San Diego Unified Port District
Document No. 64176
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Office of the District Clerk

AGREEMENT BETWEEN SAN DIEGO UNIFIED PORT DISTRICT and SAGE GROUP CONSULTING, INC. for SAP LEVEL 3 SUPPORT SERVICES AGREEMENT NO. 233-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and SAGE GROUP CONSULTING, INC., a New Jersey Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. 64174, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. 64175, RJT Compuquest, Inc., District Clerk Document No. 64177, NH Brandt, Inc., District Clerk Document No. 64178, PAS Software Services, Inc., District Clerk Document No. 64179, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. 64180, and QSI, Inc., District Clerk Document No. 64181 shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this

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

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and

conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District

P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Salil Sharma, Practice Director
Sage Group Consulting, Inc.
3400 Highway 35, Suite 9
Hazlet, NJ 07730
Tel. (732) 767-0010 x121
Fax (732) 767-0015
Email: ssharma@sageci.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

Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

By: ~~Assistant/~~Deputy

SAGE GROUP CONSULTING, INC.

Salil Sharma
Practice Director

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore	Off-Shore	On-Site
Functional Consultant	**$120/hr**	**$55/hr**	**$135/hr**
ECC Developer	**$95/hr**	**$45/hr**	**$115/hr**
BW Business Consultant	**$120/hr**	**$55/hr**	**$135/hr**
BW Developer	**$100/hr**	**$50/hr**	**$115/hr**
BW Business Consultant	**$110/hr**	**$55/hr**	**$125/hr**
BOBJ Technical Consultant	**$105/hr**	**$50/hr**	**$120/hr**
Security Consultant	**$120/hr**	**$55/hr**	**$135/hr**
Project Manger	**$135/hr**	**N/A**	**$150/hr**
OCM Consultant	**$95/hr**	**$50/hr**	**$115/hr**

(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**

Direct Costs — At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 233-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider'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. 64176, and that payment has not been received."

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

Unified Port of San Diego

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:

Signature:

Name:

Title:

Firm:

Date:

Project Manager:

Signature:

Name:

Title: Project Manager

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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $_____ **General Aggregate:** $_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

(3)

REFERENCE COPY

64176

RESOLUTION 2015-148

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH: V3IT CONSULTING, INC.; PHOENIX BUSINESS, INC. DBA PHOENIX BUSINESS CONSULTING; SAGE GROUP CONSULTING, INC.; RJT COMPUQUEST, INC.; NH BRANDT, INC.; PAS SOFTWARE SERVICES, INC.; LABYRINTH SOLUTIONS, INC. DBA LSI CONSULTING; AND QSI, INC., TO PROVIDE AS-NEEDED SAP LEVEL 3 SUPPORT SERVICES FOR A PERIOD OF FIVE (5) YEARS, FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED $1,250,000

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 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

WHEREAS, in 2003, the District implemented SAP as its Enterprise Resource Planning system (ERP); and

WHEREAS, the initial effort involved the implementation of the SAP business systems of Financials, Cost Accounting, Funds Management for Public Sector, Procurement, Inventory, Real Estate, Budget Preparation, Human Capital Management, Payroll, and Project System (management of capital development and major maintenance projects); and

WHEREAS, subsequently, District staff implemented the Plant Maintenance and Sales and Distribution modules, retiring two legacy systems, Synergen and Maritime Operations Information Systems (MOIS); and

WHEREAS, the goals of the Level 3 support agreements are to provide the District with programming support for the various SAP modules, streamline District processes, improve user experience, and improve business area reporting; and

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WHEREAS, it is important to select firms that can support each of the District's SAP components and who demonstrate strong business and technical knowledge along with expertise and experience in Public Sector and best business practices; and

WHEREAS, the decision to select multiple firms was made to eliminate historical support challenges caused by the following: (i) staff turnover at the consulting firms, (ii) limitations of a vendor's available skill set, (iii) the District's use of specialized functionality that may not be fully addressed by any one firm, and (iv) responsiveness to District's needs; and

WHEREAS, an evaluation committee comprised of the Business Information and Technology Services Department (BITS), Equal Opportunity, and Procurement Services staff, analyzed the proposals, conducted interviews on September 30 and October 1, 2015, and ranked the firms according to the criteria established in the Request for Qualifications (RFQ); and

WHEREAS, using the District's decision analysis process, the committee selected eight (8) firms as being the most able to meet the District's needs.

