

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the X day of Month Year, by and between the PORT SAN LUIS HARBOR DISTRICT ("District") and Company Name ("Contractor").

Recitals

- A. The District requires Independent Auditing Services ("Services").
- B. The Contractor submitted a written proposal ("Proposal") in response to the District 's Request for Proposals ("RFP"). Based on that Proposal, the District 's selection committee determined the Contractor to be the highest-ranked respondent to the RFP and the District invited the Contractor for exclusive negotiations. This Agreement is the product of those negotiations.
- C. The Contractor represents and warrants that it is qualified to perform the Services required by this Agreement as set forth in Appendix A ("Scope of Services").
- E. On Month, day, year, the District Board of Commissioners authorized the District 's Harbor Manager to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

Charges under this Agreement will accrue only after prior written authorization certified by the District 's Business Manager. The amount of the District 's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to the District at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the fiscal year for which funds are appropriated.

The District has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or District costs. The District's budget decisions are subject to the discretion of the District Board of Commissioners. The Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for three years from the Effective Date of the Agreement, as described in Section 3 below, provided that (a) the District shall have the right to extend this Agreement for an additional two years by providing to the Contractor written notice of such extension on or before the expiration of this Agreement,

and (b) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the District Board of Commissioners.

3. Effective Date of Agreement

This Agreement shall become effective on March 28, 2017.

4. Services Contractor Agrees to Perform

The Contractor shall conduct as its Basic Services an audit of the Basic Financial Statements of the District for each fiscal year of the term (and any additional years should the agreement be extended) for the purpose of expressing an opinion on these financial statements and issuing an independent auditor's report. The Basic Services are described more fully in Appendix A, Scope of Services, attached hereto and incorporated by reference as though fully set forth within.

Additional Services are services in addition to the Basic Services of the Agreement and include single audit services. The Additional Services are described more fully in Appendix A.

5. Compensation

All work under this Agreement shall be compensated on a fixed-fee basis. In no event shall the total compensation for all of the Contractor's Basic Services under this Agreement exceed **dollar amount for 3 years (\$)**. In the event that the two year option is exercised, the maximum compensation for Basic Services shall increase by **\$**. The breakdown of the Contractor's fees appears in Appendix B, "Fees".

As defined in Section 4 above and Appendix A, Additional Services are services not specified or required under the Agreement as Basic Services. The District shall not compensate the Contractor for Additional Services unless such services are authorized in writing prior to performance by the Contractor.

Aggregate billings for Additional Services shall not exceed **dollars (\$)**. Unless otherwise agreed in writing by the District and the Contractor, the District shall compensate the Contractor for Additional Services at the rates set forth in Appendix B. Hourly rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases.

No charges shall be incurred under this Agreement nor shall any payments become due to the Contractor until the Services required under this Agreement are performed by Contractor and approved by the Harbor Manager as being in accordance with this Agreement. The District may withhold payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall the District be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

The District 's obligation hereunder shall not at any time exceed the amount agreed to as stated in Appendix B with respect to the work covered under this agreement.

Except as may be provided by laws governing emergency procedures, officers and employees of the District are not authorized to request, and the District is not required to

reimburse the Contractor for commodities or services in excess of the price set forth in excess of the total compensation under this Agreement as stated in Section 5, unless the changed scope is authorized by written amendment and approved as required by law.

Officers and employees of the District are not authorized to offer or promise, nor is the District required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which this Agreement states.

7. Payment

Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the District and must include a unique invoice number. Invoices shall include the first and last day of a calendar month and be submitted within thirty (30) days of the end of said calendar month. All amounts paid to the Contractor shall be subject to audit by the District.

The District shall make payment to the Contractor at the address specified in the Section entitled "Notices to the Parties".

8. Submitting False Claims; Monetary Penalties

Any consultant who submits a false claim shall be liable to the District. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the District if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the District a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District; (c) conspires to defraud the District by getting a false claim allowed or paid by the District; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or (e) is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

9. Taxes

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

10. Payment Does Not Imply Acceptance of Work

The granting of any payment by the District, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

11. Qualified Personnel

The Contractor represents and warrants to the District that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the District that it has all required Agreements and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the

Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Contractor are shown in Appendix A attached hereto, and shall not be changed or substituted without the prior written consent of the District, but all personnel, including those assigned at the District's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. Independent Contractor, Payment of Employment Taxes and Other Expenses

a. Independent Contractor

The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the District under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by the District pertaining to or in connection with any retirement, health or other benefits that the District may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the District and the Contractor.

Any terms in this Agreement referring to direction from the District shall be construed as providing for direction as to policy and the result of the Contractor's work only, and not as to the means by which such a result is obtained.

b. Payment of Employment Taxes and Other Expenses

Should the District, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that the Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by the Contractor which can be applied against this liability). The District shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by the Contractor for the District, upon notification of such fact by the District, the Contractor shall promptly remit such amount due or arrange with the District to have the amount due withheld from future payments to the Contractor under this Agreement (again, offsetting any amounts already paid by the Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, The Contractor shall not be considered an employee of the District.

Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the District 's financial liability so that the District 's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

13. Insurance

The procuring of required policies of insurance shall not be construed to limit Contractor's liability thereunder, nor to fulfill the indemnification provisions and requirements of this Agreement. Notwithstanding said policies of insurance, Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement or with Contractor's use or occupancy of any portion of the Premises.

The Contractor shall purchase, maintain and keep in force during the term of this Agreement at Contractor's sole cost and expense the following insurance:

- a. CERTIFICATE OF WORKERS' COMPENSATION INSURANCE as required by the statutory laws of the State of California Labor Code.
- b. CERTIFICATE OF GENERAL LIABILITY INSURANCE AND AUTO LIABILITY INSURANCE with accompanying "Additional Insured" endorsement documents. All endorsements shall clearly state policy number.

Commercial General Liability and Auto Liability policies shall include endorsements naming Port San Luis Harbor District, Its Officers, Agents, Volunteers and Employees as additional insured.

Endorsements for General Liability and Auto Liability shall state that the Contractor's insurance is "primary" and Port San Luis Harbor District is "non-contributory," or copies of the complete policy which state the equivalent may be submitted in their entirety.

Minimum Insurance Requirements – General Liability Insurance:

One million dollars (\$1,000,000) each occurrence (combined single limit)

One million dollars (\$1,000,000) for personal injury liability

Two million dollars (\$2,000,000) in the aggregate

Minimum Insurance Requirements – Auto Liability Insurance:

One million dollars (\$1,000,000) per occurrence for bodily injury and/or property damage

Policy shall cover any auto

- c. PROFESSIONAL LIABILITY INSURANCE with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

d. CANCELLATION

No cancellation or non-renewal of the insurance policy(ies), or reduction of coverage afforded under the policy(ies), shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to the District.

e. DEDUCTIBLE AND SELF-INSURANCE RETENTIONS

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Contractor and approved by the District before execution of Agreement agreement. At the option of the District, Contractor shall either reduce or eliminate such deductibles or self-insured retentions or shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

f. FAILURE TO PROVIDE PROOF OF COVERAGE

Contractor agrees to provide evidence of the above-referenced insurance upon execution of this Agreement. District may direct Contractor to immediately cease all activities with respect to this Agreement if it determines that Contractor fails to carry, in full force and affect, all insurance policies with coverage at or above the limits specified in this Agreement. Any expense caused due to stopping of work and change of insurance shall be considered Contractor's expense.

14. Indemnification

Contractor shall indemnify and save harmless the District and its officers, directors, agents and employees from, and if requested shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, arising directly or indirectly from the Contractor's performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the District or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the District, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the District and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the District's costs of investigating any claims against the District.

In addition to the Contractor's obligation to indemnify the District, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the District from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the Contractor by the District and continues at all times thereafter. The Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of the District) and the District shall cooperate with the Contractor and its attorneys, at no cost to the District.

The Contractor shall indemnify and hold the District harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the District, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

15. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the District resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the District may have under applicable law to seek a defense, indemnity, or damages for such acts or omissions.

16. Liability of District

The District's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in the Section of this Agreement entitled "Compensation". Notwithstanding any other provision of this Agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

17. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement.

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: Payment; Submitting False Claims, Monetary Penalties; Taxes; Insurance; Proprietary or Confidential Information of District; Protection of Private Information; Assignment; Drug-Free Workplace; Compliance With Laws.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from District to Contractor.

(3) The Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the Contractor or of any substantial part of the Contractor's property, or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of the Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, or (c) ordering the dissolution, winding-up or liquidation of the Contractor.

b. On and after any Event of Default, the District shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, the District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any Event of Default; the Contractor shall pay to the District on demand all costs and expenses incurred by the District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The District shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between the District and the Contractor all damages, losses, costs or expenses incurred by the District as a result of such Event of Default and any liquidated damages due from the Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

18. Termination for Convenience

a. The District shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience when it is in the District's best interest, which best interest shall be determined at the District's sole discretion. The District shall exercise this option by giving the Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified by the District and to minimize the liability of the Contractor and the District to third parties as a result of termination. All such actions shall be subject to the prior approval of the District. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the District.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At the District 's direction, assigning to the District any or all of the Contractor's right, title and interest under the orders and subcontracts terminated. Upon such assignment, the District shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to the District 's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that the District designates to be completed prior to the date of termination specified by the District.
- (7) Taking such action as may be necessary, or as the District may direct, for the protection and preservation of any property related to this Agreement which is in the possession of the Contractor and in which the District has or may acquire an interest.

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the District an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the District directed the Contractor to perform prior to the specified termination date, for which services or work the District has not already tendered payment. The costs shall be determined as provided in Section 5, and shall be invoiced as provided in Section 7. The Contractor may also recover the reasonable cost of preparing the invoice.

d. In no event shall the District be liable for costs incurred by the Contractor or any of its subcontractors after the termination date specified by the District, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to the Contractor under this Section, the District may deduct (1) all payments previously made by the District for work or other services covered by the Contractor's final invoice; (2) any claim which the District may have against the Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the District, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and the District 's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. The District 's payment obligation under this Section shall survive termination of this Agreement.

19. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: Submitting False Claims, Monetary Penalties; Disallowance; Taxes; Payment Does Not Imply Acceptance of Work; Responsibility for Equipment; Independent Contractor, Payment of Taxes and Other Expenses; Insurance; Indemnification; Incidental and Consequential Damages; Liability of District; Proprietary or Confidential Information of District; Protection of Private Information; Notices to the Parties; Ownership of Results; Works for Hire; Audit and Inspection of Records; Non-Waiver of Rights; Limitations on Contributions; Modification of Agreement; Administrative Remedy for Agreement Interpretation; Agreement Made in California, Venue; Construction; Entire Agreement; Severability; FTA Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. The Contractor shall transfer title to the District, and deliver in the manner, at the times, and to the extent, if any, directed by the District, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the District. This subsection shall survive termination of this Agreement.

20. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail, or fax, and shall be addressed as follows:

To District:
Andrea Lueker
Port San Luis Harbor District
P.O. Box 249
3950 Avila Beach Dr.
Avila Beach, CA
805-595-5400
Fax: 805-595-5404
admin@portsanluis.com

To Contractor:

Address
City, State, Zip Code
Phone Number

Any notice of default must be sent by registered mail.

21. Proprietary or Confidential Information of the District

The Contractor understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the District.

The Contractor agrees that all information disclosed by the District to the Contractor shall be held in confidence and used only in performance of this Agreement. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

22. Protection of Private Information

The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 3.5 of the California Government Code or otherwise known as the California Public Records Act and; Section 1798.17 of the California Civil Code; and the Federal Privacy Act US Code Title 5, Part I, Chapter 5, Subchapter II, Section 552.

The Contractor agrees to all of the following:

a. Neither the Contractor nor any of its subcontractors shall disclose Private Information obtained from the District in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.

(i) The disclosure is authorized by this Agreement;

(ii) The Contractor received advance written approval from the District to disclose the information; or

(iii) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the District shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

d. Any failure of the Contractor to comply with the Nondisclosure of Private Information shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the District may terminate this Agreement, debar Contractor, or bring a false claim action against the Contractor.

23. News Releases/Interviews

All Contractor news releases, media interviews, testimony at hearings and public comment relating to the District shall be prohibited unless expressly authorized by the District.

24. Ownership of Results

All programs, working papers, files, and other materials of the Contractor or its subcontractors made pursuant to this Agreement shall remain the property of the Contractor. The District will have access to this material during normal business hours. The Contractor or its Subcontractors shall not disclose to any third party the contents of the programs, working papers, files, or any other material without the prior written approval of the District. The reports issued by the Contractor shall become the property of the District.

25. Works for Hire

If, in connection with services performed under this Agreement, the Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the District. If it is ever determined that any works created by the Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, the Contractor hereby assigns all copyrights to such works to the District, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the District, the Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

26. Audit and Inspection of Records

The Contractor agrees to maintain and make available to the District, during regular business hours, accurate books and accounting records relating to its work under this Agreement. The Contractor will permit the District to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records of personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after the final audit has been resolved, whichever is later. Any governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the District by this Section.

27. Subcontracting

The Contractor is not permitted to subcontract portions of the services to be performed under this Agreement without prior written approval of the District Harbor Manager.

Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement.

Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the District for the work performed.

28. Assignment

The services to be performed by the Contractor are personal in character and neither this

Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by the District by written instrument executed and approved in the same manner as this Agreement.

29. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions hereafter. There shall be no waiver except in writing, signed by the party to be charged.

30. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the District. No invoices for such services provided by law firms or attorneys, including, without limitation, as subcontractors of the Contractor, will be paid unless the provider received advance written approval from the District.

31. Conflict of Interest

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Policy of the District; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

32. Limitations on Contributions

Through execution of this Agreement, the Contractor acknowledges that the following which prohibits any person who contracts with the District for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a District elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor.

Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of these prohibitions.

33. Prohibition on Political Activity with District Funds

The Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement.

In the event that the Contractor violates the provisions of this Section, the District may, in addition to any other rights or remedies available hereunder, (a) terminate this Agreement, and (b) prohibit the Contractor from bidding on or receiving any new District contract for a period of two (2) years. The District will not consider the Contractor's use of profit as a violation of this Section.

34. Equal Employment Opportunity/Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, the Contractor agrees not to discriminate against any District employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's against any person or persons on account of race, marital status, religious creed, color, sexual orientation, ancestry, national origin, age (40 or above), sex, medical condition (cancer/genetic characteristics), or disability (mental and physical) including HIV and AIDS, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

b. Subcontracts

The Contractor shall incorporate by reference in all subcontracts the provisions of section a above. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

35. Requiring Minimum Compensation for Covered Employees

The Contractor agrees to comply fully with and be bound by all applicable provisions of the California Labor Code. As of the date of this Agreement the minimum hourly wage is \$8.00.

36. Earned Income Credit (EIC) Forms

Employers are required to provide their employees with IRS Form W-5 (Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. The Contractor shall provide EIC Forms to each Eligible Employee at each of the following

times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by the Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty (30) days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the District may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any subcontract entered into by the Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

37. Drug-Free Workplace Policy

The Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. The Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved according to District requirements.

39. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the District who shall decide the true meaning and intent of the Agreement. Nothing in this Section shall be interpreted as the Contractor waiving any legal rights or remedies to which it is entitled.

40. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Luis Obispo County.

41. Construction

All Section captions are for reference only and shall not be considered in construing this Agreement.

42. Entire Agreement

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in the Section entitled "Modification of Agreement".

43. Severability

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

44. Compliance With Laws

The Contractor shall keep itself fully informed of the Ordinances and regulations of the District, and of all state and federal laws and regulations in any manner affecting the performance of this Agreement, and must at all times comply with such codes, ordinances, regulations, and all applicable laws as they may be amended from time to time.

45. Compliance with Americans with Disabilities Act

The Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

46. Authority to Execute Agreement

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement maybe executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

PORT SAN LUIS HARBOR DISTRICT

CONTRACTOR

Address

City, State, Zip Code

Phone Number

Federal Employer ID Number

**APPENDIX A
SCOPE OF SERVICES**

As Defined in Request for Proposal and may include Amendments as stated in Proposal Submission

Staff Providing Services
Per Proposal

**APPENDIX B
FEES**

FEES
Per Proposal