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**AMENDMENT NO. 2 TO AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
EXCELERATE, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Amendment No. 2 to Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and EXCELERATE, LLC, a California Limited Liability Corporation (Service Provider).

Recitals:

District and Service Provider are parties to an Agreement for As Needed Project Management Office (PMO) Services. The agreement is on file in the Office of the District Clerk as Document No. 62695 dated December 18, 2014, as amended by Assignment and Assumption Agreement between ACME BUSINESS CONSULTING, LLC and EXCELERATE, LLC, Document No. 65787 dated November 14, 2016, and by Amendment No. 1, Document No. 65872 dated December 13, 2016. It is now proposed to increase the aggregate amount of Agreement with Service Provider and Agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and Agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62696, collectively by an amount of \$1,080,000.00 from a total of \$1,200,000.00 to \$2,280,000.00.

The Parties Agree:

1. Section 3.a., **Maximum Expenditure**, shall be deleted in its entirety and replaced with the following:
 - a. **Maximum Expenditure**. The aggregate amount of Agreement with Service Provider and Agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and Agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62696, collectively shall not

exceed \$1,980,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above Agreements shall not exceed \$2,280,000.00.

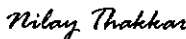
2. All other terms, covenants, and conditions in the original Agreement shall remain in full force and effect and shall be applicable to this Amendment.

SAN DIEGO UNIFIED PORT DISTRICT

EXCELERATE, LLC



Keith Coffey
Chief Technology Officer



Nilay Thakkar
President

Approved as to form and legality:
GENERAL COUNSEL



By: Assistant/Deputy

A manually signed copy of this Amendment 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 Amendment.

The Amendment with Matisia, Inc. was not executed, which resulted in the termination of their agreement with the District (Termination Letter dated 02/27/18, Clerk's Document No. 62694).

RESOLUTION 2018-016

RESOLUTION AUTHORIZING AMENDMENTS TO INCREASE THE COMBINED AMOUNT OF THE AS-NEEDED AGREEMENTS BY \$1,080,000 WITH MATISIA INC., ACME BUSINESS CONSULTING, LLC. (ASSIGNED AND ASSUMED BY EXCELERATE LLC.), AND AGILIS GROUP INC. FOR PROJECT MANAGEMENT OFFICE SERVICES, INCREASING THE AGGREGATE TOTAL FROM \$1,200,000 TO \$2,280,000 THROUGH NOVEMBER 4, 2019

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I; and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials and equipment, and grants; and

WHEREAS, on November 4, 2014, following a competitive bidding process, the BPC authorized a master services agreement between the District and three information technology consulting firms: Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. (which has been formally assigned and assumed by Excelerate LLC) for as-needed information technology "Project Management Office Services" (Master Agreement); and

WHEREAS, the District selected these firms based upon interviews of responsive bidders to Request for Qualifications number 14-27; and

WHEREAS, under the Master Agreement, the selected firms provide a complete range of professional consulting services to support the Information Technology department's project efforts to support District's staff with key expertise and additional resources; and

WHEREAS, the District used the Master Agreement to help staff execute many of the projects identified in a 5-year technology strategic plan, which sought to create more transparency with the public, modernize its physical and virtual infrastructure, augment District security systems, and create operational efficiencies; and

WHEREAS, almost two years remain in the agreement and existing funds are nearly exhausted;

WHEREAS, funds for the first year of this expenditure are budgeted for in the FY 17/18 Information Technology Professional Services account; and

2018-016

WHEREAS, this amendment adding \$1,080,000 to the agreement will allow the District to complete priority information technology projects; and

WHEREAS, BPC authorization of this agenda will increase the total agreement capacity by \$1,080,000 for a new, not-to-exceed total of \$2,280,000 for Project Management Office Services.

NOW THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director and/or her designated representative is hereby authorized on behalf of the District to enter into Amendments to increase the combined amount of the as-needed agreements by \$1,080,000 with Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. (which has been formally assigned and assumed by Excelerate LLC) for Project Management Office Services, increasing the aggregate total from \$1,200,000 to \$2,280,000 through November 4, 2019.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of January 2018, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.


EXCUSED: Zucchet

ABSENT: None.

ABSTAIN: None.


 Rafael Castellanos, Chairman
 Board of Port Commissioners

ATTEST:


 Donna Morales
 District Clerk

(Seal)



San Diego Unified Port District

3165 Pacific Hwy.
San Diego, CA 92101

Item No. 16

File #:2017-0597

DATE: January 9, 2018

SUBJECT:

RESOLUTION AUTHORIZING AMENDMENTS TO INCREASE THE COMBINED AMOUNT OF THE AS-NEEDED AGREEMENTS BY \$1,080,000 WITH MATISIA INC., ACME BUSINESS CONSULTING, LLC. (ASSIGNED AND ASSUMED BY EXCELERATE LLC.), AND AGILIS GROUP INC. FOR PROJECT MANAGEMENT OFFICE SERVICES, INCREASING THE AGGREGATE TOTAL FROM \$1,200,000 TO \$2,280,000 THROUGH NOVEMBER 4, 2019

EXECUTIVE SUMMARY:

On November 4, 2014, following a competitive bidding process, the Board authorized a master services agreement between the District and three information technology consulting firms: Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. (which has been formally assigned and assumed by Excelerate LLC.) for As-Needed Information Technology "Project Management Office Services" (Master Agreement). The District selected these firms based upon interviews of responsive bidders to Request for Qualifications number 14-27 (RFQ 14-27). Under the Master Agreement, the selected firms provide a complete range of professional consulting services to support the Information Technology department's project efforts to support District's Staff with key expertise and additional resources.

The District leveraged the Master Agreement to help Staff execute many of the projects identified in a 5-year technology strategic plan, which sought to create more transparency with the public, modernize its physical and virtual infrastructure, augment District security systems, and create operational efficiencies. While existing funds are nearly exhausted, nearly two years remain in the agreement. Funds for the first year of this expenditure are budgeted for in the FY 17/18 Information Technology Professional Services account. Staff is requesting the Board authorize an amendment to the Master Agreement for an additional \$1,080,000. This amendment will help the District to complete priority information technology projects.

RECOMMENDATION:

Adopt a Resolution authorizing amendments to increase the combined amount of the as-needed agreements by \$1,080,000 with Matisia Inc., ACME Business Consulting, LLC which has been assigned and assumed by Excelerate LLC., and Agilis Group Inc. for Project Management Office Services, increasing the aggregate total from \$1,200,000 to \$2,280,000 through November 4, 2019.

FISCAL IMPACT:

File #:2017-0597

Funds for the first year of this expenditure are budgeted for in the FY 17/18 Information Technology Professional Services account. Funds required for future fiscal years will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoptions of each fiscal year's budget. Funds are available per Ordinance number 2895.

Cash Requirement Forecast	FY 17/18	FY 18/19	FY 19/20	FY 20/21	FY 21/22
Services - Professional & Other	\$ 288,360	571,120	220,520	-	-
	\$ 1,080,000	Total Cash Requirement			

COMPASS STRATEGIC GOALS:

Authorizing this Master Services amendment will allow the District to continue to drive key technology solutions forward that will create more transparency, modernize its physical and virtual infrastructure, augment its security systems, and create operational efficiencies. Thereby, this agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.
- A Port with an innovative and motivated workforce.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

The Board authorized a master services agreement on November 4, 2014 between Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. for As-Needed Information Technology "Project Management Office Services" (Master Agreement). The District selected these firms based upon interviews of responsive bidders to Request for Qualifications number 14-27 (RFQ 14-27). During the execution of the Master Agreement, ACME Business Consulting was purchased by a competing consulting firm and the agreement with ACME Business Consulting was formally assigned to and assumed by Excelerate LLC.

Under the Master Agreement, the selected firms provide a complete range of professional consulting services to support the Information Technology department's project efforts including providing program and project management services and supply concepts for the organization. Some of the expertise offered in the Master Agreement included Senior Project Managers, Technical Leads, Systems Analysts, Project Coordinators, Change and Training Managers, and Information Security Specialists.

At the time of award, the District's Information Technology (IT) department was in its second year of implementing a 5-year technology strategic plan which laid out a roadmap of strategic technology initiatives that sought to create more transparency with the public, modernize its physical and virtual infrastructure, augment its security systems, and create operational efficiencies. More than 40 projects were identified in the 5-year technology strategic plan, which concluded in 2017. The District leveraged the Master Agreement to help District staff execute many of the projects identified in the roadmap which included:

File #:2017-0597

- Legal Electronic Discovery Solution
- Automated Board Agenda Solution
- Board Room Equipment Refresh
- Computer Aided Dispatch System Replacement (in process)
- Enterprise Content Management System Replacement
- SAP Business Objects for Financial Reporting
- GroupWise replacement (with MS Outlook)
- IT Security Function Implementation
- Maritime Information System Replacement
- Transient Vessel Permitting System
- Tenth Avenue Terminal Server Room Remediation
- Data Center HVAC Upgrade
- Access Control Upgrades
- Cisco VOIP V10 Upgrade

Completing these initiatives has nearly exhausted the awarded funds. However, there are nearly two years remaining in the term of the Master Agreement and staff anticipates the need for these services to complete priority IT projects in the coming years. Staff is requesting the Board amend the Master Agreement by an additional \$1,080,000. This amendment will help the District complete the following key efforts, which are priority strategic organizational objectives.

- Cyber Security Remediation
- Implement an Information Security Program
- Implement a Co-Location Center and Disaster Recovery
- Implement a Configuration Management System
- Replace the Novel Integrated Database Management System
- Asset Management & Tracking
- Customer Relationship Management System Replacement
- Lease Management System Replacement
- Parks and Events Permitting System
- Document Management System Front End Replacement
- Intranet Redevelopment

Funds for the first year of this expenditure are budgeted for in the FY 17/18 Information Technology Professional Services account. Funds required for future fiscal years will be budgeted for in the appropriate fiscal year and cost account subject to Board approval upon adoptions of each fiscal year's budget. For the reasons discussed above, Staff requests the Board authorize an amendment to the Master Agreement for an additional \$1,080,000 to provide the project resources necessary for the District to achieve these strategic objectives.

General Counsel's Comments:

File #:2017-0597

The Office of the General Counsel's Office has reviewed the proposed amendments and approves as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action allows for the District to implement its obligation under the Port Act. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Due to limited known sub opportunities, no small business goal was established for this agreement.

PREPARED BY:

Chrissy Joslin
Senior Management Analyst, Information Technology

Attachment(s):

Attachment A: Agreement with ACME Business Consulting LLC.
Attachment B: Assignment and Assumption Agreement Between ACME Business Consulting LLC. And Excelerate LLC.
Attachment C: Agreement with Agilis Group Inc.
Attachment D: Agreement with Matisia Inc.
Attachment E: Amendment to Agreement with Excelerate LLC.
Attachment F: Amendment to Agreement with Agilis Group Inc.
Attachment G: Amendment to Agreement with Matisia Inc.

San Diego Unified Port District

Document No. **62695**

Filed **DEC 18 2014**

Office of the District Clerk

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ACME BUSINESS CONSULTING, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability 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 his designated representative informed of the progress of said services at all times.

a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on November 4, 2014 and shall terminate on November 4, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62695, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.

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

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

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

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

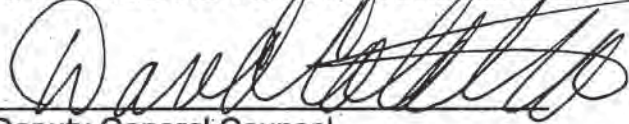
21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective 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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Nilay Thakkar
Managing Director, San Diego
ACME Business Consulting
4445 Eastgate Mall #200
San Diego, CA 92121
Office: (858) 337-9925
Fax: (858) 812-2001
Email: nthakkar@acmebc.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**ACME BUSINESS CONSULTING,
LLC**
Deborah Finley, Director
Business Information & Technology
Services Department
Nilay Thakkar
Managing Director**APPROVED AS TO FORM AND LEGALITY**
Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION*	(ACME) POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Manager	\$190	\$190
2. Project Manager	Manager	\$145	\$165
3. Functional Lead	Manager	\$145	\$165
4. Technical Lead	Manager	\$145	\$165
5. Business Analyst	Senior Consultant	\$125	\$145
6. Assistant Project Manager	Senior Consultant	\$125	\$145
7. Project Management Assistant	Senior Consultant	\$125	\$145
8. Change and Training Lead	Senior Manager	\$170	\$190

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 156-2014
- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. 62695, and that payment has not been received."

- (4) Dates of service provided
- (5) Date of invoice
- (6) A unique invoice number

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: _____ Expiration Date: _____	Each Occurrence: \$ _____
	Workers' Compensation – Statutory Employer's Liability		Inception Date: _____ Expiration Date: _____	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Excess/Umbrella Liability		Inception 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)			Phone Numbers Toll Free: _____ Fax Number: _____ E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

(1)

**REFERENCE
COPY****62695**

July 10, 2017

Mr. Nilay Thakkar
Excelerate LLC.
12707 High Bluff Drive, Suite 200
San Diego, CA 92130

Dear Mr. Thakker:

Per your agreement with the San Diego Unified Port District (agreement number 156-2014) dated December 18, 2014, The District hereby grants Option Years 1 and 2 of the agreement commencing November 5, 2017 and shall terminate on November 4, 2019

All other terms, covenants, and conditions in the original agreement shall remain in full force and effect and shall be applicable to these options.

Sincerely,



Paul Fanfera
Assistant V.P. of Business and Technology

RESOLUTION 2014-215**RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the BPC is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

2014-215

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2014-215

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November, 2014, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Moore, and Valderrama.

NAYS: None.

EXCUSED: Malcolm and Nelson.

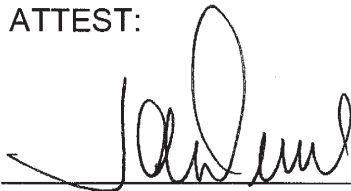
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)



San Diego Unified Port District

Page 38 of 400D

Page 30 of 136 A
3165 Pacific Hwy.
San Diego, CA 92101

File #:2014-531

DATE: November 4, 2014

SUBJECT:

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT; MATISIA INC., DBA MATISIA CONSULTANTS; AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000

EXECUTIVE SUMMARY:

Board of Port Commissioners (Board) authorized staff to develop a five-year Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved fiscal year 2015 (FY 2014/2015) projects through the adoption of the annual budget.

One of the TSP initiatives approved by the Board is to implement a Project Management Office providing more responsiveness to the District's current and future information technology initiatives. The Project Management Office will obtain improvements over time by continuously driving the Business Information and Technology Services (BITS) department to improve its performance rolling out projects. The Project Management Office will define and maintain project management standards for information technology going forward.

The primary goal of the Project Management Office is to achieve benefits found in following project management standards, policies, processes, and methods. As the BITS department matures, the Project Management Office will become the source for guidance, documentation, and metrics related to the practices involved in managing and implementing projects within the District. It will report on project activities, problems, and new initiative requests coming from other District departments. It will also be a strategic tool used to keep the information technology initiatives focused on District strategic goals and objectives.

Staff issued Request for Qualification 14-27 (RFQ No. 14-27) on August 6, 2014 for As-Needed Project Management Office Services. The District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive. Evaluations were performed by a panel comprised of BITS staff, Procurement staff, and Equal Opportunity Management. The panel analyzed the proposals, conducted interviews, and ranked the firms according to the criteria established in RFQ No. 14-27. Using the District's decision analysis process, the panel selected three top firms

File #:2014-531

based upon their ability to meet the District's needs.

RECOMMENDATION:

Resolution Selecting and Authorizing Agreements with Agilis Group Inc., dba AgilisIT; Matisia Inc., DBA Matisia Consultants; and ACME Business Consulting, LLC, to Provide As-Needed Information Technology Project Management Services for Three Years with Two Optional One Year Extensions for a Total Aggregate Amount not to Exceed \$1,200,000.

FISCAL IMPACT:

The maximum cost to the District for the first 3 years is estimated at \$900,000 and the total of \$1,200,000 over 5 years, if the two optional annual options are exercised. Funds for the first year of the agreement are budgeted in the (FY 2014/2015) operating budget in the Business Information and Technology Services Professional Services account (Ordinance 2766). Funds needed for future fiscal year(s) will be budgeted in the appropriate fiscal year and cost account, subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s):

- A Port that the public understands and trusts.
- A Port with an innovative and motivated workforce.

DISCUSSION:

The Board authorized staff to develop a TSP at the August 9, 2011 Board meeting by awarding an agreement to ThirdWave Corporation to conduct a comprehensive enterprise study. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved (FY 2014/2015) TSP projects through the adoption of the annual budget.

The TSP identified 40+ technology projects over a five year period: replacing the District's email system, replacing the document management system, updating the real estate management solution, geographical information system, replace the computer aided dispatch system, maritime operation information system, redesigned the public internet site, agenda management solution, and General Services maintenance system process improvements. New E-Government initiatives include; public records request management, transient vessel solution, park permitting, public records management, and electronic invoicing. Other initiatives on the roadmap include a solution to manage all of the District's media assets such as; videos and pictures, enterprise reporting, human resources system improvements, and standard financial and budgeting system improvements.

One of the TSP projects approved by the Board is to initiate a Project Management Office that better responds to the District's current and future information technology initiatives. The Project

File #:2014-531

Management Office will obtain improvements over time and continuously drive the BITS department to improve its performance deploying projects and operationally advancing needs.

The District has been doing technology and business process driven projects using disparate methodologies and practices which has proven to be disorganized and required an immense learning curve for BITS staff. Along with implementing a new Project Management Office, the BITS department implemented a forum for technology governance seeking to improve the value of departmental business operations and rationally prioritize project requests along with researching the best tools and applications recommended for a thriving organization. Together with the Project Management Office this Technology Governance Forum provides a framework for implementing policies, business processes, and internal controls to effectively support all the services that the BITS department provides.

The Technology Governance Forum represents the review and analysis of proposed tools, applications and/or hardware introduced by non-technical departments and BITS. It makes decisions or recommendations regarding information technology strategies and policies, BITS department projects, priorities, and related issues.

RFP - Vendor Information

Agilis Group Inc., dba AgilisIT (AgilisIT) - the AgilisIT approach to working with the District is to provide personnel that are the “right fit” ensuring that personnel understand the District technology environment. Agilis is a professional services firm specializing in offering information technology services. AgilisIT provides solid staff experience as it relates to the District’s future initiatives and roadmap. Such experiences include working with US Military, Department of Treasury, California General Services Department, Industrial Relations and Managed Healthcare. They have a solid understanding of the District’s environment and have a familiarity with public sector rules and regulations. A primary strength is in Microsoft technologies.

Matisia Inc., dba Matisia Consultants (Matisia) - Based in Southern California and Seattle, Washington, Matisia is a professional services firm that specializes in SAP and Microsoft Application services. Matisia staff experience as it relates to the District’s future initiatives and roadmap is top-of-the-line. Such experience includes working with Southern California Edison, Carefusion, Microsoft, and Costco Wholesale. They have a solid understanding of the SAP environment especially in the areas the District intends to enhance in upcoming years. Primary strength is in SAP core modules and integration.

ACME Business Consulting, LLC (ACME) - ACME specializes in implementation, business process, and project management services. ACME was the most well rounded firm in the selection group. Even though the firm is small in terms of the number of employees, they make up for it in staff experience, stability of staff, and public sector experience. Their primary strength is in Microsoft technologies and content management.

Other Firms in selection group - LSI Consulting, Sage, MGT of America, BPM Advisors, Kissinger Group, Dataskill, and Wave Technology Solutions Group provided bid submissions that added limited value when compared to ACME, Matisia, and Agilis related Project Management Office services.

File #:2014-531

General Counsel's Comments:

The General Counsel's Office has reviewed the agreements for AgilisIT, Matisia and ACME and approves them as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to CEQA. No further action under CEQA is required.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program: Due to limited sub opportunities no Small Business Enterprise (SBE) goal was established for this solicitation. Two of the three firms recommended are SBEs.

PREPARED BY:

Kenneth Chambers
Manager, Business Information Technology Services

Attachment(s):

Attachment A: Agreement 155- 2014 Matisia Inc., dba Matisia Consultants

Attachment B: Agreement 156-2014 ACME Business Consulting, LLC

Attachment C: Agreement 157-2014 Agilis Group Inc., dba AgilisIT

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
MATISIA INC.
DBA
MATISIA CONSULTANTS
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 155-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MATISIA INC. dba MATISIA CONSULTANTS, a Washington 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with ACME Business Consulting, Inc., District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Kristin Roth, CEO
Matisia Consultants
3134 Elliot Avenue, Suite 220
Seattle, WA 98121
Tel. 206-395-2600
Email: Kristin.Roth@matisia.com

****END OF PAGE****

- 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

**MATISIA INC.
DBA
MATISIA CONSULTANTS**

Deborah Finley, Director
Business Information & Technology
Services Department

Kristin Roth
CEO

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Consultant	\$225	\$225
2. Project Manager	Senior Consultant	\$198	\$198
3. Functional Lead	Senior Consultant	\$198	\$198
4. Technical Lead	Senior Consultant	\$165	\$165
5. Business Analyst	Senior Consultant	\$165	\$165
6. Assistant Project Manager	Consultant	\$140	\$140
7. Project Management Analyst	Consultant	\$120	\$120
8. Change and Training Lead	Senior Consultant	\$175	\$175

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 155-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)

SDUPD Agreement Number: _____

This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)	Phone Numbers
	Toll Free: _____ Fax Number: _____
	E-mail Address: _____
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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ACME BUSINESS CONSULTING, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability 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 his designated representative informed of the progress of said services at all times.

- a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

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

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Nilay Thakkar
Managing Director, San Diego
ACME Business Consulting
4445 Eastgate Mall #200
San Diego, CA 92121
Office: (858) 337-9925
Fax: (858) 812-2001
Email: nthakkar@acmebc.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

**ACME BUSINESS CONSULTING,
LLC**

Deborah Finley, Director
Business Information & Technology
Services Department

Nilay Thakkar
Managing Director

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION*	(ACME) POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Manager	\$190	\$190
2. Project Manager	Manager	\$145	\$165
3. Functional Lead	Manager	\$145	\$165
4. Technical Lead	Manager	\$145	\$165
5. Business Analyst	Senior Consultant	\$125	\$145
6. Assistant Project Manager	Senior Consultant	\$125	\$145
7. Project Management Assistant	Senior Consultant	\$125	\$145
8. Change and Training Lead	Senior Manager	\$170	\$190

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 156-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)

SDUPD Agreement Number: _____

This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)

Phone Numbers

Toll Free:

Fax Number:

E-mail Address:

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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
AGILIS GROUP INC.
DBA
AGILISIT
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 157-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AGILIS GROUP INC. DBA AGILISIT, 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with ACME Business Consulting, LLC, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Joyce Tang, President
Agilis Group Inc. dba AgilisIT
7968 Arjons Drive, Suite 105
San Diego, CA 92126
Tel. 888-8324858 x201
Email: jtang@agilisit.com

END OF PAGE

- 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

**AGILIS GROUP, INC.
DBA
AGILISIT**

Deborah Finley, Director
Business Information & Technology
Services Department

Joyce Tang
President

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1.Senior Project Manager		\$159	\$159
2. Project Manager		\$105	\$105
3. Functional Lead	Project Lead	\$100	\$100
4. Technical Lead	Architect/Sr Developer	\$119	\$119
5. Business Analyst		\$70	\$70
6. Assistant Project Manager		\$85	\$85
7. Project Management Analyst		\$65	\$65
8. Change and Training Lead		\$73	\$73

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for

reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 157-2014
- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

- (4) Dates of service provided
- (5) Date of invoice
- (6) A unique invoice number

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (Board) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the Board is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

20xx-xxx

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November 2014 by the following vote:

**REFERENCE
COPY**

TASK AUTHORIZATION #1

62695

March 1, 2015

Nilay Thaker
4445 Eastgate Mall, #200
San Diego, CA 92121

**Subject: Task Authorization #1 for Agreement No. 156-2014
ACME Business Consulting, LLC. For as Needed Project Management
(PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed **\$ 212,800**. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #1** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Chrissy Joslin	4.	WBS or IO/ Cost Center:	
2.	Date of Request:	3/1/2015	5.	Task Start Date:	3/2/2015
3.	Task Budget:	\$ 212,800	6.	Task End Date:	9/30/2015
7.	Task Title: eDiscovery and Public Records Request Project Management				

8. Scope of Services.

- Assist in Developing the RFP
- Develop Proposal interviews plans including questions, scripts, and scoring matrix.
- Complete Litigation Response Plan

- Complete Public Request Response Plan
- Write Board Agenda Sheet (if Required) & ancillary presentation materials
- Develop Change Management and Communication Plan
- Monitor & Control Project Risks, Issues
- Track Project Deliverables, Milestones
- Complete and Disseminate Weekly Project Status Reports
- Oversee Implementation of Solution(s)
- Capture and Set Vendor Configuration Requirements
- Develop test plan and facilitate testing
- Execute Change Management & Communications Plan
- Develop Key Performance Indicators for New Solution(s)
- Develop & Execute End User Training Plan
- Create Customer Satisfaction Surveys
- Conduct Project Close out and Lessons Learned

The District will provide a workstation and cubicle for the contractor.

The District will provide contractor with necessary security access to systems and facilities during the performance of services.

APPROVALS:

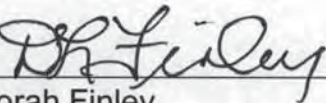
SAN DIEGO UNIFIED PORT DISTRICT
APPROVED: ☒ YES ☐ NO

Signature: 

Name: Chrissy Joslin

Title: Senior Management Analyst

Date: 3/1/2015

Signature: 

Name: Deborah Finley

Title: Director,
Business Systems & Tech Services

Date: 3/1/2015



Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280
Fax (619) 686-7278

**REFERENCE
COPY**

TASK AUTHORIZATION #2

62695

December 6, 2016

Nilay Thaker
 ACME Business Consulting & Excelerate, LLC
 4445 Eastgate Mall, #200
 San Diego, CA 92121
 Email: nthakkar@acmebc.com

**Subject: Task Authorization #1 for Agreement No. 156-2014
 ACME Business Consulting, LLC and Excelerate, LLC For as Needed
 Project Management (PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed **\$ 74,880.00**. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #2** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Tony Hart	4.	WBS or IO/ Cost Center:	
2.	Date of Request:	11/30/16	5.	Task Start Date:	12/19/16
3.	Task Budget:	\$ 74,880.00	6.	Task End Date:	06/16/17
7.	Task Title: Project Management Services				

8. Scope of Services.

Project	Current Stage	Planned Stage (during 6-month engagement)
1. Closed Circuit TV (CCTV) Infrastructure Project	Initiation/Planning	Execution
2. Mobile and Visual Units for Harbor Police Project	Execution	Execution (Issue Resolution Ongoing)
3. Next Gen 800MHz Project	Execution	Execution
4. Learning Management System Implementation	Discovery	Initiation/Planning


Project Manager Duties:

- Project Initiation
- - Stakeholder Analysis
 - Define Scope
 - Define Team along with Roles/Responsibilities
- Develop Project Charter and Obtain Sponsor/Stakeholder Approval
 - Scope (In and Out)
 - Vision
 - Stakeholders and Project Team RACI
 - High Level Process Map
 - Initial Risks
- Manage Project Plan and Critical Path
- Risk and Issue Management and Mitigation/Resolution
- Manage Artifacts within the PMO Stage Gate Process
- Communications Plan Development and Implementation
- Ongoing Status Reporting
- Support Process Design, Requirements Gathering and Functional Design with SMEs and Stakeholders
- Support Vendor Selection Process (as needed for Mobile/Visual Units for Harbor Police Project)

APPROVALS:

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED: ☒ **YES** ☐ **NO**

Signature: 

Name: Mark Zecca

Title: CTO, IT

Date: 12/14/2016

(3)

**INFORMATION TECHNOLOGY**

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6291

**REFERENCE
COPY**

**TASK AUTHORIZATION NO. 2
Amendment No. 1**

62695

June 14, 2017

Nilay Thakkar
ACME Business Consulting and Excelerate LLC
12707 High Bluff Drive, Ste. 200
San Diego, CA 92130
Email: nilay@exceleratellc.com

Subject: Amendment to Task Authorization for Agreement No. 156 - 2014:
As Needed Project Management Office (PMO) Services

1. Task Authorization No. 2 Titled "Project Management Services, dated 11/30/2016, has been amended as follows:
 - a. Item 3, Task Budget, is hereby amended to \$148,480
 - b. Item 6, Task End Date, is hereby amended to 11/30/2017
 - c. Item 8, Scope of Services is hereby amended to reflect the following:

Project	Classification	Rate
Closed Circuit TV (CCTV) Infrastructure Project	Project Manager	\$92/hr
Mobile and Visual Units for Harbor Police Project	Project Manager	\$92/hr
Next Gen 800MHz Project	Project Manager	\$92/hr
Document Management System Front End Replacement	Project Manager	\$92/hr
Document Management System Upgrade	Project Manager	\$92/hr
Unified Communication and Collaboration Software Implementation	Project Manager	\$92/hr
Windows Server 2003 Remediation	Project Manager	\$92/hr

See Amendment no. 1 to Agreement for As Needed Project Management Office (PMO) Services (Clerks No. 65872) section 1.b which states "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."

A. Project Manager Duties

- i. Project Initiation
- ii. Stakeholder Analysis
- iii. Define Scope
- iv. Define Team along with Roles/Responsibilities

B. Develop Project Charter and Obtain Sponsor/Stakeholder Approval

- i. Scope (In and Out)
- ii. Vision
- iii. Stakeholders and Project Team RACI
- iv. High Level Process Map
- v. Initial Risks

C. Manage Project Plan and Critical Path

D. Risk and Issue Management and Mitigation/Resolution

E. Manage Artifacts within the PMO Stage Gate Process

F. Communications Plan Development and Implementation

G. Ongoing Status Reporting

H. Support Process Design, Requirements Gathering and Functional Design with SMEs and Stakeholders

I. Support Vendor Selection Process


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

AGREEMENT SUMMARY

	Term of Agreement:	11/4/2017
1	TA Capacity:	\$900,000
2	Executed TA Total:	\$633,824.75
3	Pending TA Total:	\$0.00
4	Available Funds:	\$266,175.25
5	TA Amount:	\$148,480
6	Remaining Balance:	\$117,695.25

=Line 1 – [Line 2+ Line 3]

3. Please acknowledge acceptance of this Amendment Task Authorization #2 by signing below and returning via e-mail to cjoslin@portofsandiego.org.

APPROVALS**Excelerate, LLC:**Signature: 

Name: Nilay Thakkar

Title: President

Date: 6/14/2017

Project Manager:Signature: 

Name: Chrissy Joslin

Title: Sr. Management Analyst

Date: 6/14/17

CTOSignature: 

Name: Paul Fanfera

Title: Asst. V.P., Business & Technology,
Information Technology

Date: 6/14/17

(2)

62695



INFORMATION TECHNOLOGY
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

TASK AUTHORIZATION NO. 2 Amendment No. 2

October 18, 2017

Nilay Thakkar
ACME Business Consulting and Excelerate LLC.
12707 High Bluff Drive, Ste. 200
San Diego, CA 92130
Email: nilay@exceleratellc.com

Subject: Amendment to Task Authorization for Agreement No. 156 - 2014
As Needed Project Management Office (PMO) Services

-
1. Task Authorization No. 2, for Project Management Services, dated November 30, 2016 along with Amendment No. 1 to this Task Authorization dated June 14, 2017, is amended as follows:
 - a. Item 3, Task Budget is hereby reduced by \$29, 162 for an aggregate, not to exceed total of \$119,318;
 - b. Item 6, Task End Date, is hereby amended to 10/18/2017
 2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.

3. Please acknowledge acceptance of this Amendment by signing below and returning a copy via email to [cj Joslin@portofsandiego.org](mailto:cjoslin@portofsandiego.org).

APPROVALS**Consultant:**Signature: *Nilay Thakkar*

Name: Nilay Thakkar

Title: President

Company: Excelerate LLC.

Date: 24-Oct-2017

Project Manager:Signature: *C Joslin*

Name: Chrissy Joslin

Title: Sr. Management Analyst

Date: *10/18/2017***Director**Signature: *Keith Coffey*

Name: Keith Coffey

Title: Chief Technology Officer

Date: *10-18-2017*

REFERENCE COPY

62695

(2)

**Information Technology Department***San Diego Unified Port District**P.O. Box 120488**San Diego, CA 92112-0488**(619) 686-7280**Fax (619) 686-7278***TASK AUTHORIZATION #3**

March 17, 2016

Nilay Thaker
 ACME Business Consulting and Excelerate LLC
 4445 Eastgate Mall, #200
 San Diego, CA 92121
 Email: nilay@exceleratellc.com

**Subject: Task Authorization #2 for Agreement No. 156-2014
 As Needed Project Management (PMO Services)**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$11,275. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #3** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Chrissy Joslin	4.	WBS or IO/ Cost Center:	
2.	Date of Request:	3/17/17	5.	Task Start Date:	3/20/17
3.	Task Budget:	\$11,275.00	6.	Task End Date:	6/30/2017
7: Task Title: Website Redesign Project Management.					

8. Scope of Services:**Key Activities**

- Review and assess technical merits of short list vendor proposals (estimated 4-6 proposals)
- Develop and deliver a framework to assess the technical parts of the proposals Help the team prep for the demos including questions to ask related to technical merit
- Participate in presentations and demos days on 3/28 and 3/29
- Make recommendations (only on technical merits) based on the framework results to the Port team on finalists (Port team would consider this input in their final decision)

Key Deliverables

- Technical assessment framework (how and what)
- Key questions for Port team to ask at the 3/28 and 3/29 Interviews/Demos
- Technical assessment results (prioritized list of vendors)

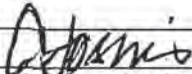
AGREEMENT SUMMARY


Term of Agreement: 11/4/217	
① Task Authorization Capacity:	\$1,200,000\$
② Executed TA Total:	\$646,179.75
③ Pending TA Total:	0.00
④ Available Funds:	553,820.25
⑤ Task Authorization Amount:	\$11,275.00
⑥ Remaining Balance:	\$542,545.25

= Line ① - [Line ② + Line ③]

APPROVALS:

SAN DIEGO UNIFIED PORT DISTRICT
APPROVED: ☒ **YES** ☐ **NO**

Signature:	
Name:	Chrissy Joslin
Title:	Project Manager
Date:	03/17/17

Signature:	
Name:	Paul Fanfera
Title:	Assistant Vice President, Business and Technology
Date:	03/17/17

(3)



Information Technology Department
San Diego Unified Port District
 3165 Pacific Highway
 San Diego, CA 92101
 (619) 686-7280

TASK AUTHORIZATION NO. 4

**REFERENCE
COPY**

May 9, 2017

62695

Nilay Thakkar
 ACME Business Consulting and Excelerate LLC
 12707 High Bluff Drive, Ste. 200
 San Diego, CA 92103
 Email: nilay@exceleratellc.com

**Subject: Task Authorization for Agreement No. 156- 2014
 As Needed Project Management Office (PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$57,400. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #4 on invoice(s) for this Task.**

TASK DESCRIPTION

1.	Requestor:	Chrissy Joslin	4.	WBS or IO/ Cost Center:	
2.	Date of Request:	5/9/2017	5.	Task Start Date:	6/1/17
3.	Task Budget:	\$57,400	6.	Task End Date:	6/30/2018
7.	Task Title: Website Redesign Project Technical Direction				

8. Scope of Services.

Key Activities

- Act as technical representative of the Port for website development (and other projects as needed).
- Be involved in all stages of the project from discovery to development, user testing and launch, on an as-needed basis.
- Assess the technical aspects of the solution, as it is developed by the chosen vendor. Some key focus areas include:

- The CMS - usability, performance, server environment/setup, structure, roles/permissions, etc.
- Front-end website - features, how well it captures the requirements, performance & security, design, mobile-friendliness, etc.
- Overall tech stack - long-term stability/viability, ease to maintain, etc.

• Ensure that the final solution meets the parameters set forth in the RFP and the approved proposal.

- Guide the vendors' development of a Test Plan to ensure it meets the Port's needs and minimizes risk.
- Make sure that the application (front-end and back-end) is tested well enough to ensure full planned functionality as well as stability.
-
- Participate in any meetings, demos, training or working sessions
- Assist the PORT with technical design for any supporting projects that intersect with the Website Redesign project, including but not limited to CRM integration and Intranet integration.

9. Contractor Staffing (If applicable)

Name	Classification	Rate	Hours
Chandan Kanodia	*Technical Director	\$205	410

**See Amendment no. 1 to Agreement for As Needed Project Management Office (PMO) Services (Clerks No. 65872) section 1.b which states "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."*

10. List of Sub-Contractors (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via e-mail to cjoslin@portofsandiego.org, Project Manager.


AGREEMENT SUMMARY

	Term of Agreement:	11/4/2017
1	TA Capacity:	\$1,200,000
2	Executed TA Total:	\$657,454.75
3	Pending TA Total:	\$0.00
4	Available Funds:	\$542,545.25
5	TA Amount:	\$51,250
6	Remaining Balance:	\$491,295.25

=Line 1 – [Line 2+ Line 3]

APPROVALS

SAN DIEGO UNIFIED PORT DISTRICT APPROVED: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Project Manager:Signature: 

Name: Chrissy Joslin

Title: Senior Management Analyst

Date: 5/30/17

Director:Signature: 

Name: Paul Fanfera

Title: Assistant Vice President

Date: 5/30/17

Excelerate:Signature: 

Name: Nilay Thakkar

Title: President

Date: 5/30/2017

TASK AUTHORIZATION FORM
San Diego Unified Port District

**INFORMATION TECHNOLOGY**

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6324

**REFERENCE
COPY**

TASK AUTHORIZATION #5**62695**

July 7, 2017

Nilay Thakkar
 ACME Business Consulting and Excelerate LLC
 12707 High Bluff Dr., #200
 San Diego, CA 92103
 Email: nilay@exceleratellc.com

Subject: Task Authorization #5 for Agreement No. 156-2014 (Clerk's Document No. 62695) – As Needed Project Management Office (PMO) Services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$36,175.00. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #5** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Tom Gresham	4.	WBS or IO/ Cost Center:	176
2.	Date of Request:	07/07/17	5.	Task Start Date:	07/10/2017
3.	Task Budget:	\$36,175	6.	Task End Date:	11/04/2017
7.	Task Title: Project Management Services				

TASK AUTHORIZATION FORM San Diego Unified Port District

8. Scope of Services.

- Act as technical leader for the Harbor Police Department (HPD) through the Port of San Diego IT Department.
 - Extend IT services to HPD, which is not to add, transition, or centralize any tech functions to HPD from IT
- Delivery of Tier 1 response as possible, in support of Port Help Desk, escalation to Tier 2 support when needed
- Directly access and work through key internal IT individuals (with appropriate permissions and authority) for escalated Tier 3 support needs
 - Act as the secondary systems administration for Public Safety Systems
 - Primary System Admin will be responsible for assigning System Administration work
 - Will not be required to administer Access Control for entire Port, but potentially departmental administration for HPD
- Engage with systems vendors as needed and provide vendor guidance as needed
- Support special project work for HPD and Public Safety Systems that have a direct impact to the HPD
- Operationally reports to and takes direction from the HPD technology program manager

Pricing:

- Role Title – Technical Architect (per our rate card)
- \$98 per hour
- Time and Materials Engagement
- Billed at the end of each month for services provided during the previous month
- Net 30 terms

9. Contractor Staffing (If applicable)

Name	Classification	Hours
	Staff as needed per Agreement rates	

10. List of Sub-Contractors (If applicable)

N/A

Term of Agreement: 11/04/2017 – 11/04/2017		
①	OA Capacity:	\$179,730.00
②	Executed Invoices/TA Total:	143,555.00
③	Pending TA Total:	0
④	Available Funds:	\$36,175.00
⑤	Task Authorization Amount:	36,175.00
⑥	Remaining Balance:	\$0.00

= Line ① - [Line ② + Line ③]

TASK AUTHORIZATION FORM
San Diego Unified Port District

APPROVALS

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED: ☒ **YES** ☐ **NO**

Signature: Paul Fanfera

Name: Paul Fanfera

Title: AVP, Information and
Technology

Date: 7/10/17



(2)

62695

INFORMATION TECHNOLOGY
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-6291

TASK AUTHORIZATION NO. 5
Amendment No. 1

August 22, 2017

Nilay Thakkar
ACME Business Consulting and Excelerate LLC.
12707 High Bluff Dr., #200
San Diego, CA 92103
Email: nilay@exceleratellc.com

Subject: Amendment to Task Authorization #5 for Agreement No.156-2014 (Clerk's Document No. 62695:
As Needed Project Management Office (PMO) Services

-
1. Task Authorization No. 5, (Project Management Services), dated July 7, 2017, has been amended as follows:
 - a. Item 3 (for Task Budget) is replaced with \$376,320.00
 - b. Item 6 (for Task End Date) is replaced with 6/30/2019
 2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.
 3. Agreement Summary

	Term of Agreement:	11/4/2019
1	TA Capacity:	\$783,745
2	Executed TA Total:	\$217,155
3	Pending TA Total:	\$0
4	Available Funds:	\$566,590
5	TA Amount:	\$376,320
6	Remaining Balance:	\$190,270



3. Please acknowledge acceptance of this Amendment by signing below and returning via email to Chrissy Joslin, Project Manager, at cjoslin@portofsandiego.org.

APPROVALS

Consultant:

Signature: Nilay Thakkar

Name: Nilay Thakkar

Title: President

Company: Excelerate LLC

Date: 22-Aug-2017

Project Manager:

Signature: Chrissy Joslin

Name: Chrissy Joslin

Title: Sr. Management Analyst

Date: 8/23/2017

Director

Signature: Paul Fanfera

Name: Paul Fanfera

Title: Asst. VP, Business & Technology

Date: _____

(2)
TASK AUTHORIZATION FORM
San Diego Unified Port District

Page 131 of 136
REFERENCE

COPY

62695



INFORMATION TECHNOLOGY

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

(619) 686-7280

TASK AUTHORIZATION NO. 6

September 29, 2017

Nilay Thakkar
President
Excelerate LLC.
12707 High Bluff Dr., #200
San Diego, CA 92103
Email: nilay@exceleratellc.com

Subject: Task Authorization for Agreement No. 156- 2014
As Needed Project Management Office (PMO) Services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$190,230. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #6** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Chrissy Joslin	4.	WBS or IO/ Cost Center:	124
2.	Date of Request:	9/29/2017	5.	Task Start Date:	10/2/2017
3.	Task Budget:	\$190,230	6.	Task End Date:	2/3/2018
7.	Task Title: Chief Information Security Officer Services				

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

Agreement Summary

	Term of Agreement:	11/14/2019
1.	TA Capacity:	\$1,200,000
2.	Executed TA Total:	\$1,009,721
3.	Pending TA Total:	\$0
4.	Available Funds:	\$190,279
5.	TA Amount:	\$190,230
6.	Remaining Balance:	\$49

= Line 1- (Line 2 + Line 3)

9. Contractor Staffing (If applicable)

Name	Classification	Rate/hr
Robert Renzulli	Chief Information Security Officer	\$255

10. List of Sub-Contractors (If applicable)

NA

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via email to Chrissy Joslin at [cj Joslin at cjoslin@portofsandiego.org](mailto:cjoslin@portofsandiego.org).

APPROVALS

Project Manager:

Signature: 

Name: Chrissy Joslin

Title: Sr. Management Analyst

Date: 9/29/2017

Director:

Signature: 

Name: Paul Fanfera

Title: Assistant Vice President

Date: 9/29/2017

Excelerate LLC.:

Signature: 

Name: Nilay Thakkar

Title: President

Date: 29-Sep-2017

(4)

62695**TASK AUTHORIZATION FORM**
San Diego Unified Port District**INFORMATION TECHNOLOGY**
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280**TASK AUTHORIZATION NO. 7**

November 6, 2017

Nilay Thakkar
President
Excelerate LLC.
12707 High Bluff Dr., #200
San Diego, CA 92103
Email: nilay@exceleratellc.com**Subject: Task Authorization for Agreement No. 156- 2014**
As Needed Project Management Office (PMO) Services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$29,211. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #7** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Chrissy Joslin	4.	WBS or IO/ Cost Center:	TP-0076
2.	Date of Request:	11/6/2017	5.	Task Start Date:	11/08/2017
3.	Task Budget:	\$ 29,211.00	6.	Task End Date:	6/30/2019
7.	Task Title: Document Management System Front End Replacement Project Management Services				

TASK AUTHORIZATION FORM

San Diego Unified Port District

8. Scope of Services.

- Provide overall program management and guidance, ensuring that initiatives remain on schedule and within acceptable and agreed parameters.
- Collaborate and support the business representatives to resolve issues or prioritize functions as agreed
- Provide direction to the project team, stakeholders or members
- Communicate to project team leadership regarding all operations and details of the project
- Proactively monitor progress of the work against the project plan, undertake actions to stay on track
- Actively manage the project issues & risk list. Provide recommendations to mitigate risks and resolve issues and manage issues to resolution
- Provide first line of resolution prior to issue escalation
- Understand when to escalate an issue to project leadership
- Develop and review agreed upon deliverables
- Lead and facilitate key project team meetings to drive decisions
- Develop and deliver presentations for team
- Understand business justification and project prioritization
- Present and/or Collaborate with the Executive Sponsor(s) to provide progress updates and inform on program risks and issues
- Provide other program/project management services as needed outside the traditional project model

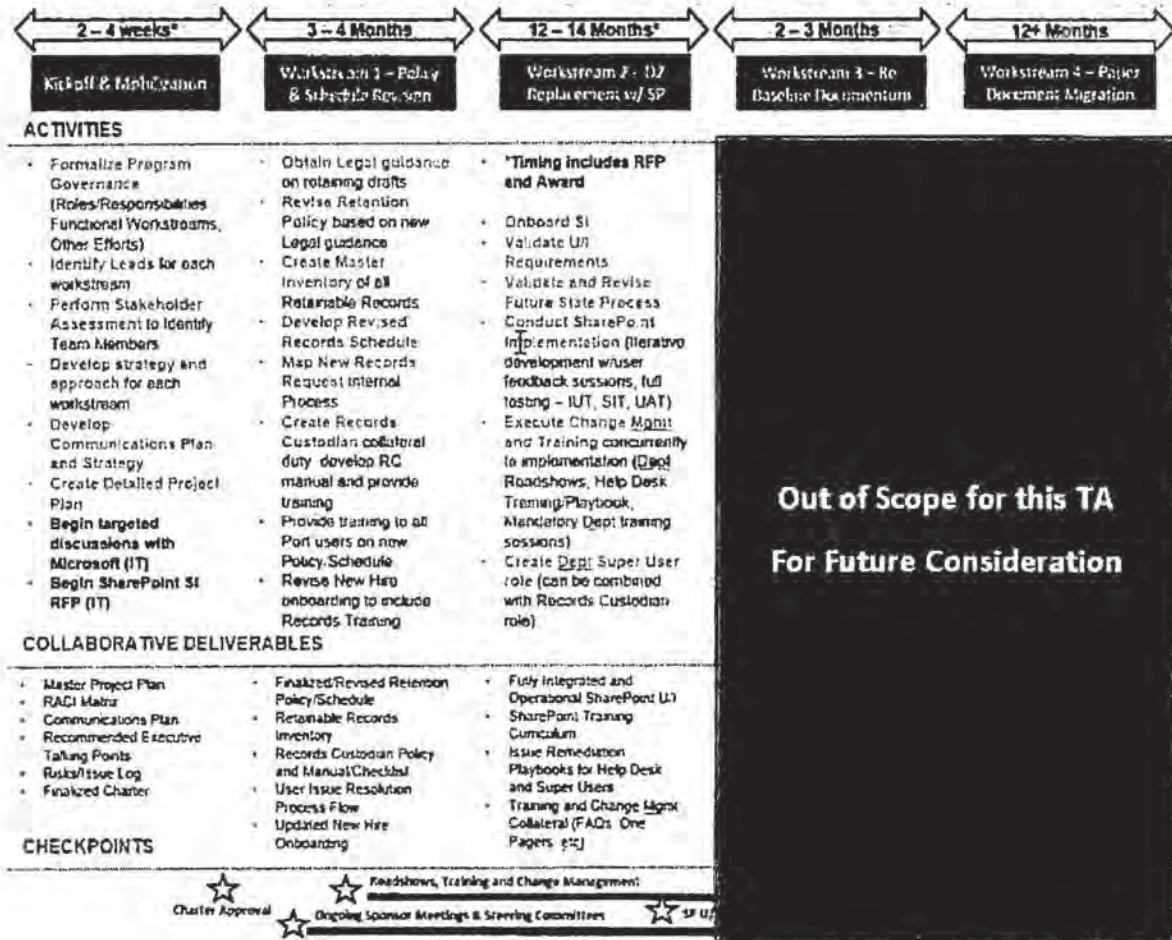
A. Key Assumptions:

- Excelerate shall rely on the accuracy of the data or information provided by the Port of San Diego, its representatives or advisors
- Timely and reasonable access to personnel across the organization
- Location of primary work site: San Diego, CA
- The Port of San Diego will provide on-site access for both resources & seating for 1 Excelerate resource
- All deliverables will be reviewed for relevance & responsibility at the start of Workstream 2 with Workstream 3 and 4 as future items if needed
- Timeline above is estimated based on a strawman effort conducted in a prior phase

TASK AUTHORIZATION FORM San Diego Unified Port District

- Timely policy decisions will be provided as to not impact the estimated timeline

B. Project Scope Overview



Agreement Summary

Term of Agreement:		11/4/2019
1.	TA Capacity:	783,754.00
2.	Executed TA Total:	754,543.00
3.	Pending TA Total:	0.00
4.	Available Funds:	29,211
5.	TA Amount:	29,211
6.	Remaining Balance:	0.00

= Line 1- (Line 2 + Line 3)

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

9. Contractor Staffing (If applicable)

Name	Classification	Rate/hr
Vay Shire	Senior Project Manager	\$120
Eric Engel	Senior Manager – Quality Assurance	\$0

10. List of Sub-Contractors (If applicable)

N/A

11. Please acknowledge acceptance of this Task Authorization by signing below and returning via email to Chrissy Joslin at cjoslin@portofsandiego.org

APPROVALS

Project Manager:


Signature: 

Name: Chrissy Joslin

Title: Sr. Management Analyst

Date: 11/6/17

Director:

Signature: 

Name: Paul Fanera

Title: Assistant Vice President

Date: 11/6/17

Excelerate LLC.

Signature: 

Name: Nilay Thakkar

Title: President

Date: 06-Nov-2017

ASSIGNMENT AND ASSUMPTION AGREEMENT

between

ACME BUSINESS CONSULTING, LLC

and

EXCELERATE, LLC

for

**AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability Corporation wishes to assign its interests in the above referenced agreement to EXCELERATE, LLC, a California Limited Liability Corporation.

Recitals:

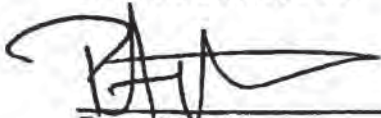
The Agreement is on file in the office of the District Clerk as Document No. 62695 dated December 18, 2014. It is now proposed to assign the Agreement to EXCELERATE, LLC, and have EXCELERATE, LLC assume all of the debts and obligations of the agreement.

The Parties Agree:

1. As of November 8, 2016, the undersigned, ACME BUSINESS CONSULTING, LLC hereby assigns and transfers to EXCELERATE LLC all of ACME BUSINESS CONSULTING, LLC's right, title, and interest in and to the above Agreement.
2. EXCELERATE, LLC, hereby assumes all of the debts and obligations of ACME BUSINESS CONSULTING, LLC, regarding the above Agreement, as of November 8, 2016, and agrees to fully and faithfully perform each and every term, covenant, and condition thereof.
3. This assignment and assumption is subject to the consent of San Diego Unified Port District.

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

**ACME BUSINESS
CONSULTING, LLC**



Peter Lizotte
Founder/Principal

EXCELERATE, LLC



Nilay Thakkar
President

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.

(2)

65787

RESOLUTION 2016-171**RESOLUTION CONSENTING TO ASSIGNMENT
AND ASSUMPTION OF AN AGREEMENT FOR AS
NEEDED PROJECT MANAGEMENT SERVICES
FROM ACME BUSINESS CONSULTING, LLC TO
EXCELERATE LLC**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

WHEREAS, on October 14, 2014 the Board of Port Commissioners adopted a resolution authorizing an agreement with ACME Business Consulting, LLC (ACME) for as-needed services to the Information Technology Project Management Office; and

WHEREAS, ACME was acquired by a firm that no longer does business in San Diego and has indicated that it cannot carry out the demands of the contract; and

WHEREAS, ACME has agreed to assign all of its San Diego business to Excelerate, LLC (Excelerate); and

WHEREAS, Excelerate is a company that was created by a former principal of ACME, who established a company which would continue to do business in San Diego; and

WHEREAS, District IT staff has done due diligence and determined Excelerate is proficient in all areas of expertise which ACME possessed and staff recommends this assignment to Excelerate.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to consent to Assignment and Assumption of a Professional Services Agreement for as-needed Project Management Services from ACME Business Consulting, LLC to

2016-171

Excelerate, LLC.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL


By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of November, 2016, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Nelson, and Valderrama.

NAYS: None.

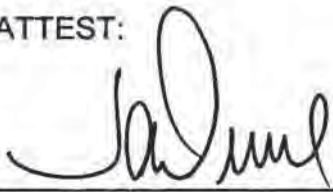
EXCUSED: Moore.

ABSENT: None.

ABSTAIN: None.


Marshall Merrifield, Chairman
Board of Port Commissioners

ATTEST:


Timothy A. Deuel
District Clerk

(Seal)



San Diego Unified Port District

Item No. 10

File #:2016-0566

DATE: November 8, 2016**SUBJECT:****RESOLUTION CONSENTING TO ASSIGNMENT AND ASSUMPTION OF AN AGREEMENT FOR AS NEEDED PROJECT MANAGEMENT SERVICES FROM ACME BUSINESS CONSULTING, LLC TO EXCELERATE LLC****EXECUTIVE SUMMARY:**

On October 14, 2014 the Board of Port Commissioners adopted a resolution authorizing an agreement with ACME Business Consulting, LLC (ACME) for as-needed Information Technology Project Management Services. ACME was recently acquired by a firm who no longer does business in San Diego. Therefore, ACME has agreed to assign all of its San Diego business to a third party, Excelerate LLC (Excelerate).

RECOMMENDATION:

Adopt a Resolution Consenting to Assignment and Assumption of a Professional Services Agreement for As Needed Project Management Services from ACME Business Consulting, LLC to Excelerate LLC.

FISCAL IMPACT:

The proposed Board action would have no additional fiscal impact to the District.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal:

- A Port with an innovative and motivated workforce.

DISCUSSION:

On October 14, 2014 the Board of Port Commissioners adopted a resolution authorizing an agreement with ACME for as-needed Information Technology Project Management Services. A contract with ACME was executed in order to carry out the resolution, and to provide as-needed services to the Information Technology Project Management Office.

Recently, ACME was acquired by a firm that no longer does business in San Diego and has indicated

File #:2016-0566

that it cannot carry out the demands of the contract. ACME has agreed to assign all of its San Diego business to Excelerate. Excelerate is a company that was created by a former principal of ACME, who established a company which would continue to do business in San Diego. District IT staff has done due diligence and determined Excelerate is proficient in all areas of expertise which ACME possessed and staff recommends this assignment and assumption of the District's agreement to Excelerate.

General Counsel's Comments:

The Office of the General Counsel reviewed the assignment and assumption agreement between ACME Business Consulting, LLC and Excelerate, LLC, and approves as to form and legality.

Environmental Review:

The proposed Board action (change) does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

In addition, the proposed Board action (change) allows for the District to implement its obligations under the Port Act and/or other laws. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

Finally, the proposed Board action (change) does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program:

Not applicable.

PREPARED BY:

Chrissy Joslin
Senior Management Analyst, Information Technology

Attachment(s):

Attachment A: Agreement 156-2014 Excelerate LLC.

ASSIGNMENT AND ASSUMPTION AGREEMENT
between
ACME BUSINESS CONSULTING, LLC
and
EXCELERATE, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014

ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability Corporation wishes to assign its interests in the above referenced agreement to EXCELERATE, LLC, a California Limited Liability Corporation.

Recitals:

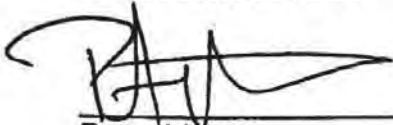
The Agreement is on file in the office of the District Clerk as Document No. 62695 dated December 18, 2014. It is now proposed to assign the Agreement to EXCELERATE, LLC, and have EXCELERATE, LLC assume all of the debts and obligations of the agreement.

The Parties Agree:

1. As of November 8, 2016, the undersigned, ACME BUSINESS CONSULTING, LLC hereby assigns and transfers to EXCELERATE LLC all of ACME BUSINESS CONSULTING, LLC's right, title, and interest in and to the above Agreement.
2. EXCELERATE, LLC, hereby assumes all of the debts and obligations of ACME BUSINESS CONSULTING, LLC, regarding the above Agreement, as of November 8, 2016, and agrees to fully and faithfully perform each and every term, covenant, and condition thereof.
3. This assignment and assumption is subject to the consent of San Diego Unified Port District.

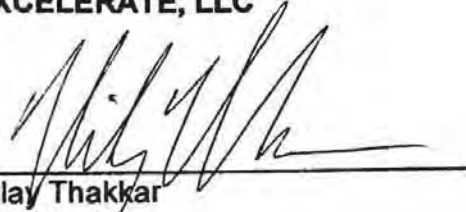
4. All other terms, covenants, and conditions in the original Agreement shall remain in full force and effect and shall be applicable to this Agreement.

**ACME BUSINESS
CONSULTING, LLC**



Peter Lizotte
Founder/Principal

EXCELERATE, LLC



Nilay Thakkar
President

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.

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION CONSENTING TO ASSIGNMENT
AND ASSUMPTION OF AN AGREEMENT FOR AS
NEEDED PROJECT MANAGEMENT SERVICES
FROM ACME BUSINESS CONSULTING, LLC TO
EXCELERATE LLC**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials, and equipment, and grants; and

WHEREAS, on October 14, 2014 the Board of Port Commissioners adopted a resolution authorizing an agreement with ACME Business Consulting, LLC (ACME) for as-needed services to the Information Technology Project Management Office; and

WHEREAS, ACME was acquired by a firm that no longer does business in San Diego and has indicated that it cannot carry out the demands of the contract; and

WHEREAS, ACME has agreed to assign all of its San Diego business to Excelsate, LLC (Excelsate); and

WHEREAS, Excelsate is a company that was created by a former principal of ACME, who established a company which would continue to do business in San Diego; and

WHEREAS, District IT staff has done due diligence and determined Excelsate is proficient in all areas of expertise which ACME possessed and staff recommends this assignment to Excelsate.