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

That the Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into agreements with V3IT Consulting, Inc.; Phoenix Business, Inc. dba Phoenix Business Consulting; Sage Group Consulting, Inc.; RJT Compuquest, Inc.; NH Brandt, Inc.; PAS Software Services, Inc.; Labyrinth Solutions, Inc. dba LSI Consulting; and QSI, Inc., to provide as-needed SAP level 3 support services for a period of five (5) years, for a total aggregate amount payable under the agreements not to exceed $1,250,000.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: ~~Assistant~~/Deputy

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PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 17th day of November, 2015, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Nelson, and Valderrama.
NAYS: None.
EXCUSED: None.
ABSENT: None.
ABSTAIN: None.

Dan Malcolm, Chairman
Board of Port Commissioners

ATTEST:

Timothy A. Deuel
District Clerk

(Seal)

San Diego Unified Port District

(205)

3165 Pacific Hwy.
San Diego, CA 92101

REFERENCE
COPY
64176

File #:2015-1656

DATE: November 17, 2015

SUBJECT:

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH:

A) V3IT CONSULTING, INC.
B) PHOENIX BUSINESS, INC. DBA PHOENIX BUSINESS CONSULTING
C) SAGE GROUP CONSULTING, INC.
D) RJT COMPUQUEST, INC.
E) NH BRANDT, INC.
F) PAS SOFTWARE SERVICES, INC.
G) LABYRINTH SOLUTIONS, INC. DBA LSI CONSULTING
H) QSI, INC.

TO PROVIDE AS-NEEDED SAP LEVEL 3 SUPPORT SERVICES FOR A PERIOD OF FIVE (5) YEARS, FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED $1,250,000.

EXECUTIVE SUMMARY:

This proposed action will provide continued as-needed Level 3 support for SAP, the District's Enterprise Resource Planning system. The District created Requests for Qualifications No. 15-31 (RFQ 15-31) with the intent to enter into a multi-vendor agreement with qualified firms to provide Level 3 support for all aspects of the SAP system.

Information Technology support services are comprised of three (3) service levels. Level 1 is the initial support level responsible for basic customer issues which is provided by Business Information & Technology Services Department (BITS) System Support Analysts. Level 2 is a more in-depth technical support level where more experienced and knowledgeable personnel such as BITS Business Systems Analysts provide the support within a particular function or product. Level 3 is the highest level of support responsible for handling the most difficult or advanced problems and these vendors will provide that service.

A multi-vendor agreement provides the District with options to select the best approach to a solution and/or best price. It ensures expertise and best practices across all disciplines of the SAP system and the ability to leverage each firm's individual strengths. A multi-vendor agreement also provides greater capacity to work on multiple projects concurrently.

On September 2, 2015, the District issued RFQ 15-31 and electronically notified 487 firms of the request. 13 firms submitted proposals of their qualifications. A selection panel evaluated the

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responses based on the District's standard evaluation criteria.

An evaluation committee comprised of BITS, Equal Opportunity, and Procurement Services staff, analyzed the proposals, conducted interviews on September 30 and October 1, 2015, and ranked the firms according to the criteria established in the RFQ. The firms that were interviewed included: Microexcel, Inc., QSI, Inc. Sage Group Consulting, Sierra Infosys, Inc., LSI Consulting, Quintel-MC, Inc., PAS Software Services, Inc., V3iT Consulting, Inc., Phoenix Business, Inc., SmallBoard, NH Brandt, Inc., RJT Compuquest, Inc. and Insight Global.

RECOMMENDATION:

Adopt a Resolution selecting and authorizing As-Needed Agreements with V3iT Consulting, Inc.; Phoenix Business, Inc. dba Phoenix Business Consulting; Sage Group Consulting; RJT Compuquest, Inc.; NH Brandt, Inc.; PAS Software Services, Inc.; Labyrinth Solutions, Inc. dba LSI Consulting; and QSI, Inc. to provide SAP Level 3 Support Services for a period of five (5) years for a total aggregate amount not to exceed $1,250,000.

FISCAL IMPACT:

Funds for the first year of this expenditure are budgeted in the FY 15/16 Technology Management Program Professional Services account or otherwise included in the applicable project budgets of the District's Technology Strategic Plan as approved by the Board. Funds required for future fiscal year (s) will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

The proposed action will utilize the expertise and experiences of qualified vendors in order to leverage SAP's ongoing technologies and to streamline the District's business processes. This agenda item supports the following Strategic Goal(s).

- A thriving and modern maritime seaport.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

In 2003, the District implemented SAP as its ERP system. The initial effort involved the implementation of the SAP business systems of Financials, Cost Accounting, Funds Management for Public Sector, Procurement, Inventory, Real Estate, Budget Preparation, Human Capital Management, Payroll, and Project System (management of capital development and major maintenance projects). Subsequently, staff implemented the Plant Maintenance and Sales and Distribution modules, retiring two legacy systems, Synergen and Maritime Operations Information Systems (MOIS).

The goals of the Level 3 support agreements are to provide the District with programming support for

the various SAP modules, streamline District processes, improve user experience, and improve business area reporting. It was important to select firms that could support each of the District's SAP components and who demonstrate strong business and technical knowledge along with expertise and experience in Public Sector and best business practices.

The decision to select multiple firms was made to eliminate historical support challenges caused by the following: (i) staff turnover at the consulting firms, (ii) limitations of a vendor's available skill set, (iii) the District's use of specialized functionality that may not be fully addressed by any one firm, and (iv) responsiveness to District's needs.

When an enhancement request or complex issue requires Level 3 support, a request, detailing the requirement or issue is sent to all firms on the Level 3 Agreement. These firms will propose a solution and estimate of effort. BITS staff selects the firm with the best solution and price.

An evaluation committee comprised of the BITS, Equal Opportunity, and Procurement Services staff, analyzed the proposals, conducted interviews on September 30 and October 1, 2015, and ranked the firms according to the criteria established in the RFQ. The firms that were interviewed included: Microexcel, Inc., QSI, Inc. Sage Group Consulting, Sierra Infosys, Inc., LSI Consulting, Quintel-MC, Inc., PAS Software Services, Inc., V3iT Consulting, Inc., Phoenix Business, Inc., SmallBoard, NH Brandt, Inc., RJT Compuquest, Inc. and Insight Global.

Using the District's decision analysis process, the committee selected the following eight (8) firms as being the most able to meet the District's needs.

V3iT Consulting, Inc. (V3iT) - V3iT was established in 2001 and their primary business focus is the SAP suite of software. It is headquartered in Naperville, Illinois and has its Center of Excellence in Thane, India and Center of Dedication to e-Learning in Belgaum, India. V3iT has been providing consulting services to the District since 2006 and has worked with other Public Sector agencies with similar scope. V3iT proposed one of the lowest fee structures in its proposal.

Phoenix Business Consulting (Phoenix) - Phoenix is headquartered in Haltom City, TX with an office in Los Angeles, CA. Phoenix specializes in providing SAP implementation and support services to the Public Sector. Phoenix has over 17 years of experience providing production support to Public Sector firms. Phoenix proposed an onsite visit at no additional cost to analyze the current state of the District's SAP implementation.

Sage Group Consulting, Inc. (Sage) - Sage has been in business since 2001 with offices in Hazlet, NJ; Schaumburg, IL; Houston, TX and NOIDA, India. Sage has been successfully providing consulting services to the District for the past nine (9) years. Sage proposed at no additional cost to analyze the SAP implementation at the District.

RJT Compuquest, Inc. (RJT) - RJT was founded in 1996 and is based out of Irvine, CA. RJT has been providing consulting services to the District since 2003. Their proposed staff demonstrated excellent skill sets with additional offshore support. RJT proposed at no additional cost an onsite knowledge acquisition and in-depth analysis of the District's business processes.

PAS Software Services, Inc. (PAS) - PAS is based in Houston, TX and has 25 years of SAP

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experience. PAS has expertise in SAP Business Warehouse architecture, custom data modeling and Business Intelligence reporting.

NH Brandt, Inc. (NHB) - NHB has over 17 years of SAP architecture and development experience. NHB is based locally in San Diego and has worked as a sub-consultant on several SAP projects at the District and is very familiar with District business processes.

LSI Consulting (LSI) - LSI was founded in 1998 as a result of participating in the first two SAP Public Sector implementations in the U.S. LSI is based in New Jersey with a local office in San Diego. LSI has strong Public Sector experience with strong expertise in SAP's Business Objects platform. LSI has been providing consulting services to the District since 2014.

QSI, Inc. (QSI) - QSI was founded in 1998 and is headquartered locally in Carlsbad, CA. QSI has strong experience with Public Sector firms and scope of work similar to the District's. QSI has provided consulting services for the District as a sub-consultant.

QSI proposes the following sub-consultants: Abeam and ZEDventures

General Counsel's Comments:
The Office of the General Counsel has reviewed the issues set forth in this agenda sheet and found no legal concerns as presented, and has reviewed and approved the agreements for form and legality. The agreements follow the District's standard template which requires the service provider 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 or expense arising out of, or related to the performance of services by service provider.

Environmental Review:

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.

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:

Due to limited subconsulting opportunities, no small business enterprise goal was established.

PREPARED BY:

Romero San Agustin
Business Systems Supervisor,
Business Information and Technology Services

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File #:2015-1656

Attachment(s):

Attachment A:	Draft Agreement 231-2015 - V3iT Consulting, Inc.
Attachment B:	Draft Agreement 232-2015 - Phoenix Business, Inc.
Attachment C:	Draft Agreement 233-2015 - Sage Group Consulting, Inc.
Attachment D:	Draft Agreement 234-2015 - RJT Compuquest, Inc.
Attachment E:	Draft Agreement 235-2015 - NH Brandt, Inc.
Attachment F:	Draft Agreement 236-2015 - PAS Software Services, Inc.
Attachment G:	Draft Agreement 237-2015 - LSI Consulting
Attachment H:	Draft Agreement 238-2015 - QSI, Inc.

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
V3IT CONSULTING, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 231-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and V3IT CONSULTING, INC., an Illinois Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

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

NAME OF FIRM	TYPE OF SERVICES PROVIDED
XXX	XXX

c. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service

Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

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

Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation

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

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties

may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the

services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Vandana Padgaonkar, President
V3IT Consulting, Inc.
Naperville, IL 60563
Tel. (630) 245-1400 x202
Fax (630) 245-1401
Email: vandana.padgaonkar@V3iT.com

**********END OF PAGE**********

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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

V3IT CONSULTING, INC.

_____
Vandana Padgaonkar
President

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE**	On-Shore	Offshore	Onsite
SAP Functional Consultant (FI, CO, GM, FM, SD, PP, PI, PM, HCM, etc.)	75	30	110
SAP Technical Lead	70	30	100
SAP Technical Consultant	60	25	90
SAP BW Functional Lead	70	30	100
SAP BW Functional Consultant	60	25	90
SAP BW Technical Lead	70	30	100
SAP BW Technical Consultant	60	25	90
SAP BOBJ Consultant (Senior)	50	25	80
SAP BOBJ Consultant (Associate)	45	20	70
SAP BOBJ Consultant (Junior)	40	15	60
SAP BOBJ Lead	50	25	80
SAP BOBJ Senior Consultant	45	20	70
SAP BOBJ Associate Consultant	40	15	60
SAP Security Consultant	60	30	90
SAP Project Manager	80	30	120
Assistant Project Manager	70	25	105
Change Management and Training Lead	75	30	110
SAP ABAP Consultant (Senior)	50	25	80
SAP ABAP Consultant (Associate)	45	20	70
SAP ABAP Consultant (Junior)	40	15	60

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 231-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
PHOENIX BUSINESS, INC.
dba
PHOENIX BUSINESS CONSULTING
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 232-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and PHOENIX BUSINESS, INC. DBA PHOENIX BUSINESS CONSULTING, a Massachusetts Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

(3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider'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 Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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,

Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements

shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service

Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Hanif Sarangi, President
Phoenix Business, Inc. dba Phoenix Business Consulting
5717 Madge Place
Haltom City, TX 76117
Tel. (512) 557-4731
Fax (817) 549-0261
Email: contracts@phoenixteam.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

PHOENIX BUSINESS, INC. dba PHOENIX BUSINESS CONSULTING

_____
Hanif Sarangi
President

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore	Off-Shore	On-Site
Sr. Functional Analyst	**$110/hr**	**$60/hr**	**$160/hr**
Sr. Technical Analyst	**$110/hr**	**$40/hr**	**$140/hr**
Sr. BW/BOBJ Lead (Functional)	**$100/hr**	**$50/hr**	**$140/hr**
Sr. BW/BOBJ Lead (Technical)	**$90/hr**	**$40/hr**	**$140/hr**
SAP Security Analyst	**$90/hr**	**$40/hr**	**$140/hr**
Sr. Project Manager	**$110/hr**	**$60/hr**	**$190/hr**
SAP Trainer	**$110/hr**	**$60/hr**	**$160/hr**
Project Manager	**$100/hr**	**$55/hr**	**$180/hr**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 232-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
SAGE GROUP CONSULTING, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 233-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and SAGE GROUP CONSULTING, INC., a New Jersey Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this

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

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and

conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District

P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Salil Sharma, Practice Director
Sage Group Consulting, Inc.
3400 Highway 35, Suite 9
Hazlet, NJ 07730
Tel. (732) 767-0010 x121
Fax (732) 767-0015
Email: ssharma@sageci.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

SAGE GROUP CONSULTING, INC.

_____
Salil Sharma
Practice Director

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore	Off-Shore	On-Site
Functional Consultant	**$120/hr**	**$55/hr**	**$135/hr**
ECC Developer	**$95/hr**	**$45/hr**	**$115/hr**
BW Business Consultant	**$120/hr**	**$55/hr**	**$135/hr**
BW Developer	**$100/hr**	**$50/hr**	**$115/hr**
BW Business Consultant	**$110/hr**	**$55/hr**	**$125/hr**
BOBJ Technical Consultant	**$105/hr**	**$50/hr**	**$120/hr**
Security Consultant	**$120/hr**	**$55/hr**	**$135/hr**
Project Manger	**$135/hr**	**N/A**	**$150/hr**
OCM Consultant	**$95/hr**	**$50/hr**	**$115/hr**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 233-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
RJT COMPUQUEST, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 234-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and RJT COMPUQUEST, INC., a California Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

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

NAME OF FIRM	TYPE OF SERVICES PROVIDED
Gulbahar Saini	SAP Principal Financial Consulting
Kevin Ung	SAP Principal Financial Consulting
David Paz	SAP RE/ Financial Consulting
Carlo Maglinao	SAP RE Consulting
Eric Thorlin	SAP SD Consulting
Shripad Rege	SAP SD Consulting
Shirish Athavale	SAP SD Consulting
Deepak Gupte	SAP MM Consulting
Mo Arabat	SAP MM Consulting
Murali Kammalapat	SAP MM Consulting
Karthik	SAP HCM Consulting
Kingsley Ossuetta	SAP HCM Consulting
Don Collins	SAP BI Consulting
Prabodh Misra	SAP BI Consulting
Vamshi Gumalapuram	SAP BI Consulting
Biksham Balagoni	SAP BI Consulting
Mahesh Linga	SAP ABAP Consulting
Anil Lankapalli	SAP ABAP Consulting
Pavan Jegrum	SAP ABAP Consulting

Vinodh Kumar	SAP Workflow Consulting
Joseph Scurry	SAP Security Consulting

c. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

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

Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation

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

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties

may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the

services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Mark Shmagin, Vice President, Finance & Operations
RJT Compuquest, Inc.
222 N. Sepulveda Blvd., Suite 2250
El Segundo, CA 90245
Tel. 310-378-6666 ext. 229
Email: mark@rjtcompuquest.com

**********END OF PAGE**********

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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

RJT COMPUQUEST, INC.

_____
Mark Shmagin
Vice President, Finance & Operations

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore	Off-Shore	On-Site
Consultant	**$135/hr**	**$40/hr**	**$145/hr**
ECC Technical Consultant	**$115/hr**	**$35/hr**	**$120/hr**
Project Manager	**$145/hr**	**N/A**	**$165/hr**
Principal Consultant	**$150/hr**	**N/A**	**$175/hr**

(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**

Direct Costs — At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 234-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
NH BRANDT, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 235-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and NH BRANDT, INC., a California S Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this

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

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore,

Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement

is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Nathan Brandt, President
NH Brandt, Inc.
527 10th Avenue, Suite 204
San Diego, CA 92101
Tel. (650) 823-8571
Email: Nathan.Brandt@nhbrandt.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

NH BRANDT, INC.

_____
Nathan Brandt
President

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

Position Title	On-Shore	On-Site
President	**$100/hr**	**$100/hr**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 235-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
PAS SOFTWARE SERVICES, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 236-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and PAS SOFTWARE SERVICES, INC., a Texas Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this

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

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore,

Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement

is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Murali Dhulipala
PAS Software Services, Inc.
13407 Point Village Lane
Cypress, TX 77429
Tel. (832) 330-3210
Email: bi.muralid@gmail.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

PAS SOFTWARE SERVICES, INC.

_____
Murali Dhulipala
Authorized Representative

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore
ECC Functional Analyst	**$90/hr**
ECC Technical Developer	**$90/hr**
BW Functional Analyst	**$105/hr**
BW Technical Developer	**$105/hr**
BOBJ Functional Analyst	**$90/hr**
BOBJ Technical Developer	**$90/hr**
Security Support Developer	**$80/hr**
Project Manager	**$110/hr**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 236-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
And
LABYRINTH SOLUTIONS, INC.
dba
LSI CONSULTING
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 237-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and LSI CONSULTING, INC., a Massachusetts Corporation Venture (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, and QSI, Inc., District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which

relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Service Provider shall provide District at Service Provider'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 Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

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

NAME OF FIRM	TYPE OF SERVICES PROVIDED
Marlin Alliance	SAP Change Management and Training, Project
Kochur Trummer Corporation	Project Management, QA and Reporting

c. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding

the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were

performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which

claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Nader Tirandazi, West Region VP
Labyrinth Solutions, Inc. dba LSI Consulting
401 B. Street, Suite 2020
San Diego, CA 92101
Tel. (858) 342-6665
Fax (858) 832-1363
Email: ntirandazi@lsiconsulting.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

LABYRINTH SOLUTIONS, INC.
DBA LSI CONSULTING

_____
Nader Tirandazi
VP West Region

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

(b) 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:

Classification	On-Shore	Off-Shore	On-Site
ECC Functional Support	**$145/hr**	**$110/hr**	**$165/hr**
ECC Technical Support	**$125/hr**	**$90/hr**	**$145/hr**
BW Functional Support	**$145/hr**	**$110/hr**	**$160/hr**
BW Technical Support	**$125/hr**	**$90/hr**	**$145/hr**
BOBJ Functional Support	**$140/hr**	**$110/hr**	**$155/hr**
BOBJ Technical Support	**$125/hr**	**$90/hr**	**$135/hr**
Security Support	**$120/hr**	**$90/hr**	**$135/hr**
Project Management	**$125/hr**	**$100/hr**	**$150/hr**
Change Management & Training	**$125/hr**	**$100/hr**	**$145/hr**
BASIS	**$115/hr**	**$90/hr**	**$135/hr**
ABAP	**$115/hr**	**$90/hr**	**$120/hr**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 237-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
QSI, INC.
for
SAP LEVEL 3 SUPPORT SERVICES
AGREEMENT NO. 238-2015

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and QSI, INC., a California Corporation (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or his designated representative informed of the progress of said services at all times.

   a. **As-Needed Services**

      (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider 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) Service Provider 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 Service Provider.

      (3) Services rendered under this Agreement shall be undertaken by Service Provider 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 November 18, 2015 and shall terminate on October 31, 2020, 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 Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

   a. **Maximum Expenditure.** The aggregate amount of this Agreement with Service Provider and agreement with V3IT Consulting, Inc., District Clerk Document No. _____, Phoenix Business, Inc. dba Phoenix Business Consulting, District Clerk Document No. _____, Sage Group Consulting, Inc., District Clerk Document No. _____, RJT Compuquest, Inc., District Clerk Document No. _____, NH Brandt, Inc., District Clerk Document No. _____, PAS Software Services, Inc., District Clerk Document No. _____, and Labyrinth Solutions, Inc. dba LSI Consulting, District Clerk Document No. _____ shall not exceed $1,250,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider 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, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider 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, Service Provider shall nevertheless, bill at the lower rate.

c. **Progress Documentation.** Service Provider 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. Service Provider 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 Service Provider 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. Service Provider 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 Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District

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

5. **SERVICE PROVIDER'S SUB-SERVICE PROVIDERS**

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

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

NAME OF FIRM	TYPE OF SERVICES PROVIDED
ZEDventures, Inc.	SAP BW, BOBJ, ABAP L3 Support
ABEAM	SAP BW, BOBJ, ABAP L3 Support

c. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers 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 Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider 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, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider 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, Service Provider 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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 Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider 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 Service Provider 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 Service Provider provided for in this Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

a. Service Provider 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 two million dollars ($2,000,000) per Occurrence and four million dollars ($4,000,000) 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 Service Provider'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.

b. Service Provider 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. Service Provider 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 Service Provider or Service Provider’s sub-contractors or

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

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider 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 Service Provider or its agents, employees, or Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider 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. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each

party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.

15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.

16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider 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, Service Provider 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 Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to

any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider 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 Service Provider 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 Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.

b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the

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

c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider 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 Service Provider. Upon five (5) day written notice to the

Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider 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 Service Provider 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 Service Provider. 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 Service Provider.

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

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

a. Submit all correspondence regarding this Agreement to:

Romero San Agustin, Business Systems Supervisor
Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6499
Email: rsanagus@portofsandiego.org

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

Greg Williams, CEO/President
QSI, Inc.
310 Hana Ct.
Encinitas, CA 92024
Tel. (760) 500-1255
Email: greg.williams@QualitySolutionsConsulting.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

_____
Deborah L. Finley
Director,
Business Information & Technology Services

Approved as to form and legality:
GENERAL COUNSEL

_____
By: Assistant/Deputy

QSI, INC.

_____
Greg Williams
CEO/President

ATTACHMENT A
SCOPE OF SERVICES

San Diego Unified Port District

A. SAP Functional Support

The District will provide front line support for the enterprise applications. Service Provider may provide assistance to District's Business Systems Analysts to solve problems that are related to District's application usage, including by way of example:

1. Usage questions related to use of the application for District's specific business processes.
2. Problems regarding application functionality
3. Problem determination and resolution
4. Coordination with application vendors to analyze and resolve problems
5. Application support for standard reports and interfaces
6. Evaluation of application bugs and installation of fixes as coordinated with District
7. Any modification to configuration as requested by District
8. On-site training as requested by District

B. Data Warehouse and Reporting Support

Service Provider shall perform the following additional services given reasonable accommodation to provide appropriate resources, including but not limited to the following:

1. Development and implementation of custom and standard Info Providers and their associated Info Objects and Hierarchies, Extractors, Data Sources, Info Sources, Transformations, Data Transfer Processes, Info Packages, Process Chains, and any other configuration objects necessary for the loading, maintenance, and access of the available data
2. Development, implementation, and maintenance of Information broadcaster and broadcasted reports
3. Development, implementation, and maintenance of BOBJ tools: Dashboards, Crystal Reports, Analysis for OLAP
4. Analysis and documentation of existing configuration
5. Remote and On-site training
6. Analyzing and advising District on issues that arise during the period of the agreement
7. Monitoring the BW loads and broadcasted reports

C. Systems Administration and Development Support

Per District's request, Service Provider may provide SAP ABAP/JAVA Development support to District for any changes to the application that requires SAP programming. These requests may include but not limited to:

1. Workflow
2. Reports
3. Interfaces to external systems
4. Data Conversions
5. Enhancements Packs
6. SAP Forms
7. Languages include: ABAP, C#, HTML 5, SQL, Script, JAVA
8. Web Parts, OOP, User Exits/BADI/BAPI
9. SAP Fiori, Gateway, Duet Enterprise
10. Personna
11. NetWeaver (NWDI, Portal, BSP, Portal, ITS, WAS)
12. Security role creation for all SAP systems

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 Service Provider compensation as set forth hereunder.

(1) Service Provider 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 Fixed Fee or Time and Materials or a combination of the two.

(a) 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.

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

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

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

POSITION TITLE	On-Shore	Off-Shore	On-Site
SD Functional Support	**$115/hr**	**N/A**	**$115/hr**
MM Functional Support	**$115/hr**	**N/A**	**$115/hr**
PS Functional Support	**$102/hr**	**N/A**	**N/A**
RE Functional Support	**$102/hr**	**N/A**	**N/A**
HCM Functional Support	**$106/hr**	**N/A**	**N/A**
Workflow Functional Support	**$102/hr**	**N/A**	**N/A**
FICO Functional Support	**$106/hr**	**N/A**	**N/A**
ABAP Technical Support	**$106/hr**	**N/A**	**N/A**
PLM Functional Support	**$102/hr**	**N/A**	**N/A**
Security	**$102/hr**	**N/A**	**N/A**
Project Management	**$115/hr**	**N/A**	**$115/hr**
Change Management & Training	**$106/hr**	**N/A**	**$106/hr**
Training	**$69/hr**	**N/A**	**N/A**
Sr. ABAP Cons	**N/A**	**$43/hr**	**N/A**
Sr. BW Functional Cons.	**N/A**	**$48/hr**	**N/A**
Sr. BW Technical Cons.	**N/A**	**$48/hr**	**N/A**
PM/Managing Cons.	**N/A**	**$53/hr**	**N/A**
Sr. BO Technical Cons.	**N/A**	**$48/hr**	**N/A**

(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**

Direct Costs At Cost (zero mark-up)

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

2. **INVOICING**

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

b. Service Provider 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. 238-2015
(2) If applicable, the Task Authorization(s) (TA) number being charged.
(3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

(4) Dates of service provided
(5) Date of invoice
(6) A unique invoice number

c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.

d. Invoices shall be mailed to the attention of: Romero San Agustin, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.

e. 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 Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

f. Service Provider 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 Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District

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

TASK AUTHORIZATION NO. _

(Date)

(Name)
(Title)
(Name of Company)
(Address)
(City, State, Zip)
Email:

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

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

TASK DESCRIPTION

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

8. **Scope of Services.**

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

Name	Classification	Hours
	Staff as needed per Agreement rates	

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

N/A

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

APPROVALS

Service Provider:	**Project Manager:**
Signature:	Signature:
Name:	Name:
Title:	Title: Project Manager
Firm:	Date:
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	**SDUPD Agreement Number:** _____ **This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.**

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: $_____		**Inception Date:** **Expiration Date:**	**Each Occurrence:** **$**_____ **General Aggregate:** **$**_____
	Commercial Automobile Liability ❑ All Autos ❑ Owned Autos ❑ Non-Owned & Hired Autos		**Inception Date:** **Expiration Date:**	**Each Occurrence:** $
	Workers' Compensation – Statutory **Employer's Liability**		**Inception Date:** **Expiration Date:**	**E.L. Each Accident $** **E.L. Disease Each Employee $** **E.L. Disease Policy Limit $**
	Excess/Umbrella Liability		**Inception 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)	Phone Numbers Toll Free: Fax Number: E-mail Address:
	Signature of Authorized Agent(s) or Broker(s) Date:

SAN DIEGO UNIFIED PORT DISTRICT

REQUIRED INSURANCE ENDORSEMENT

ENDORSEMENT NO.	EFFECTIVE DATE	POLICY NO.

NAMED INSURED:

GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):
All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.

2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.

3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").

4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

_____
(NAME OF INSURANCE COMPANY)

_____
(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

San Diego Unified Port District
c/o Ebix BPO
P.O. Box 12010-3
Hemet, CA 92546-8010 – OR –
Email to: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

DRAFT

RESOLUTION 20xx-xxx

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH: V3IT CONSULTING, INC.; PHOENIX BUSINESS, INC. DBA PHOENIX BUSINESS CONSULTING; SAGE GROUP CONSULTING, INC.; RJT COMPUQUEST, INC.; NH BRANDT, INC.; PAS SOFTWARE SERVICES, INC.; LABYRINTH SOLUTIONS, INC. DBA LSI CONSULTING; AND QSI, INC., TO PROVIDE AS-NEEDED SAP LEVEL 3 SUPPORT SERVICES FOR A PERIOD OF FIVE (5) YEARS, FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED $1,250,000

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 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

WHEREAS, in 2003, the District implemented SAP as its Enterprise Resource Planning system (ERP); and

WHEREAS, the initial effort involved the implementation of the SAP business systems of Financials, Cost Accounting, Funds Management for Public Sector, Procurement, Inventory, Real Estate, Budget Preparation, Human Capital Management, Payroll, and Project System (management of capital development and major maintenance projects); and

WHEREAS, subsequently, District staff implemented the Plant Maintenance and Sales and Distribution modules, retiring two legacy systems, Synergen and Maritime Operations Information Systems (MOIS); and

WHEREAS, the goals of the Level 3 support agreements are to provide the District with programming support for the various SAP modules, streamline District processes, improve user experience, and improve business area reporting; and

WHEREAS, it is important to select firms that can support each of the District's SAP components and who demonstrate strong business and technical knowledge along with expertise and experience in Public Sector and best business practices; and

WHEREAS, the decision to select multiple firms was made to eliminate historical support challenges caused by the following: (i) staff turnover at the consulting firms, (ii) limitations of a vendor's available skill set, (iii) the District's use of specialized functionality that may not be fully addressed by any one firm, and (iv) responsiveness to District's needs; and

WHEREAS, an evaluation committee comprised of the Business Information and Technology Services Department (BITS), Equal Opportunity, and Procurement Services staff, analyzed the proposals, conducted interviews on September 30 and October 1, 2015, and ranked the firms according to the criteria established in the Request for Qualifications (RFQ); and

WHEREAS, using the District's decision analysis process, the committee selected eight (8) firms as being the most able to meet the District's needs.

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

That the Executive Director or her designated representative is hereby authorized and directed on behalf of the San Diego Unified Port District to enter into agreements with V3IT Consulting, Inc.; Phoenix Business, Inc. dba Phoenix Business Consulting; Sage Group Consulting, Inc.; RJT Compuquest, Inc.; NH Brandt, Inc.; PAS Software Services, Inc.; Labyrinth Solutions, Inc. dba LSI Consulting; and QSI, Inc., to provide as-needed SAP level 3 support services for a period of five (5) years, for a total aggregate amount payable under the agreements not to exceed $1,250,000.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

_____

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 17th day of November, 2015, by the following vote: