

BLUE ECONOMY AGREEMENT
between
SAN DIEGO UNIFIED PORT DISTRICT
and
PACIFIC OCEAN AQUAFARMS, LLC
for
OFFSHORE AQUACULTURE
DEMONSTRATION PROJECT

THIS BLUE ECONOMY AGREEMENT (“Agreement”) is being made this ____ day of _____, 2018 (“Effective Date”), by and between the **SAN DIEGO UNIFIED PORT DISTRICT**, a public corporation with a business address of 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488 (“District”), and **PACIFIC OCEAN AQUAFARMS, LLC**, a California limited liability company, with its principal place of business located at 211 East Ocean Blvd., Ste. 550 Long Beach, CA 90802 (“POA”), with regards to the terms and conditions as set forth herein. The District and POA may be referred to collectively as the “Parties,” with each being a “Party.”

RECITALS

WHEREAS, the District has established the Blue Economy program which seeks to encourage the implementation of innovative technologies and aquaculture and blue tech businesses that help accomplish the District’s purposes of promoting commerce, navigation, fisheries, recreation, and environmental stewardship, and will benefit the local port community of San Diego and enable the District to diversify its portfolio of business lines and assets by providing resources and funding which will foster that development (the “Program”);

WHEREAS, the promotion of sustainable aquaculture is directly in line with the District's purposes, including the promotion of commerce, fisheries, and environmental stewardship;

WHEREAS, POA is committed to pioneering sustainable, offshore aquaculture in the United States and is pursuing a project to establish a fin-fish farm located in federal waters off San Diego, California (the "Project"). POA intends to apply for federal permits required to perform the Project and POA's application for such permits will undergo analysis and review of potential environmental impacts by the appropriate federal agencies pursuant to the National Environmental Protection Act ("NEPA") (collectively "Application/NEPA Review Process"). POA's Board of Managers are comprised of representatives from Pacific Ocean Fresh, a wholly owned subsidiary of Hubbs-SeaWorld Research Institute, and NOCEAN, a wholly owned subsidiary of Pacific6, a Long Beach, California based investment group; and

WHEREAS, while it is unknown whether the federal agencies will grant the required permits, if they do, the Project will be located in federal waters and will not be located on land or water within the jurisdiction or ownership of the District. Further, POA does not require approval from the District for the Project, and the District does not have legal authority over the proposed Project in federal waters and the property it would utilize; and

WHEREAS, the Application/NEPA Review Process and the Project do not constitute "projects" within the meaning of the California Environmental Quality Act (CEQA) because it does not have the potential to result in a direct or indirect physical

change in the environment within the jurisdiction of the District and does not require discretionary decision of the District in order to be approved or carried out; and

WHEREAS, the District desires to be involved in the Application/NEPA Review Process and, after completion of the Application/NEPA Review Process, if the federal agencies grant POA the required permits, provide POA use of District's Tenth Avenue Marine Terminal for loading and offloading of fish and other materials for the Project in exchange for a certain share of POA's revenue from the Project; and

WHEREAS, the Tenth Avenue Marine Terminal has adequate capacity to accommodate the loading and offloading of fish and other materials for the Project and such activities are within the scope of the certified Final Environmental Impact Report for the Tenth Avenue Marine Terminal Redevelopment Plan and do not require any discretionary action on the part of the District's Board of Port Commissioners; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their respective duties, obligations and revenue sharing arrangements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the Parties agree as follows:

1. Recitals Incorporated by Reference. The recitals set forth above are incorporated herein by this reference and are made terms of this Agreement and not mere recitals.

2. Term. This Agreement shall commence on _____ and shall terminate fifteen (15) years from the Project's start of operation, as defined in Section 5, herein. POA shall have the option to extend the term of this Agreement for an additional ten (10) year period on the same terms and conditions contained herein (including

extending the Revenue Share Period by ten (10) years) by providing District with written notice of its desire to extend at least three (3) months prior to the expiration of the initial term.

