

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
CIVILIAN, INC.
AS-NEEDED MEDIA RESEARCH, BUYING & ANALYSIS
CONSULTING SERVICES
AGREEMENT NO. 61-2019SN**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and CIVILIAN, INC., a California Corporation (Service Provider).

The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall provide services 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.

- a. **As-Needed Services**

- (1) Service Provider is aware and agrees that the services to be provided under this Agreement are on an as-needed basis as determined by the District, in its sole and absolute discretion. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a Task Authorization (TA) has been signed by the District Representative and a notice to proceed has been provided to the Service Provider, accompanied by the executed TA. Service Provider is aware and agrees that the services may be necessary for a third-party applicant's project and that a separate three-party agreement between Service Provider, District and the applicant will be required under said circumstances.
- (2) Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A: Scope of

Services as requested by District by issuance of specific Task Authorization and agreed to by Service Provider.

- (3) Services rendered under this Agreement shall be undertaken by Service Provider only upon issuance of a TA for said services, in the format or substantially similar format to the sample TA form in the attached Exhibit A, attached hereto and incorporated herein. A TA shall not be considered effective until the TA has been signed by the District's designated representative and a written notice to proceed has been provided to the Service Provider, accompanied by the executed TA.

2. **TERM OF AGREEMENT.** This Agreement shall commence on June 1, 2019 and shall terminate on May 31, 2024, 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 aggregate amount under this Agreement with Service Provider and Agreements with companies listed in Table 1, Parties to Aggregate Agreements, below, shall not exceed \$600,000.

Agreement No.	Party to Agreement	District Clerk Document No.
59-2019SN	Spark Branding House, Inc. dba Spark	
60-2019SN	Ark Marketing and Media Solutions, Inc.	
61-2019SN	Civilian, Inc.	

Table 1 – Parties to Aggregate Agreements

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 an individual TA or the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.

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

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District at all reasonable times in the City of San Diego.
- b. Such records shall be maintained by Service Provider for the latter of a period of three (3) years after completion of services to be performed under this Agreement, a period of three (3) years after termination of this

Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

- 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) business 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 or a three-party agreement, if applicable, until such documents are provided.

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

- a. It may be necessary for Service Provider to sub-contract with third-parties (Sub-Service Providers) for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's Sub-Service Providers shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's Sub-Service Providers. Service Provider shall compensate each Service Provider's Sub-Service Providers in the time periods required by law. Any Service Provider's Sub-Service Providers employed by Service Provider shall be independent Service

Providers and not agents of District. Service Provider shall insure that Service Provider's Sub-Service Providers satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

- b. Listed below are the firms that the District has approved as Service Provider's sub-contractors to provide services under this Agreement:

<u>NAME OF FIRM</u>	<u>TYPE OF SERVICES PROVIDED</u>
Kate L. Parberry dba Site Insite Media	Media Buying

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

6. COMPLIANCE

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

provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.

- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.
7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations in its expertise area, independent of the District; provided, however, Service Provider shall possess no authority with respect to any District decision or discretion and agrees that the District may request revisions to the work and the District has the ultimate control regarding decisions and how the work will be used.
8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District, which may be withheld in the District's sole and absolute discretion, in each instance.
9. **INDEMNIFY, DEFEND, HOLD HARMLESS**
 - a. **Duty to Indemnify, duty to defend and hold harmless.** The parties acknowledge and agree that this Agreement is not a construction contract. To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, (collectively, Claim), caused by, arising out of, or related to the performance of services by Service Provider as provided

for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars

(\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
 - (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.
 - (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- (3) Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof.

Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.

- (4) Professional Liability insurance in the amount of \$1,000,000 per claim and \$1,000,000 aggregate.

- (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) years, in an amount no less than the amount required pursuant to this Agreement.

- (b) Alternately, if the existing Professional Liability is terminated during the above referenced five-year period, Consultant shall maintain at its own expense, "tail" coverage in the same minimum amount as set forth in this paragraph.

- (c) All coverages under this section shall be effective as of the effective date of this Agreement or provide for a retroactive date of placement that coincides with the effective date of this Agreement.

- (5) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.

- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of

Insurance is attached as Exhibit B and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.

- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the Commercial General Liability coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services, work 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 Sub-Service Providers.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any Sub-Service Providers and their respective agent(s) or employee(s) shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Sub-Service Providers' or 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 and Sub-Service Providers shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by legal 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 legal 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. **REPRESENTATIONS BY THE DISTRICT.** The Service Provider shall not rely on any oral representations by the District and any written representation relied on by the Service Provider must be written and transmitted to the Service Provider by a District employee having authority to do so and in certain cases, such written representations may only be provided by the direction of the Board of Port Commissioners
17. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

18. **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.
19. **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-Service Provider 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.

- 20. **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.

21. **COMPLIANCE WITH PREVAILING WAGE LAWS**

- 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. If Service Provider decides that PWL applies, Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.

- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On

identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.

- (2) The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.
- (3) In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. 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.

22. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM**

- a. This Section 22 applies if required by local, State or federal law.
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.

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

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:

Revekka Balancier, Marketing Manager
Marketing & Communications
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
619-686-6232
Email: rbalancier@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:

Stacey Nelson Smith
Founder and CEO
Civilian, Inc.
2468 Historic Decatur Road, Suite 250
San Diego, CA 92106
619-787-0889
Email: stacey@civilian.agency


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

SAN DIEGO UNIFIED PORT DISTRICT

CIVILIAN, INC.

Jenifer Barsell
Director, Marketing & Communications



Stacey Nelson Smith
Founder & CEO

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

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

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

1. **SCOPE OF SERVICES.** Service Provider shall augment the work of District's in-house team on an as-needed basis, by providing a combination of strategic media buying support services including but not limited to media research; recommendations and refinement; media buying, execution and trafficking; and media buy tracking, analysis and adjustment based on outcomes. Media mix shall be developed to effectively reach the target audience in support of various marketing, communications, branding and outreach campaigns as outlined in the following tasks:

- a. **Task 1. Develop Strategic Marketing & Media Plans**

Create integrated marketing and media plans with multiple touch points to maximize message impact with the target audience by achieving optimal reach and frequency within provided budget. Utilize a comprehensive list of media options to create a media plan with gross impressions and cost-per-mille (CPM) clearly identified, with value-added promotional opportunities included in the plan. Provide recommendations and rationale for media mix and budget breakdown.

- 1) **Broadcast Media**

- a) **Television** - Research television advertising opportunities; provide recommendations for final media buy based on most current rankings against target audience. Media plans shall include total number of spots per spot length, gross rating points achieved, cumulative audience, total reach, frequency, and household impressions.
- b) **Radio** - Research radio advertising opportunities; provide recommendations for final media buy based on most current rankings against target audience. Media plans shall include total number of spots, gross rating points achieved, cumulative audience, total reach, frequency, and gross impressions.

- 2) **Digital**

- a) **Connected TV/OTT** – Research streaming video advertising opportunities; provide recommendations for final media buy based on geographic, demographic and psychographic filters against campaign target audience. Media plans shall include estimated views, reach and gross impressions.
- b) **Geo-Fencing** – Research geo-fencing mobile app advertising opportunities; provide recommendations for final media buy based on geographic, demographic and psychographic filters against campaign target audience. Media plans shall include estimated reach and gross impressions.

- c) **Online Distribution** – Research media website and/or app network advertising opportunities as part of media buys or as stand-alone buys; provide recommendations for final media buy based on demographic filters and keyword based SEO/SEM against campaign target audience. Media plans shall include estimated reach, average click-through-rate and gross impressions.
 - d) **Google Ad Suite** – Research google advertising opportunities; provide recommendations for final media buy based on demographic and geographic filters and keyword based SEO/SEM against campaign target audience. Media plans shall include estimated reach, average click-through-rate and gross impressions.
- 3) **Direct Marketing**
- a) **Digital Banner Ads in E-Newsletters** – Research e-newsletter advertising opportunities; provide recommendations for final media buy based on geographic and demographic filters against campaign target audience. Media plans shall include newsletter subscribers, average open rate, average click-through-rate and gross impressions.
 - b) **Dedicated E-Blasts** – Research custom e-blast advertising opportunities; provide recommendations for final media buy based on geographic, demographic and psychographic filters against campaign target audience. Media plans shall include e-blast audience numbers, average open rate, average click-through-rate and estimated gross impressions.
 - c) **Direct Mail/Mailers** – Research direct mail/unique mailer opportunities; provide recommendations for final marketing plan based on geographic, demographic and psychographic targeting, and creative opportunities to reach audience based on campaign alignment.
 - d) **Event Opportunities** – Research event participation opportunities; provide recommendations for final marketing plan based on geographic, demographic and psychographic targeting, and creative opportunities to reach audience based on campaign alignment.
- 4) **Out-Of-Home**
- a) **Transit Shelters** – Research out-of-home advertising opportunities, concentrating on transit shelters, including bus shelter cases and bicycle docking station kiosks; provide recommendations for final geographic and demographic targeting to reach audience based on campaign alignment.
 - b) **Display Opportunities** – Research alternative out-of-home display advertising opportunities, particularly event based or high-traffic opportunities, including, but not limited to, kiosks, wraps, sponsorships and other unique out-of-home display; provide recommendations for final geographic and

demographic targeting to reach audience based on campaign alignment.

5) **Social Media**

- a) **Facebook PPC** – Research Facebook advertising opportunities; provide recommendations for final media buy based on demographic, geographic, behavioral, and interest filters against campaign target audience. Media plans shall include estimated reach, estimated clicks, estimated cost-per-click and gross impressions.
- b) **LinkedIn PPC** - Research Linked-In advertising opportunities; provide recommendations for final media buy based on demographic, geographic, behavioral, and interest filters against campaign target audience. Media plans shall include estimated reach, estimated clicks, estimated cost-per-click and gross impressions.
- c) **YouTube PPC** - Research YouTube advertising opportunities; provide recommendations for final media buy based on demographic, geographic, and programmatic filters against campaign target audience. Media plans shall include estimated reach, estimated completed views, and gross impressions.

6) **Print**

- a) **Newspaper and Magazines** – Research newspaper and print advertising opportunities; provide recommendations for final media buy based on geographic, demographic and psychographic make-up of audited circulation and readership against campaign target audience. Media plans shall include recommended size, rationale and estimated gross impressions.
- b) **Specialty Publications** - Research specialty publications including trade magazines, special issues, annual directories, special event distributions and other similar advertising opportunities; provide recommendations for final media buy based on geographic, demographic and psychographic make-up of audited circulation and readership against campaign target audience. Media plans shall include recommended size, rationale and estimated gross impressions.

b. **Task 2: Media Buying & Execution**

Implement integrated marketing and media plans created in Task 1 in close coordination with the District.

- 1) **Placement** – Place all media buys based on the elements of the approved plans beginning with rate negotiation and securing added-value promotions based on the District's strategic priorities. Request insertion orders, contracts or placement agreements as required by each media outlet, coordinate with the District to secure all necessary signatures and Task Authorizations (TA).

- 2) **Deliverables Coordination w/ Production Team** – Provide District production team with comprehensive information needed to produce all media deliverables including deadlines, specs, and delivery instructions. Integrate completely with District's in-house workflow using online project management system.
- 3) **Trafficking** – Provide media with final produced assets, confirm delivery and receipt of all assets for each media partner with the District, secure invoices for all placed media, including broadcast audits where applicable, check all invoices and/or audits against original proposals and insertion orders, negotiate make-goods, credits, discounts or other opportunities as needed for all media not run as placed or proposed, and provide the District with final invoices for payment.

c. **Task 3: Media Campaign Analysis**

Analyze all placed media campaign's performance with regards to media partner's performance, budget performance/cost efficiency, under and over delivery of audience, gross impressions vs. website traffic, and overall campaign performance, and make recommendations for improvement of future campaigns.

- 1) **Broadcast Analysis** to include spot dates, times, programs, total # of spots, GRPs, estimated vs. actual gross impressions and CPM.
- 2) **Digital Analysis** to include dates, platforms, specific creative, frequency, total # of clicks, click-through-rate, estimated vs actual gross impressions and CPM.
- 3) **Direct Marketing Analysis** to include dates, platform, specific creative, # of subscribers, total opens, open rate, total # of clicks, click-through-rate, estimated vs. actual gross impressions and CPM.
- 4) **Out-of-Home Analysis** to include posted dates, estimated traffic, estimated vs actual gross impressions and CPM.
- 5) **Social Media Analysis** to include dates, platform, # of followers on platform, total number of campaign posts, combined reach, combined clicks, combined engagement, click-through-rate, estimated vs. actual gross impressions and CPM.
- 6) **Print Analysis** to include run dates, sizes, audited circulation, readership and CPM.

d. **Task 4: Media Landscape Research & Analysis**

Consult with the District on an as-needed basis for non-campaign specific media buying strategies, research and landscape analysis to provide overall broadcast media rankers, new media trends, performance and recommendations for incorporation into media strategies, or landscape research for specific industries.

- 1) **Local/Regional Media** – Provide overall audit of local media landscape in any of the areas listed above, which may include but is not limited to, rankers, reputation, and audience insights.

- 2) **National/International Media** – Research broader media landscape in specific focus areas such as tourism, within any of the areas listed above, to provide the District with recommendations on focus areas, audience usage trends, new opportunities for reaching desired audiences.
- 3) **Industry Specific Media** - Provide overview of trade or industry specific marketing opportunities, regional and trade specific publications, trade specific conferences, and digital, direct or other advertising opportunities within a specialty target audience, industry or subject area. Examples include but are not limited to the District's five sub-brands - Maritime (cargo, industrial), Waterfront Development (real estate development, blue tech), Public Safety (law enforcement, homeland security), Experiences (travel, tourism and hospitality) and Environment (pollution prevention, water quality, sustainability).

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

1. COMPENSATION

- a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.
- (1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Task Authorizations (individually, TA) shall be Lump Sum, Fixed Fee, or Time and Materials or any combination of all three.
- (a) Each invoice for Lump Sum work shall include:
- Date work performed;
Description of the work performed;
Direct Costs.
- (b) Each invoice for Fixed Fee work shall include:
- Date work performed;
Description of the work performed;
Percent of total work being invoiced;
Percent of total work completed;
Direct Costs.
- (c) Each invoice for Time and Materials work shall include:
- Date work performed;
Description of the work performed;
Hours worked by personnel classification;
Rate per personnel classification;
Total personnel cost by classification; and
Direct Costs.
- (2) Professional services invoiced on a Time and Materials basis shall be in accordance with the following Rate Schedule:

	LABOR CLASSIFICATION	FULLY-BURDENED HOURLY BILLING RATE
1	Director of Media Services	\$175.00
2	Senior Media Strategist	\$150.00
3	Media Coordinator	\$95.00

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

b. Reimbursable Expenses

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

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

2. INVOICING

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.
- b. Service Provider shall include the following information on each invoice submitted for payment by District, in addition to the information required in Section I, above:
- (1) Agreement No. 61-2019SN
 - (2) The TA(s) number(s) being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."

- (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be emailed to the attention of Revekka Balancier, Marketing and Communications, Port of San Diego, P.O. Box 120488, San Diego, California, 92112.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT A
TASK AUTHORIZATION FORM
San Diego Unified Port District



(DEPARTMENT NAME)

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

(619) 686-____

Fax (619) 725-____

TASK AUTHORIZATION NO. _

(Date)

(Name)

(Title)

(Name of Company)

(Address)

(City, State, Zip)

Email:

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

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

TASK DESCRIPTION

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

Project Manager:

Signature: _____

Name: _____

Title: Project Manager

Date: _____

Manager:

Signature: _____

Name: _____

Title: Manager

Date: _____

Director:

Signature: _____

Name: _____

Title: Director

Date: _____

EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

Return this form to:

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