

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT, CITY OF CHULA VISTA
and
COLANTUONO, HIGHSMITH & WHATLEY, P.C.
for
LEGAL SERVICES**

Agreement No. GC-18/19-63

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District), the CITY OF CHULA VISTA, a chartered municipal corporation (City) and COLANTUONO, HIGHSMITH & WHATLEY, P.C. (Outside Counsel). The parties agree to the following:

1. **SCOPE OF SERVICES.**

- a. Outside Counsel is retained to assist the District (through its General Counsel) and the City (through its City Attorney) in providing professional legal services as described in Exhibit A, which contains information protected by the Attorney-Client Privilege and Attorney Work product doctrines. An attorney-client relationship is hereby formed between District and Outside Counsel as well as between the City and Outside Counsel. Outside Counsel shall at all times work under the direction of the General Counsel and the City Attorney. The District and the City shall rely on the competence, expertise and experience of Outside Counsel. At all times, Outside Counsel shall provide professional legal advice and services at or above the highest level expected of law firms providing legal services in the San Diego area. This is a non-exclusive agreement to provide legal services, and the District and/or the City may augment the services with another law firm or law firms or elect to terminate Outside Counsel's services pursuant to this Agreement.
- b. **Conflicts of Interest:** The District and the City recognize that Outside Counsel may have clients that, from time to time, may have interests adverse to the District or the City. Any such representation shall be in accordance with the ethical duties of members of the State Bar of California including, without limitation, those established by the Bar's Rules of Professional Conduct. Outside Counsel shall send written notice to the General Counsel and the City Attorney of any actual or potential conflict of interest that exists during Outside Counsel's engagement under this Agreement and request a waiver of the conflict. The request for waiver shall describe in detail the nature of the proposed engagement by Outside Counsel, the nature of the conflict, and why Outside Counsel believes a waiver is appropriate. City's and District's consent to Outside Counsel's simultaneous representation

of the two of them, and possibly a joint exercise of powers authority they have jointly formed, appears in Exhibit A to this Agreement.

- c. Outside Counsel's Supervising Attorney for this Agreement shall be Michael Colantuono. Outside Counsel's Supervising Attorney shall not be changed without the General Counsel's and City Attorney's written authorization. Outside Counsel's Supervising Attorney shall have full authority to act for Outside Counsel on all daily operational matters under this Agreement.
- d. Personnel, Consultants and Experts: Outside Counsel shall provide the District and the City with the necessary representation by qualified staff at the least costly billing category. The names of personnel authorized to provide services under this Agreement and the hourly rates for each staff member are listed in Exhibit B. Any use of personnel other than as enumerated shall be subject to the prior written approval of the General Counsel and the City Attorney. Outside Counsel may hire subcontractors, consultants, and/or experts only with the prior written approval of the General Counsel and the City Attorney. Outside Counsel shall require any such subcontractors, consultants, or experts to comply with the terms and conditions of this Agreement and the District and City will not be responsible for any fees or costs which do not conform to the provisions of this Agreement.
- e. Media Inquiries and Comments: Inquiries regarding any matters being handled by Outside Counsel should be forwarded to the General Counsel and the City Attorney. Outside Counsel should not comment on any matter without the General Counsel's and the City Attorney's prior approval.
- f. Delegation of Authority of The General Counsel and the City Attorney: The General Counsel and the City Attorney may delegate his or her authority as set forth in this Agreement to an Assistant General Counsel/City Attorney or Deputy General Counsel/City Attorney as deemed necessary. All references herein to the General Counsel herein shall mean the General Counsel or his/her delegated designee. All references herein to the City Attorney herein shall mean the City Attorney or his/her delegated designee.
- g. Notification of Settlement Offers and Authority to Settle: In addition to any obligations of Outside Counsel in accordance with the Bar's Rules of Professional Conduct, Outside Counsel shall immediately notify the General Counsel and the City Attorney of any offers of settlement received from by opposing parties whether or not such offer is in writing, constitutes a formal offer, or includes all necessary terms of a settlement offer. This Agreement does not authorize Outside Counsel to accept any settlement or make any

settlement offer to opposing parties. Any such authority given to Outside Counsel, if any, shall be made by the General Counsel, in his/her sole and absolute discretion, separately from this Agreement, and by the City Attorney, in his/her sole and absolute discretion, separately from this Agreement.

h. No Authority to Waive Privilege: This Agreement does not authorize Outside Counsel to waive the attorney-client privilege, or any other privilege, on behalf of the District or the City as to any matter, issue, communication, document or otherwise. Any such authority given to Outside Counsel, if any, shall be made by the General Counsel, in his/her sole and absolute discretion, in writing separately from this Agreement, and by the City Attorney, in his/her sole and absolute discretion, in writing separately from this Agreement. Absent such authority, Outside Counsel will not waive any such privilege or take actions which waive any such privilege.

2. **TERM OF AGREEMENT.** This Agreement shall commence on March 14, 2019 (the “Effective Date”), and shall terminate upon conclusion of the matter addressed in Exhibit A, Scope of Services, subject to earlier termination as provided below.

3. **TERMINATION.**

a. Termination/Suspension for District’s or City’s Convenience: Services performed under this Agreement may be terminated or suspended in whole or in part at any time by the General Counsel or the City Attorney as to his or her client. The General Counsel or the City Attorney shall terminate or suspend services by delivering to Outside Counsel an oral or written notice specifying the extent to which services are terminated or suspended and the effective date of such termination or suspension. After receiving a notice of termination or suspension, unless otherwise directed by the General Counsel or the City Attorney, Outside Counsel shall stop services on the date and to the extent specified in the notice and continue to perform services not terminated or suspended by the notice. After receiving a notice of termination, Outside Counsel shall: submit final billing for services rendered through the time of termination no later than thirty (30) calendar days from the effective date of termination. Outside counsel may terminate this Agreement as to one or all clients consistently with the California Rules of Professional Conduct. This Agreement shall also be terminated or suspended when each of the City, District and, if applicable, the joint exercise of powers authority, have provided notice to Outside Counsel to terminate (if such is the action) or suspend (if such is the action), as applicable, pursuant to the terms of this Agreement in the manner required under this Paragraph 3.

- b. Termination for Outside Counsel's Default: Services performed under this Agreement may be terminated in whole or in part by the General Counsel or the City Attorney upon a default by Outside Counsel. Under this Agreement, Outside Counsel will be deemed in default if Outside Counsel: (a) fails to perform the service(s) within the specified time period; or (b) fails to perform any of the provisions contained in this Agreement; or (c) fails to make adequate progress in the matter and endangers the performance of this Agreement's terms. If the General Counsel or the City Attorney wholly or partially terminates services under this Agreement for Outside Counsel's default, the General Counsel or the City Attorney, as applicable, may obtain alternative legal services with terms and in a manner the General Counsel or the City Attorney, as applicable, deem appropriate. In addition to any other remedies provided by this Agreement, law or equity, Outside Counsel shall be liable to the District and City for any excess costs associated with obtaining and utilizing alternative legal services.
- c. Closing Report Upon Termination: If requested by the General Counsel or the City Attorney, Outside Counsel shall deliver a Closing Report within five days of the termination of services which shall include, but is not limited to: (a) a brief description of the facts of the case or matter; (b) a discussion of applicable law; (c) a description of the status of the case or matter; and (d) a list and description of future scheduled court appearances. Furthermore, Outside Counsel shall immediately deliver to the General Counsel and the City Attorney all files and attorney work product at a location to be determined by the General Counsel and the City Attorney. This includes any computerized indices, programs and document retrieval systems created or used.

4. COMPENSATION

- a. For performance of services rendered pursuant to this Agreement, the District and the City shall pay Outside Counsel only fees for services that are reasonably necessary. Fees shall be in accordance with the hourly rates set forth in Exhibit B and consistent with the terms set forth in Exhibit B. In no event shall total compensation and reimbursement to Outside Counsel under this Agreement exceed \$150,000. Said maximum expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. This Agreement does not guarantee Outside Counsel any amount of work.
- b. Outside Counsel will not be compensated for services provided once the maximum expenditure stated above is reached without amendment to this Agreement. Outside Counsel shall not be required to perform further services after the maximum compensation

has been reached. However, Outside Counsel shall monitor total expenditures under this Agreement and shall give the General Counsel and the City Attorney prompt written notice when 60% of the maximum is reached, and again when 80% of the maximum is reached, and any other time that Outside Counsel anticipates the need for services in excess of the maximum Agreement amount. Whether or not notice is given by Outside Counsel, if Outside Counsel performs work in excess of the maximum compensation authorized by this Agreement, it does so at its own risk. Only a written amendment to this Agreement, executed by the General Counsel and the City Attorney, increasing the amount of compensation can obligate the District or the City to pay for such services, and any such amendment is the sole and absolute discretion of the General Counsel and the City Attorney.

- c. Reservation of Rights to Obtain Reimbursement: The District and the City shall pay Outside Counsel based on Outside Counsel's submission of monthly invoices consistent with the provisions of this Agreement. Even though District or City makes payment pursuant to invoices, the District and the City shall have the right to demand reimbursement any time District or the City determines that previously paid costs were not properly billed by Outside Counsel. Outside Counsel shall promptly reimburse District and the City for such costs and expenses previously paid by District and the City. District's and City's payment of an invoice shall not be a waiver of any rights under this Agreement.
- d. Most Favored Nations: Outside Counsel represents that, as of the effective date of this agreement, the rates set forth in Exhibit B and the other economic terms and conditions provided in this Agreement, taken individually, are at least as favorable to the District and the City as to those provided by Outside Counsel for comparable work being performed for other public agency clients. If, during the term of this Agreement (including any extension or renewal), Outside Counsel has in effect or places into effect with any public agency clients for comparable work a lower rate or a more favorable economic term or condition than provided under this Agreement (a "More Favorable Provision"), Outside Counsel will promptly offer such More Favorable Provision, unconditionally, to the District and the City by providing written notice thereof to the General Counsel and the City Attorney (an "MFN Notice") and, at the General Counsel's and the City Attorney's election, this Agreement will be deemed to have been modified to provide District and the City with such More Favorable Provision. Notwithstanding anything herein to the contrary, Outside Counsel's failure to provide the District and the City with a MFN Notice

will not limit or otherwise impact District's or the City's right to enjoy the benefits of the applicable More Favorable Provision(s).

- e. Payments: The District and the City shall make payment(s) for services rendered under this Agreement based on the monthly, itemized billing statement(s) Outside Counsel submits to the General Counsel and City Attorney. The District and the City shall review all billing statements in accordance with the terms of this Agreement. The District and the City shall make its best effort to process payments promptly after receiving Outside Counsel's monthly billing statement. The District and the City shall not pay interest or finance charges on any outstanding balance(s).
- f. End of Month and Fiscal Year estimates: At the District's or City's request, Outside Counsel shall promptly provide estimates of unbilled fees, expenses, and costs including outside vendors, experts, etc. The District and the City expect to make such request monthly. District's and City's fiscal years end on June 30th. Outside Counsel shall provide fiscal year-end closure invoice estimates in May for all outside counsel fees, expenses and costs including outside vendors, experts, etc. It is understood that the estimated information provided will be used for estimate purposes only.

5. RECORDS AND AUDIT

- a. Outside Counsel shall maintain full and complete records of the cost of services performed under this Agreement as well as all project files, documents, research, and work in progress (collectively "billing and project documents"). Such billing and project documents shall be open to inspection by the District or the City 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 or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- b. The District and the City shall also have the right to audit billing and project documents, whether or not final, which Outside Counsel or anyone else associated with the work has prepared or which relate to the work which Outside Counsel is performing for the District or City pursuant to this Agreement regardless of whether such records have previously been provided to the District or the City. Outside Counsel shall provide the District and the City at Outside Counsel's expense a copy of all such records within five (5) working days of a written request by the District or the City. The District's and the City's right shall also include inspection at reasonable times of Outside Counsel's office or facilities which are engaged in the performance of services pursuant to this Agreement. Outside

Counsel shall, at no cost to the District or the City furnish reasonable facilities and assistance for such review and audit. Outside Counsel's failure to provide the records within the time requested shall preclude Outside Counsel from receiving any compensation due under this Agreement until such documents are provided.

c. Outside Counsel's obligations under this Section 5, Records and Audit, shall survive termination of this Agreement.

6. **ASSIGNMENT**. This is a personal services Agreement between the parties and Outside Counsel shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the General Counsel and the City Attorney in each instance.

7. **INDEMNIFY, DEFEND, HOLD HARMLESS**

a. **Duty to Indemnify, duty to defend and hold harmless**. To the fullest extent provided by law, Outside Counsel agrees to defend, indemnify and hold harmless the District and the City, and their respective Board of Port Commissioners, City Council, Commissions, commissioners, council members, agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees actually incurred) or expense for, relating to or resulting from Outside Counsel's negligent error or omission, including Outside Counsel's officers, agents, subcontractors, employees, (Claim), caused by, arising out of, or related to the negligent performance of services by Outside Counsel as provided for in this Agreement, or negligent failure to act by Outside Counsel, its officers, agents, subcontractors and employees. Outside Counsel'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 or the City, or their respective agents, officers, or employees.

b. Outside Counsel further agrees that the duty to indemnify, and the duty to defend the District and the City as set forth in 7.a, requires that Outside Counsel pay all reasonable attorneys' fees and costs the District and the City actually incur associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the negligent services of Outside Counsel provided for in this Agreement.

c. The District and/or the City may, at their own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. If the District and/or City elects to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim arising from the negligent services of Outside

Counsel provided for in this Agreement, Outside Counsel agrees to pay all reasonable attorneys' fees and all costs actually incurred by the District and/or the City.

8. **INSURANCE REQUIREMENTS**

- a. Outside Counsel shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) 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, Outside Counsel shall maintain, at its own expense, continued Professional Liability insurance of not less than three (3) 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 three-year period, Outside Counsel 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.
 - (2) Commercial Automobile Liability (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 Outside Counsel 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.
 - (4) 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 Automobile Liability and Employer's Liability policies.
- b. Outside Counsel shall furnish the District and the City 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 District

and the City, an exemplar Certificate of Insurance is attached as Exhibit C and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with District and City. 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 and the City in writing at least 30 days in advance of policy cancellation. Outside Counsel shall also provide notice to the District and the City 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.
 - d. Furnishing insurance specified herein by the District and the City will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Outside Counsel or Outside Counsel's sub-contractors or any tier of Outside Counsel's sub-contractors. The District and the City shall reserve the right to obtain complete copies of any of the insurance policies required herein.
 - e. Additional Coverage. To the extent that insurance coverage provided by Outside Counsel maintains higher limits than the minimums required under this Section 8, District and City shall be entitled to coverage for the higher limits maintained.
 - f. Additional Insureds. District, City, its Board of Port Commissioners, City Council, Commissions, officers, officials, employees, agents, and volunteers must be named as additional insureds with respect to any policy of general liability, automobile, or pollution insurance specified as required herein or as may otherwise be specified by the District's or City's Risk Manager. For the City, the general liability additional insured coverage must be provided in the form of an endorsement to the Outside Counsel's insurance using ISO CG 2010 (11/85) or its equivalent; such endorsement must not exclude Products/Completed Operations coverage.
9. **INDEPENDENT CONTRACTOR.** Outside Counsel and any agent or employee of Outside Counsel shall act in an independent capacity and not as officers or employees of the District or the City. The District and the City assume no liability for Outside Counsel's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for Outside Counsel. Outside Counsel shall not have authority to act as an agent on behalf of the District or the City beyond that created by the attorney-client

relationship. Outside Counsel acknowledges that it is aware that because it is an independent contractor and the District and the City are making no deductions from its fee and is not contributing to any fund on its behalf. Outside Counsel disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

10. **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.

11. **CONTACT INFORMATION.** The contact information of the parties to this agreement is as follows:

District:

Name: San Diego Unified Port District
Office of the General Counsel
Address: 3165 Pacific Highway
San Diego, CA 92101
Telephone: (619) 686-6219
Facsimile: (619) 686- 6444

City of Chula Vista:

Name: City of Chula Vista
Office of the City Attorney
Address: 276 Fourth Avenue
Chula Vista, CA 91910

Telephone: (619) 691-5037
Facsimile: (619) 409-5823

Outside Counsel:

Name: Michael G. Colantuono
Colantuono, Highsmith & Whatley, P.C.
Address: 420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091
Telephone: (530) 432-7357
Facsimile: (530) 432-7356
Email: mcolantuono@chwlaw.us

12. **SEVERABILITY.** Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable

of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby.

13. **GOVERNING LAW, JURISDICTION AND VENUE**: The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. As to any matter arising from or related to this Agreement, all parties hereby consent to the jurisdiction of the state and federal courts in the State of California, and to venue within San Diego County.

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SIGNATURE PAGE
SAN DIEGO UNIFIED PORT DISTRICT, CITY OF CHULA VISTA
and
COLANTUONO, HIGHSMITH & WHATLEY, P.C.
for
LEGAL SERVICES

Agreement No. GC-18/19-63

IN WITNESS WHEREOF, by executing this Agreement where indicated below, the parties agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

**COLANTUONO, HIGHSMITH
& WHATLEY, P.C.**

Michael G. Colantuono
President

SAN DIEGO UNIFIED PORT DISTRICT

Thomas A. Russell
General Counsel

CITY OF CHULA VISTA

Glen R. Googins
City Attorney

EXHIBIT B
HOURLY RATES AND APPROVED TIMEKEEPERS

A. Hourly rates for each authorized timekeeper shall not exceed the following:

Authorized Timekeeper	Title	Hourly Rate
Michael G. Colantuono	Partner	\$360
Pamela K. Graham	Senior Counsel	\$360
Liliane M. Wyckoff	Associate	\$330
Evelyn K. Scott	Paralegal	\$170
Lourdes Hernandez	Paralegal	\$170

B. The hourly rate for any timekeeper subsequently approved by the General Counsel AND the City Attorney (without amendment to this Agreement) shall not exceed the following:

Title	Hourly Rate
Partners	\$360
Of Counsel	\$360
Associates	\$330
Paralegals	\$170

C. Outside Counsel shall provide invoices to the District and the City which show all of the work performed and expenses incurred for each month, and then the invoice shall indicate the District is responsible for 50% of such total amount and the City is responsible for 50% of the total amount.

RULES FOR HOURLY BILLING AND REIMBURSABLE EXPENSES

Invoiced items that do not comply with these rules will not be paid. **All references to the District shall mean the District and the City. All references to the General Counsel shall mean the General Counsel and the City Attorney.**

1. Monthly invoices shall contain the District's short matter title (see Exhibit A) and a file number when one has been assigned and shall set forth the date of each service, an understandable description of the service and the time spent on each entry. Invoices shall contain a "code" for initials used in the billing, plus the title ("partner", "paralegal", etc.) and billing rate of each person.
2. Billings under this Agreement shall not be made in more than one-tenth of an hour (six minutes) increments, and shall represent the devotion of a full six minutes before such an increment is billed. Under no circumstances shall Outside Counsel use "block billing", wherein a list of series of activities is done with only an aggregate amount of time specified. Instead, Outside Counsel shall provide a detailed specific entry for each separate task and sub-task reflecting the time for such task or subtask. All tasks set forth in Outside Counsel's billing documentation shall be highly specific and highly detailed. Overly generalized listings of task descriptions such as "review contract" or "prepare for negotiations" will not be acceptable. Outside Counsel shall provide a detailed description of each action as described below.
3. Outside Counsel shall submit its billing statement monthly in arrears, **no later than the fifteenth of the month following the month service was rendered.**
4. Outside Counsel agrees to assign the person with the lowest hourly rate who is fully competent to provide the services required. If Outside Counsel 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, Outside Counsel shall nevertheless, bill at the lower rate.
5. Use of paralegals is encouraged providing they meet the requirements set forth herein. Assignment of work to paralegals should not result in duplicative activity between attorneys and paralegals, or the reworking or rewriting of paralegals' work product by attorneys. District will not pay for paralegal time (nor any person's time) spent performing clerical/secretarial work (e.g., filing, indexing, sorting, organizing, photocopying and bates stamping documents) unless District has given its prior written approval. District expects paralegals to perform true paralegal work, e.g., research, document productions, preparing discovery or responses, interviewing witnesses, etc.
6. Outside Counsel shall not unit-bill for reviewing or drafting correspondence, pleadings or other documents, or for telephone conferences. Bill only for the actual time spent.
7. Outside Counsel shall not bill for clerical, secretarial, administrative or word processing time, nor bill for standard file opening or closing charges.
8. Conferences between Outside Counsel staff must be demonstratively necessary and occasional.
9. Unless preapproved in advance by the General Counsel, Outside Counsel shall not bill for more than one attorney or other staff support to attend depositions, hearings, witness interviews, document productions, or other activities.

10. Outside Counsel shall not bill for an associate's or any person's apprenticeship or training time. Apprenticeship and training time is that which does not directly contribute to Outside Counsel's representation of the District in the assigned matter.
11. Outside Counsel shall not bill for file preparation and/or reviews by anyone undertaken when files are transferred within the firm from one attorney to another, or to a new attorney or other staff.
12. Outside Counsel shall not bill for time preparing for or discussing the terms of this agreement, or budgeting or billing issues or disputes.
13. Outside Counsel shall not bill for educational programs or other overhead expenses.
14. Outside Counsel shall not bill for multiple redrafts of memos, pleadings, interrogatories, etc.
15. Where a task benefits more than one case, allocate the time among the various cases. Do not duplicate bill.
16. Outside Counsel shall not bill for generalized legal research time, which is considered to be educational in nature, however, legal research time in connection with a specific legal matter or litigation issue may be billed at the normal rate.
17. Outside Counsel shall not use part-time or summer clerks unless specifically approved by in advance.
18. Deposition summaries shall be prepared for the General Counsel only when requested by the General Counsel, and shall be completed by the deposing lawyer within ten (10) days. Outside Counsel shall not bill for a paralegal or another lawyer to summarize the deposition after the transcript is received unless preapproved by the General Counsel.
19. Outside Counsel shall not bill for page and line summaries of depositions without prior authorization.
20. Outside Counsel may bill for deposition preparation, but the preparation must be done close to the scheduled deposition. If a different attorney covers a deposition or motion, Outside Counsel may bill for reasonable time to prepare for that task but not for a comprehensive case review.
21. Outside Counsel shall not bill for travel time within the County of San Diego. Extraordinary travel out of the County in connection with a legal matter or litigation may be billed only if pre-approved at the sole and absolute discretion of the General Counsel.
22. Outside Counsel shall not bill for costs incurred for items such as routine telephone, facsimile, transcriptions, computerized legal research, routine printing or photocopying and routine postage.
23. Expenses such as specialized printing, charts, expert fees, microfilming, computerized document retrieval, consultant services, investigative services, computer litigation support services, videotaping of depositions, temporary office help, travel expenses, meals as well as other expenses, must be preapproved by the General Counsel. Any such expense exceeding \$1000 must be preapproved in writing by the General Counsel. Travel-related expenses must comply with the District policies regarding travel reimbursement.
24. All invoices for expenses shall include supporting documentation.
25. Outside Counsel shall not bill for commissions, mark-ups, overhead or other non-direct costs from outside consultants or experts.

**EXHIBIT C
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 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: portofsandiego@ebix.com
Fax: 1-866-866-6516

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between 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 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)

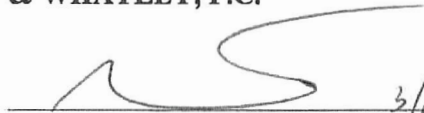
<p>MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:</p> <p>San Diego Unified Port District c/o Ebix BPO P.O. Box 12010-3 Hemet, CA 92546-8010 – OR – Email to: portofsandiego@ebix.com Fax: 1-866-866-6516</p>

SIGNATURE PAGE
SAN DIEGO UNIFIED PORT DISTRICT, CITY OF CHULA VISTA
and
COLANTUONO, HIGHSMITH & WHATLEY, P.C.
for
LEGAL SERVICES

Agreement No. GC-18/19-63

IN WITNESS WHEREOF, by executing this Agreement where indicated below, the parties agree that they have read and understood all terms and conditions of the Agreement, that they fully agree and consent to bound by same, and that they are freely entering into this Agreement as of the Effective Date.

**COLANTUONO, HIGHSMITH
& WHATLEY, P.C.**


_____ 3/27/19
Michael G. Colantuono
President

SAN DIEGO UNIFIED PORT DISTRICT

Thomas A. Russell
General Counsel

CITY OF CHULA VISTA

Glen R. Googins
City Attorney