3. POA Activities. POA shall apply for the applicable federal permits and undergo the applicable federal environmental review under NEPA. If, after completion of the Application/NEPA Review Process, such permits are granted by the federal agencies, POA shall take commercially reasonable steps to operate the proposed fin-fish farm located in federal waters off San Diego California. POA's operation shall be in compliance with such federal permits and all applicable law

4. District Cooperation in Application/NEPA Review Process and Conditional Use of District Facilities.

- a. District shall cooperate in, and consult related to, the Application/NEPA Review Process by utilizing District staff and consultant resources, use of District space for meetings, and/or other non-monetary cooperation, all as determined in District's sole and absolute discretion, throughout the Application/NEPA Review Process including, without limitation, permit application development, interagency pre-application meetings, public scoping and other stakeholder meetings, analyses required by NEPA, and coordination with other local, state and federal agency initiatives. Further, if, after POA submits its application to federal agencies, District is invited by the National Oceanic and Atmospheric Administration (NOAA) to act as a cooperating or participating agency in the Application/NEPA Review Process, District will accept and perform that role. District's obligation to cooperate in

the Application/NEPA Review Process as set forth above shall terminate upon issuance of the Project's federal permits necessary for POA to commence operations or three (3) years from execution of this Agreement, whichever occurs first.

- b. Conditioned on completion of the Application/NEPA Review Process and issuance by the federal agencies of permits necessary for POA to commence operations, District shall waive POA's dockage and wharfage charges (as such are defined and set forth in the District's Tariff No. 1-G, as it may be amended) at District's Tenth Avenue Marine Terminal (TAMT), for loading and unloading of Project's equipment, fish, fish feed, and other Project-related materials being transported to and from the Project's farm in federal waters for the period beginning with execution of this Agreement through the end of the Revenue Share Period, as defined in Section 5 herein. District states that, based on POA's description of the Project, including a maximum annual production of 5,000 metric tons of fish, the maximum extent of POA's activities for which dockage and wharfage charges are waived hereunder is within the maximum cargo throughput analyzed in the District's previously-certified TAMT Programmatic Environmental Impact Report (TAMT PEIR) and that no further analysis or action under CEQA is required of the District. Nothing herein obligates POA to utilize TAMT, nor prevents POA from utilizing other District facilities or non-District facilities for the Project. If POA pays dockage and/or wharfage charges to utilize District facilities other than TAMT for the loading and unloading of Project's equipment, fish, fish feed,

and other Project-related materials being transported to and from the Project's farm in federal waters for the period beginning with execution of this Agreement through the end of the Revenue Share Period, as defined in Section 5 herein, the amount of such dockage and wharfage charges shall constitute a credit which POA may apply against future Revenue Payments to District as set forth in Section 5 herein. However, such credit is capped at, and therefore may not exceed, \$50,000 annually.

5. Revenue Sharing. If, after completion of the Application/NEPA Review Process, the federal agencies grant the permits necessary for POA to commence operations, the District shall be entitled to a share of POA's gross revenue from the Project as follows:

- a. Revenue Share Period. POA shall pay District the Revenue Share for the period beginning at the start of the Project's fifth year of operation for a period of ten (10) years thereafter ("Revenue Share Period"). Start of operation is defined as fish first being put in the Project's fish pens in federal waters.
- b. Revenue Share. POA shall pay District an amount equal to one percent (1%) of any and all gross revenue of any kind that POA earns and receives in connection with the Project during the Revenue Share Period ("Revenue Payments").
- c. POA shall pay Revenue Payments, if any, to the District on a quarterly basis. Each Revenue Payment shall be accompanied by a written report

of POA's applicable gross revenue and Revenue Payment calculation, in a form reasonably required by the District ("Revenue Report").

- d. Unless an alternative method of payment has been arranged in writing by the Parties, all payments to the District shall be made payable to "SAN DIEGO UNIFIED PORT DISTRICT" and be sent to 3165 Pacific Highway, Post Office Box 120488, San Diego, CA 92112-0488. POA shall make each Revenue Payment within 30 days of the end of each quarter.
- e. In order to ensure that the District receives its bargained-for Revenue Payments, POA agrees that all of its dealings involving the Project, with POA affiliates, members, owners, or insiders shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less POA gross revenue than would have resulted from an arms-length negotiation, for the purpose of calculating the Revenue Payment for such dealings, the higher POA gross revenue that would have resulted from an arms-length negotiation shall be used in the calculation of Revenue Payments.