NOW, THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or her designated representative is hereby authorized on behalf of the San Diego Unified Port District to consent to Assignment and Assumption of a Professional Services Agreement for as-needed Project Management Services from ACME Business Consulting, LLC to Excelsate, LLC.

20xx-xxx

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 8th day of November, 2016, by the following vote:

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
AGILIS GROUP INC.**

**DBA
AGILISIT
for**

**AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 157-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AGILIS GROUP INC. DBA AGILISIT, 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 his designated representative informed of the progress of said services at all times.

a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on November 4, 2014 and shall terminate on November 4, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and agreement with ACME Business Consulting, LLC, District Clerk Document No. 62695 collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.

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

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Joyce Tang, President
Agilis Group Inc. dba AgilisIT
7968 Arjons Drive, Suite 105
San Diego, CA 92126
Tel. 888-8324858 x201
Email: jtang@agilisit.com

END OF PAGE

- 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

**AGILIS GROUP, INC.
DBA
AGILISIT**


Deborah Finley, Director
Business Information & Technology
Services Department


Joyce Tang
President

APPROVED AS TO FORM AND LEGALITY


Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager		\$159	\$159
2. Project Manager		\$105	\$105
3. Functional Lead	Project Lead	\$100	\$100
4. Technical Lead	Architect/Sr Developer	\$119	\$119
5. Business Analyst		\$70	\$70
6. Assistant Project Manager		\$85	\$85
7. Project Management Analyst		\$65	\$65
8. Change and Training Lead		\$73	\$73

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for

reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 157-2014
- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. 62696, and that payment has not been received."

- (4) Dates of service provided
- (5) Date of invoice
- (6) A unique invoice number

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
 Hemet, CA 92546-8010 —OR—
 Email: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: _____ Expiration Date: _____	Each Occurrence: \$ _____
	Workers' Compensation – Statutory Employer's Liability		Inception Date: _____ Expiration Date: _____	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Excess/Umbrella Liability		Inception 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)			Phone Numbers Toll Free: _____ Fax Number: _____ E-mail Address: _____	
			Signature of Authorized Agent(s) or Broker(s) <div style="text-align: right;">Date: _____</div>	

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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

(1)

**REFERENCE
COPY****62696**

July 10, 2017

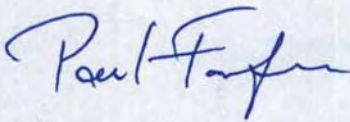
Ms. Joyce Tang
President
Agilis Group Inc.
7968 Arjons Drive, Suite 105
San Diego, CA 92126

Dear Ms. Tang:

Per your agreement with the San Diego Unified Port District (agreement number 157-2014) dated December 18, 2014, The District hereby grants Option Years 1 and 2 of the agreement commencing November 5, 2017 and shall terminate on November 4, 2019

All other terms, covenants, and conditions in the original agreement shall remain in full force and effect and shall be applicable to these options.

Sincerely,



Paul Fanfera
Assistant V.P. of Business and Technology

RESOLUTION 2014-215**RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the BPC is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

2014-215

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2014-215

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November, 2014, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Moore, and Valderrama.

NAYS: None.

EXCUSED: Malcolm and Nelson.

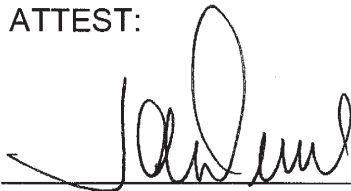
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)



San Diego Unified Port District

Page 184 of 400D

Page 30 of 128 C
3165 Pacific Hwy.
San Diego, CA 92101

File #:2014-531

DATE: November 4, 2014

SUBJECT:

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT; MATISIA INC., DBA MATISIA CONSULTANTS; AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000

EXECUTIVE SUMMARY:

Board of Port Commissioners (Board) authorized staff to develop a five-year Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved fiscal year 2015 (FY 2014/2015) projects through the adoption of the annual budget.

One of the TSP initiatives approved by the Board is to implement a Project Management Office providing more responsiveness to the District's current and future information technology initiatives. The Project Management Office will obtain improvements over time by continuously driving the Business Information and Technology Services (BITS) department to improve its performance rolling out projects. The Project Management Office will define and maintain project management standards for information technology going forward.

The primary goal of the Project Management Office is to achieve benefits found in following project management standards, policies, processes, and methods. As the BITS department matures, the Project Management Office will become the source for guidance, documentation, and metrics related to the practices involved in managing and implementing projects within the District. It will report on project activities, problems, and new initiative requests coming from other District departments. It will also be a strategic tool used to keep the information technology initiatives focused on District strategic goals and objectives.

Staff issued Request for Qualification 14-27 (RFQ No. 14-27) on August 6, 2014 for As-Needed Project Management Office Services. The District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive. Evaluations were performed by a panel comprised of BITS staff, Procurement staff, and Equal Opportunity Management. The panel analyzed the proposals, conducted interviews, and ranked the firms according to the criteria established in RFQ No. 14-27. Using the District's decision analysis process, the panel selected three top firms

File #:2014-531

based upon their ability to meet the District's needs.

RECOMMENDATION:

Resolution Selecting and Authorizing Agreements with Agilis Group Inc., dba AgilisIT; Matisia Inc., DBA Matisia Consultants; and ACME Business Consulting, LLC, to Provide As-Needed Information Technology Project Management Services for Three Years with Two Optional One Year Extensions for a Total Aggregate Amount not to Exceed \$1,200,000.

FISCAL IMPACT:

The maximum cost to the District for the first 3 years is estimated at \$900,000 and the total of \$1,200,000 over 5 years, if the two optional annual options are exercised. Funds for the first year of the agreement are budgeted in the (FY 2014/2015) operating budget in the Business Information and Technology Services Professional Services account (Ordinance 2766). Funds needed for future fiscal year(s) will be budgeted in the appropriate fiscal year and cost account, subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s):

- A Port that the public understands and trusts.
- A Port with an innovative and motivated workforce.

DISCUSSION:

The Board authorized staff to develop a TSP at the August 9, 2011 Board meeting by awarding an agreement to ThirdWave Corporation to conduct a comprehensive enterprise study. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved (FY 2014/2015) TSP projects through the adoption of the annual budget.

The TSP identified 40+ technology projects over a five year period: replacing the District's email system, replacing the document management system, updating the real estate management solution, geographical information system, replace the computer aided dispatch system, maritime operation information system, redesigned the public internet site, agenda management solution, and General Services maintenance system process improvements. New E-Government initiatives include; public records request management, transient vessel solution, park permitting, public records management, and electronic invoicing. Other initiatives on the roadmap include a solution to manage all of the District's media assets such as; videos and pictures, enterprise reporting, human resources system improvements, and standard financial and budgeting system improvements.

One of the TSP projects approved by the Board is to initiate a Project Management Office that better responds to the District's current and future information technology initiatives. The Project

File #:2014-531

Management Office will obtain improvements over time and continuously drive the BITS department to improve its performance deploying projects and operationally advancing needs.

The District has been doing technology and business process driven projects using disparate methodologies and practices which has proven to be disorganized and required an immense learning curve for BITS staff. Along with implementing a new Project Management Office, the BITS department implemented a forum for technology governance seeking to improve the value of departmental business operations and rationally prioritize project requests along with researching the best tools and applications recommended for a thriving organization. Together with the Project Management Office this Technology Governance Forum provides a framework for implementing policies, business processes, and internal controls to effectively support all the services that the BITS department provides.

The Technology Governance Forum represents the review and analysis of proposed tools, applications and/or hardware introduced by non-technical departments and BITS. It makes decisions or recommendations regarding information technology strategies and policies, BITS department projects, priorities, and related issues.

RFP - Vendor Information

Agilis Group Inc., dba AgilisIT (AgilisIT) - the AgilisIT approach to working with the District is to provide personnel that are the “right fit” ensuring that personnel understand the District technology environment. Agilis is a professional services firm specializing in offering information technology services. AgilisIT provides solid staff experience as it relates to the District’s future initiatives and roadmap. Such experiences include working with US Military, Department of Treasury, California General Services Department, Industrial Relations and Managed Healthcare. They have a solid understanding of the District’s environment and have a familiarity with public sector rules and regulations. A primary strength is in Microsoft technologies.

Matisia Inc., dba Matisia Consultants (Matisia) - Based in Southern California and Seattle, Washington, Matisia is a professional services firm that specializes in SAP and Microsoft Application services. Matisia staff experience as it relates to the District’s future initiatives and roadmap is top-of-the-line. Such experience includes working with Southern California Edison, Carefusion, Microsoft, and Costco Wholesale. They have a solid understanding of the SAP environment especially in the areas the District intends to enhance in upcoming years. Primary strength is in SAP core modules and integration.

ACME Business Consulting, LLC (ACME) - ACME specializes in implementation, business process, and project management services. ACME was the most well rounded firm in the selection group. Even though the firm is small in terms of the number of employees, they make up for it in staff experience, stability of staff, and public sector experience. Their primary strength is in Microsoft technologies and content management.

Other Firms in selection group - LSI Consulting, Sage, MGT of America, BPM Advisors, Kissinger Group, Dataskill, and Wave Technology Solutions Group provided bid submissions that added limited value when compared to ACME, Matisia, and Agilis related Project Management Office services.

File #:2014-531

General Counsel's Comments:

The General Counsel's Office has reviewed the agreements for AgilisIT, Matisia and ACME and approves them as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to CEQA. No further action under CEQA is required.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program: Due to limited sub opportunities no Small Business Enterprise (SBE) goal was established for this solicitation. Two of the three firms recommended are SBEs.

PREPARED BY:

Kenneth Chambers
Manager, Business Information Technology Services

Attachment(s):

Attachment A: Agreement 155- 2014 Matisia Inc., dba Matisia Consultants

Attachment B: Agreement 156-2014 ACME Business Consulting, LLC

Attachment C: Agreement 157-2014 Agilis Group Inc., dba AgilisIT

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
MATISIA INC.
DBA
MATISIA CONSULTANTS
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 155-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MATISIA INC. dba MATISIA CONSULTANTS, a Washington 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with ACME Business Consulting, Inc., District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Kristin Roth, CEO
Matisia Consultants
3134 Elliot Avenue, Suite 220
Seattle, WA 98121
Tel. 206-395-2600
Email: Kristin.Roth@matisia.com

****END OF PAGE****

- 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

**MATISIA INC.
DBA
MATISIA CONSULTANTS**

Deborah Finley, Director
Business Information & Technology
Services Department

Kristin Roth
CEO

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Consultant	\$225	\$225
2. Project Manager	Senior Consultant	\$198	\$198
3. Functional Lead	Senior Consultant	\$198	\$198
4. Technical Lead	Senior Consultant	\$165	\$165
5. Business Analyst	Senior Consultant	\$165	\$165
6. Assistant Project Manager	Consultant	\$140	\$140
7. Project Management Analyst	Consultant	\$120	\$120
8. Change and Training Lead	Senior Consultant	\$175	\$175

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 155-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ACME BUSINESS CONSULTING, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability 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 his designated representative informed of the progress of said services at all times.

- a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

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

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Nilay Thakkar
Managing Director, San Diego
ACME Business Consulting
4445 Eastgate Mall #200
San Diego, CA 92121
Office: (858) 337-9925
Fax: (858) 812-2001
Email: nthakkar@acmebc.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

**ACME BUSINESS CONSULTING,
LLC**

Deborah Finley, Director
Business Information & Technology
Services Department

Nilay Thakkar
Managing Director

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION*	(ACME) POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Manager	\$190	\$190
2. Project Manager	Manager	\$145	\$165
3. Functional Lead	Manager	\$145	\$165
4. Technical Lead	Manager	\$145	\$165
5. Business Analyst	Senior Consultant	\$125	\$145
6. Assistant Project Manager	Senior Consultant	\$125	\$145
7. Project Management Assistant	Senior Consultant	\$125	\$145
8. Change and Training Lead	Senior Manager	\$170	\$190

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 156-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
AGILIS GROUP INC.
DBA
AGILISIT
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 157-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AGILIS GROUP INC. DBA AGILISIT, 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with ACME Business Consulting, LLC, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Joyce Tang, President
Agilis Group Inc. dba AgilisIT
7968 Arjons Drive, Suite 105
San Diego, CA 92126
Tel. 888-8324858 x201
Email: jtang@agilisit.com

END OF PAGE

- 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

**AGILIS GROUP, INC.
DBA
AGILISIT**

Deborah Finley, Director
Business Information & Technology
Services Department

Joyce Tang
President

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1.Senior Project Manager		\$159	\$159
2. Project Manager		\$105	\$105
3. Functional Lead	Project Lead	\$100	\$100
4. Technical Lead	Architect/Sr Developer	\$119	\$119
5. Business Analyst		\$70	\$70
6. Assistant Project Manager		\$85	\$85
7. Project Management Analyst		\$65	\$65
8. Change and Training Lead		\$73	\$73

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for

reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 157-2014
- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

- (4) Dates of service provided
- (5) Date of invoice
- (6) A unique invoice number

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3

Hemet, CA 92546-8010 –OR–

Email: sdupd@prod.certificatesnow.com

Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (Board) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the Board is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

20xx-xxx

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November 2014 by the following vote:

**REFERENCE
COPY
62696**

(1)

Task Authorization

Business Information & Technology Services

TA #1

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

BITS INFORMATION

Project Manager Kenneth Chambers
Invoicing Nanette Banang
Project Name Project Management Services
Task Start/End 11/5/2014 - 6/30/2016
Contracts 157-2014
Contract Dollars \$300,000
TA Cost \$0
Remaining Dollars \$300,000

VENDOR INFORMATION

Company Agilist Group Inc. da AgilisIT
Name Joyce Tang, President
Address 7968 Arjons Drive, Suite 105
City/State San Diego, CA 92126
Email jtang@agilisIT.com
Phone 888-832-4858

SCOPE OF WORK

Rates and Titles agreed upon associated with the staff listed below. Rates below maynot be represented in the contract rate table.

Staffing	Role	Rate	Hrs.	Totals
Terry Atkins	Technical Lead	\$119		
Breena Loraine	Proj Management Analyst	\$65		
Connie Bond	Functional/Project Lead	\$100		
Robin Griswald	Project Manager	\$105		

Assumptions

The District will provide a workstation and cubicle for the contractor
The District will Provide contractor with necessary security access to systems and facilities during the performance of services
The District will ensure the availability and responsiveness of key personnel needed to support the completion of this work

T&M (Est. hrs)

0

Submitted by (BITS Project Manager)

Date

Submitted by (President, Agilis Group Inc)

Date

Submitted by (Director of BITS)

Date

REFERENCE
COPY

62696

Task Authorization

Business Information & Technology Services

TA #2

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

BITS INFORMATION

Project Manager Kenneth Chambers
Invoicing Nanette Banang
Project Name Project Management Services
Task Start/End 11/5/2014 - 6/30/2015
Contracts 157-2014
Contract Dollars \$300,000
TA Cost \$153,740
Remaining Dollars \$146,260

VENDOR INFORMATION

Company Agilist Group Inc. da AgilisIT
Name Joyce Tang, President
Address 7968 Arjons Drive, Suite 105
City/State San Diego, CA 92126
Email jtang@agilisIT.com
Phone 888-832-4858

SCOPE OF WORK

The Port is currently seeking several project managers along with Technical infrastructure changes. We would like to have key resources to support our projects at the PMO level, advisory services and SharePoint Architecture Services.

Staffing	Role	Rate	Hrs.	Totals
Terry Atkins	Technical Lead	\$119	160	\$19,040
Breena Loraine	Proj Management Analyst	\$65	300	\$19,500
Connie Bond	Functional/Project Lead	\$100	480	\$48,000
Robin Griswald	Project Manager	\$105	640	\$67,200

Assumptions

The District will provide a workstation and cubicle for the contractor
The District will Provide contractor with necessary security access to systems and facilities during the performance of services
The District will ensure the availability and responsiveness of key personnel needed to support the completion of this work

T&M (Est. hrs)

1580

Submitted by (BITS Project Manager)

Submitted by (President, Agilis Group Inc)

Submitted by (Director of BITS)

Date

Date

Date

**Business Information & Technology Services**

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

(619) 686-7280

Fax (619) 686-7278

TASK AUTHORIZATION NO. 2 Amendment No. 1

**REFERENCE
COPY
62696**

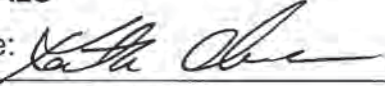
March 23, 2015

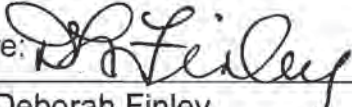
Joyce Tang
President
7968 Arjons Drive, Suite #105
San Diego, CA 92126
jtang@agilist.com

**Subject: Amendment to Task Authorization for Agreement No. 157-2014:
As Needed Project Management Office (PMO) Services**

-
1. Task Authorization No.1, (Project Management Services), dated December 23, 2014 has been amended as follows:
 - a. Decrease hours from 160 to 107 hours and decrease amount from \$19,040.00 to \$12,733.00 for Terry Atkins (Technical Lead).
 - b. Decrease hours from 480 to 363.25 hours and decrease amount from \$48,000.00 to \$36,325.00 for Connie Bond (Functional/Project Lead).
 2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.

APPROVALS

Signature: 
 Name: Kenneth Chambers
 Title: Project Manager, BITS Department
 Date: 4-1-15

Signature: 
 Name: Deborah Finley
 Title: Director, BITS Department
 Date: 4/1/15

REFERENCE
COPY
62696

(1)

**Task Authorization
Business Information & Technology Services**

TA #3

San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

BITS INFORMATION

Project Manager Kenneth Chambers
Invoicing Nanette Banang
Project Name Project Management Services
Task Start/End 2/2/2015 - 5/1/2015
Contracts 157-2014
Contract Dollars \$300,000
TA Cost \$184,940
Remaining Dollars \$115,060

VENDOR INFORMATION

Company Agilis Group Inc. da AgilisIT
Name Joyce Tang, President
Address 7968 Arjons Drive, Suite 105
City/State San Diego, CA 92126
Email jtang@agilisIT.com
Phone 888-832-4858

SCOPE OF WORK

The Port is currently seeking Technical Lead Assistant to work on service management projects for the district. Type services include, enterprise print services, desktop and laptop deployments and inventory management.

Staffing	Role	Rate	Hrs.	Totals
Chase Newell	Technical Lead Assistant	\$60	520	\$31,200

Assumptions

The District will provide a workstation and cubicle for the contractor
The District will Provide contractor with necessary security access to systems and facilities during the performance of services
The District will ensure the availability and responsiveness of key personnel needed to support the completion of this work

T&M (Est. hrs)

520


Submitted by (BITS Project Manager)

1-28-15
Date


Submitted by (President, Agilis Group Inc)

1/28/15
Date


Submitted by (Director of BITS)

1/28/15
Date

(2)

**Business Information & Technology Services Department***San Diego Unified Port District**P.O. Box 120488**San Diego, CA 92112-0488**(619) 686-7280**Fax (619) 686-7278***TASK AUTHORIZATION #4**

**REFERENCE
COPY
62696**

March 23, 2015

Joyce Tang
President
Agilist Group Inc.
7968 Arjons Drive, Suite #105
San Diego, CA 92126
Tel.: (888) 832-4858
jtang@agilist.com

**Subject: Task Authorization #4 for Agreement No. 157-2014
As Needed Project Management Office (PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$68,535.00. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA # 4** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Kenneth Chambers	4.	WBS or IO/ Cost Center:	TP0016/TP0031
2.	Date of Request:	03/23/15	5.	Task Start Date:	03/01/15
3.	Task Budget:	\$68,535.00	6.	Task End Date:	06/30/15
7. Task Title: As-Needed Project Management Services.					

8. Scope of Services.

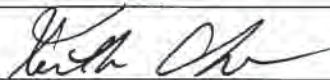
The Port is currently seeking several project managers along with Technical Infrastructure changes. We would like to have key resources to support our projects at the PMO level, advisory services and SharePoint.

Name	Classification Title	Hours	Amount
R. Griswold	Project Manager	467	\$49,035.00
B. Loraine	Project Management Analyst	300	\$19,500.00
	TOTAL:	842	\$68,535.00

APPROVALS

SAN DIEGO UNIFIED PORT DISTRICT
APPROVED: ☒ **YES** ☐ **NO**

Signature: _____



Name: Kenneth Chambers

Title: Manager, Business Systems & Tech Services

Date: _____

3-26-15

Signature: _____



Title: Director

Business Information & Technology Services

Date: _____

3/30/15

(1)



Business Information & Technology Services
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 (619) 686-7280
 Fax (619) 686-7278

TASK AUTHORIZATION NO. 4
Amendment No. 1

**REFERENCE
 COPY**
62696

May 1, 2015

Joyce Tang
 President
 7968 Arjons Drive, Suite #105
 San Diego, CA 92126
jtang@agilist.com

**Subject: Amendment to Task Authorization for Agreement No. 157-2014:
 As Needed Project Management Office (PMO) Services**

1. Task Authorization No.4, (Project Management Services), dated March 23, 2015 has been amended as follows:
 - a. Increase hours from 467 to 603 hours and increase amount from \$49,035.00 to \$63,315.00 for Robin Griswold (Project Manager).
2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.


APPROVALS

Signature: 

Name: Kenneth Chambers

Title: Project Manager, BITS Department

Date: 5-6-15

Signature: 

Name: Deborah Finley

Title: Director, BITS Department

Date: 5/6/15



Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280
Fax (619) 686-7278

TASK AUTHORIZATION NO. 4
Amendment No. 2

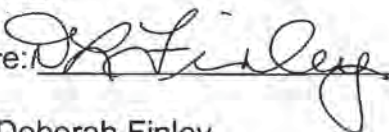
July 2, 2015

Joyce Tang
President
7968 Arjons Drive, Suite #105
San Diego, CA 92126
jtang@agilist.com

**Subject: Amendment to Task Authorization for Agreement No. 157-2014:
As Needed Project Management Office (PMO) Services**

1. Task Authorization No.4, (Project Management Services), dated March 23, 2015 has been amended as follows:
 - a. Increase hours from 300 to 375 hours and increase amount from \$19,500.00 to \$22,782.50 for Breena Loraine (Project Management Analyst).
2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.

APPROVALS

Signature: 

Name: Deborah Finley

Title: Director, Business Information & Technology Services

Date: 7/2/15

Business Information & Technology Services Department

San Diego Unified Port District

P.O. Box 120488

San Diego, CA 92112-0488

(619) 686-7280

Fax (619) 686-7278

**REFERENCE
COPY**

62696

TASK AUTHORIZATION #5

April 30, 2015

Bryan Kim
agilisIT
7968 Arjons Dr, Suite 105
San Diego, CA 92126
bkim@agilisit.com

**Subject: Task Authorization #5 for Agreement No. 157-2014
Agilist Consulting for As needed Tech Writing Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed **\$ 10,000.00**. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #5** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Tom Gresham	4.	WBS or IO/ Cost Center:	TP-0026
2.	Date of Request:	04/29/2015	5.	Task Start Date:	05/04/2015
3.	Task Budget:	\$ 10,000.00	6.	Task End Date:	06/30/2015
7.	Task Title: DR System Recovery Documentation				

8. Scope of Services.

Creation of Technical Documentation

1. Onsite Technical Staff Interviews – Partial days ~4 hours/day

1.1 Information Gathering

1.2 Collect & Review Existing Documentation

2. Technical Writing

2.1 System Component Inventory

2.2 System Diagrams

2.3 Step-by-step Recovery Procedures

2.4 Port will Review for Quality Check

9. Labor Category & Rate

Technical Writer - \$67.00 / Hour

APPROVALS:**SAN DIEGO UNIFIED PORT DISTRICT**APPROVED: ☒ YES ☐ NOSignature: Tom Gresham

Name: Tom Gresham

Title: Technology Security Supervisor

Date: 5/1/2015Signature: Deborah Finley

Name: Deborah Finley

Title: Director,
Business Systems & Tech ServicesDate: 5/1/15

(2)



Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

TASK AUTHORIZATION #6

June 16, 2015

Joyce Tang
President
Agilist Group Inc.
7968 Arjons Drive, Suite #105
San Diego, CA 92126
Tel.: (888) 832-4858
jtang@agilist.com

**Subject: Task Authorization #6 for Agreement No. 157-2014
As Needed Project Management Office (PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed **12,675.00**. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #6** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Kenneth Chambers	4.	WBS or IO/ Cost Center:	176
2.	Date of Request:	06/16/15	5.	Task Start Date:	07/01/15
3.	Task Budget:	\$12,675.00	6.	Task End Date:	09/30/15
7: Task Title: As-Needed Project Management Services.					

8. Scope of Services.

The Port is currently seeking several project managers along with . Technical Infrastructure changes. We would like to have key resources to support our projects at the PMO level, advisory services and SharePoint.

Name	Classification Title	Hours	Amount
B. Loraine	Project Management Analyst	195	\$12,675.00
	TOTAL:	195	\$12,675.00

APPROVALS

Signature: 
Title: Director, Business Information & Technology Services
Date: 6/16/15


Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280

TASK AUTHORIZATION #7

August 12, 2015

Joyce Tang
 President
 Agilist Group Inc.
 7968 Arjons Drive, Suite #105
 San Diego, CA 92126
 Tel.: (888) 832-4858
jtang@agilist.com

**Subject: Task Authorization #7 for Agreement No. 157-2014
 As Needed Project Management Office (PMO) Services**

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed **\$30,000.00**. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA #7** on invoice(s) for this Task.

TASK DESCRIPTION


1.	Requestor:	D. Finley	4.	WBS or IO/ Cost Center:	176
2.	Date of Request:	08/12/15	5.	Task Start Date:	08/15/15
3.	Task Budget:	\$30,000.00	6.	Task End Date:	02/29/16
7: Task Title: As-Needed Project Management Services.					

8. Scope of Services.

The Port is currently seeking several project managers along with Technical Infrastructure changes. We would like to have key resources to support our projects at the PMO level, advisory services and SharePoint.

Name	Classification Title	Hours	Amount
B. Loraine	Project Management Analyst	461	\$30,000.00
	TOTAL:	461	\$30,000.00

APPROVALS

Name/Signature: Deborah L. Finley/	
Title: Director, Business Information & Technology Services	
Date: 8/12/15	

62696

Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280
Fax (619) 686-7278

TASK AUTHORIZATION NO. 7

Amendment No. 1

January 20, 2016

Joyce Tang
President
7968 Arjons Drive, Suite #105
San Diego, CA 92126
jtang@agilist.com

**Subject: Amendment No. 1 to Task Authorization 7 for Agreement No. 157-2014
Agilist Group for As Needed Project Management Office (PMO) Services**

1. Task Authorization No. 7, (As Needed Project Management Office (PMO) Services), dated August 12, 2015 has been amended as follows:
 - a. Increase dollar amount from \$30,000.00 to \$45,000.00.
 - b. Extend Task End Date from 02/29/16 to 04/30/16.
2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.

APPROVALS

Signature:	
Name:	Deborah L. Finley
Title:	Director, Business Information & Technology Services
Date:	1/20/16

(11)

62696



Business Information & Technology Services
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280
Fax (619) 686-7278

TASK AUTHORIZATION NO. 7 Amendment No. 2

June 1, 2016

Joyce Tang
President
7968 Arjons Drive, Suite #105
San Diego, CA 92126
jtang@agilist.com

**Subject: Amendment No. 2 to Task Authorization 7 for Agreement No. 157-2014
Agilist Group for As Needed Project Management Office (PMO) Services**

1. Task Authorization No. 7, Amendment No. 1 (As Needed Project Management Office (PMO) Services), dated January 20, 2016 has been amended as follows:
 - a. Extend Task End Date from 04/30/16 to 12/31/16.
2. All other terms, covenants, and conditions in the original Task Authorization shall remain in full force and effect and shall be applicable to this Amendment.

APPROVALS

Signature:	
Name:	Deborah L. Finley
Title:	Director, Business Information & Technology Services
Date:	6/1/16

(2)

**REFERENCE
COPY**
62696


Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
(619) 686-7280
Fax (619) 686-7278

TASK AUTHORIZATION # 8

May 12, 2016

Joyce Tang
President
Agilist Group, Inc.
7968 Arjons Drive, Suite #105
San Diego, CA 92126
Email: jtang@agilist.com

Subject: Task Authorization # 8 for Clerk's # 62696
Agilist Group for As Needed Project Management Office Services

You are authorized to proceed with the work described in this correspondence, in an amount not to exceed \$2,500.00. This Task Authorization is in accordance with the terms of the subject agreement. **Please cite TA # 8** on invoice(s) for this Task.

TASK DESCRIPTION

1.	Requestor:	Jeff Benedict	4.	WBS or IO/ Cost Center:	176
2.	Date of Request:	05/12/16	5.	Task Start Date:	05/12/16
3.	Task Budget:	\$2,500.00	6.	Task End Date:	06/30/16
7.	Task Title: Portwalk Pavers Application.				

8. Scope of Services.

- a. Close-out and package the Portwalk pavers application. The package should include all data and applications associated with and required to make the pavers application operate. This package will be archived locally.
- b. Set up account for: jbenedict@portofsandiego.org with administrator rights to the SQL database in Azure. Provide an overview of how the Azure SQL Server is setup.

Hourly rate for this classification is defined in Attachment B of the subject agreement.

AGREEMENT SUMMARY

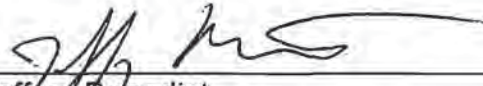
Term of Agreement: 11/04/14-11/04/17		
①	Task Authorization Capacity:	360,000.00
②	Executed TA/Invoices Total:	308,477.50
③	Pending TA Total:	0
④	Available Funds:	51,522.50
⑤	Task Authorization Amount:	2,500.00
⑥	Remaining Balance:	49,022.50

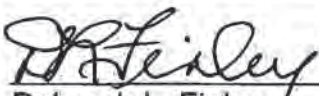
= Line ① - [Line ② + Line ③]

APPROVALS

SAN DIEGO UNIFIED PORT DISTRICT

APPROVED: ☒ YES ☐ NO

Signature: 
 Name: Jeffrey Benedict
 Title: Systems Administration Supervisor
 Date: 5/12/2016

Signature: 
 Name: Deborah L. Finley
 Title: Director, Business Information & Technology Services
 Date: 5-12-16

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
MATISIA INC.**

San Diego Unified Port District

Document No. 62694

Filed DEC 18 2014
Office of the District Clerk

**DBA
MATISIA CONSULTANTS**

**for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 155-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MATISIA INC. dba MATISIA CONSULTANTS, a Washington 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 his designated representative informed of the progress of said services at all times.

a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on November 4, 2014 and shall terminate on November 4, 2017 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 of Agreement with Service Provider and agreement with ACME Business Consulting, Inc., District Clerk Document No. 62695, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62696 collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

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

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

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

22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:


Kristina Roth, CEO
Matisia Consultants
3134 Elliot Avenue, Suite 220
Seattle, WA 98121
Tel. 206-395-2600
Email: Kristina.Roth@matisia.com

****END OF PAGE****

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

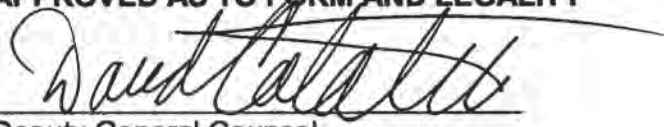
SAN DIEGO UNIFIED PORT DISTRICT

**MATISIA INC.
DBA
MATISIA CONSULTANTS**


Deborah Finley, Director
Business Information & Technology
Services Department


Kristina Roth
CEO

APPROVED AS TO FORM AND LEGALITY


Deputy General Counsel

ATTACHMENT A
SCOPE OF SERVICES
San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

*LABOR CLASSIFICATION	*POSITION TITLE*	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Consultant	\$225	\$225
2. Project Manager	Senior Consultant	\$198	\$198
3. Functional Lead	Senior Consultant	\$198	\$198
4. Technical Lead	Senior Consultant	\$165	\$165
5. Business Analyst	Senior Consultant	\$165	\$165
6. Assistant Project Manager	Consultant	\$140	\$140
7. Project Management Analyst	Consultant	\$120	\$120
8. Change and Training Lead	Senior Consultant	\$175	\$175

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 155-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. 62694, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 —OR—
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____ This certificate applies to all operations of named Insureds on District property in connection with all agreements between the District and Insured.
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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: \$ _____		Inception 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		Inception Date: _____ Expiration Date: _____	Each Occurrence: \$ _____
	Workers' Compensation – Statutory Employer's Liability		Inception Date: _____ Expiration Date: _____	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Excess/Umbrella Liability		Inception 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)	Phone Numbers Toll Free: _____ Fax Number: _____ E-mail Address: _____ 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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**REFERENCE
COPY****62694**

July 10, 2017

Ms. Kristina Roth
CEO
Matisia Consultants
3134 Elliot Avenue, Suite 220
Seattle, WA 98121

Dear Ms. Roth:

Per your agreement with the San Diego Unified Port District (agreement number 155-2014) dated December 18, 2014, The District hereby grants Option Years 1 and 2 of the agreement commencing November 5, 2017 and shall terminate on November 4, 2019

All other terms, covenants, and conditions in the original agreement shall remain in full force and effect and shall be applicable to these options.

Sincerely,



Paul Fanfera
Assistant V.P. of Business and Technology

RESOLUTION 2014-215**RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the BPC is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

2014-215

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

2014-215

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November, 2014, by the following vote:

AYES: Bonelli, Castellanos, Merrifield, Moore, and Valderrama.

NAYS: None.

EXCUSED: Malcolm and Nelson.

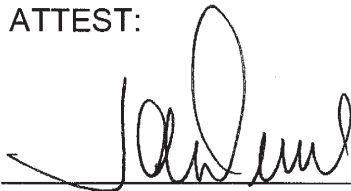
ABSENT: None.

ABSTAIN: None.



Robert E. Nelson, Chairman
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)



San Diego Unified Port District

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3165 Pacific Hwy.
San Diego, CA 92101

File #:2014-531

DATE: November 4, 2014

SUBJECT:

RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT; MATISIA INC., DBA MATISIA CONSULTANTS; AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000

EXECUTIVE SUMMARY:

Board of Port Commissioners (Board) authorized staff to develop a five-year Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved fiscal year 2015 (FY 2014/2015) projects through the adoption of the annual budget.

One of the TSP initiatives approved by the Board is to implement a Project Management Office providing more responsiveness to the District's current and future information technology initiatives. The Project Management Office will obtain improvements over time by continuously driving the Business Information and Technology Services (BITS) department to improve its performance rolling out projects. The Project Management Office will define and maintain project management standards for information technology going forward.

The primary goal of the Project Management Office is to achieve benefits found in following project management standards, policies, processes, and methods. As the BITS department matures, the Project Management Office will become the source for guidance, documentation, and metrics related to the practices involved in managing and implementing projects within the District. It will report on project activities, problems, and new initiative requests coming from other District departments. It will also be a strategic tool used to keep the information technology initiatives focused on District strategic goals and objectives.

Staff issued Request for Qualification 14-27 (RFQ No. 14-27) on August 6, 2014 for As-Needed Project Management Office Services. The District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive. Evaluations were performed by a panel comprised of BITS staff, Procurement staff, and Equal Opportunity Management. The panel analyzed the proposals, conducted interviews, and ranked the firms according to the criteria established in RFQ No. 14-27. Using the District's decision analysis process, the panel selected three top firms

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based upon their ability to meet the District's needs.

RECOMMENDATION:

Resolution Selecting and Authorizing Agreements with Agilis Group Inc., dba AgilisIT; Matisia Inc., DBA Matisia Consultants; and ACME Business Consulting, LLC, to Provide As-Needed Information Technology Project Management Services for Three Years with Two Optional One Year Extensions for a Total Aggregate Amount not to Exceed \$1,200,000.

FISCAL IMPACT:

The maximum cost to the District for the first 3 years is estimated at \$900,000 and the total of \$1,200,000 over 5 years, if the two optional annual options are exercised. Funds for the first year of the agreement are budgeted in the (FY 2014/2015) operating budget in the Business Information and Technology Services Professional Services account (Ordinance 2766). Funds needed for future fiscal year(s) will be budgeted in the appropriate fiscal year and cost account, subject to Board approval upon adoption of each fiscal year's budget.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s):

- A Port that the public understands and trusts.
- A Port with an innovative and motivated workforce.

DISCUSSION:

The Board authorized staff to develop a TSP at the August 9, 2011 Board meeting by awarding an agreement to ThirdWave Corporation to conduct a comprehensive enterprise study. The results and recommendations were presented to Board members in a series of individual meetings occurring in March 2012. The Board approved (FY 2014/2015) TSP projects through the adoption of the annual budget.

The TSP identified 40+ technology projects over a five year period: replacing the District's email system, replacing the document management system, updating the real estate management solution, geographical information system, replace the computer aided dispatch system, maritime operation information system, redesigned the public internet site, agenda management solution, and General Services maintenance system process improvements. New E-Government initiatives include; public records request management, transient vessel solution, park permitting, public records management, and electronic invoicing. Other initiatives on the roadmap include a solution to manage all of the District's media assets such as; videos and pictures, enterprise reporting, human resources system improvements, and standard financial and budgeting system improvements.

One of the TSP projects approved by the Board is to initiate a Project Management Office that better responds to the District's current and future information technology initiatives. The Project

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Management Office will obtain improvements over time and continuously drive the BITS department to improve its performance deploying projects and operationally advancing needs.

The District has been doing technology and business process driven projects using disparate methodologies and practices which has proven to be disorganized and required an immense learning curve for BITS staff. Along with implementing a new Project Management Office, the BITS department implemented a forum for technology governance seeking to improve the value of departmental business operations and rationally prioritize project requests along with researching the best tools and applications recommended for a thriving organization. Together with the Project Management Office this Technology Governance Forum provides a framework for implementing policies, business processes, and internal controls to effectively support all the services that the BITS department provides.

The Technology Governance Forum represents the review and analysis of proposed tools, applications and/or hardware introduced by non-technical departments and BITS. It makes decisions or recommendations regarding information technology strategies and policies, BITS department projects, priorities, and related issues.

RFP - Vendor Information

Agilis Group Inc., dba AgilisIT (AgilisIT) - the AgilisIT approach to working with the District is to provide personnel that are the “right fit” ensuring that personnel understand the District technology environment. Agilis is a professional services firm specializing in offering information technology services. AgilisIT provides solid staff experience as it relates to the District’s future initiatives and roadmap. Such experiences include working with US Military, Department of Treasury, California General Services Department, Industrial Relations and Managed Healthcare. They have a solid understanding of the District’s environment and have a familiarity with public sector rules and regulations. A primary strength is in Microsoft technologies.

Matisia Inc., dba Matisia Consultants (Matisia) - Based in Southern California and Seattle, Washington, Matisia is a professional services firm that specializes in SAP and Microsoft Application services. Matisia staff experience as it relates to the District’s future initiatives and roadmap is top-of-the-line. Such experience includes working with Southern California Edison, Carefusion, Microsoft, and Costco Wholesale. They have a solid understanding of the SAP environment especially in the areas the District intends to enhance in upcoming years. Primary strength is in SAP core modules and integration.

ACME Business Consulting, LLC (ACME) - ACME specializes in implementation, business process, and project management services. ACME was the most well rounded firm in the selection group. Even though the firm is small in terms of the number of employees, they make up for it in staff experience, stability of staff, and public sector experience. Their primary strength is in Microsoft technologies and content management.

Other Firms in selection group - LSI Consulting, Sage, MGT of America, BPM Advisors, Kissinger Group, Dataskill, and Wave Technology Solutions Group provided bid submissions that added limited value when compared to ACME, Matisia, and Agilis related Project Management Office services.

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General Counsel's Comments:

The General Counsel's Office has reviewed the agreements for AgilisIT, Matisia and ACME and approves them as to form and legality.

Environmental Review:

The proposed Board action does not constitute a "project" under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 and is therefore not subject to CEQA. No further action under CEQA is required.

The proposed Board action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or exclusion is not required.

Equal Opportunity Program: Due to limited sub opportunities no Small Business Enterprise (SBE) goal was established for this solicitation. Two of the three firms recommended are SBEs.

PREPARED BY:

Kenneth Chambers
Manager, Business Information Technology Services

Attachment(s):

Attachment A: Agreement 155- 2014 Matisia Inc., dba Matisia Consultants

Attachment B: Agreement 156-2014 ACME Business Consulting, LLC

Attachment C: Agreement 157-2014 Agilis Group Inc., dba AgilisIT

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
MATISIA INC.
DBA
MATISIA CONSULTANTS
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 155-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MATISIA INC. dba MATISIA CONSULTANTS, a Washington 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with ACME Business Consulting, Inc., District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. Certified Payrolls. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Kristin Roth, CEO
Matisia Consultants
3134 Elliot Avenue, Suite 220
Seattle, WA 98121
Tel. 206-395-2600
Email: Kristin.Roth@matisia.com

****END OF PAGE****

- 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

**MATISIA INC.
DBA
MATISIA CONSULTANTS**

Deborah Finley, Director
Business Information & Technology
Services Department

Kristin Roth
CEO

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Consultant	\$225	\$225
2. Project Manager	Senior Consultant	\$198	\$198
3. Functional Lead	Senior Consultant	\$198	\$198
4. Technical Lead	Senior Consultant	\$165	\$165
5. Business Analyst	Senior Consultant	\$165	\$165
6. Assistant Project Manager	Consultant	\$140	\$140
7. Project Management Analyst	Consultant	\$120	\$120
8. Change and Training Lead	Senior Consultant	\$175	\$175

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 155-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
ACME BUSINESS CONSULTING, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and ACME BUSINESS CONSULTING, LLC, an Oregon Limited Liability 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 his designated representative informed of the progress of said services at all times.

- a. **As-Needed Services**

- (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
- (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA) for said services, in the format as shown in the attached Exhibit A,

attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

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

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Nilay Thakkar
Managing Director, San Diego
ACME Business Consulting
4445 Eastgate Mall #200
San Diego, CA 92121
Office: (858) 337-9925
Fax: (858) 812-2001
Email: nthakkar@acmebc.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

**ACME BUSINESS CONSULTING,
LLC**

Deborah Finley, Director
Business Information & Technology
Services Department

Nilay Thakkar
Managing Director

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION*	(ACME) POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1. Senior Project Manager	Senior Manager	\$190	\$190
2. Project Manager	Manager	\$145	\$165
3. Functional Lead	Manager	\$145	\$165
4. Technical Lead	Manager	\$145	\$165
5. Business Analyst	Senior Consultant	\$125	\$145
6. Assistant Project Manager	Senior Consultant	\$125	\$145
7. Project Management Assistant	Senior Consultant	\$125	\$145
8. Change and Training Lead	Senior Manager	\$170	\$190

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 156-2014
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

"I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
 - (4) Dates of service provided
 - (5) Date of invoice
 - (6) A unique invoice number
- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3
Hemet, CA 92546-8010 –OR–
Email: sdupd@prod.certificatesnow.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
AGILIS GROUP INC.
DBA
AGILISIT
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 157-2014**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AGILIS GROUP INC. DBA AGILISIT, 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 his designated representative informed of the progress of said services at all times.
 - a. **As-Needed Services**
 - (1) Service Provider is aware that the services to be provided under this Agreement are on an as-needed basis as determined by the District. Service Provider may or may not receive a request to provide such services, and Service Provider may not receive the maximum expenditure of funds allocated for these services. No work or services will be performed until a task authorization has been signed by the District Representative.
 - (2) Service Provider shall furnish all technical and professional labor, and materials to 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 Task Authorization (TA)

for said services, in the format as shown in the attached Exhibit A, attached hereto and incorporated herein. A Task Authorization shall not be considered effective until the Task Authorization has been signed by the District's designated representative.

2. **TERM OF AGREEMENT.** This Agreement shall commence on October 15, 2014 and shall terminate on October 15, 2017 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 of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. _____, and agreement with ACME Business Consulting, LLC, District Clerk Document No. _____, collectively shall not exceed \$900,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$1,200,000.00.
 - b. **Payment Procedure.** For work performed on an hourly basis, Service Provider agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Service Provider finds it necessary to have work, which would usually be performed by personnel with a lower rate, performed by personnel paid at the higher hourly rate, Service Provider shall nevertheless, bill at the lower rate.

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

4. **RECORDS**

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

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

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's Sub-Service Providers shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision beyond rendition of such information, advice, or recommendations.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to Indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost

(including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.

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

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and

Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

- (a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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 CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or Sub-Service Providers.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION.** In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.
18. **DISPUTE RESOLUTION**
- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
 - b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be

documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, Sub-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.

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**

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls to the General Services & Procurement Department, 1400 Tidelands Avenue, National City, California 91950.

21. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
22. **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, including Insurance Certificates and Endorsements to:

Deborah Finley, Director
Business Information & Technology Services Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-7271
Email: dfinley@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:

Joyce Tang, President
Agilis Group Inc. dba AgilisIT
7968 Arjons Drive, Suite 105
San Diego, CA 92126
Tel. 888-8324858 x201
Email: jtang@agilisit.com

END OF PAGE

- 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

**AGILIS GROUP, INC.
DBA
AGILISIT**

Deborah Finley, Director
Business Information & Technology
Services Department

Joyce Tang
President

APPROVED AS TO FORM AND LEGALITY

Deputy General Counsel

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Service Provider shall provide Project Management Office services based on the roles listed in the rate schedule as well as working within the guidelines of the PMO. Key duties of the personnel include developing and maintaining project plan, schedules, build charters, risk analysis and change, communication planning. One of the key duties in a project manager or lead role is to manage deliverables understand roles and responsibilities, schedule management and quality management plans. Personnel will provide facilitation of design sessions, project meetings, status update meetings with the audiences assigned by the PMO Manager and will be responsible for assuring notes are produced along with action items.

Leads will on occasion work with the District's different teams teaching/mentoring best practice step by step lifecycles in the chosen technology areas. The mentoring process may include assisting the PMO in setting up project plans for application development, infrastructure and business process management and central process for all internal and external user applications. The leads should have experience in the District's technologies or applications listed below. The leads should also have experience configuring and building business applications from end-to-end. The leads should be strong in translating business requirements into the necessary technical specifications than build appropriately.

Service Provider should provide staffing associated with key roles with the PMO. The PMO use several methodologies depending on the project type. ASAP for SAP, Waterfall in some standard business process engagements and standard SDLC with a variant of ASAP and AGILE to handle custom development

A. Additional Services: The District may also require the services listed below;

- Develop and manage project-specific procedures for communications, administration
- Document management, issue and resolution tracking
- Provide quality control, deliverable oversight and schedule monitoring
- Provide change management and control, change document, schedule, and solution development
- Documenting Knowledge Transfer for newly implemented solutions
- Change Management Services
- Business Process Management Processes
- Requirement Gathering
- Match Requirements Matrix with completion of project

- Training and Mentoring duties
- Test Management and Organization
- Schedule and facilitate a Lessons Learned
- Design Post Go-Live Strategies

B. Key Applications:

1. SHAREPOINT 2013 ENTERPRISE
2. .NET FRAMEWORK 4.5X
3. SAP ECC 6.0 (Financial, HCM, SALES & Distribution, Plant Maintenance)
4. OFFICE 365
5. DOCUMENTUM 6.7X
6. SQL SERVER 2012
7. ESRI GIS
8. SAP BUSINESS OBJECTS SUITE

C. Key Infrastructure:

1. AZURE CLOUD
2. HYPER-V
3. WINDOWS SERVER 2012
4. CISCO NETWORKING

**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 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) Services shall be invoiced in accordance with the following Rate Schedules:

LABOR CLASSIFICATION	POSITION TITLE**	FULLY BURDENED RATE Remote	FULLY BURDENED RATE Onsite
1.Senior Project Manager		\$159	\$159
2. Project Manager		\$105	\$105
3. Functional Lead	Project Lead	\$100	\$100
4. Technical Lead	Architect/Sr Developer	\$119	\$119
5. Business Analyst		\$70	\$70
6. Assistant Project Manager		\$85	\$85
7. Project Management Analyst		\$65	\$65
8. Change and Training Lead		\$73	\$73

* Invoices shall reference Consultant's Position Titles, shown on table above.

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

(3) **Reimbursable Expenses**

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

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

2. **INVOICING**

- a. **Payment Documentation.** As a prerequisite to payment for services, Service Provider shall invoice District for services performed and for

reimbursable expenses authorized by this Agreement, accompanied by such records, receipts and forms as required.

- 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. 157-2014
- (2) If applicable, the Task Authorization(s) (TA) number being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

- (4) Dates of service provided
- (5) Date of invoice
- (6) A unique invoice number

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be mailed to the attention of: Deborah Finley, Business Information & Technology Services, P.O. Box 120488, San Diego Unified Port District, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.
- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request and within sixty (60) days of incurring costs to be reimbursed under the Agreement. Payment will be made to Service Provider within thirty (30) days after receipt by District of a proper invoice.

EXHIBIT 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 12010-3

Hemet, CA 92546-8010 –OR–

Email: sdupd@prod.certificatesnow.com

Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability Occurrence Form Claims-made Form Retro Date _____ Liquor Liability Deductible/SIR: \$ _____		Inception 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		Inception Date: Expiration Date:	Each Occurrence: \$
	Workers' Compensation – Statutory Employer's Liability		Inception Date: Expiration Date:	E.L. Each Accident \$ E.L. Disease Each Employee \$ E.L. Disease Policy Limit \$
	Excess/Umbrella Liability		Inception 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)			Phone Numbers	
			Toll Free: _____ Fax Number: _____	
			E-mail Address: _____	
			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 12010-3
 Hemet, CA 92546-8010 – OR –
 Email to: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION SELECTING AND AUTHORIZING AGREEMENTS WITH AGILIS GROUP INC., DBA AGILISIT, MATISIA INC., DBA MATISIA CONSULTANTS, AND ACME BUSINESS CONSULTING, LLC, TO PROVIDE AS-NEEDED INFORMATION TECHNOLOGY PROJECT MANAGEMENT SERVICES FOR THREE YEARS WITH TWO OPTIONAL, ONE YEAR EXTENSIONS FOR A TOTAL AGGREGATE AMOUNT NOT TO EXCEED \$1,200,000**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, the Board of Port Commissioners (Board) adopted BPC Policy No. 110 incorporating the provisions of the Accounting Act to govern the processing and administration of public projects; and

WHEREAS, the BPC authorized staff to develop a Technology Strategic Plan (TSP) at the August 9, 2011 Board meeting by awarding an agreement with ThirdWave Corporation to conduct a comprehensive study resulting in a TSP; and

WHEREAS, one of the TSP initiatives approved by the Board is to implement a Project Management Office (PMO) providing more responsiveness to the District's current and future information technology initiatives; and

WHEREAS, the PMO will reap improvements over time by continuously driving the Business Information and Technology Services Department to improve its performance rolling out projects; and

WHEREAS, staff issued Request for Qualification 14-27 on August 6, 2014 for as needed PMO Services; and

WHEREAS, the District notified 119 firms electronically and received fifteen (15) bids, all of which were deemed responsive; and

WHEREAS, District's decision analysis process was used to select three top firms based upon their ability to meet the District's needs.

20xx-xxx

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director or his designated representative is hereby authorized on behalf of the San Diego Unified Port District to authorize as needed Project Management Service Agreements with Agilis Group Inc., dba Agilisit, Matisia Inc., dba Matisia Consultants, and ACME Business Consulting, LLC, for Project Management Office Services in an amount not to exceed \$900,000 for three years, with two optional, one year extensions at \$150,000 per year.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 4th day of November 2014 by the following vote:

Attachment E to Agenda File No. 2017-0597

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
EXCELERATE, LLC
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 156-2014**

The parties to this Amendment No. 2 to Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and EXCELERATE, LLC, a California Limited Liability Corporation (Service Provider).

Recitals:

District and Service Provider are parties to an Agreement for As Needed Project Management Office (PMO) Services. The agreement is on file in the Office of the District Clerk as Document No. 62695 dated December 18, 2014, as amended by Assignment and Assumption Agreement between ACME BUSINESS CONSULTING, LLC and EXCELERATE, LLC, Document No. 65787 dated November 14, 2016, and by Amendment No. 1, Document No. 65872 dated December 13, 2016. It is now proposed to increase the agreement amount by \$1,080,000.00 from a total of \$1,200,000.00 to \$2,280,000.00.

The Parties Agree:

1. Section 3.a., **Maximum Expenditure**, shall be delted in its entirety and replaced with the following:
 - a. **Maximum Expenditure.** The aggregate amount of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62696, collectively shall not exceed \$1,980,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate

maximum amount of Option Year 2 shall not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$2,280,000.00.

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

SAN DIEGO UNIFIED PORT DISTRICT

EXCELERATE, LLC

Keith Coffey
Chief Technology Officer

Nilay Thakkar
President

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Amendment 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 Amendment.

Attachment F to Agenda File No. 2017-0597

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
AGILIS GROUP INC.
DBA
AGILISIT
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 157-2014**

The parties to this Amendment No. 1 to Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and AGILIS GROUP INC. dba AGILISIT, a California Corporation (Service Provider).

Recitals:

District and Service Provider are parties to an Agreement for As Needed Project Management Office (PMO) Services. The agreement is on file in the Office of the District Clerk as Document No. 62696 dated December 18, 2014. It is now proposed to increase the agreement amount by \$1,080,000.00 from a total of \$1,200,000.00 to \$2,280,000.00.

The Parties Agree:

1. Section 3.a., **Maximum Expenditure**, shall be deleted in its entirety and replaced with the following:
 - a. **Maximum Expenditure.** The aggregate amount of Agreement with Service Provider and agreement with Matisia Inc. dba Matisia Consulting, District Clerk Document No. 62694, and agreement with ACME Business Consulting, LLC (assigned to Excelerate, LLC), District Clerk Document No. 62695, collectively shall not exceed \$1,980,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall

not exceed \$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$2,280,000.00.

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

SAN DIEGO UNIFIED PORT DISTRICT

**AGILIS GROUP INC.
dba AGILISIT**

Keith Coffey
Chief Technology Officer

Joyce Tang
President

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Amendment 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 Amendment.

**AMENDMENT NO. 1 TO AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
MATISIA INC.
DBA
MATISIA CONSULTANTS
for
AS NEEDED PROJECT MANAGEMENT OFFICE (PMO) SERVICES
AGREEMENT NO. 155-2014**

The parties to this Amendment No. 1 to Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and MATISIA INC. dba MATISIA CONSULTANTS, a Washington Corporation (Service Provider).

Recitals:

District and Service Provider are parties to an Agreement for As Needed Project Management Office (PMO) Services. The agreement is on file in the Office of the District Clerk as Document No. 62694 dated December 18, 2014. It is now proposed to increase the agreement amount by \$1,080,000.00 from a total of \$1,200,000.00 to \$2,280,000.00.

The Parties Agree:

1. Section 3.a., **Maximum Expenditure**, shall be delted in its entirety and replaced with the following:
 - a. **Maximum Expenditure.** The aggregate amount of Agreement with Service Provider and agreement with ACME Business Consulting, LLC (assigned to Excelerate, LLC), District Clerk Document No. 62695, and agreement with Agilis Group Inc. dba AgilisIT, District Clerk Document No. 62696, collectively shall not exceed \$1,980,000.00. Two 1-year options may be granted at the District's sole discretion. The aggregate maximum amount of Option Year 1, if granted shall not exceed \$150,000.00 and the aggregate maximum amount of Option Year 2 shall not exceed

\$150,000.00. The maximum aggregate expenditure of the above agreements shall not exceed \$2,280,000.00.

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

SAN DIEGO UNIFIED PORT DISTRICT

**MATISIA INC.
dba MATISIA CONSULTANTS**

Keith Coffey
Chief Technology Officer

Kristina Roth
CEO

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

A manually signed copy of this Amendment 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 Amendment.

DRAFT**RESOLUTION 20xx-xxx****RESOLUTION AUTHORIZING AMENDMENTS TO INCREASE THE COMBINED AMOUNT OF THE AS-NEEDED AGREEMENTS BY \$1,080,000 WITH MATISIA INC., ACME BUSINESS CONSULTING, LLC. (ASSIGNED AND ASSUMED BY EXCELERATE LLC.), AND AGILIS GROUP INC. FOR PROJECT MANAGEMENT OFFICE SERVICES, INCREASING THE AGGREGATE TOTAL FROM \$1,200,000 TO \$2,280,000 THROUGH NOVEMBER 4, 2019**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I; and

WHEREAS, the Board of Port Commissioners (BPC) adopted BPC Policy No. 110 to establish a policy governing the processing and administration of public projects, consulting and service agreements, the purchasing of supplies, materials and equipment, and grants; and

WHEREAS, on November 4, 2014, following a competitive bidding process, the BPC authorized a master services agreement between the District and three information technology consulting firms: Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. (which has been formally assigned and assumed by Excelerate LLC) for as-needed information technology "Project Management Office Services" (Master Agreement); and

WHEREAS, the District selected these firms based upon interviews of responsive bidders to Request for Qualifications number 14-27; and

WHEREAS, under the Master Agreement, the selected firms provide a complete range of professional consulting services to support the Information Technology department's project efforts to support District's staff with key expertise and additional resources; and

WHEREAS, the District used the Master Agreement to help staff execute many of the projects identified in a 5-year technology strategic plan, which sought to create more transparency with the public, modernize its physical and virtual infrastructure, augment District security systems, and create operational efficiencies; and

WHEREAS, almost two years remain in the agreement and existing funds are nearly exhausted;

20xx-xxx

WHEREAS, funds for the first year of this expenditure are budgeted for in the FY 17/18 Information Technology Professional Services account; and

WHEREAS, this amendment adding \$1,080,000 to the agreement will allow the District to complete priority information technology projects; and

WHEREAS, BPC authorization of this agenda will increase the total agreement capacity by \$1,080,000 for a new, not-to-exceed total of \$2,280,000 for Project Management Office Services.

NOW THEREFORE, BE IT RESOLVED by the Board of Port Commissioners of the San Diego Unified Port District, as follows:

That the Executive Director and/or her designated representative is hereby authorized on behalf of the District to enter into Amendments to increase the combined amount of the as-needed agreements by \$1,080,000 with Agilis Group Inc., Matisia Inc., and ACME Business Consulting LLC. (which has been formally assigned and assumed by Excelerate LLC) for Project Management Office Services, increasing the aggregate total from \$1,200,000 to \$2,280,000 through November 4, 2019.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL

By: Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 9th day of January 2018, by the following vote: