

**AGREEMENT BETWEEN  
SAN DIEGO UNIFIED PORT DISTRICT  
and  
KPMG LLP  
for  
AS-NEEDED INTERNAL AUDIT SERVICES  
AGREEMENT NO. 281-2017SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and KPMG LLP, a Limited Liability Partnership (Service Provider). The parties agree to the following:

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

shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on February 7, 2018 and shall terminate on February 6, 2021, 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 \$300,000. 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.

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 work in progress and to audit timekeeping and expense 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, provided that such inspection does not cause the Service Provider to reveal Service Provider's proprietary information or that of its other clients. Service

Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

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

- a. It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's Sub-Service Providers shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's Sub-Service Providers. Service Provider shall compensate each Service Provider's Sub-Service Providers in the time periods required by law. Any Service Provider's Sub-Service Providers employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall include all mandatory flow-down provisions identified herein in any agreement with Sub-Service Providers.
- b. Service Provider shall also include a clause in its Agreements with Service Provider's Sub-Service Providers which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's Sub-Service Providers to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair

Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.
  8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.
  9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
    - a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for damage to tangible property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), to the extent caused by, the negligent or willful acts or omissions

of the Service Provider or its officers, agents, subcontractors, or employees in connection with the performance of services by Service Provider as provided for in this Agreement. 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. In the event the District seeks indemnification under this provision, the District shall promptly inform the Service Provider and tender the defense thereof. The District shall provide the Service Provider with reasonable assistance in connection with actions subject to this indemnity. The District may choose, at its own election and at its own cost, to participate in the defense.

#### 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) Service Provider shall be solely responsible for any deductibles or self-insured retentions.
    - (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. 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. Service Provider shall also provide notice to District prior to cancellation of 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.

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. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and

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

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Upon full and final payment to Service Provider under the Agreement, the Service Provider assigns and grants to the District, title in the tangible items specified as deliverables or work product in a Task Authorization (the "Deliverables") and any copyright interest in the Deliverables. 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 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 except as required by law, legal process, or applicable professional standards; or except to its partners, principals, employees, vendors, and/or subcontractors in connection with the performance of this Agreement. If and to the extent that any Service Provider property is contained in any of the Deliverables ("Service Provider Property"), Service Provider hereby grants the District, under Service Provider's intellectual property rights in such KPMG Property, a royalty-free, non-exclusive, non-transferable, perpetual license to use such Service Provider Property solely in connection with the District's use of the Deliverables. Service Provider acknowledges that it shall obtain no ownership right in confidential information of the District. In addition, the District acknowledges and agrees that Service Provider shall have the right to retain for its files copies of each of the Deliverables and all information necessary to comply with its contractual obligations and applicable professional standards..

17. **LIMITATION OF LIABILITY.** Notwithstanding anything else in this Agreement to the contrary, including all attachments, the liability of the Service Provider on account of any actions, damages, claims, liabilities, costs, expenses or losses in any way arising out of or relating to the services performed under the Agreement shall be limited to the amount of fees paid or owing to the Service Provider under the Agreement. In no event shall the Service Provider be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss asserted, whether in Agreement, statute, rule, regulation or tort (including but not limited to negligence) or otherwise, and shall survive Agreement termination or expiration.
18. **MANAGEMENT DECISIONS.** The District acknowledges and agrees that the Service Provider's services may include advice and recommendations; but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, the District. The

Service Provider will not perform management functions or make management decisions for the District.

19. **THIRD PARTY USAGE.** The District acknowledges and agrees that any advice, recommendations, information, Deliverables or other work product ("Advice") provided by the Service Provider in connection with the services under the Agreement is intended for the District's sole benefit and the Service Provider does not authorize any party other than the District to benefit from or rely upon such Advice, or make any claims against the Service Provider relating thereto. Any such benefit or reliance by another party shall be at such party's sole risk. The Service Provider may, in its sole discretion mark such Advice to reflect the foregoing. Except for disclosures that are required by law or that are expressly permitted by this Agreement, the District will not disclose, or permit access to such Advice to any third party without the Service Provider's prior written consent.
20. **CALIFORNIA ACCOUNTANCY ACT.** For engagements where services will be provided by the Service Provider through offices located in California, the District acknowledges that certain of Service Provider's personnel who may be considered "owners" under the California Accountancy Act and implementing regulations (California Business and Professions Code section 5079(a); 16 Cal. Code Regs. sections 51 and 51.1) and who may provide services in connection with this engagement, may not be licensed as certified public accountants under the laws of any of the various states.
21. **ELECTRONIC COMMUNICATIONS.** The Service Provider and the District may communicate with one another by electronic mail or otherwise transmit documents in electronic form during the course of this engagement. Each party accepts the inherent risks of these forms of communication (including the security risks of interception of or unauthorized access to such communications, the risks of corruption of such communications and the risks of viruses or other harmful devices). The District agrees that the final hardcopy or electronic version of a document, including a Deliverable, or other written communication that the

Service Provider transmits to the District shall supersede any previous versions transmitted by the Service Provider to the District.

22. **ACTIVE SPREADSHEETS AND ELECTRONIC FILES.** The Service Provider may use models, electronic files and spreadsheets with embedded macros created by the Service Provider to assist the Service Provider in providing the services under the Agreement. If the District requests a working copy of any such model, electronic file or spreadsheet, the Service Provider may, at its discretion, make such item available to the District for its internal use only on an as-is basis and such item shall be considered a Deliverable; provided that the District is responsible for obtaining the right to use any third party products necessary to use or operate such item. The Service Provider retains ownership of and all rights in such models, electronic files, and/or spreadsheets with embedded macros; except for the District data contained therein.
23. **USE OF VENDORS.** The District acknowledges and agrees that in connection with the performance of services under the Agreement, Service Provider and its Member Firms, in their discretion or at District's direction, may utilize the services of third parties within and outside of the United States to complete the services under the Agreement. The District further acknowledges and agrees that Service Provider-controlled parties, member Firms of KPMG International, and other third party service providers (collectively, "Vendors") may have access to Confidential Information from offshore locations, and that the Service Provider uses Vendors within and outside of the United States to provide at Service Provider's direction administrative or clerical services to Service Provider. These Vendors may in the performance of such services have access to District's Confidential Information. Service Provider represents to the District that with respect to each Vendor, Service Provider has technical, legal and/or other safeguards, measures and controls in place to protect Confidential Information of District from unauthorized disclosure or use. The Service Provider shall be responsible to the District for Service Provider-controlled, Member Firms, or Vendor's failure to comply.

24. **VOLUME REBATES.** Where Service Provider is reimbursed for expenses, Service Provider's policy is to bill clients the amount incurred at the time the good or service is purchased. If the Service Provider subsequently receives a volume rebate or other incentive payment from a vendor relating to such expenses, the Service Provider does not credit such payment to its clients. Instead, Service Provider applies such payments to reduce its overhead costs, which costs are taken into account in determining Service Provider's standard billing rates and certain transaction charges that may be charged to clients.
25. **DISTRICT VENDORS AND CONFLICTS.** The District is aware that the Service Provider may be providing assurance, tax and/or advisory services to other actual or potential contractors of the District. The Service Provider will perform an internal search for any potential client conflicts relating to any of the District's contractors identified by the District as having a role in connection with Service Provider's performance of this Agreement. The District hereby agrees that a Service Provider's status as the Service Provider's District does not impact Service Provider's engagement to perform this Agreement. The Service Provider will advise the District of any conflicts of interest that could prevent it from performing the Agreement. However, Service Provider is a large firm that is engaged by new clients on a daily basis and as a result it cannot guarantee that, following its conflict search, an engagement for any other related party will not be accepted somewhere else in Service Provider's firm. Should any new information come to Service Provider's attention, the Service Provider will promptly inform the District. Service Provider shall perform this Agreement in accordance with applicable professional standards.
26. **EXPORT CONTROL.** Service Provider and the District acknowledge and agree that each shall comply with all applicable United States export control laws and regulations in the performance of each party's respective activities under the Engagement Letter. The District shall not provide Service Provider, or grant Service Provider access to, (a) information (including technical data or technology), verbally, electronically, or in hardcopy, (b) software or (c) hardware,

that is controlled for export by the United States government under the Arms Export Control Act of 1976, Export Administration Act of 1979, the International Traffic in Arms Regulations ("ITAR"), Export Administration Regulations ("EAR"), Department of Energy Part 810 Regulations or Nuclear Regulatory Commission Part 110 Regulations, except information, software or hardware that is classified as EAR99 under the EAR

27. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Port Auditor 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 Port Auditor 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. However, if the District seeks to terminate the Agreement for breach or default by the Service Provider, the District shall first notify the Service Provider in writing of its intent to terminate, identify the alleged deficiencies in performing giving rise to the intent to terminate, and shall not terminate the Agreement for cause or default unless the Service Provider fails to cure the specified deficiencies within thirty (30) days of Service Provider's receipt of notice of such deficiencies.

28. **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, after good faith efforts, the parties are unable to resolve their dispute through mediation within ninety (90) days after the issuance by one of the parties of a request for mediation, then the parties are free to pursue all other legal and equitable remedies available to them. Nothing herein shall preclude the Service Provider from filing a timely formal claim in accordance with applicable California law provided, however, that the Service Provider shall, if permitted, seek a stay of said claim during the pendency of any mediation. Either party may seek to enforce any written agreement reached by the parties during mediation in any court of competent jurisdiction.
  - c. The foregoing mediation 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.
29. **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 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. Subject at all times to the Dispute Resolution provision herein, if such expenses, miscellaneous charges, or other liabilities or increased costs are, where applicable, 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.

30. **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.

31. **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.
32. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
33. **PORT AUDITOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Port Auditor or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.
- a. Submit all correspondence regarding this Agreement to:

Robert Monson, Port Auditor  
Office of the Port Auditor  
San Diego Unified Port District  
P.O. Box 120488  
San Diego, CA 92112-0488  
Tel. 619-686-6477  
Email: rmonson@portofsandiego.org

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


Cathy Gonzales, Partner  
KPMG LLP  
4747 Executive Drive, Suite 600  
San Diego, CA 92121  
Tel. 858-750-7160  
Email: cgonzales@kpmg.com

- d. 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**

**KPMG LLP**

\_\_\_\_\_  
Robert Monson, Port Auditor

  
\_\_\_\_\_  
Cathy Gonzales, Partner

Approved as to form and legality:  
GENERAL COUNSEL

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

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

## ATTACHMENT A SCOPE OF SERVICES

### San Diego Unified Port District

#### 1. SCOPE OF SERVICES

- a. The following statements are intended to describe the general nature and level of work performed under as-needed internal audit services. They are not intended to be an exhaustive list of all responsibilities, duties and skills required by those providing as-needed internal audit services. In addition, all as-needed engagement work (e.g., work papers, audit report) will go through the quality assessment review process established by the Port Auditor's Office prior to issuing the audit report (draft or final).
- b. Under direction of the Port Auditor and/or Assistant Port Auditor, as-needed internal audit services may include the following, as well as, additional related services:
  - 1) Plans, organizes, schedules and conducts assigned operational, compliance, tenant and contractual audits or special studies within processes and budgets established by the Port Auditor's Office.
  - 2) Schedules and arranges audits.
  - 3) Performs audits/special projects in compliance with the Institute of Internal Auditors Standards: International Professional Practices Framework (Red Book) and uses as guidance other appropriate standards (e.g., GAGAS-Yellow Book, GAAS-AICPA).
  - 4) Conducts audits by reviewing and analyzing transactions, documents, records, reports and procedures and discussing relevant issues with appropriate sources to obtain additional information.
  - 5) Prepares work papers that summarize data pertinent to the assigned audit/special project and support audit findings/recommendations.
  - 6) Identifies internal control, accounting, non-compliance or other financial or operational issues and develops recommendations for resolution to District and tenant management.
  - 7) Conducts appropriate research to formulate findings and prepares preliminary and final audit reports and exhibits.
  - 8) Discuss as appropriate audit plans, issues, reports and recommendations (which may be sensitive or confidential) with all levels of District management, tenant business owners, and other professionals.

- c. Services provided, as outlined herein, constitute an Advisory Engagement conducted under the American Institute of Certified Public Accountants ("AICPA") Standards for Consulting Services. Such services are not intended to be an audit, examination, attestation, special report or agreed-upon procedures engagement as those services are defined in AICPA literature applicable to such engagements conducted by independent auditors. Accordingly, these services will not result in the issuance of a written communication to third parties by service provider directly reporting on financial data or internal control or expressing a conclusion or any other form of assurance.
- d. Service provider, an external service provider, confirms that the internal audit services will be delivered in accordance with sections of the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors (the "Standards"), that are applicable to an external service provider and as agreed to collectively by service provider and the District. Office of the Port Auditor has overall responsibility for maintaining an effective internal audit function/program.
- e. Each project will be subject to service provider's internal evaluation process and negotiation of a mutually agreeable Task Authorization that will include details specific to the project (e.g., project scope, approach, deliverables, timing, staffing, fees, roles and responsibilities, etc.).

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

**1. COMPENSATION**

(1) For the conforming performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.

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

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

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

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

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

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

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

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

Classification	Fully Burdened Hourly Billing Rate
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1. Consultant	\$175.00
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- (a) The following shall be considered part of the fully burdened hourly rates stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, telecommunications, photography, and all other costs and expenses incurred in completing such services.
- (b) Additional classifications and fully burdened hourly rates not listed in the Rate Schedule above may be authorized via Task Authorization with the approval of the District's Project Manager.

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- a. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
  - (1) Agreement No. 281-2017SN
  - (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

- b. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be mailed to the attention of: Robert Monson, Office of the Port Auditor, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all timekeeping and expense 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.
- e. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

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

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

**TASK AUTHORIZATION NO. \_**

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

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

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

**TASK DESCRIPTION**

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

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: \_\_\_\_\_

**Port Auditor:**

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

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

Title: Port Auditor

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: portofsandiego@ebix.com**  
**Fax: 1-866-866-6516**

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	<b>Commercial General Liability</b> <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: _____ Expiration Date: _____	Each Occurrence: _____ \$ _____ General Aggregate: _____ \$ _____
	<b>Commercial Automobile Liability</b> <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: _____ Expiration Date: _____	Each Occurrence: _____ \$ _____
	<b>Workers Compensation – Statutory</b> Employer's Liability		Commencement Date: _____ Expiration Date: _____	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	<b>Professional Liability</b> <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: _____ Expiration Date: _____	Each Claim _____ \$ _____
	<b>Excess/Umbrella Liability</b>		Commencement Date: _____ Expiration Date: _____	Each Occurrence: \$ _____ General Aggregate: \$ _____
CO LTR	COMPANIES AFFORDING COVERAGE		A. M. BEST RATING	
A				
B				
C				
D				
<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 on the Commercial General Liability policy 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. 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.
4. 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