

12. **INDEPENDENT CONTRACTOR.** Design Professional and any agent or employee of Design Professional shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Design Professional's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Design Professional. Design Professional shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Design Professional 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. Design Professional 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 Design Professional pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Design Professional 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, Design Professional 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 Design Professional pursuant to this Agreement (including any duplicate copies kept by the Design Professional) shall not be shown to any other public or private person or entity, except as authorized by District. Design Professional 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 Design Professional 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 Design Professional 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 Design Professional 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-Design Professional 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 Design Professional, made an exhaustive inspection to check the quality or quantity of the services performed by the Design Professional, made an examination to ascertain how or for what purpose the Design Professional has used money previously paid on account by the District, or constitute a waiver of claims against the Design Professional by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Design Professional 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 Design Professional. Upon five (5) day written notice to the Design Professional, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Design Professional to pay the same; and the amount due the Design Professional under this Agreement or the whole or so much of the money due or to become due to the Design Professional 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 Design Professional 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 Design Professional. 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 Design Professional.

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

- a. Design Professional acknowledges and agrees that it is the sole and exclusive responsibility of Design Professional to: (a) ensure that all persons and/or entities (including, but not limited to, Design Professional 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.** Design Professional acknowledges and agrees that it is the sole and exclusive responsibility of the Design Professional to ensure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.
 - (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Design Professional will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Design Professional's request.
 - (2) The use of LCPtracker by the Design Professional is mandatory. Access to LCPtracker will be provided at no cost to the Design Professional.

- (3) In order to utilize LCPtracker, the Design Professional needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Design Professional's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Design Professional's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Design Professional must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Design Professional.
- (6) Training options can be provided to the Design Professional upon request.

21. **DESIGN PROFESSIONAL/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of

this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- b. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
 - c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
 - d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
22. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
23. **EQUAL OPPORTUNITY EMPLOYMENT**
- Service Provider represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, gender, gender expression, sexual orientation, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Service Provider will, within forty-five (45) days of the effectiveness of this Agreement, provide a written statement of its commitment to diversity, equity and inclusion, which shall include a commitment and brief description of its plan to implement good faith efforts to recruit subconsultants and employees in a non-discriminatory manner. If Service Provider fails to provide such written statement as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination. Service Provider shall, not later than sixty (60) days prior to the expiration of each anniversary of the effective date of this Agreement, provide a written report describing Service Provider's actions and results in furtherance of its commitment to diversity, equity, and inclusion. Service Provider's report shall not identify individual subconsultants and employees by name. If Service Provider fails to provide such report as required, the District may terminate this Agreement, effective immediately, by providing written notice of such termination.

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

a. Submit all correspondence regarding this Agreement to:

Amy Dilts
Engineering – Construction
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-6004
Email: eng_invoices@portofsandiego.org

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

Tamara O’Neal
NV5, Inc.
15092 Avenue of Science, Suite 200
San Diego, CA 92128
Tel. (858) 385-2103
Email: tamara.oneal@nv5.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

NV5, INC.

Ernesto Medina
Chief Engineer, Engineering – Construction

Carmen Kasner

Carmen Kasner
PE, Principal in Charge

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

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

**ATTACHMENT A
SCOPE OF SERVICES**

San Diego Unified Port District

1. **Scope:** Service Provider will provide professional engineering consulting services on an as needed basis regarding quality control oversight and review of design plans, specifications and cost estimates for completeness, consistency and compliance with all federal, state and local design criteria, standards of practice, regulations and permit requirements, including but not limited to the following:
 - a. Review and provide advice regarding structural calculations, soils reports, geotechnical, grading, onsite improvements, energy calculations and reports, disabled accessibility requirements, and green building standards.
 - b. Review and provide advice regarding storm water erosion control, drainage and best management practices.
 - c. Additional services may include one or more of the following disciplines:
 - (1) Civil engineering
 - (2) Landscape and irrigation
 - (3) Structural engineering
 - (4) Geotechnical engineering
 - (5) Mechanical engineering
 - (6) Electrical and plumbing engineering
 - (7) Traffic engineering
 - (8) Accessibility and ADA requirements
 - (9) Title 24, California Administration code for Port owned buildings
 - (10) Certified Building Official and Inspector services preferred
 - d. For all services requested Service Provide shall utilize staff with appropriate California registrations including:
 - (1) California Architect

- (2) California Structural Engineer
- (3) California Geotechnical Engineer
- (4) California Electrical Engineer
- (5) California Mechanical Engineer

**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 Design Professional compensation as set forth hereunder.
- (1) Design Professional 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) Professional services shall be invoiced in accordance with the following Rate Schedules:

POSITION TITLE	YEAR 1 (FULLY BURDENED HOURLY RATE)	YEAR 2 (FULLY BURDENED HOURLY RATE)	YEAR 3 (FULLY BURDENED HOURLY RATE)	YEAR 4 (FULLY BURDENED HOURLY RATE)	YEAR 5 (FULLY BURDENED HOURLY RATE)
Engineering Manager	\$217.35	\$222.48	\$227.73	\$233.10	\$238.61
Senior Engineer	\$172.37	\$176.44	\$180.60	\$184.86	\$189.23
Associate Engineer	\$126.54	\$129.53	\$132.58	\$135.71	138.91
Senior Designer	\$150.00	\$153.54	\$157.16	\$160.87	\$164.67
Engineering Aide	\$78.82	\$80.68	\$82.58	\$84.53	\$86.53
Chief Building Official	\$165.00	\$168.89	\$172.88	\$176.96	\$181.14
Inspector	\$125.00	\$127.95	\$130.97	\$134.06	\$137.22

Escalation Rate 2.36% per year

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

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

- b. Design Professional 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. 103-2021JR
 - (2) If applicable, the Task Authorization(s) (TA) number being charged.
 - (3) The following certification phrase, with printed name, title and signature of Design Professional'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 Design Professional, 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
- 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 Design Professional for the Services. Any overpayment discovered in such an audit may be charged against the Design Professional's future invoices and any retention funds.
- f. Design Professional 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 Design Professional 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/Chief Engineer:

Signature: _____
 Name: _____
 Title: Director/Chief Engineer
 Date: _____

EXHIBIT B CERTIFICATE OF INSURANCE San Diego Unified Port District

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

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

**Return this form to: San Diego Unified Port District c/o Ebix BPO
P.O. Box 100085 – 185
Duluth, GA 30096 – OR –
E-mail to: portofsandiego@ebix.com – OR –
Fax: 1-866-866-6516**

Name and Address of Insured (Contractor or Vendor)	SDUPD Agreement Number _____ This certificate applies to all operations of named insureds property in connection with all agreements between the District and Insured.
----------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	BEST'S RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

Name and Address of Authorized Agent(s) or Broker(s)	E-Mail Address:
	Phone: _____ Fax Number: _____
	Signature of Authorized Agent(s) or Broker(s) Date: _____

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

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

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