

**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
STUDIO FINK, LTD.  
for  
SAN DIEGO-CORONADO BRIDGE LIGHTING PROJECT PHASE 2  
AGREEMENT NO. 169-2017SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and STUDIO FINK, LTD., a United Kingdom 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 August 15, 2017 and shall terminate on December 31, 2018, 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 maximum expenditure under this Agreement shall not exceed \$230,000. 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 services may be required for the completion of the services specified in this Agreement. For performance of Additional Services, District shall compensate Service Provider using the terms and conditions in Attachment B, Compensation and Invoicing. With Additional Services the maximum amount of this agreement shall not exceed \$230,000. If Additional Services are required, they shall be undertaken by Service Provider only upon issuance of a Task Authorization (TA), Exhibit C, 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. Pricing of each Task Authorization shall be governed by the cost and pricing information

attached hereto and made a part of this Agreement as Attachment B, Compensation and Invoicing.

- (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. 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 D, 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) 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 D 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. 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:

Allan Tait  
 Waterfront Arts & Activation  
 San Diego Unified Port District  
 P.O. Box 120488  
 San Diego, CA 92112-0488  
 Tel. 619-686-7247  
 Email: atait@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:

Peter Fink, Artist  
Studio Fink, Ltd.  
80 Three Colt Street  
London E14 8AP  
UNITED KINGDOM  
Tel. 00442071484693  
Email: peter@studiofink.eu

- 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**

**STUDIO FINK, LTD.**

\_\_\_\_\_  
Yvonne Wise  
Director, Waterfront Arts & Activation

\_\_\_\_\_  
Peter Fink, Artist

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

#### I. Scope of Services

##### 1. PROJECT DESCRIPTION

- a. The District is planning, in cooperation with the California Department of Transportation (“Caltrans”), a distinctive public artwork project for the San Diego-Coronado Bay Bridge (“Bridge”) through the design and implementation of an artist-designed architectural lighting installation that will aesthetically illuminate and complement an important San Diego icon, enliven the public environment, create a sense of place and identity along the waterfront, and draw people to the region. The design will utilize computer-programmable, colored LED luminaires to illuminate the bridge structure with a dynamic lighting design. The project will also affirm the cooperating agencies’ commitment to sustainable energy usage by offsetting the lighting’s electrical consumption with energy obtained from renewable sources.

##### 2. BACKGROUND AND GENERAL SCOPE OF SERVICES

- a. The San Diego-Coronado Bridge Lighting Project (“Project”) is structured, in accordance with a Memorandum of Understanding (MOU) between the District and Caltrans (Clerk’s Document No. 57911 dated July 26, 2011), Exhibit A, to be completed in four phases. The services to be undertaken under this Agreement pertain solely to the Project’s second phase, which is the Project Approval & Environmental Document (PA&ED) phase, referred to hereinafter as “Phase 2.”
- b. The purpose of this Agreement is to obtain the artistic design and consulting services of project artist Peter Fink, doing business as Studio Fink Ltd (“Service Provider”), as direct consultant to the District and as collaborator with design team member Buro Happold Consulting Engineers, Inc. (Buro Happold) throughout Phase 2 of the Project.
- c. It is the intention of this Scope of Services that the Service Provider, as the Project’s lead artist, will serve as the artistic consultant with the District for implementation of Phase 2 of the Project and will collaborate with other members of the previously selected international design team consisting of Buro Happold and Speirs + Major Associates who, with Service Provider, are collectively referred to hereinafter as the “Design Team”.

- d. Service Provider's organizational relationship with the District, Caltrans, and associated Design Team members and sub-consultants is illustrated in the chart attached as Exhibit B

### 3. **PHASE 2 MILESTONES**

The principal goal of Phase 2, towards which Service Provider's collaboration with the Design Team and coordination with the District shall be aimed, is to obtain Caltrans' approval of the Project for installation on the Bridge and certification of the appropriate level of environmental document in accordance with the California Environmental Quality Act (CEQA). Milestones in achieving this goal will be marked by the approval of certain Project-related documents, as indicated below, for which preparation, review, and refinement will require the Service Provider's artistic and technical input in collaboration with the District and other Design Team members throughout Phase 2. For the purpose of this Agreement and compensation of Service Provider, the documentation required in the progression towards Project approval is divided in to two sub-phases of Phase 2, as indicated below:

- a. Phase 2A – Project Initiation Document (PID)
  - (1) Project Description
  - (2) Environmental Initial Study (IS)
  - (3) Project Study Report / Project Development Support (PSR-PDS)
- b. Phase 2B – Project Report & Environmental Document (PA&ED)
  - (1) Draft Project Report (DPR)
  - (2) Environmental Document (ED)
  - (2) Final Project Report (PR)

Service Provider's specific tasks and deliverables related to the successful accomplishment of the foregoing milestones ("Phase 2 Scope of Services") are specified in Section 4 below:

### 4. **TASKS AND DELIVERABLES**

- a. Safeguard the creative integrity of the project.
- b. Collaborate with the Design Team and provide input into the design services and deliverables that will be provided by the Design Team whose services are defined under separate agreement between the District and the Buro Happold.

- c. Collaborate with the Buro Happold and sub-consultants and coordinate with the District and Caltrans to deliver the Phase 2 Scope of Services through to completion of the approved Project Report.
- d. Advise the District on the schematic design interim milestones during the design review process, project risk register, and Prime Consultant progress reports.
- e. Advise the District on milestone approvals and final approvals.
- f. Advise the District on coordination of preliminary Project schedule and approval process in Phase 2 of the Project.
- g. Execute a new set of Photorealistic Renderings CGI visuals to illustrate the schematic design for the Project Report and for project-related public relations, media, and fundraising purposes. The CGI visuals should include, as a minimum:
  - 1) The complete in situ aerial nighttime view of the Bridge and surrounding urban context
  - 2) One nighttime view of central-span section
  - 3) Two nighttime views of the Bridge support piers showing the visual and environmental impacts of lighting and structural attachments of luminaires
- h. Attend and participate in the following Project-related activities. The frequency, need, and schedule for such activities shall be planned and agreed to amongst the District, Service Provider, and Prime Consultant upon initiation of Phase 2:
  - 1) Initial Project kick-off meeting in San Diego with District and Caltrans, including site visit
  - 2) Design workshops led by Buro Happold in San Diego and Los Angeles
  - 3) Design workshops with London-based sub-consultants in London
  - 4) Bi-monthly (alternate month) workshop/progress meetings with Buro Happold and the District
  - 5) Meetings to advise and update District on progress and key issues arising from the ongoing risk register

- i. Provide input as necessary into monthly progress reports issued by the Buro Happold.
- j. Provide input into the evolving design narrative for Prime Consultant's technical disciplines involved with the Project, including: structural design services, electrical engineering design services, sustainable energy consulting services, lighting design services, information communications technology (ICT) and controls consulting, and cost consulting.
- k. Provide artist approvals and input to District approvals for all technical proposals produced by the foregoing disciplines listed in Section 4.j.
- l. Review the summary level risk assessment with the District, identifying major risk elements that may impact cost, schedule, and construction logistics; and provide assessment and recommended mitigation measures, as appropriate.
- m. Jointly with Speirs + Major Associates:
  - 1) Refine and finalize the Bridge lighting concept design into a Phase 2 design narrative
  - 2) Comment on contractors' and/or manufacturers' drawings, details and specifications
  - 3) Assist with the interface of lighting schemes between different areas of the project
  - 4) Provide technical support to assist others in realizing the approved lighting design concept
  - 5) Evaluate proposed alternative lamp and luminaire specification information provided by others
  - 6) Review and comment on lighting photometry, plots, calculations and related data
  - 7) Assist with the review of lighting costs prepared by others
  - 8) Assist with the updating and monitoring of energy forecasts
  - 9) Assist with the evaluation of lighting equipment samples, mock-ups and tests
  - 10) Provide input as necessary into the PA&ED schematic design stage Project Report

## 5. ADDITIONAL SERVICES

- a. Public Outreach, Public Relations, and Media Participation. It is envisioned that Service Provider, as project artist, may have a role to play in the District's public outreach, public relations, and media planning for the Project during Phase 2. As part of this scope of services, Service Provider shall develop, in consultation with the District, a proposal for his participation in the foregoing services, as distinct from Service Provider's service outlined in Section 4 above, which may include a recommended plan and terms for compensation on an "as-needed" basis, in accordance with the fee schedule outlined in Attachment B, Compensation & Invoicing.
- b. Dedication Artwork Prints. It is envisioned that the fundraising and public relations aspects of the Bridge lighting project may benefit from the Service Provider, as project artist, creating a limited and numbered graphics edition or editions of the creative Bridge lighting concept. This print or prints would be an original artwork distinct from CGI visualizations or renderings. The printing would use a Giclee fine art digital process. The individual graphic prints would be designed for presentation to principal donors, sponsors, and stakeholders as a form of acknowledgement and celebration. Service Provider's production of these prints would be charged as an additional service with a to-be-negotiated creative fee plus the cost of printing and framing.

**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. Invoice(s) shall be on a Fixed Fee basis.

- a) Each invoice for Fixed Fee work shall include:

Date work performed;  
Statement of services performed by task;  
Percent of total work being invoiced;  
Percent of total work completed;  
Direct Costs;  
Total Amount;  
Progress Report (shall include employee name, classification title, hourly rate number of hours worked and totals per classification title, percent of total work invoiced by task, percent of total work completed by task, cumulative costs incurred)

- b) Professional services shall be invoiced in accordance with the following Fee Schedule:

<b>Phase</b>	<b>Phase Description</b>	<b>Fixed Fee Amount</b>
2A	Project Initiation Document (PID)	\$72,000
2B	Project Report & Environmental Document (PA&ED)	\$110,000
	Reimbursable Expenses (Not to Exceed)	\$38,000
	Additional Services (Not to Exceed)	\$10,000
<b>Total Agreement Amount</b>		<b>\$230,000</b>

- (2) For **Additional Services**, Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Invoices shall be Lump Sum, Fixed Fee, or Time and Materials or any combination of all three as defined on each Task Authorization.
- (a) Each invoice for Lump Sum work shall include:
- Date work performed;  
Description of the work performed;  
Direct Costs.
- (b) Each invoice for Fixed Fee work shall include:
- Date work performed;  
Description of the work performed;  
Percent of total work being invoiced;  
Percent of total work completed;  
Direct Costs.
- (c) Each invoice for Time and Materials work shall include:
- Date work performed;  
Description of the work performed;  
Hours worked by personnel classification;  
Rate per personnel classification;  
Total personnel cost by classification; and  
Direct Costs.
- (3) **Additional Services** shall be invoiced in accordance with the following Rate Schedule:

<b>Service</b>	<b>Rate</b>	<b>Period</b>
Public Outreach Activities	\$800	Daily
Public Relations & Media	\$350	Hourly

**Note:** 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, lodging, telecommunications, photography, and all other costs and expenses incurred in completing such services.

b. **Reimbursable Expenses**

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

**Note:** Reimbursement for other 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**

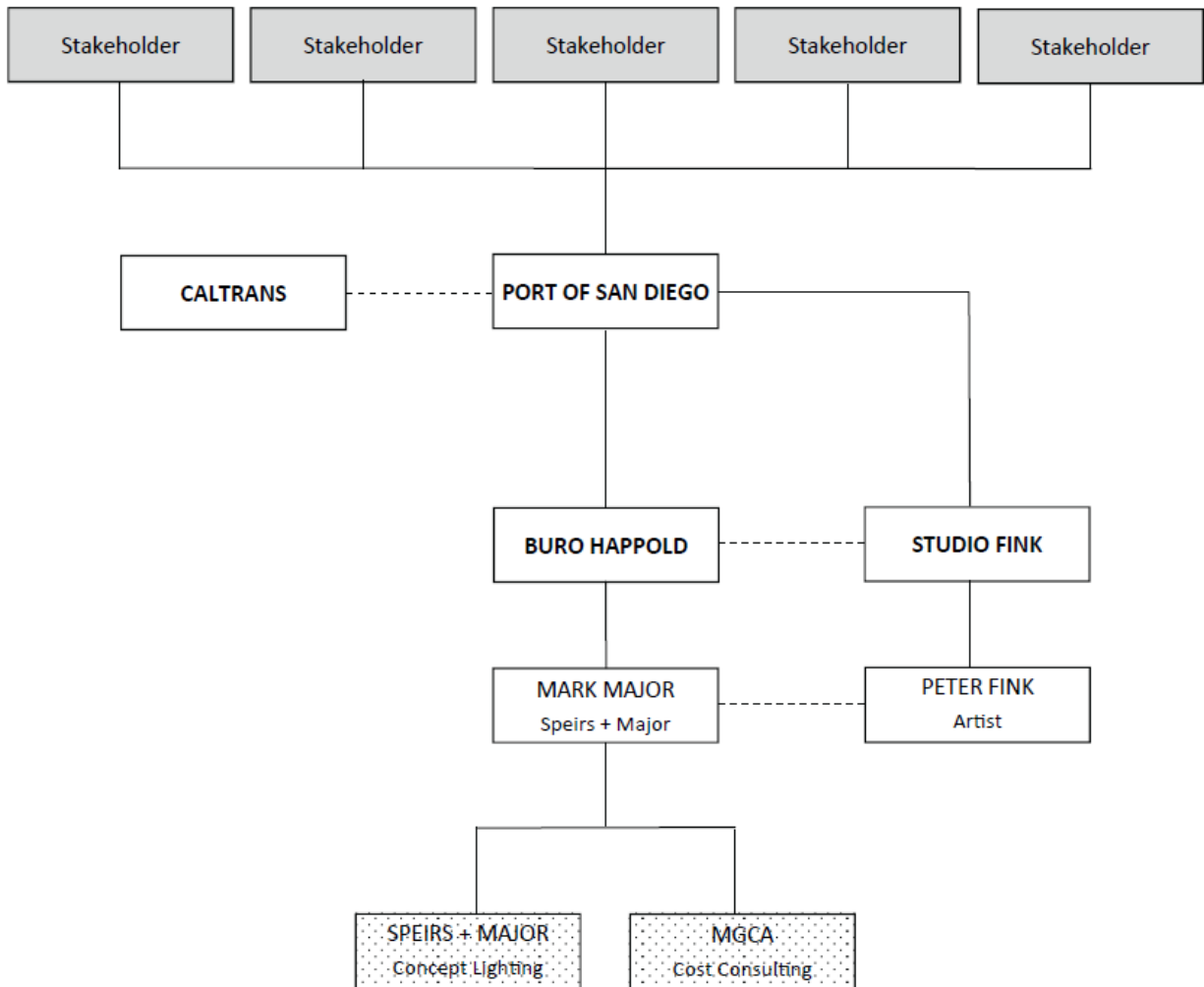
- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such **records, receipts and forms as required.**
- b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section 1, above:
  - 1) Agreement No. 169-2017SN
  - 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: Allan Tait, Waterfront Arts & Activation, 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 B**  
**SAN DIEGO-CORONADO BRIDGE LIGHTING PROJECT**  
**TEAM ORGANIZATION**  
**San Diego Unified Port District**

Service Provider's organizational relationship with the District, Caltrans, and associated Design Team members is illustrated in the organization chart below.



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

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**(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)

<b>Name</b>	<b>Classification</b>	<b>Hours</b>
	Staff as needed per Agreement rates	

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

<b>N/A</b>

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

**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 D**  
**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.

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: \$ _____
<b>CO LTR</b>	<b>COMPANIES AFFORDING COVERAGE</b>			<b>A. M. BEST RATING</b>
A				
B				
C				
D				
<b>A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.</b>				
Name and Address of Authorized Agent(s) or Broker(s)			E-mail Address:	
			Phone: _____ Fax Number: _____	
			Signature of Authorized Agent(s) or Broker(s) Date: _____	

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

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

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

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

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

\_\_\_\_\_  
 (NAME OF INSURANCE COMPANY)

\_\_\_\_\_  
 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

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

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