

AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ERNST & YOUNG LLP
for
LONG-TERM RECOVERY PLANNING CONSULTING SERVICES
AGREEMENT NO. XX-XXXX

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ERNST & YOUNG LLP (EY), a Delaware limited liability partnership. The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on March 18, 2019 and shall terminate on August 31, 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 \$262,641.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately.

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

- b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

- c. **Progress Documentation.** Service Provider shall provide District progress dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

- d. **Additional Services; Task Authorizations**
 - (1) Additional services may be required for the completion of the services specified in this Agreement. For performance of Additional Services, District shall compensate Service Provider using the terms and conditions in Attachment B, Compensation and Invoicing. With Additional Services the maximum amount of this agreement shall not exceed \$262,641.00. If Additional Services are required, they shall be undertaken by Service Provider only upon issuance of a Task Authorization (TA), Exhibit A, attached hereto and incorporated reports in a format and on a schedule as District directs.

Progress reports shall include a description of work completed, cumulative herein, for said services.

- (2) An estimate of the level of effort shall be submitted to the District and negotiated for each Task Authorization. Pricing of each Task Authorization shall be governed by the cost and pricing information attached hereto and made a part of this Agreement as Attachment B, Compensation and Invoicing.
- (3) A Task Authorization shall not be considered effective until the Task Authorization form has been signed by District.
- (4) Service Provider shall bill for Additional Services in accordance with the terms of payment, including the documentation required in this Agreement. In addition, invoices for Additional Services shall cite the appropriate Task Authorization (TA) number.

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego and such records shall be kept for at least three (3) years after the termination of this Agreement.
- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have

previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

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

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

NAME OF FIRM

Mozaik Solutions

TYPE OF SERVICES PROVIDED

Emergency Management Planning

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
- c. The Long-Term Recovery Planning is a project funded through the U.S. Department of Homeland Security, Port Security Grant Program for Fiscal Years FY 2017 and 2018.

- d. The Service Provider shall comply with all applicable requirements of Grant Agreement Numbers EMW-2017-PU-00651 and EMW-2018-PU-00247, on file in the Office of the District Clerk as Document Numbers 67404 and 69143, all Federal laws, executive orders, regulations and policies governing this program.
7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
- a. **Duty to Indemnify, duty to defend and hold harmless.** Provided that the District promptly notifies Service Provider in writing of the Claim and allows Service Provider to control, and cooperates with Service Provider in, the defense of and any related settlement negotiations, the 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') or expense for, including but not limited to, damage to tangible personal property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to willful misconduct or gross negligence in the performance of services by Service Provider or its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. RESERVED

10. INSURANCE REQUIREMENTS

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds, which may be satisfied by a blanket additional insured endorsement.
- (b) 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") for claims related to Service Provider's sole negligence.
- (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 three (3) 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 three-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 standard accord form 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 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, Service Provider must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of

insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.

- d. Furnishing insurance specified herein by the District will in no way relieve, limit or increase 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. If there is a claim and there is a coverage dispute District shall reserve the right to obtain complete copies of the relevant insurance policies.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.
14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at

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

Service Provider may use data, software, designs, utilities, tools, models, and other methodologies and know-how that Service Provider either owns or licenses ("Preexisting Materials") in connection with performing the services. Service Provider retains all intellectual property rights in the Preexisting Materials (including any improvements or knowledge developed while performing the services) and in any working papers compiled in connection with the services.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

Service Provider may terminate this Agreement and all rights, duties and obligations

hereto if the Service Provider believes, in good faith, that its professional obligations or requirements related to independence and conflicts matters, promulgated by entities having regulatory authority over it, including, but not limited to, the AICPA, SEC, PCAOB and GAO, require termination. In the event of termination for such reasons, Service Provider shall provide the District with information on the grounds for such termination, subject to any confidentiality restrictions.

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 resolve the dispute through mediation and arbitration in accordance with the procedures set forth in Exhibit C. Resolution by mediation and arbitration is required for all disputes except for disputes seeking solely injunctive relief.

b. RESERVED

c. RESERVED

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

expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

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

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

- A. The District may not recover from Service Provider, in contract or tort, under statute or otherwise, any consequential, incidental, punitive, or special damages in connection with claims arising out of this Agreement or otherwise relating to the services performed by Service Provider, including any amount for loss of profit, data, or goodwill, whether or not the likelihood of such loss or damages was contemplated.
- B. The District may not recover from Service Provider, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid for the services that directly caused the loss in connection with claims arising out of this Agreement or otherwise relating to the services performed by Service Provider. This limitation will not apply to losses caused by Service Provider's fraud or intentional misconduct or to the extent prohibited by applicable law.
- C. The District may not make a claim or bring proceedings related to the services performed by Service Provider or otherwise under this Agreement against: a) any other firm within the Ernst & Young global network other than Service Provider ("EY Member Firms"); and b) any subcontractors, members, shareholders, directors, officers, partners, principals or employees of Service Provider or any other EY Member Firm (collectively, "EY Persons"). The District shall make any claim or bring any proceedings solely against Service Provider. These provisions are intended to benefit the EY Member Firms and all EY Persons, who shall be entitled to enforce them.
24. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.

- a. Submit all correspondence regarding this Agreement to:

Matthew Brown
 Homeland Security Program Mgr.
 San Diego Harbor Police Dept.
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 Tel. 619-725-6025
 Email: mstainbrook@portofsandiego.org

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

Ernst & Young LLP
2323 Victory Avenue,
Suite 2000
Dallas, TX 75219
Tel. 214 969 8839
Email: Allen.Melton@ey.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

Ernst & Young LLP

Mark G. Stainbrook
Vice President, Public Safety

Allen Melton
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

A. Background

The Port of San Diego (POSD) is a regional economic powerhouse, designated by the U.S. Department of Defense as a “strategic port”. Given its Southern California geographic location, the Port faces natural and manmade threats that few if any other U.S. ports face. From its tourist-friendly open atmosphere with large public gathering spaces (parks, hotels, restaurants, tourist attractions, etc.), one of the largest military footprints in the world, major commercial/industry, international airport, rail, and proximity to the international border (which directly increases trafficking and smuggling in/around the port), the Port must coordinate with an extensive number of stakeholders as part of the regional ‘preparedness, response and recovery, system’ [or the Port’s whole community”]. The San Diego Unified Port District (SDUPD or District) plays a critical role in the response and recovery to an emergency incident in the Port of San Diego, and its effectiveness in doing so directly impacts the regional economy. As the local jurisdictional authority for the Tidelands, the District plays a vital role in leading and facilitating among stakeholders to enhance the preparedness, response, and recovery capabilities of the Port.

The hallmark of a resilient port includes the ability to recover quickly, restore commerce and confidence, and continue to serve as the economic engine for the region. In Fiscal Years 2016, 2017 and 2018, the SDUPD applied for and received Federal Port Security Grant Funding (PSGP) to continue its emergency preparedness efforts to enhance its multi-agency/multi-jurisdictional coordination communication and planning. The Scope of Services identified here addresses the need to continue the Port’s efforts towards building the foundation the port region requires for recovery and resumption of business and trade, and ensuring the region regains its ability to deliver as the economic driver for the region.

To further support development of the Port’s emergency management capabilities, EY will provide the items listed below in the Scope of Services in the following three phases: (1) Development of a Financial Disaster Recovery Plan/Manual (FDRP) for POSD; (2) Incorporation of insurance components into the Plan/Manual; and (3) Finalize the Long-Term Recovery Plan/Resumption of Trade Plan. The Scope of Services and related Compensation & Invoicing relates to the awarded 2017 and 2018 PSGP.

B. Scope of Services

The financial toll of disasters to a region is significant, as experienced following events such as Hurricanes Harvey, Irma and Maria, Superstorm Sandy, the California wildfires and mudflow/debris flow, earthquakes, terrorist events, etc. Resumption of trade is critical to the economic vitality for the District, bringing people back to work,

retaining businesses (small, medium and large), etc., management of the financial component of a disaster is perhaps the most important part of recovery. This scope outlines EY's support to be provided in the development of financial disaster recovery, long term recovery and resumption of trade strategies and plans.

1. Phase 1: Development of a Financial Disaster Recovery Plan/Manual (FDRP) for POSD.

- a. Host a meeting to brief Port stakeholders on the distinctions between a Financial Disaster Recovery Plan and Long-Term Recovery Plan (LTRP). This meeting is to include the District's Departments of Finance, Risk and Safety, Procurement, Emergency Management, Real Estate and the Offices of General Counsel, Office of the District Clerk; ultimately, becoming the core planning team (or internal committee) informing the development of a FDRP/manual. This includes:
 - i. Assisting the District in the development of the necessary invitations, meeting packets and materials, presentations, sign-ins, meeting minutes, etc. to facilitate the up to four (4) plan development meetings;
 - ii. Assist the District with the scheduling and conduct of a subsequent meeting to include the Resiliency Working Group's Task Force for LTRP, and member cities' Economic Development Department personnel and their respective Emergency Managers, as necessary. During these discussions, EY will assist the District with the dissemination of information and available information to private sector businesses and SDUPD members on resources following disasters, such as Small Business Administration Loans.
 - iii. Assist the District with conducting a scenario based facilitated discussion on the current state of plan/manual development to inform stakeholders of the plan itself, further test knowledge of planning requirements and generate discussion about the planning needs. This facilitated discussion is anticipated to be a four (4) hour workshop for the SDUPD on its FDRP to include plan training.

2. Phase 2: To incorporate insurance components into the plan, EY will conduct the following activities, as it relates to the District's property as well as cyber insurance policy (if applicable):

- a. Gap Analysis
 - i. Review District insurance policies noted above to understand adequacies of coverages in place and potential gaps when reconciling with potential FEMA Public Assistance proceeds with estimated project costs to get the most out of the funding sources available.
 - ii. Review of the SDUPD's assets and associated values.
 - iii. Review District's previously sustained damages and claims to understand vulnerabilities with previous disasters, when or if FEMA assistance has been previously provided, and if so, whether or not the entity carries insurance as FEMA regulations require.
- b. Business Interruption Value Analysis

- i. Perform an analysis of the SDUPD's business interruption values to assist the Port in its identification of insurance gaps and requirements. As the plan development matures, conduct a facilitated discussion with the LTRP core team and additional District parties to validate planning assumptions.
- c. Simultaneously, the foundations for LTRP planning as identified in Steps 1-10 will be ongoing and incorporated into various meetings and planning sessions of the FDRP. EY will assist the District with facilitating and moderating the LTRP process and schedule quarterly discussions of the Task Force as stood up with the Port's Resiliency Working Group. This process will begin to formulate the development of the LTRP. During the following 10 step process, EY will assist the District with:
 - i. Assisting in the assessment of the need for a long-term recovery plan
 - ii. Supporting the District in choosing a leader to guide the long-term recovery planning process
 - iii. Working with the RWG as the District obtains outside support to better build the recovery planning team
 - iv. Supporting the District's efforts to create a public information campaign to keep the community informed
 - v. Providing assistance to reach a consensus on the draft Plan, and facilitate discussions and information sharing to support the Port in obtaining buy-in from the community
 - vi. Provide support to the Port in identifying any potential issues
 - vii. Assist with the Port's communication of vision and begin setting goals
 - viii. Helping the District with the identification, evaluation and prioritizing of projects
 - ix. Outlining and drafting a recovery plan
 - x. Assisting with a scenario based workshop and discussion

3. Phase 3: Finalizing the Long-Term Recovery Plan/Resumption of Trade Plan to include:

- a. As a continuation of the ten (10) step process in Phase 2, EY will assist the District with the facilitation of the LTRP efforts outlined in t Steps 11-13 of the LTRP, to include:
 - i. Assist the District in identifying project champions to lead each of the projects
 - ii. Support the District with developing a funding strategy to fund the projects
 - iii. Aid the District as it implements and updates the plan, as needed.
- b. Provide assistance to the District in the Planning Phase for Business Interruption Value Analysis with the following activities:
- c. Assist in the development of Post Disaster Exposure Scenario Analysis
- d. Support the District in the development of a Port-wide LTRP Planning Workshop

- e. Assisting with Policy language alignment with contingency risk and contingency loss analysis
- f. Assist the Port in the formation of POSD claim team(s)
- g. Finalizing the drafting of the LTRP in support of the District's efforts.
- h. Providing support to the Port in its raining and exercises to be conducted, dependent upon plan completion and the planning team's determination of need to further test the District's knowledge and command of the plan. This includes, on behalf of the District's lead, providing support with the following activities:
 - i. Assist in the development of a workshop for the District's on its FDRP to include plan training. The design, conduct, and evaluation processes for the workshop will be conducted with the District's lead, as follows:
 - 1. Support the District in identifying and scheduling the planning team meetings
 - 2. Provide assistance with developing invitations, meeting packets/materials, multi-media presentation, sign-ins, meeting minutes, etc. and facilitate the following exercise planning meetings:
 - a. Concept & Objectives/Initial Planning Meeting
 - b. Mid-Planning Meeting, and develop a Master Scenario Events List (if needed)
 - c. Final Planning Meeting
 - 3. As directed by the District, develop training workshop materials inclusive of:
 - a. Discussion-based scenario(s)
 - b. Participant Handbook/Situation Manual (SITMAN)
 - c. Facilitator/Controller/Evaluator Handbook/Manual
 - d. Participant and Evaluator Evaluations
 - e. PowerPoint/multi-media presentation
 - 4. Support the District in workshop logistics, as mutually agreed. Logistical support which may include:
 - a. Providing printed exercise materials
 - b. Procuring acceptable venues, refreshments, audio-visual technology, badges, and other supplies/equipment, as necessary and mutually agreed
 - c. Assist and support the invitation process and track participant registration, includes printing of appropriate badges for participants, observers and controller/facilitators
 - ii. Structure the workshop to include facilitation, and to provide controllers/facilitators/evaluators as required for successful conduct and in support of the Exercise Planning Team. The workshop will include set-up, tear-down, and necessary controller/facilitator/evaluator briefings.
 - iii. Facilitate the After-Action Reporting Process as follows:

1. Draft the Seminar Report (Seminar/Workshop) or After-Action Report ([AAR], Tabletop/Functional Exercise)
2. Conduct the After-Action Conference (as determined by the EPT)
3. Develop the Improvement Plan and finalize the AAR (as applicable)

ATTACHMENT B COMPENSATION & INVOICING

San Diego Unified Port District

A. Compensation

1. Services will be billed in accordance with the following Rate/Fee Schedule on a Time and Materials (T&M) or Fixed Fee Basis, based on the following established progress deliverables/milestones. Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted for services performed. Task Authorizations shall be Fixed Fee or Time and Materials (T&M) or a combination of the two.

| Item # | Deliverables | Compensation |
|--------|--|------------------|
| 1 | Financial Disaster Recovery Plan Development | \$100,000 |
| 1a | Convene meeting of FDRP group to include all preparatory work and follow up | \$10,000 |
| 1b | Drafting of report to include review and discussions with FDRP group | \$44,000 |
| 1c | Convene second meeting to review FRRP | \$10,000 |
| 1d | Finalize Report | \$10,000 |
| 1e | Conduct a facilitated discussion to train towards the FDRP to include follow up and after actions | \$26,000 |
| 2 | Insurance Planning and review | \$131,106 |
| 2a | Gap analysis | \$40,000 |
| 2b | Asset and associated values review | \$30,000 |
| 2c | Prior damages and claims review | \$15,000 |
| 2d | Business interruption value analysis | \$20,000 |
| 2e | Incorporate initial Steps 1-10 of LTRP into meetings and plans included in items 1 (a-e) and 2 (a-c) | \$26,106 |
| 3 | Develop a Long-Term Recovery/Resumption of Trade plan for the SDUPD | |
| 3a | Hold up to (4) meetings of the RWG to conduct planning and coordination in writing the LTR plan, to include- | |
| 3b | Continuation of Steps 1-10 of the LTRP and now move into Steps 11-13 | |
| 3c | Finalize plan drafting | |
| 3d | Workshop planning for Training and or Exercise | |
| 3e | Workshop conduct | |
| 3f | Workshop after action | |
| | | |
| | | |
| | Total Services: | \$231,106 |
| | | |
| | | |

| Item # | Deliverables | Compensation | Page 27 of 33 B |
|--------|--|------------------|-----------------|
| | REIMBURSABLE EXPENSES (Not-to-Exceed) Meeting Supplies and Materials, Travel Expenses, Logistics for Meeting Support; Port to provide meeting space. | \$31,535 | |
| | Total Reimbursable Expenses: | \$31,535 | |
| | TOTAL AGREEMENT AMOUNT | \$262,641 | |

- a. Professional services invoiced based on Time & Materials (T&M) shall be billed in accordance with the following Rate Schedules:

| Classification | Fully Burdened Hourly Billing Rate |
|--------------------|------------------------------------|
| 1. Project Manager | \$ 279 |
| 2. Analyst I | \$ 186 |
| 3. Analyst II | \$ 253 |
| 4. SMR I | \$ 220 |

- i. 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.
- ii. 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.

All other terms, covenants, and conditions in the original Agreement shall remain in full force and effect and shall be applicable to this Amendment.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District



(DEPARTMENT NAME)

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

(619) 686-____

Fax (619) 686-____

TASK AUTHORIZATION NO. _

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

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

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

TASK DESCRIPTION

| | | |
|----|-------------|--|
| 1. | Requestor: | |
| | | |
| 7. | Task Title: | |

8. Scope of Services.

9. Contractor Staffing (If applicable)

| Name | Classification | Hours |
|------|-------------------------------------|-------|
| | Staff as needed per Agreement rates | |
| | | |

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

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

APPROVALS**Service Provider:**

Signature: _____

Name: _____

Title: _____

Firm: _____

Date: _____

Manager:

Signature: _____

Name: _____

Title: Manager

Project Manager:

Signature: _____

Name: _____

Title: Project Manager

Date: _____

Director:

Signature: _____

Name: _____

Title: Director

Date: _____

EXHIBIT B

CERTIFICATE OF INSURANCE

San Diego Unified Port District

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

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

Return this form to: **San Diego Unified Port District**
c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
Email: 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 |
| | Commercial General Liability Retro Date _____ Deductible/SIR: \$ _____ | | Expiration Date: _____ | \$ _____ General Aggregate: \$ _____ |
| | Commercial Automobile Liability | | 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 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") for claims related to Service Provider's sole negligence.
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: portofsandiego@ebix.com
 Fax: 1-866-866-6516

Dispute Resolution Procedures

Mediation

A party shall submit a dispute to mediation by written notice to the other party or parties. The mediator shall be selected by the parties. If the parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution ("CPR") shall designate a mediator at the request of a party. Any mediator must be acceptable to all parties and must confirm in writing that he or she is not and will not become during the term of the mediation, an employee, partner, executive officer, director, or substantial equity owner of any EY audit client.

The mediator shall conduct the mediation as he/she determines, with the agreement of the parties. The parties shall discuss their differences in good faith and attempt, with the mediator's assistance, to reach an amicable resolution of the dispute. The mediation shall be treated as a settlement discussion and shall therefore be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. The mediation proceedings shall not be recorded or transcribed.

Each party shall bear its own costs in the mediation. The parties shall share equally the fees and expenses of the mediator.

If the parties have not resolved a dispute within 90 days after written notice beginning mediation (or a longer period, if the parties agree to extend the mediation), the mediation shall terminate, and the dispute shall be settled by arbitration. In addition, if a party initiates litigation, arbitration, or other binding dispute resolution process without initiating mediation, or before the mediation process has terminated, an opposing party may deem the mediation requirement to have been waived and may proceed with arbitration.

Arbitration

The arbitration will be conducted in accordance with the procedures in this document and the CPR Rules for Non-Administered Arbitration ("Rules") as in effect on the date of the Agreement, or such other rules and procedures as the parties may agree. In the event of a conflict, the provisions of this document will control.

The arbitration will be conducted before a panel of three arbitrators, to be selected in accordance with the screened selection process provided in the Rules. Any issue concerning the extent to which any dispute is subject to arbitration, or concerning the applicability, interpretation, or enforceability of any of these procedures, shall be governed by the Federal Arbitration Act and resolved by the arbitrators. No potential arbitrator may be appointed unless he or she has agreed in writing to these procedures and has confirmed in writing that he or she is not, and will not become during the term of the arbitration, an employee, partner, executive officer, director, or substantial equity owner of any EY audit client.

The arbitration panel shall have no power to award non-monetary or equitable relief of any sort or to make an award or impose a remedy that (i) is inconsistent with the agreement to which these procedures are attached or any other agreement relevant to the dispute, or (ii) could not be made or imposed by a court deciding the matter in the same jurisdiction. In deciding the dispute, the arbitration panel shall apply the limitations period that would be applied by a court deciding the matter in the same jurisdiction and shall have no power to decide the dispute in any manner not consistent with such limitations period.

Discovery shall be permitted in connection with the arbitration only to the extent, if any, expressly authorized by the arbitration panel upon a showing of substantial need by the party seeking discovery.

All aspects of the arbitration shall be treated as confidential. The parties and the arbitration panel may disclose the existence, content or results of the arbitration only in accordance with the Rules or applicable professional standards. Before making any such disclosure, a party shall give written notice to all other parties and shall afford them a reasonable opportunity to protect their interests, except to the extent such disclosure is necessary to comply with applicable law, regulatory requirements or professional standards.

The result of the arbitration shall be binding on the parties, and judgment on the arbitration award may be entered in any court having jurisdiction.