SERVICES FOR AN AGGREGATE AMOUNT NOT TO EXCEED \$600,000**

**WHEREAS**, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

**WHEREAS**, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 establishing a procedure for the administration of contracts, solicitation of service provider agreements and the purchasing of supplies, materials, and equipment; and

**WHEREAS**, the Marketing & Communications Department uses the services of professional consulting firms to provide advanced skills and to supplement the services of the in-house resources utilizing best practices for citizen engagement, strategic marketing, public outreach, public information and stakeholder relations and these services are needed by the District to provide counsel on an as-needed and per-project basis in various areas related to public initiatives and issues, events, maritime and industrial projects, real estate development, environmental stewardship, public access and parks; and

**WHEREAS**, the Request for Qualifications (RFQ) for as-needed Strategic Communications Consulting Services was issued on August 23, 2016; and

**WHEREAS**, the District received responsive proposals from eleven firms; and

**WHEREAS**, qualifications were reviewed by a panel of District staff and six of the eleven firms were selected for interviews; and

**WHEREAS**, the evaluation panel considered the written submittals, interviews, and a decision analysis process using the criteria stated in the RFQ; and

**WHEREAS**, the selection panel found that MJE Marketing, Inc. and Nuffer, Smith, Tucker, Inc. and Strategic Communications, Inc. and Katz &

20xx-xxx

Associates, Inc. were the highest qualified based on the experience of their staff and firm, approach to the project, capability to perform, and fair and reasonable cost.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That MJE Marketing, Inc. and Nuffer, Smith, Tucker, Inc. and Strategic Communications, Inc. and Katz & Associates, Inc. are hereby selected for Strategic Communications Consulting Services, and that the Executive Director, or her designated representative, is hereby authorized on behalf of the San Diego Unified Port District to enter into three-year agreements for as-needed Strategic Communications Consulting Services for an aggregate amount not to exceed \$600,000.

APPROVED AS TO FORM AND LEGALITY:

---

General Counsel

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 13<sup>th</sup> day of December, 2016, by the following vote:

(2)

**PROCUREMENT SERVICES**

San Diego Unified Port District  
1400 Tidelands Avenue  
National City, CA 91950  
(619) 686-6392

**TASK AUTHORIZATION NO. 1****REFERENCE  
COPY****65940**

April 10, 2017

Marlee J. Ehrenfeld  
**MJE Marketing Services, Inc.**  
3111 Camino Del Rio North, Suite 100  
San Diego, CA 92108  
Email: marlee@mjemarketing.com

**Subject: Task Authorization for Agreement No. 247-2016SN**  
Agreement between San Diego Unified Port District and MJE Marketing for "as needed"  
strategic communications consulting services

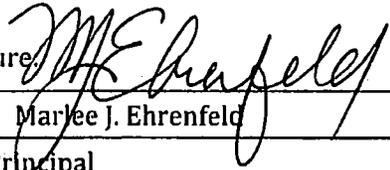
You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$10,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #1** on invoice(s) for this Task.

**TASK DESCRIPTION**

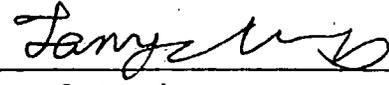
1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	4/1/2017	4.	Task End Date:	6/6/2017
5.	Task Title: <b>Maritime Month Campaign Support - Writing</b>				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN <b>Note: All-inclusive: All Direct Expenses and Sub-Consultants must be included within the dollar amount authorized.</b>				

**APPROVALS**

**Consultant:**

Signature:   
Name: Marlee J. Ehrenfeld  
Title: Principal  
Firm: MJE Marketing Services, Inc.  
Date: 4/13/17

**Project Manager:**

Signature:   
Name: Tanya Castaneda  
Title: Project Manager  
Date: 4/13/17

**Approval:**

Signature:   
Name: Jen Barsell  
Title: Director, MarCom  
Date: 4/13/17

(2)



**65940**

**PROCUREMENT SERVICES**  
San Diego Unified Port District  
1400 Tidelands Avenue  
National City, CA 91950  
(619) 686-6392

**TASK AUTHORIZATION NO. 2**

September 11, 2017

Marlee J. Ehrenfeld  
**MJE Marketing Services, Inc.**  
3111 Camino Del Rio North, Suite 100  
San Diego, CA 92108  
Email: marlee@mjemarketing.com

**Subject: Task Authorization 2 for Agreement No. 247-2016SN**  
Agreement between San Diego Unified Port District and MJE Marketing for "as needed" campaign support services

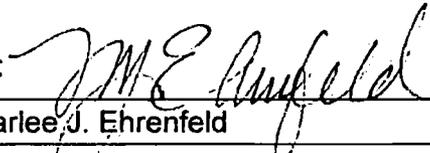
You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$15,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #2** on invoice(s) for this Task.

**TASK DESCRIPTION**

1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	9/11/2017	4.	Task End Date:	12/31/2017
5.	Task Title: <b>Environmental Campaign Support</b>				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN • <b>Please invoice for time and materials</b>				

**APPROVALS**

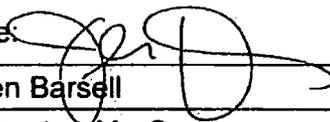
**Consultant:**

Signature:   
Name: Marlee J. Ehrenfeld  
Title: Principal  
Firm: MJE Marketing Services, Inc.  
Date:

**Project Manager:**

Signature:   
Name: Tanya Castaneda  
Title: Project Manager  
Date: 5/11/17

**Approval:**

Signature:   
Name: Jen Barsell  
Title: Director, MarCom  
Date: 9/11/17

(2)

65940



PROCUREMENT SERVICES  
San Diego Unified Port District  
1400 Tidelands Avenue  
National City, CA 91950  
(619) 686-6392

**TASK AUTHORIZATION NO. 2 – Amendment 1**

January 3, 2018

Marlee J. Ehrenfeld  
**MJE Marketing Services, Inc.**  
3111 Camino Del Rio North, Suite 100  
San Diego, CA 92108  
Email: marlee@mjemarketing.com

**Subject: Task Authorization 2 – Amendment 1 for Agreement No. 247-2016SN**  
Agreement between San Diego Unified Port District and MJE Marketing for "as needed" campaign support services

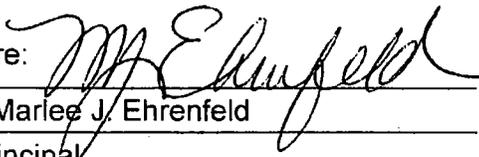
You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$15,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #2-Amendment 1** on invoice(s) for this Task.

**TASK DESCRIPTION**

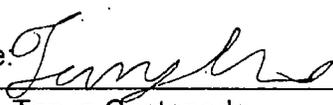
1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	11/20/2017	4.	Task End Date:	06/30/2018
5.	Task Title: <b>Environmental Campaign Support</b>				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN • <b>Please invoice for time and materials</b>				
8.	THE ONLY REVISION OF THIS TASK AUTHORIZATION IS THE TASK END DATE EXTENDING TO 6/30/18				

**APPROVALS**

**Consultant:**

Signature:   
Name: Marlee J. Ehrenfeld  
Title: Principal  
Firm: MJE Marketing Services, Inc.  
Date: 1/4/18

**Project Manager:**

Signature:   
Name: Tanya Castaneda  
Title: Project Manager  
Date: 1/4/18

**Approval:**

Signature:   
Name: Jen Barsell  
Title: Director, MarCom  
Date: 1/4/18



(3)

PROCUREMENT SERVICES  
San Diego Unified Port District  
1400 Tidelands Avenue  
National City, CA 91950  
(619) 686-6392

**TASK AUTHORIZATION NO. 3**

September 21, 2017

Marlee J. Ehrenfeld  
MJE Marketing Services, Inc.  
3111 Camino Del Rio North, Suite 100  
San Diego, CA 92108  
Email: marlee@mjemarketing.com

**Subject: Task Authorization 3 for Agreement No. 247-2016SN**  
Agreement between San Diego Unified Port District and MJE Marketing for "as needed" scriptwriting support services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$3,500. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #3** on invoice(s) for this Task.

**TASK DESCRIPTION**

1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	9/21/2017	4.	Task End Date:	10/5/2017
5.	Task Title: <b>Security Video Scriptwriting</b>				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN • <b>Please invoice for time and materials</b>				

**APPROVALS**

**Consultant:**

Signature: \_\_\_\_\_

Name: Marlee J. Ehrenfeld

Title: Principal

Firm: MJE Marketing Services, Inc.

Date: \_\_\_\_\_

**Project Manager:**

Signature: \_\_\_\_\_

Name: Tanya Castaneda

Title: Project Manager

Date: 9/23/17

**Approval:**

Signature: \_\_\_\_\_

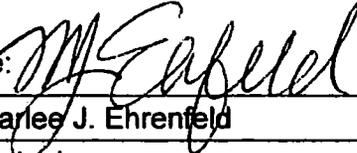
Name: Jen Barsell

Title: Director, MarCom

Date: 9/25/17

**APPROVALS**

**Consultant:**

Signature:   
 Name: Marlee J. Ehrenfeld  
 Title: Principal  
 Firm: MJE Marketing Services, Inc.  
 Date:

**Project Manager:**

Signature:  
 Name: Tanya Castaneda  
 Title: Project Manager  
 Date:

**Approval:**

Signature:  
 Name: Jen Barsell  
 Title: Director, MarCom  
 Date:



(2)

**PROCUREMENT SERVICES**  
 San Diego Unified Port District  
 1400 Tidelands Avenue  
 National City, CA 91950  
 (619) 686-6392

**REFERENCE  
 COPY  
 65940**

**TASK AUTHORIZATION NO. 4**

November 20, 2017

Marlee J. Ehrenfeld  
**MJE Marketing Services, Inc.**  
 3111 Camino Del Rio North, Suite 100  
 San Diego, CA 92108  
 Email: marlee@mjemarketing.com

**Subject: Task Authorization 4 for Agreement No. 247-2016SN**  
 Agreement between San Diego Unified Port District and MJE Marketing for "as needed" scriptwriting support services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$5,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #4** on invoice(s) for this Task.

**TASK DESCRIPTION**

1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	11/20/2017	4.	Task End Date:	12/30/2017
5.	Task Title: Castellanos Speech and Video Scriptwriting Support				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN <ul style="list-style-type: none"> <li>• <b>Please invoice for time and materials</b></li> </ul>				

**APPROVALS**

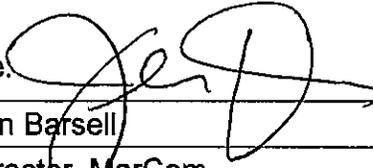
**Consultant:**

Signature:   
Name: Marlee J. Ehrenfeld  
Title: Principal  
Firm: MJE Marketing Services, Inc.  
Date: 11.21.17

**Project Manager:**

Signature:   
Name: ~~for~~ Tanya Castaneda  
Title: Project Manager  
Date: 11/22/17

**Approval:**

Signature:   
Name: Jen Barsell  
Title: Director, MarCom  
Date: 11/22/17

(2)

65940



PROCUREMENT SERVICES  
San Diego Unified Port District  
1400 Tidelands Avenue  
National City, CA 91950  
(619) 686-6392

**TASK AUTHORIZATION NO. 5**

January 3, 2018

Marlee J. Ehrenfeld  
**MJE Marketing Services, Inc.**  
3111 Camino Del Rio North, Suite 100  
San Diego, CA 92108  
Email: marlee@mjemarketing.com

**Subject: Task Authorization 5 for Agreement No. 247-2016SN**  
Agreement between San Diego Unified Port District and MJE Marketing for "as needed" editorial programming support

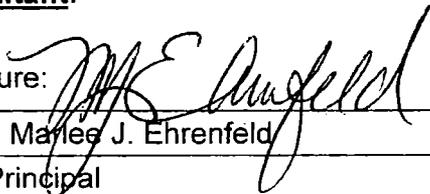
You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$20,000. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #5** on invoice(s) for this Task.

**TASK DESCRIPTION**

1.	Requestor:	Tanya Castaneda	3.	WBS or IO/ Cost Center:	160
2.	Task Start Date:	1/03/2018	4.	Task End Date:	6/30/2018
5.	Task Title: <b>Editorial Programming</b>				
6.	Scope of Services: refer to <b>Attachment A</b> of Agreement No. 247-2016SN				
7.	Compensation/Invoicing: refer to <b>Attachment B</b> of Agreement No. 247-2016SN • <b>Please invoice for time and materials</b>				

**APPROVALS**

**Consultant:**

Signature: 

Name: Marilee J. Ehrenfeld

Title: Principal

Firm: MJE Marketing Services, Inc.

Date: 1/4/18

**Project Manager:**

Signature: 

Name: Tanya Castaneda

Title: Project Manager

Date: 1/4/18

**Approval:**

Signature: 

Name: Jen Barsell

Title: Director, MarCom

Date: 1/4/18