6. Records and Audit Rights. POA shall, at all times, maintain full and complete records relating to revenue from the Project. All such records shall be kept for a minimum of ten (10) years from their creation but in no event longer than three (3) years past the expiration of the Revenue Share Period. The District shall, at all times, upon reasonable notice, have the right to review such records and to audit such records. Inspection of such records shall occur during business hours at POA's offices and/or facilities. POA shall, at no cost to District, furnish reasonable facilities and

assistance during such review and audit. If any such inspection or audit reveals that POA has underpaid any Revenue Payments due hereunder by more than 5%, POA shall also reimburse the District within 30 days after receipt of a copy of the inspection or audit report for all out-of-pocket costs and expenses incurred by the District for such inspection or audit. If an underpayment of the Revenue Payments is determined by any such inspection or audit and POA does not dispute such finding, then POA shall pay to the District within 30 days after receipt of a copy of the inspection or audit report the amount of any such underpayment. If an overpayment of Revenue Payments is determined by any such inspection or audit and the District does not dispute such finding, then the District shall pay to POA within 30 days thereafter the amount of such overpayment.

7. Representations and Warranties by POA.

- a) POA has all requisite legal and corporate power and authority to enter into this Agreement and perform its obligations in accordance with the terms of this Agreement. The execution and delivery of this Agreement by POA and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of POA and no further action is required by POA in this regard. This Agreement has been duly executed and delivered by POA and constitutes the valid and binding obligation of POA enforceable against POA in accordance with its respective terms except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights

generally and (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

- b) POA is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other person, entity or party in connection with the execution, delivery and performance by POA of this Agreement in accordance with its terms.
- c) The operation of the business of POA, as it is currently conducted and as proposed to be conducted, including POA's proposed activities in connection with the Project as contemplated hereby, has not, does not and will not infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction.
- d) POA has not received written notice from any third party or any other overt threats from any third party, that the operation of the business of POA as it is currently conducted and as proposed to be conducted, or any act, product or service of POA, infringes or misappropriates the intellectual property of any third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

8. Operation of Business. POA will operate its business in a manner which will not knowingly infringe or misappropriate in any manner the intellectual property of any third party or constitute unfair competition or trade practices under the applicable laws of any jurisdiction. POA shall notify the District immediately upon receiving notice from any

person, party or government agency or authority of notice of any other overt threats that the operation of the business of POA infringes or misappropriates the intellectual property of such third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

9. POA Statements related to District. Without the District's prior consent, which may be withheld or conditioned in each instances in its absolute discretion, POA shall not use the District's name, logo, or other intellectual property. POA shall not misrepresent the District's cooperation in the Application/NEPA Review Process or otherwise related to the Project.

10. Compliance. POA and its sub-contractors shall comply with the California Fair Employment and Housing Act, the American with Disabilities Act, and all other applicable federal, state, and local laws prohibiting discrimination, including without limitation, laws prohibiting discrimination because of age, ancestry, color, creed, denial of family and medical care leave, disability, marital status, medical condition, national origin, race, religion, sex, or sexual orientation. POA shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable. POA shall comply with all Federal, State, regional and local laws, and district ordinances and Regulations applicable to the performance of any services contemplated by this Agreement as exist now or as may be added or amended.

11. Independent Analysis and Waiver. POA shall perform, demonstrate and operate the Project independent of the control and direction of the District, other than normal contract monitoring provided; however, POA shall possess no authority with respect to

any District decision. While POA may seek subject matter advice and information from District employees or personnel, provision of such advice is at the sole and absolute discretion of the District, and District shall not be responsible or liable for any such advice or information that it may provide, or the absence of such. POA waives any and all claims for damages in reliance of any advice and/or information provided by the District and/or its personnel and agents.

12. Assignment, Transfer, Sale, Conveyance. Only if both of the conditions in subsections 12.a and 12.b have been met, POA may assign, transfer, sell, or otherwise convey, voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement and any rights, privileges, entitlement or other benefit conferred under the Project's federal permits without the consent of the District. Any purported assignment, transfer, sale, or conveyance by POA shall not be effective unless and until both of the conditions in subsections 12.a and 12.b have been met.

- a. POA must give District written notice of any proposed assignment, transfer, sale, or conveyance, including information and documents sufficient to identify what is being assigned, transferred, sold, or conveyed, and to whom, at least sixty (60) days in advance of the effective date of such proposed assignment, transfer, sale, or conveyance. If necessary, POA and District agree to enter into a confidentiality and nondisclosure agreement covering such information.
- b. Additionally, one the following conditions must be met.
 - i. POA buys out District's right to future Revenue Payments and makes full payment to District in an amount equal to the greater of

- (i) \$50,000 times the number of years (including partial years, pro-rated for the length of the year expended) remaining in the Revenue Share Period as of the date of the proposed assignment and (ii) the highest amount of gross revenue of any kind that POA earns and receives in connection with the Project from any consecutive twelve (12) month period prior to the date of proposed assignment times one percent (1%) times the number of years (including partial years, pro-rated for the length of the year expended) remaining in the Revenue Share Period as of the date of the proposed assignment; or
- ii. District and the party to which POA proposes to assign, transfer, sell, or convey ("New Party") have entered into an agreement relating to the Project and Revenue Payments which continue the District's right to receive Revenue Payments from the Project. District is under no obligation to consider, negotiate or enter into such agreement with New Party, and District retains its sole and absolute discretion related thereto.

13. Indemnity by POA. To the fullest extent provided by law, POA agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including all attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including POA's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the Project

or the performance by POA as provided for in this Agreement. The POA duty to defend, indemnify, and hold harmless shall not include any Claim arising from the gross negligence or willful misconduct of the District, its officers, or employees. The duty to indemnify, and the duty to defend the District as set forth herein requires that POA pay all reasonable attorneys' fees and costs that the District may incur associated with or related to enforcing the indemnification provisions and defending any Claim. The District may, at its own election, conduct its defense, or participate in the defense of any Claim. If the District chooses at its own election to conduct its own defense, participate in its own defense or obtain independent legal counsel in defense of any Claim, POA agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

POA hereby further indemnifies the District, its agents, officers or employees against, and agrees to hold each of them harmless from, any and all damages, losses and/or liability incurred or suffered by any of them:

- (i) arising out of or related in any way to any misrepresentation or breach of any representation or warranty made by POA in this Agreement;
- (ii) arising out of or related in any way to any breach of any covenant or agreement to be performed by POA pursuant to this Agreement;
- (iii) arising out of or related in any way to the infringement by POA (including without limitation through use by POA or its licensees) of the intellectual property rights of a third party; or
- (iv) arising out of violations by POA of applicable law.

14. Insurance Requirements.

- a. POA shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:
 - (1) Marine General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, Products/Completed Operations, and Pollution) insurance, with coverage at least as broad as Insurance Services Office Commercial Marine General Liability Coverage with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.
 - (a) The deductible or self-insured retention on this Marine General Liability insurance policy shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Marine General Liability insurance policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit B, Certificate of Insurance, attached hereto and incorporated herein).
 - (c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the POA's insurance and shall not contribute to it.

- (d) The Marine General Liability insurance policy shall be endorsed to include a waiver of transfer of rights of recovery against the District (“Waiver of Subrogation”).
- (2) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) insurance 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 insurance (and, if applicable, Jones Act and/or United States Longshore and Harbor Workers’ Act), statutory limits, is required of the POA and all sub-contractors (or be a qualified self-insured) under the applicable laws and in accordance with “Workers’ Compensation and Insurance Act”, Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer’s Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- (4) Protection and Indemnity (including Tower’s Liability) insurance in the amount of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (a) The Protection and Indemnity insurance shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District.

- (5) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the Marine General Liability, Automobile Liability, and Employer's Liability insurance policies.
- b. POA shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit B and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. POA shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.
- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on POA or POA's sub-contractors or any tier of POA's sub-

contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

15. Independent Contractor. POA and any agent or employee of POA shall act in an independent capacity and not as officers or employees or agents of District. The District assumes no liability for the POA's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the POA. POA shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. POA acknowledges that it is aware that because it is an independent contractor. POA disclaims the right to any fee or benefits except as expressly provided for in this Agreement. This Agreement does not form a legal partnership or agency relationship between POA and the District.

16. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel of their choice 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.

17. Governing Law. This agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to its principles or rules of conflict of laws to the extent such principles or rules are not mandatorily applicable by statute and would require or permit the application of the laws of another

jurisdiction. For purposes of any claim, suit, action or proceedings arising out of or in connection with this Agreement, each of the parties hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the County of San Diego in the State of California.

18. 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.

19. 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-contractor 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.

20. Compliance With Prevailing Wage Laws. POA acknowledges and agrees that it will ensure that all persons and/or entities (including any subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work relating to the Project shall comply with the requirements of California's and any other prevailing wage laws to the extent such laws are applicable.

21. Compliance With All Applicable Laws (including Environmental Laws). POA shall comply with all applicable District rules and policies, including policies relating to safety and the handling of biohazards, as well as federal, state, or local laws (including all applicable environmental laws), ordinances, codes, rules, permits, licensing conditions, and regulations, including any amendments thereto in connection with the implementation of the Project, and shall procure, at its expense, any licenses, permits, insurance, and government approvals necessary to the operation of its business.

22. Captions; Headings. The captions and/or headings by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

23. Force Majeure. Neither Party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by: (i) fires, embargoes, floods, wars, labor stoppages, government requirements, or acts of God; or (ii) other circumstances substantially beyond its reasonable control.

24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall be one and the same instrument. This Agreement may be executed by facsimile signature or signature transmitted via scan/email.

25. Attorneys' Fees. If any dispute arises between the Parties with respect to matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing party in any such proceeding shall be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief to which it may be entitled.

26. Severability. If any provision of this Agreement is inoperative or unenforceable for any reason in any jurisdiction, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, Sections or subsections of this Agreement in any jurisdiction shall not affect the remaining portions of this Agreement in such jurisdiction or in any other jurisdiction.

27. Amendment; Waivers. This Agreement shall not be amended, supplemented or modified except in a writing executed by authorized representatives of the Parties. Waiver by a Party of any breach of any provision of this Agreement by the other Party shall not operate, or be construed, as a waiver of any subsequent or other breach.

28. Notice. All notices, requests, demands and other communications made in connection with this Agreement shall be in writing and shall be deemed to have been duly given (a) if sent by first-class registered or certified mail, return receipt requested, postage prepaid, on the fifth day following the date of deposit in the mail, (b) if delivered personally, when received, or (c) if transmitted by facsimile, email transmission or other telegraphic communications equipment, when confirmed, in each case addressed to the parties identified herein below. Further,

If to the District:

Jason Giffen, Assistant Vice President, Operations, Planning and Green Port

San Diego Unified Port District

P.O. Box 120488, San Diego, CA 92112

Facsimile: 619-686-6473

Email: jgiffen@portofsandiego.org

If to POA

Donald Kent, CEO

c/o Hubbs Seaworld Research Institute

2595 Ingraham Street, San Diego, CA 92101

Facsimile: 619-226-3944

Email: dkent@hswri.org

29. 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.

30. Authorization. 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 POA.

31. Further Assurances. Each of the Parties hereto agrees to execute all such further instruments and documents and to take all such further action as the other Party may reasonably require in order to effectuate the terms and purposes of this Agreement. The Parties shall act in good faith in the performance of their obligations under this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their officers thereunto duly authorized as of the day and year first written above. The Parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below.

SIGNATURES ON FOLLOWING PAGE

"District"

**SAN DIEGO UNIFIED PORT DISTRICT,
A Public Corporation**

By: _____
Signature

Name: _____

Title: _____

"POA"

**PACIFIC OCEAN AQUAFARMS, LLC,
a California limited liability company**

By:  _____
Signature

Name: DONALD KENT

Title: CEO

**APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL**

By _____
Deputy

Exhibit A
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 –
 Email: sdupd@prod.certificatesnow.com
 Fax: 1-866-866-6516

Name and Address of Insured (Consultant)			SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.	
CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		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: \$ _____
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

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: