

**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
MERKEL & ASSOCIATES, INC.  
for  
FISH SAMPLING SERVICES FOR OYSTER REEFS IN SOUTH SAN DIEGO BAY  
AGREEMENT NO. 240-2016ME**

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

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials 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 their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on November 14, 2016 and shall terminate on December 31, 2022, 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.** District shall compensate Service Provider a fee not to exceed \$174,610 for completion of the services described in Attachment A, Scope of Services District shall compensate Service Provider a fee not to exceed \$25,390.00 for any additional services authorized per section 3d below. The maximum expenditure under this Agreement shall not exceed \$200,000.00. 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.
  
- d. **Additional Services; Task Authorizations**
  - (1) Additional fish sampling and fish sampling related services may be required for the completion of the services specified in this Agreement. For performance of Additional Services, District shall compensate Service Provider on a negotiated fixed fee basis in an amount not to exceed \$25,390.00 using the terms and conditions in Attachment B, Compensation and Invoicing. With Additional Services the maximum amount of this agreement shall not exceed \$200,000.00. If Additional Services are required, they shall be undertaken by Service Provider only upon issuance of a Task

Authorization (TA), Exhibit A, attached hereto and incorporated herein, for said services.

- (2) An estimate of the level of effort shall be submitted to the District and negotiated for each Task Authorization.
- (3) A Task Authorization shall not be considered effective until the Task Authorization form has been signed by District.
- (4) Service Provider shall bill for Additional Services in accordance with the terms of payment, including the documentation required in this Agreement. In addition, invoices for Additional Services shall cite the appropriate Task Authorization (TA) number.

#### 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-CONTRACTORS**

- 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-contractors 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-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.
- b. Listed below are the firms that the District has approved as Service Provider's sub-contractors to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
California State University, Fullerton/Dr. Danielle Zacherl	Scientific Study Design/Analytical Support

- c. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

## 6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. 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.

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 Executive Director (President/CEO) 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 subcontractors.
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-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.
- c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.
19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the 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. **COMPLIANCE WITH PREVAILING WAGE LAWS (IF APPLICABLE)**

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

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

- (6) Training options can be provided to the Service Provider upon request.

21. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- b. 2.4.1 No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.



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

23. **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:

Eileen Maher, Principal  
Planning and Green Port  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
Tel. 619-686-6532  
Email: emaher@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:

Keith W. Merkel  
Merkel & Associates, Inc.  
5434 Ruffin Road  
San Diego, CA 92123  
Tel. 858-560-6465  
Email: kmerkel@Merkelinc.com

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

**SAN DIEGO UNIFIED PORT DISTRICT**

**MERKEL & ASSOCIATES, INC.**

\_\_\_\_\_  
Jason Giffen, Assistant Vice President  
Planning and Green Port

  
\_\_\_\_\_  
Keith W. Merkel  
Vice President

Approved as to form and legality:  
GENERAL COUNSEL

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

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

**ATTACHMENT A**  
**SCOPE OF SERVICES**  
**San Diego Unified Port District**

**A. Requirements**

1. As this project is the first of its kind in Southern California, biological monitoring of the project site both pre- and post-construction is critical to building regional understanding of living shoreline restoration techniques and project impacts. The project team currently anticipates completing one year of pre-construction monitoring and a minimum of five years of post-construction monitoring, with oyster reef construction currently anticipated to commence in 2017.
2. The objective of the project's fish sampling program is to quantitatively determine whether fish community composition, abundance, and species diversity in the project area are affected by construction of oyster reefs.

**B. Tasks**

**TASK 1: DEVELOP MONITORING PROGRAM**

The San Diego Bay Native Oyster Restoration Plan proposes a study design and monitoring plan that provides guidelines for development of the fisheries monitoring program. The study question related to fisheries is: *“Do constructed oyster reef arrays (including oyster reef elements and mudflat habitat between the elements) support increased diversity and abundance of organisms (including invertebrates, fish, and birds) over adjacent mudflat habitat?”*

Under Task 1, a matrix of sampling gear types will be created that illustrates pros and cons of each gear. Service Provider has performed a preliminary analysis to inform the development of the San Diego Bay Native Oyster Restoration Plan study design and determined that the following gear types are most appropriate:

- Minnow trap: consisting of two connecting cylinders made of wire mesh. The traps would be baited and secured to oyster reef elements or to control area mudflat for a period of one full daily tidal cycle.

- Collapsible hoop trap: consisting of wire loop base with and two wings. The traps would not have an escape pot, and would be baited and secured to oyster reef elements or to control area mudflat for a period of one full daily tidal cycle.
- Small beach seine: consisting of a 1m tall by x 2.8m wide net with 0.3 cm mesh and a 1 m x 1 m bag in the center. The net will be pulled a fixed distance (approximately 20 m to cover the length of an oyster reef array and surrounding area of influence) and then pursed and lifted to trap fish.

While other gear types will be explored in the sampling gear matrix, the gear types described above are known to have the following benefits:

- They may be deployed and retrieved easily and quickly in and around structures.
- They may be deployed at multiple locations simultaneously (e.g. traps may be set within all oyster reef elements and control areas in a study block over a single tidal cycle).
- They may be deployed over a short time period to prevent introduction of unwanted long-term structure to the restored habitat. It is understood that deployment of traps on mudflats does introduce some shore term structure; however, this is considered acceptable in order to allow direct comparison of treatment and control areas.
- They will capture a wide variety of fish and mobile invertebrates. Traps would target structure-associated species on and directly adjacent to oyster reef elements, and seines would target pelagic and demersal species across entire oyster reef arrays and surrounding area of influence.
- They minimize fish mortality as a majority of fish are measured, weighed and returned to the bay alive.
- They have been used with success in other sampling programs including the San Francisco Bay Living Shorelines Project.

- They are cost effective to obtain and deploy.

It is imperative that the fisheries monitoring program be tailored to the study design outlined in the San Diego Bay Native Oyster Restoration Plan, and revised to address any changes to the Project made during final design and engineering. Under Task 1, Service Provider will prepare revised fisheries monitoring methods based on the study design in the existing Plan. The following text describes proposed methods. The number of replicates for each gear type would be determined in conjunction with development of data analysis methods (Task 2). A minimum of three replicate trap arrays (one minnow trap plus one collapsible hoop trap) will be deployed within each oyster reef array and control area, anchored to oyster reef elements, marked with a buoy, and left in place for a complete daylong tidal cycle.

While traps are in place, a team of biologists will complete a minimum of three small beach seine pulls within each oyster reef array and control area. To complete each seine pull, biologists will establish an approximately 20m transect perpendicular to the shoreline and passing through the gap between oyster reef elements. Two biologists will pull the net from bay to shore along each transect and then the net will be pursed and gathered from the bottom to capture fish and mobile invertebrates. Seines will be pulled at each location between a +1ft and +3ft MLLW tide when water just covers the majority of the reef elements. Because of this tidal restriction (lower tides would not have enough water for seine pulls and higher tides would cover reef elements increasing the likelihood of net entanglement), it is anticipated that one study block can be completed in a single day. Therefore, a total of three consecutive sampling days will be required to complete a fisheries monitoring event.

With regard to the reference site, the same methods as described above would be utilized with three replicate trap arrays and three small beach seine pulls at each of the two treatment elevations. This will require a fourth day of sampling during each monitoring event.

Fish captured in each trap array and each small beach seine will be processed in the same manner. All organisms captured will be transferred to plastic buckets with

aerators. All individual fish will be measured (mm SL) and weighed (g) and returned to the bay. If more than 30 individuals of any species are captured, a batch sampling procedure would be implemented, where 30 individuals are measured and weighed, 100 individuals are batch weighed, and the remainder is then batch weighed. Mobile invertebrates will be counted, batch weighed by species, and returned to the bay. Photographs of each species will be collected and vouchers may be preserved and transported to the laboratory to confirm identification. Density and biomass will be calculated for all fish, and by species for fish and mobile invertebrates.

Eelgrass will be quantified at the time of each fisheries monitoring survey. Unmanned Aerial Vehicles (UAV or Drone)- Based Aerial Photogrammetry will be collected at low tide using an aerial drone to collect high resolution georeferenced and rectified aerial photogrammetry and ortho imagery of the study area. These data will be processed to a 50 cm point grid (DEM) and 2D ortho imagery. The data will be imported in ArcGIS® and limits of eelgrass will be digitized to determine percent cover of eelgrass within each oyster reef array and control area at the time of fisheries monitoring. Shoot density of eelgrass (if present) will be determined by counting shoots within randomly placed quadrats within each oyster reef array and control area.

Under Task 1, the monitoring program will include a monitoring schedule.

As an alternative to the requirements of the RFP, Service Provider has proposed a reduced monitoring frequency schedule, with sampling conducted annually during summer for one year pre-construction and five years post-construction. It is believed that sampling frequency can be reduced to once per year during summer, and that an increase in sampling intensity during this single period can overcome anticipated sample variance.

### ***Task 1 Deliverables***

The Task 1 deliverable is a written study plan approved by the District and the Technical Advisory Committee (TAC) for the Project. The study plan will detail Study Area and reference site locations, gear types, sampling methods for fish and eelgrass, sampling

frequency (schedule), sampling intensity, and data analysis methods. The study plan will be delivered electronically.

## **TASK 2: DEVELOP DATA ANALYSIS METHODS**

Methods of data analysis for fisheries monitoring are dependent largely upon the study design presented in the San Diego Bay Native Oyster Restoration Plan, to be revised through final Project design and engineering. Data analysis methods will be developed to address:

- Sources of variation across the Study Area,
- Sources of variation associated with presence or absence of eelgrass within oyster reef arrays and/or control areas,
- Sources of variation associated with the natural patchy spatial and seasonal distribution of fish and mobile invertebrates in marine environments,
- Sources of variation that are outside of the Project, but may be related to uncontrollable weather or climate-related conditions.

The Plan proposes a blocked study design with two treatment oyster reef elevations (reef crest at +1ft or +2ft MLLW) and associated control areas of the same size and placed at the same tidal elevations. This design addresses sources of variation across the Study Area with the ability to test for a block effect. Control areas are spaced a minimum of 30m (approximately 100 feet) from oyster reef arrays to be outside of potential physical and biological influence of the reef arrays. However, it is known that eelgrass seasonally occurs within the Study Area at the intertidal elevations proposed for placement of oyster reef arrays. The quantitative measurement of eelgrass within oyster reef arrays and control areas at the time of each fisheries monitoring interval will address this source of variation with the ability to utilize presence of eelgrass as a covariate for statistical analysis of fisheries data.

A primary issue with many fisheries monitoring programs is a lack of sufficient replication and/or sample size to overcome variation associated with the natural patchy

distribution of fish. This results in an inability to find statistical significance of a treatment effect, and increases the likelihood of a Type II error - the inability to detect an effect that is present. This is the most difficult source of variation to address, as increasing replication can be costly, and over-fishing a small area through increased replication may have a detrimental effect on fisheries within restored oyster reef arrays, particularly with structure associated species that display site fidelity. This source of variation may be addressed through appropriate replication. Prior to field sampling, the appropriate number of replicates to be sampled will be confirmed based on a *post hoc* evaluation of the statistical power achieved from other studies that have utilized similar sampling methods, including the San Francisco Bay Living Shorelines Project. Other studies included in this analysis would be POLB/POLA harbor, U.S. Navy CVN Wharf, Batiquitos Lagoon, Bolsa Chica, and the South Bay Power Plant fish studies. An additional *post hoc* power analysis will be completed with data from the first monitoring event to confirm appropriate sample size. This analysis would take into consideration both primary factors, as well as interactions between block and treatment, time and treatment, and the presence of eelgrass as a covariate. The sampling intensity will then be adjusted for future monitoring events.

The number of samples required to achieve a reasonable level of comfort that any observed differences between study treatments are real is dependent on the complexity of the study question. As an example, a power analysis completed by Service Provider as part of the Post-Dredging Recolonization Study in San Diego Bay illustrated that the number of fish or benthic samples required to compare sites or time periods was less than the number of samples required to analyze the interaction between site and time. Further, analysis of more general metrics (such as total abundance or total phyla) requires less replication than analysis of more detailed metrics (such as abundance by species).

The final major source of variation is associated with uncontrollable physical or biological conditions in the environment. Collection of data within the Study Area and at reference site, along with collection of pre- and post-construction data, as stated above, would allow for BACI analysis to separate temporal and environmental effects from effects of constructed oyster reef arrays. BACI designs are useful for analyzing



permanent, stepped changes over time (such as mean fish density or biomass before vs five years following construction of oyster reefs). The differential change between the Study Area and the reference site will help determine whether observed effects are related to study treatments or environmental conditions outside of the control of the Project.

While statistical tests will be determined in conjunction with Task 1, it is anticipated that the study effects may be tested using two way ANOVA (with block and tidal elevation as factors). These tests may also be nested with time period (pre- or post-construction) and location (Study Area or reference site) as factors. With eelgrass present, ANCOVA may be used with eelgrass cover and/or density as a covariate. Data would be checked for homoscedasticity and normality prior to testing. A correspondence analysis will be performed for dominant species and treatments (e.g. oyster reef elevation) to analyze differences in the communities of fish and mobile invertebrate that utilize the oyster reefs and control mudflats.

In addition to traditional statistical methods, data analyses will include calculation of biodiversity indices, which provide valuable information about community composition as a whole. Replicate data for oyster reef elevation treatments, control areas, or blocks may be pooled to calculate biodiversity indices, which allows for a more complete understanding of a patchily distributed fish community. The following biodiversity indices will be performed:

- species richness: total number of species captured
- jackknife species richness: an estimate of the true number of species within an area based on species richness, number of rare taxa, and number of replicates. Rarefaction curves may also be used to predict species richness based on actual number of samples. This allows estimation of accumulation of species based on number of individuals captured.
- Pielou's Evenness (J'): an estimate of the relative abundance of species captured in pooled replicates

- Shannon Diversity ('H pooled): a measure of the species richness in pooled replicates and the proportional abundance of species present.

### ***Task 2 Deliverables***

Data analysis methods will be included in the study plan prepared as a deliverable under Task 1. No additional deliverables are anticipated for Task 2.

### **TASK 3: CONDUCT PRE-CONSTRUCTION SAMPLING**

As an alternative to the requirements of the RFP, a single annual pre-construction fisheries sampling event will occur during the summer prior to the construction of the oyster reef.

Pre-construction sampling would utilize methods outlined above under Task 1.

### ***Task 3 Deliverables***

The Task 3 deliverable will be a single data summary in letter format that will all pre-construction data collected.

The letter will include:

- Summary charts and tables of fish density and abundance by treatment, and by location.
- Summary charts and tables for abundance and diversity of mobile invertebrates by treatment, and by location.
- Summary of biodiversity diversity indices for fish by treatment, and by location.
- Pre-construction map of eelgrass cover within the Study Area and reference site (if present).
- Summary of eelgrass density within the Study Area and reference site (if present).

#### **TASK 4: CONDUCT POST-CONSTRUCTION SAMPLING**

As an alternative to the requirements of the RFP, Service Provider has proposed a reduced monitoring frequency, with post-construction sampling conducted annually during summer for five years following the completion of oyster reef construction.

Post-construction sampling would utilize methods outlined above under Task 1.

##### ***Task 4 Deliverables***

The Task 4 deliverables will consist of an annual report prepared following each post-construction sampling year and a final report following the fifth year of post-construction sampling (for a total of five reports). Each report will include:

- Summary charts and tables of fish density and abundance by year by treatment, and by location.
- Summary charts and tables for abundance and diversity of mobile invertebrates by year, by treatment, and by location.
- Summary of biodiversity diversity indices for fish by year, by treatment, and by location.
- Maps of eelgrass cover by survey year within the Study Area and reference site (if present).
- Summary of eelgrass density by year within the Study Area and reference site (if present).
- Statistical analysis of post-construction data to test for treatment effects of constructed oyster reefs.
- Recommendations for changes to sampling protocols.
- A discussion of site conditions, sampling efforts, findings, and comparison of pre- and post-construction results.

In addition to the above elements, the final report for the Project (prepared following the fifth year of post-construction monitoring) will include a comparison of fish sampling results with other projects, including the San Francisco Bay Living Shorelines Project, and a discussion of whether and to what degree the Project has met the goals and objectives outlined in the San Diego Bay Native Oyster Restoration Plan.

Finally, the final Project report will be prepared with consideration of other monitoring elements (e.g. oyster settlement and growth, benthic infauna, avifauna, and physical monitoring) being completed under other contracts. The biological and physical environment within the Study Area will function synergistically, and it will be imperative to analyze data in a holistic manner, rather than as separate pieces, in order to assess the overall success of the Project and its ability to create a biological rich native oyster habitat in San Diego Bay.

#### **TASK 5: MEETINGS AND PROJECT COORDINATION**

This project is a collaborative effort among the District, the California Coastal Conservancy, US Fish and Wildlife Service (USFWS), Cal State Fullerton and other partners to design, construct and conduct long-term monitoring of the first ever native oyster living shoreline in San Diego Bay. Collaborative communication and coordination between scientists, engineers, project managers, and the Technical Advisory Committee will be imperative for Project success.

Service Provider has incorporated meetings and project coordination into the work tasks. Under this task, Service Provider would be available to coordinate, communicate, and present results via phone and/or in-person meetings to the District, the TAC, and other partners, as appropriate. The following effort is assumed for budgeting purposes:

- One kickoff meeting with the District, TAC and appropriate partners, as appropriate, to finalize and approve the fisheries monitoring program and data analysis methods
- Quarterly phone conferences with the District

- One meeting and presentation of results per year with the District, TAC, and other project partners, as appropriate.

***Task 5 Deliverables***

Deliverables for Task 5 are meeting minutes from the meetings identified above.

**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.

(a) Each invoice shall include:

Performance period of work performed;  
Description of the work performed;  
Amount invoiced;

(2) Additional Fish Sampling and Fish Sampling related services shall be compensated on a negotiated fixed fee basis depending on the services needed.

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

1. Task 1	\$ 6,791.00
2. Task 2	\$ 5,382.00
3. Task 3	\$ 27,789.00
4. Task 4	\$134,648.00
5. As-needed allowance	<u>\$ 25,390.00</u>
<b>TOTAL:</b>	<b>\$200,000.00</b>

**Note:** The following shall be considered part of the per task and additional services costs stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, lodging, telecommunications, photography, and all other costs and expenses incurred in completing such services.

**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 1, above:
  - 1) Agreement No. 240-2016ME
  - 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: Tim Barrett, Planning and Green Port, San Diego Unified Port District, P.O. Box 120488, 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) 686-\_\_\_\_*

**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.	<b>Task Title:</b>				

8. **Scope of Services.**



9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. List of Sub-Contractors (If applicable)

N/A

**APPROVALS**

**Service Provider:**

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

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

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

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

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

**Project Manager:**

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

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

Title: Project Manager

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

**Manager:**

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

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

Title: Manager

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

**Director:**

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

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

Title: Director

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

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

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

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

**Return this form to:**      **San Diego Unified Port District**  
**c/o Ebix BPO**  
**P.O. Box 100085 – 185**  
**Duluth, GA 30096 – OR –**  
**Email: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.com)**  
**Fax: 1-866-866-6516**

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____  This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.
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CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	<b>Commercial General Liability</b> <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		<b>Commencement Date:</b>  <b>Expiration Date:</b>	<b>Each Occurrence:</b> \$ _____  <b>General Aggregate:</b> \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		<b>Commencement Date:</b>  <b>Expiration Date:</b>	<b>Each Occurrence:</b> \$ _____
	<b>Workers Compensation – Statutory</b>  Employer's Liability		<b>Commencement Date:</b>  <b>Expiration Date:</b>	E.L. Each Accident \$ _____  E.L. Disease Each Employee \$ _____  E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		<b>Commencement Date:</b>  <b>Expiration Date:</b>	Each Claim \$ _____  \$ _____
	<b>Excess/Umbrella Liability</b>		<b>Commencement Date:</b>  <b>Expiration Date:</b>	Each Occurrence: \$ _____  General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

**A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.**

Name and Address of Authorized Agent(s) or Broker(s)	E-mail Address: _____
	Phone: _____ Fax Number: _____
	Signature of Authorized Agent(s) or Broker(s)
	Date: _____

**SAN DIEGO UNIFIED PORT DISTRICT****REQUIRED INSURANCE ENDORSEMENT**

<b><u>ENDORSEMENT NO.</u></b>	<b><u>EFFECTIVE DATE</u></b>	<b><u>POLICY NO.</u></b>
<b>NAMED INSURED:</b>		
<b>GENERAL DESCRIPTION OF AGREEMENT(S) AND/OR ACTIVITY(IES):</b> All written agreements, contracts and leases with the San Diego Unified Port District and any and all activities or work performed on district premises		

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

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

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

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(NAME OF INSURANCE COMPANY)

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(SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

**MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:**

San Diego Unified Port District  
c/o Ebix BPO  
P.O. Box 100085 – 185  
Duluth, GA 30096 – OR –  
Email to: [sdupd@prod.certificatesnow.com](mailto:sdupd@prod.certificatesnow.com)  
Fax: 1-866-866-6516