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San Diego Unified Port District

Document No. **71201**

Filed **05/28/2020**

Office of the District Clerk

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
APEX COMPANIES, LLC
for
CHULA VISTA BAYFRONT SWPPP SERVICES
AGREEMENT NO. 148-2019MA**

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

Recitals:

District and Service Provider are parties to an Agreement for Chula Vista Bayfront SWPPP Services. The Agreement is on file in the Office of the District Clerk as Document No. 70602 dated November 6, 2019, as amended by Amendment No. 1, Document No. 70989 dated March 4, 2020. It is now proposed to amend the Agreement by replacing the current Agreement Attachment B with the Attachment B dated May 22, 2020.

The Parties Agree:

1. Attachment B, **COMPENSATION & INVOICING**, is hereby replaced in its entirety with the Attachment B dated May 22, 2020 attached to this Amendment No. 2.

*****END OF PAGE*****

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

SAN DIEGO UNIFIED PORT DISTRICT**APEX COMPANIES, LLC.***Ernesto Medina*

Ernesto Medina
Chief Engineer, Engineering-Construction

Joseph Westlock

Joseph Westlock
Director/Division Manager

Approved as to form and legality:
GENERAL COUNSEL

John Carter

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 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 on a Fixed Fee and/or Time and Materials basis.

(a) 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.

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

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

(2) Professional services performed on a Time and Materials basis shall be invoiced in accordance with the following **Rate Schedule**:

LABOR CLASSIFICATION / POSITION TITLE	FULLY BURDENED HOURLY BILLING RATE
1. Senior Project Manager	\$190.00
2. Project Manager	\$140.00
3. Senior Engineer	\$160.00
4. Engineer	\$110.00
5. Senior Inspector	\$125.00

APEX LABOR RATES			
Labor Classifications	Regular Time	1.5x Overtime	2.0x Overtime
Laborer	\$97.00	\$114.00	\$130.00
Equipment Operator	\$145.00	\$169.00	\$193.00
Teamster	\$72.00	\$84.00	\$96.00
Project Administrator	\$90.00	N/A	N/A

SUBCONTRACTOR LABOR RATES			
Labor Type	Regular	1.5x OT	2.0x OT
Laborer	\$80.00	\$97.00	\$114.00
Foreman	\$90.00	\$107.00	\$124.00
Landscape Hydro Seeder	\$90.00	\$108.00	\$126.00
Skip Loader (Operator Only)	\$101.00	\$124.00	\$148.00
Skid Steer (Operator Only)	\$101.00	\$125.00	\$149.00
5k Reachlift (Operator Only)	\$81.00	\$95.00	\$108.00
Water Truck (Operator Only)	\$82.00	\$95.00	\$122.00
3 Axel Flat Bed (Operator Only)	\$82.00	\$95.00	\$122.00
Street Sweeper (Operator Only)	\$82.00	\$95.00	\$109.00

5% mark-up allowed on Subcontractor Costs, APEX Material Costs, and APEX Equipment Costs.

- (a) The following shall be considered part of the fully burdened hourly rates stated in this Agreement: vehicle expenses, parking, tolls, film, postage, facsimiles, computer usage, printing, normal copying and document reproduction, blue print services, travel, telecommunications, photography, and all other costs and expenses incurred in completing such services.
- (3) Additional classifications, fully burdened hourly rates, and Fixed Fees not listed in this Agreement may be authorized via Task Authorization with the approval of the District's Project Manager.
- (4) **Agreement Expenditure Summary.** The following table summarizes the maximum annual expenditures to be incurred under this Agreement:

Description	Initial Term (11/12/2019 – 11/11/2020)	Optional Term (11/12/2020 – 11/11/2022)
Operations and Maintenance (LTMP) at Chula Vista Bayfront Site 2 & 3 (Maximum)	\$ 108,269.00	-
As-Needed Services (Maximum)	\$ 75,000.00	\$ 450,000.00
TOTAL ANNUAL FEES, Agreement not-to-exceed amount	\$ 183,269.00	\$ 450,000.00

(5) **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. 148-2019MA
- (2) The Task Authorization(s) (TA) number(s) being charged.
- (3) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:

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

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

- c. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- d. Invoices shall be emailed to: eng_invoices@portofsandiego.org and/or mailed to the attention of Amy Dilts, Engineering-Construction Department, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488.
- e. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by 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.