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San Diego Unified Port District

Document No. **65819**Filed **NOV 23 2016**

Office of the District Clerk

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
GREAT ECOLOGY & ENVIRONMENTS, INC.
for
MITIGATION BANK CONSULTING SERVICES
FOR THE POND 20 SITE SAN DIEGO, CA
AGREEMENT NO. 244-2016AC**

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

1. **SCOPE OF SERVICES.** Consultant 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. Consultant shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on November 8, 2016 and shall terminate on June 30, 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 Consultant 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 \$640,220.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Consultant shall not be required to perform further services after compensation has been expended. In the event that the Consultant anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately.

ORIGINAL

District must approve an amendment to this Agreement before additional fees and costs are incurred.

- b. **Payment Procedure.** For work performed on an hourly basis, Consultant agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Consultant finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Consultant shall nevertheless, bill at the lower rate.
- c. **Progress Documentation.** Consultant shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. **RECORDS**

- a. Consultant shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Consultant understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in

progress and to audit financial records, whether or not final, which Consultant or anyone else associated with the work has prepared or which relate to the work which Consultant is performing for District pursuant to this Agreement regardless of whether such records have previously been provided to District. Consultant shall provide District at Consultant's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Consultant's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Consultant shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any compensation due under this Agreement until such documents are provided.

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

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

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Analytical Environmental Services	Permitting and regulatory support
Environmental Science Associates	Hydrology and engineering support
Recon Environmental	Restoration science support
Schmidt Design Group	Design and public access support
IO Environmental & Infrastructure	Constructability and cost estimating support
Eurofins Calscience Environmental Laboratories	Analytical chemistry
Snyder Geologic	Field geology support

- c. Consultant shall also include a clause in its Agreements with Consultant'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 Consultant'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, Consultant and Consultant'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. Consultant shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Consultant shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
7. **INDEPENDENT ANALYSIS.** Consultant shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Consultant shall possess no authority with respect to any District decision.
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Consultant shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of 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, Consultant agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Consultant's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Consultant as provided for in this Agreement, or failure to act by Consultant, its officers, agents, subcontractors and employees. The Consultant's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Consultant shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

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

- (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.
 - (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.
 - (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.
- (5) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.
- b. Consultant shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit A and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Consultant shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.

- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
 - d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Consultant or Consultant's sub-contractors or any tier of Consultant's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Consultant shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Consultant shall correct such deficiencies without additional compensation. Furthermore, Consultant expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Consultant shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Consultant or its agents, employees, or subcontractors.
12. **INDEPENDENT CONTRACTOR.** Consultant and any agent or employee of Consultant shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Consultant's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Consultant. Consultant shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Consultant acknowledges that it is aware that

because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Consultant disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

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

shall be the property of District from the moment of their preparation and the Consultant shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Consultant shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Consultant pursuant to this Agreement (including any duplicate copies kept by the Consultant) shall not be shown to any other public or private person or entity, except as authorized by District. Consultant shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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 Consultant of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Consultant to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Consultant other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

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

Consultant, made an exhaustive inspection to check the quality or quantity of the services performed by the Consultant, made an examination to ascertain how or for what purpose the Consultant has used money previously paid on account by the District, or constitute a waiver of claims against the Consultant by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Consultant for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Consultant. Upon five (5) day written notice to the Consultant, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Consultant to pay the same; and the amount due the Consultant under this Agreement or the whole or so much of the money due or to become due to the Consultant under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Consultant at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Consultant. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Consultant.

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

- a. Consultant acknowledges and agrees that it is the sole and exclusive responsibility of Consultant to: (a) ensure that all persons and/or entities (including, but not limited to, Consultant or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of

California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.

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

- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. 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. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.

- (5) Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Service Provider.
- (6) Training options can be provided to the Service Provider upon request.

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

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

registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

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

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

- a. Submit all correspondence regarding this Agreement to:


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

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

Dr. Mark Laska, President and Founder
Great Ecology, Inc.
2251 San Diego Avenue
Suite A218
San Diego, CA 92110
Tel: (858) 750-3201
Email: mlaska@greatecology.com

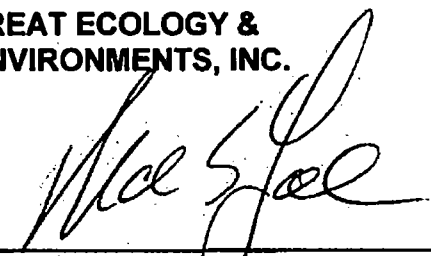
- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT



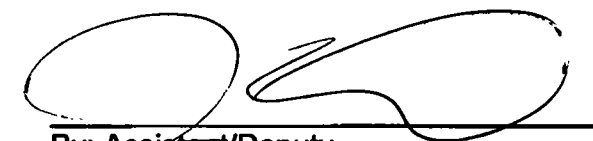
T. Scott Edwards
Executive Vice President

**GREAT ECOLOGY &
ENVIRONMENTS, INC.**



Dr. Mark Laska
President and Founder

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

Background:

The goal of this Agreement is to support the District's development of Pond 20 as a mitigation bank, complete with regulatory submittals, business planning, and site design advancement. The specific goals will be to document baseline conditions, develop the engineering design of the bank, and prepare construction documents at the 60% completion level. This will lead to refined cost estimates and a higher level of confidence in the business model. Concurrently, Consultant shall seek commitments from buyers to secure credit purchases from the bank and will submit a Bank Prospectus to the Interagency Review Team (IRT) that incorporates resource agency input. Finally, this Agreement will include development of the draft Mitigation Banking Instrument – the regulatory document that codifies how credits are defined, sold, and secured.

Consultant shall complete the following tasks:

Task 1: Baseline Condition Investigations;

Consultant shall obtain information regarding current conditions at Pond 20 necessary to move forward with regulatory approval and business model refinement elements.

Subtask 1: Base Map Development

Consultant shall develop a base map suitable for design and construction, including:

- a. Providing an ortho-rectified aerial image and establish survey control benchmarks;
- b. Performing additional topographic ground survey along proposed channels and the existing channel at the Bayshore bikeway trail, and at channel bottoms; and
- c. Integrating topographic ground survey data and the aerial image into one coordinated base map for design.

The survey shall be conducted in concert with the *Subtask 2: Geotechnical Investigation* to increase time efficiency and decrease mobilization costs.

Subtask 2: Geotechnical Investigation

Consultant shall perform soils investigation and testing to inform construction approaches and soil disposal options.

- a. The site investigation shall focus on proposed channel locations, existing channels, and existing inner berm depressional areas;
- b. Soil sampling using a backhoe or excavator to dig test pits throughout the site;
- c. Soil samples will be collected and tested for geotechnical properties (sieve analysis, plasticity index, etc.); and
- d. Consultant shall provide slope stability recommendations for excavated channels and placement of excavated materials (if placed onsite).

Subtask 3: Soil/Sediment Investigation

Consultant shall collect soil and sediment samples for testing related to sediment quality characterization and horticultural parameters. Task includes laboratory fees assuming aquatic or upland disposal options, and horticultural-related analyses for the anticipated as-built exposed surface. Sampling will be conducted in conjunction with the Geotechnical Investigation to increase field efficiency and lower mobilization costs. We will:

- a. Produce a Sampling and Analysis Plan appropriate for regulatory review;
- b. Collect soil/sediment samples from same test pits dug under the Geotechnical Investigation and submit for laboratory testing following USACE/EPA and/or Regional Water Quality Control Board regulatory guidance (as appropriate, to be determined pending further discussions with Port staff);
- c. Analyze analytical reports and make project specific recommendations; and
- d. Coordinate with regulatory agencies as required.

Subtask 4: Wetland Jurisdictional Determination

Consultant shall conduct jurisdictional wetland delineation on the Pond 20 site. Consultant shall realize efficiencies by drawing upon the results of the Merkel & Associates 2008 site survey and provide revised figures. The jurisdictional delineation will be used to refine design area estimates of current and restored wetland and non-wetland Waters of the U.S. habitats, and to support permit submission to the USACE. This effort will include:

- a. A site visit to validate and update the wetland boundaries defined in the 2008 delineation using GPS and hand-flagging;
- b. Wetland boundary establishment and mapping by licensed surveyor;
- c. Generation of graphics to reflect the updated wetland boundary locations;
- d. Preparation of a report summarizing the updated wetland assessment;
- e. Attendance at a site line verification meeting with the U.S. Army Corps of Engineers (USACE) onsite if required; and
- f. Submission of jurisdictional determination request to USACE.

Subtask 5: Conduct Baseline Functional Assessment

Consultant shall conduct a baseline wetland functional assessment to determine baseline ecological conditions on Pond 20. This baseline is the standard against which any site improvements are measured. Design efforts shall then be targeted with the goal of increasing ecological function, or generating "uplift." Uplift is one of the chief determinants of the mitigation bank credit ratio, and is important from a business as well as a design standpoint. Consultant shall also evaluate suitable reference (or control) sites for comparison of restoration success. Under this task, we will:

- a. Determine the most suitable wetland functional assessment to use on the site from an ecological and regulatory acceptance perspective – the typical method used in California is CRAM (California Rapid Assessment Method) but it has severe limitations for use in tidal wetlands planning;

- b. Collect and analyze field data per functional assessment methodology; and
- c. Develop a baseline conditions and reference site report for regulatory submittals.

Subtask 6: Internal/External Stakeholder and Regulatory Coordination

This task includes initial communication with key stakeholders, neighbors, and regulatory contacts such as:

- a. Attendance at one meeting with Poseidon Water (Poseidon) to determine how their project may affect the Pond 20 site with respect to design, construction schedules, and management strategies;
- b. Preliminary coordination with the Chula Vista Bayfront Project team on sediment management strategies;
- c. Coordination with Port departments (e.g., legal, engineering).

Task 2: General Development Plan And 30% Design

Subtask 1: 30% Design

Phase I effort produced two alternative schematic designs of the Pond 20 wetland. The design was based on available information and project goals and will be further refined based on results of the TASK 1 investigations and ongoing discussions with the District and/or potential credit buyers (related to habitat credit need, for example) and regulatory agencies. The Final 30% Concept Design will double as a General Development Plan and shall provide the basis for hydraulic/geomorphic analyses described below.

Consultant shall prepare a preliminary design of the "marsh only" concept to a 30%-completion level. Preliminary design development will include updating the concept design plan to incorporate comments, refine channel layout and reflect the new base map and preliminary engineering analyses to develop 30% design documents. Preliminary plans will include:

- a. 30% Grading Plans (including channel plan view and typical sections);
- b. Final Concept Design/ General Development Plan;
- c. Outline technical specifications;
- d. Preliminary construction cost estimate; and
- e. Design memo/project description that documents results of the preliminary design analysis.

Consultant shall prepare a basis of design memo/project description for submittal to regulatory agencies at the conclusion of the preliminary design phase.

Subtask 2: Hydraulic & Geomorphic Assessments

Consultant shall perform hydraulic and geomorphic analyses to evaluate potential flood impacts and assess future habitat evolution, including:

- a. Hydrodynamic modeling of Otay River for 100-year flood assessment with and without the Pond 20 project, and for cumulative conditions with the Poseidon project, using the

MIKE-11 hydraulic model developed by ESA/PWA for the Lower Otay River Salt Marsh and Wetland Restoration in 2003; and

- b. Geomorphic assessment to size the restored tidal channels and qualitatively assess sustainability of restored habitats using available prior studies.

At this stage, the FEMA documentation (map revisions and/or "no rise" certification) will not be needed. This task assumes minor adjustments to the 2003 model to update to current conditions.

Subtask 3: Scour Potential Analysis at Bayshore Bikeway Bridge

The proposed project will increase tidal flows downstream of the site and likely result in some deepening and widening of the channel at the existing bike trail bridge. In this task, Consultant shall use existing information to evaluate the potential for project-related channel scour to undermine the stability of the bridge footings and put the bridge at risk for failure.

Consultant shall coordinate with the U.S. Fish & Wildlife Service (USFWS) South San Diego Bay National Wildlife Refuge to understand what scour analysis (and potentially scour protection design) has or will be performed for the Poseidon Water project, which also has potential to increase bridge scour. Under this task, consultant shall review any available reports, analyses, and preliminary designs (e.g. Poseidon project documents, past modeling efforts). The bridge is relatively new and the as-built drawings and hydraulic design criteria for the bridge are available. Consultant shall assess the potential for the project to affect the structural integrity of the bridge and document the findings in a technical memorandum.

(Note: In the event that review of existing data is not sufficient to fully assess potential effects of the project on the structural integrity of the bridge, then hydraulic modeling will be used to provide a more detailed assessment. The additional assessment will not be necessary, and has not included in this task for this additional effort.)

Subtask 4: Port Stakeholder Coordination

- a. Developing illustrative graphics for public engagement;
- b. Providing support and materials for updates to Board of Port Commissioners;
- c. Participation in meetings with regulatory agencies for initial review of preliminary design;
- d. Attending focused meetings with the Port and/or project team; and
- e. Attending public engagement meetings as needed.

Task 3: 60% Design: 60% Design Services and Preliminary Construction Documents

Consultant shall progress the Preliminary Design to the 60%-completion level including addressing comments received from regulatory agencies and the client. The 60% Design submittal will include 40 scale drawings, technical specifications and construction cost estimates.

Subtask 1: The 60% drawings set shall consist of the preliminary sheet list summarized in TABLE 1.

TABLE 1: 60% DESIGN SHEET TITLES AND ESTIMATED NUMBER OF SHEETS

Sheet Title	Number of Sheets
Title Sheet and General Notes	2
Site Plan, including staging area and access routes	1
Survey Control and Site Key Plan	1
Channel Grading Plan (1" = 40')	7
Typical Channel Grading Sections	1
Levee Breach – Detailed Plan & Sections	1
Irrigation Plan (1" = 40')	5
Planting Plans (1" = 40')	8
Site Improvement, Planting, and Irrigation Details and Notes	6
Estimated Total	32

This task is based on the following and is to be confirmed during the Hydraulic and Geomorphic Assessments and Scour Potential analyses:

- Perimeter levee improvements (i.e. raising or widening) are not needed for flood protection of adjacent properties;
- Erosion protection measures to address potential scour at the bike path bridge or downstream channel are not needed; and
- Hypersaline soils on western portion of site do not require additional water quality analysis, regulatory permitting constraints or special handling or offsite disposal.

Subtask 1: Prepare a full set of preliminary 60% completion construction documents and technical specifications at 40 scale "D Sheet" size.

- The preliminary construction set of drawings will include civil engineering grading and drainage plans;
- The preliminary set of construction drawings will also include landscape architectural drawings for planting and irrigations, details, and calculations; and
- The preliminary construction set of plans will include preliminary project technical specifications.

Subtask 2: Coordination with Client and Regulatory Agencies

Under this task, Consultant shall;

- Meet with regulatory agencies for initial review of the 60% design;
- Attend meetings with the Port and project team;
- Develop illustrative graphics for public engagement; and
- Attend public engagement meetings as requested.

Subtask 3: Master Plan/CEQA Contractor/Clean Water Act Compliance Support

In addition to the regulatory process associated with the Mitigation Bank (TASK 4), various planning, permitting, and certifications are necessary. As the Port progresses with the Master Plan Amendment,

CEQA compliance, 404 permitting, and 401 certification processes, Consultant shall provide additional support including the development of supporting figures, tables, narrative text, and citation materials, or attendance at meetings or on conference calls

Task 4 Mitigation Banking Regulatory Support; AND

Subtask 1: Develop and Submit Bank Prospectus to the Interagency Review Team (IRT)

With the District, Consultant shall introduce the resource agencies (lead by the Army Corps) to the planned mitigation bank, and begin the formal regulatory bank approval process. As part of this task, Consultant shall:

- a. Complete a Draft Prospectus;
- b. Attend a meeting with the Interagency Review Team (IRT) to receive formal input on the Draft Prospectus; and
- c. Incorporate IRT comments to produce a final Prospectus, and submit to the IRT for formal review.

Subtask 2: Advance Additional Mitigation Banking Elements

Consultant shall advance multiple other mitigation banking elements to ensure the timely development of the Pond 20 mitigation bank. Specifically, we will develop:

- a. Draft Mitigation Bank Instrument;
- b. Insurance and Endowment Plan;
- c. Long-Term Planning strategies; and
- d. Performance and Long-Term Monitoring Plans.

Task 5 Project Management, Communication, and Project Management.

Subtask 1: Communication and Project Summary Documentation

- a. Attendance of Dr. Laska, the project manager, at bi-monthly meetings with Port staff and quarterly meetings with the Project Team technical leads, if needed;
- b. Project management functions and subcontractor oversight;
- c. Preparation of presentation materials to support internal and external communication needs; and
- d. Preparation of summary documentation communicating Phase II conclusions and recommended next steps.

SCHEDULE

Consultant shall begin work on upon execution on this Agreement. The scope of work will be completed by June 2018. TASKS 1 AND 2 are anticipated to be complete within one year, while TASKS 3, and 4 will begin in mid-2017, and generally be the focus of work in the second half of 2017. The scope of work outlined above for each task will be conducted concurrently where feasible for maximum schedule efficiency.

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

1. COMPENSATION

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

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

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

Task/Subtask Number;
Date work performed;
Description of the work performed;

TASK No.	DESCRIPTION	AMOUNT
Task 1:	Baseline Investigations	\$183,350
Task 2:	General Development Plan and 30% Design	\$167,560
Task 3:	60% Design	\$148,310
Task 4:	Mitigation Bank Regulatory Elements	\$96,000
Task 5:	Project Management, Communication, and Project Summary Documentation	\$45,000
Agreement Total		\$640,220

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, Consultant shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- b. Consultant 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. 244-2016AC
 - 2) If applicable, the Task Authorization(s) (TA) number being charged.
 - 3) The following certification phrase, with printed name, title and signature of Consultant's project manager or designated representative:

 "I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. **65819**, 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 Consultant, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Eileen Maher, Planning & Green Port, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Consultant for the Services. Any overpayment discovered in such an audit may be charged against the Consultant's future invoices and any retention funds.
- f. Consultant shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Consultant within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
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
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____	
			This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <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: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
CO LTR	COMPANIES AFFORDING COVERAGE		A. M. BEST RATING	
A				
B				
C				
D				
A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.				
Name and Address of Authorized Agent(s) or Broker(s)			E-mail Address:	
			Phone: _____ Fax Number: _____	
			Signature of Authorized Agent(s) or Broker(s)	
			Date: _____	

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

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

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

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

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

 (NAME OF INSURANCE COMPANY)

 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

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