

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
BLUE SOURCE, LLC
for
MARKETING CONSULTANT FOR LCFS CREDITS
AGREEMENT NO. 222-2019RH**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and BLUE SOURCE, LLC, a Utah Limited Liability Company (Service Provider). The parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on January 1, 2020 and shall terminate on December 31, 2024, subject to earlier termination as provided below.
3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:
 - a. **Maximum Expenditure.** The maximum expenditure under this Agreement shall not exceed \$900,000.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing

immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.

- b. **Progress Documentation.** Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

4. **RECORDS**

- a. Service Provider shall maintain full and complete records of the cost of services performed under this Agreement. Such records shall be open to inspection of District 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.
- b. Such records shall be maintained by Service Provider for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.
- c. Service Provider understands and agrees that District, at all times under this Agreement, has the right to review project documents and work in progress and to audit financial records, whether or not final, which Service Provider or anyone else associated with the work has prepared or which relate to the work which Service Provider is performing for District pursuant to this Agreement regardless of whether such records have

previously been provided to District. Service Provider shall provide District at Service Provider's expense a copy of all such records within five (5) working days of a written request by District. District's right shall also include inspection at reasonable times of the Service Provider's office or facilities, which are engaged in the performance of services pursuant to this Agreement. Service Provider shall, at no cost to District furnish reasonable facilities and assistance for such review and audit. Service Provider's failure to provide the records within the time requested shall preclude Service Provider from receiving any compensation due under this Agreement until such documents are provided.

5. **SERVICE PROVIDER'S SUB-CONTRACTORS**

- a. It may be necessary for Service Provider to sub-contract for the performance of certain technical services or other services for Service Provider to perform and complete the required services; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. The Service Provider shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Service Provider or Service Provider's sub-contractors. Service Provider shall compensate each Service Provider's sub-contractors in the time periods required by law. Any Service Provider's sub-contractors employed by Service Provider shall be independent Service Providers and not agents of District. Service Provider shall insure that Service Provider's sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

- b. Service Provider shall also include a clause in its Agreements with Service Provider's sub-contractors which reserves the right, during the performance of this Agreement and for a period of three (3) years following termination of this Agreement, for a District representative to

audit any cost, compensation or settlement resulting from any items set forth in this Agreement. This clause shall also require Service Provider's sub-contractors to retain all necessary records for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

6. **COMPLIANCE**

- a. In performance of this Agreement, Service Provider and Service Provider's 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. Service Provider shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. Service Provider shall comply with all Federal, State, regional and local laws, and district Ordinances and Regulations applicable to the performance of services under this Agreement as exist now or as may be added or amended.

7. **INDEPENDENT ANALYSIS.** Service Provider shall provide the services required by this Agreement and arrive at conclusions with respect to the rendition of information, advice or recommendations, independent of the control and direction of District, other than normal contract monitoring provided, however, Service Provider shall possess no authority with respect to any District decision.

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its

rights, duties, or obligations under this Agreement without the express written consent of Executive Director (President/CEO) of District in each instance.

9. **INDEMNIFY, DEFEND, HOLD HARMLESS**

- a. **Duty to indemnify, duty to defend and hold harmless.** To the fullest extent provided by law, Service Provider 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 reasonable 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 Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider as provided for in this Agreement, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider'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, its agents, officers, or employees.
- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement.

10. **INSURANCE REQUIREMENTS**

- a. Service Provider shall at all times during the term of this Agreement maintain, at its expense, the following minimum levels and types of insurance:

- (1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) 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 Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.
 - (b) The Commercial General Liability 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 A, 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 Service Provider's insurance and shall not contribute to it.
 - (d) The Commercial General Liability 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) 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 the Service Provider 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. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
- (4) Professional Liability insurance in the amount of \$2,000,000 per claim and \$2,000,000 aggregate.
 - (a) At the end of the agreement period, Consultant shall maintain, at its own expense, continued Professional Liability insurance of not less than five (5) 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 five-year period, Consultant 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.
- (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 General Liability, Automobile Liability and Employer's Liability policies.

- b. Service Provider 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 A 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. Service Provider 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 Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

11. **ACCURACY OF SERVICES.**

- a. Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.
- b. District shall provide all information reasonably requested by Service Provider on a timely basis. All information provided by District to Service Provider relating to kWh used for shore power to Ocean-Going Vessels and agreed upon LCFS eligible equipment used in the District's operations shall be accurate and complete.

12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District except as outlined in Attachment A or unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.
14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS** Any and all materials and documents, except for materials and documents subject to an obligation of confidentiality to a third party, but including drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway,

San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. TERMINATION.

- a. In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof (Early Termination Date).
- b. Service Provider may terminate this Agreement with thirty (30) days written notice to District of such termination and specifying the effective date thereof (Early Termination Date) upon the occurrence of any of the following:
 - (1) District materially breaches any warranty, covenant, or other obligation under this Agreement and such breach is not cured within thirty (30) days' notice of such;
 - (2) A material representation made in this Agreement proves to have been incorrect;
 - (3) District disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of this Agreement (or such action is taken by any person or entity appointed or empowered to operate or act on behalf of District).
- c. Upon the occurrence of an Early Termination as provided in 17.a or 17.b above, Service Provider shall have the right to market all existing Contract Environmental Attributes to Third Parties for ninety (90) days following the

Early Termination Date. At the end of these ninety (90) days, neither Party shall have any further obligation to the other under this Agreement and Service Provider shall transfer to District all Environmental Attributes arising from the Project that have not been sold.

- d. In the event of an Early Termination as provided in 17.a or 17.b above, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

- a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate.
- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties

may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-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.

19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to

cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

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

- a. Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of Service Provider to: (a) ensure that all persons and/or entities (including, but not limited to, Service Provider or Subcontractors) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with any work shall comply with the requirements of California's and any other prevailing wage laws ("PWL") to the extent such laws are applicable and (b) determine whether any Services are subject to the PWL by obtaining a determination by means that do not involve the District.
- b. **Certified Payrolls.** Service Provider acknowledges and agrees that it is the sole and exclusive responsibility of the Service Provider to insure that all certified payrolls are provided to the District. Service Provider shall submit certified payrolls electronically via the software LCPtracker.

- (1) LCPtracker is a web-based system, accessed on the World Wide Web by a web browser. Service Provider will be given a Log-On identification and password to access the San Diego Unified Port District's reporting system upon Service Provider's request.
- (2) The use of LCPtracker by the Service Provider is mandatory. Access to LCPtracker will be provided at no cost to the Service Provider.
- (3) In order to utilize LCPtracker, the Service Provider needs a computer and internet access. A digital camera and a scanner may be useful. For more information, go to www.lcptracker.com. To Login, go to www.lcptracker.net and from the homepage, select LOGIN and enter the Username and Password that will be provided to you by the District upon Service Provider's request.
- (4) Use of the system will entail data entry of weekly payroll information including; employee identification, labor classification, total hours worked and hours worked on this project, wage and benefit rates paid etc. The Service Provider's payroll and accounting software might be capable of generating a 'comma delimited file' that will interface with the software.
- (5) Service Provider must require all lower-tier sub participants the mandatory requirement to use LCPtracker to provide any required labor compliance documentation. Lower-tier sub participants will be given a Log-On identification and password from the Service Provider.
- (6) Training options can be provided to the Service Provider upon request.

21. **SERVICE PROVIDER/CONTRACTOR REGISTRATION PROGRAM (IF APPLICABLE)**

- a. In accordance with the provisions of Labor Code section 1771.1. (a) A contractor or subcontractor shall not be qualified to bid on; be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.
- b. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- c. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- d. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

22. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.

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

a. Submit all correspondence regarding this Agreement to:

Thomas Maclean, Program Director, Energy
Planning & Green Port Department
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. (619) 686-8006
Email: tmaclean@portofsandiego.org

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

Kevin Townsend, Chief Commercial Officer
Blue Source, LLC
2825 E. Cottonwood Pkwy, Suite 400
Cottonwood Heights, UT 84121
Tel. (801) 322-4750
Email: ktownsend@bluesource.com

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- c. Written notification to the other party shall be provided, in advance, of changes in the name or address of the designated Authorized Representative.

SAN DIEGO UNIFIED PORT DISTRICT

BLUE SOURCE, LLC

Thomas Maclean
Energy Program Director

Matthew Harmer

Matthew J. Harmer
Vice President & General Counsel

Approved as to form and legality:
GENERAL COUNSEL

By: Assistant/Deputy

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

**ATTACHMENT A
SCOPE OF SERVICES**

San Diego Unified Port District

1. TITLE; EXCLUSIVE DEVELOPMENT AND MARKETING RIGHTS

- a. Subject to the terms and conditions of this Agreement, District hereby conveys to Service Provider, throughout the Term, the following: (i) the sole and exclusive right to generate Contract Environmental Attributes; (ii) title to all such Contract Environmental Attributes; and (iii) the sole and exclusive right to market such Contract Environmental Attributes to Third Parties. To the extent reasonably necessary to accomplish the intent of the foregoing sentence, District shall take all necessary steps to grant, convey, and transfer all such Contract Environmental Attributes to Service Provider (or, at Service Provider's discretion, to a third party specified by Service Provider) on any date reasonably specified by Service Provider (which dates may include, but are not limited to, the date that such Contract Environmental Attributes are registered or the date that such Contract Environmental Attributes are to be delivered to a third party pursuant to an Environmental Attribute Sale Agreement).
- b. Service Provider's rights to develop and market Environmental Attributes are expressly limited to Environmental Attributes generated as a result of activities undertaken during the Project Period.
- c. Service Provider may aggregate and market such Environmental Attributes with Environmental Attributes generated from Third Party projects, in Service Provider's discretion, as a function of Service Provider's portfolio management, provided that Service Provider can demonstrate that such aggregation will not result or has not resulted in the reduction of Environmental Attribute Proceeds that otherwise would be earned through individual sales of Environmental Attributes.

2. SERVICE PROVIDER'S OBLIGATIONS

- a. **Environmental Attribute Generation.** Service Provider will make good faith, commercially reasonable efforts to generate all Environmental Attributes which can reasonably be generated pursuant to the LCFS Program based upon activities undertaken in conjunction with the LCFS Project at the District during the Project Period.
- b. **Registration.** Service Provider shall use commercially reasonable efforts to register the LCFS Projects in accordance with the applicable requirements of the LCFS Regulation.

- c. **Credit Bank and Transfer System.** Service Provider shall maintain the account of the District in the LCFS Reporting Tool and Credit Bank and Transfer System.
- d. **Marketing and Monetization.** Service Provider shall make good faith, commercially reasonable efforts to market and monetize all Contract Environmental Attributes.
- e. **Reporting, Recordkeeping, LCFS Reporting Tool, and Credit Bank and Transfer System.** Service Provider shall maintain records reasonably necessary to establish the validity of the Environmental Attributes sold pursuant to this Agreement, including but not limited to maintaining records sufficient to satisfy applicable recordkeeping requirements under § 95491.1 of the California Code of Regulations. Service Provider shall keep and maintain (i) records of all sales terms and documentation related to this Agreement, including any records and documentation necessary for Service Provider to complete the sale and transfer of applicable Environmental Attributes and the payment to District of the District's Share of Environmental Attribute Proceeds; (ii) all records reasonably necessary to establish the validity of any Environmental Attributes sold pursuant to this Agreement; and (iii) all records supporting or used in the creation of any invoice issued or payment made to District pursuant to this Agreement. These records shall be kept for a period of five years after the date of transfer of the Environmental Attributes to a Third-Party purchaser, or such other period as may be required by the LCFS Program or applicable, whichever is longer, and shall be made available to District for inspection at reasonable times and places during regular business hours upon reasonable advance notice and reasonable confidentiality provisions substantially similar to those set forth in this Agreement. Service Provider shall also make such records available, upon prior written notice to District, to any governmental or regulatory body with competent jurisdiction over the Environmental Attributes being sold.
- f. **At the District's discretion the Service Provider will procure renewable energy certificates (RECs) that match up with the electricity used. The RECs must satisfy the LCFS standards for eligible renewable energy and the RECs must be registered and retired in the Western Renewable Energy Generation Information System (WREGIS).**

3. DISTRICT'S OBLIGATIONS. District shall conduct the following activities:

- a. **Information Sharing.** District shall provide Service Provider with any and all information, data, or documentation that Service Provider specifically and reasonably requests and which are reasonably necessary to enable Service Provider to develop and/or market Environmental Attributes arising from the LCFS Project. Such information shall include the following:

- (1) No less frequently than once per month (and more frequently if agreed to by the Parties), District shall provide Service Provider with the total electricity records from all shore power outlets that serve Ocean-Going Vessels. If multiple shore power outlets have one meter, the records from this meter will suffice. Such quantity shall be provided in kWh (kilowatt-hour) units.
 - (2) At periodic intervals (currently estimated to be no more than quarterly), upon Service Provider's request District shall provide Service Provider with an affidavit, in form and substance substantially similar to the example attached hereto as Attachment C, attesting to the accuracy of the information provided pursuant to Section 3(a)(1) above.
 - b. Throughout the Term, upon Service Provider's reasonable request, District shall execute and deliver such additional documents and take such further actions as may be reasonably required to enable Service Provider to satisfy its obligations regarding Environmental Attribute development and marketing, as set forth in this Agreement.
 - c. **Recordkeeping:** District shall maintain records relating to this Agreement and reasonably necessary to establish the validity of the Environmental Attributes sold pursuant to this Agreement, including but not limited to maintaining records sufficient to satisfy applicable recordkeeping requirements under § 95491.1 of the LCFS Regulation. Such records are anticipated to include information on (i) the quantity of Environmental Attributes sold to end users. The records shall be kept five (5) years from the date they were created, except that records related to transactions involving Environmental Attributes, if any, shall be kept for five (5) years from the date of the transaction. District shall make such records available for inspection upon reasonable advance notice from Service Provider at reasonable times and places, and subject to reasonable restrictions. District shall also make such records available to any governmental or regulatory body with competent jurisdiction over the Environmental Attributes being sold.
4. **NOTICE OF INVALID ENVIRONMENTAL ATTRIBUTES.** If either Party becomes aware that any of the Environmental Attributes generated, separated, owned, and/or sold by the Parties (or the Renewable Fuel Producer) pursuant to this Agreement were invalid Environmental Attributes, then that Party shall notify the other Party, in writing, within fifteen (15) business days of such determination and work in good faith to resolve any issues.
5. **RESERVATIONS REGARDING ENVIRONMENTAL ATTRIBUTE CREDIT DEVELOPMENT.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY AS TO EITHER (I) THE NUMBER OF ENVIRONMENTAL ATTRIBUTES WHICH MAY BE GENERATED AS A RESULT OF ANY LCFS PROJECT OR (II) THE MARKETABILITY OR VALUE TO BE REALIZED AS A

RESULT OF THE CREATION OF ENVIRONMENTAL ATTRIBUTES FROM ANY LCFS PROJECT.

6. DEFINITIONS

- a. "Contract Environmental Attributes" means all Environmental Attributes generated from the LCFS Project which result from activities taking place during the Project Period. For clarification, the term "Contract Environmental Attributes" excludes all Environmental Attributes which could be generated as a result of activities taking place either before or after the Project Period.
- b. "Environmental Attribute Proceeds" means all funds received by Service Provider from the sale of Environmental Attributes generated from an LCFS Project pursuant to an Environmental Attribute Sale Agreement.
- c. "Environmental Attributes" means all benefits and all associated rights, title, and interest, without limitation, in or arising out of the environmental and financial benefits associated with the avoidance of greenhouse gas or other emissions, including, without limitation, credits issued pursuant to the LCFS Program, emission reduction credits, verified emission reductions, voluntary emission reductions, offsets, allowances, voluntary carbon units, local air quality benefits, and similar credits.
- d. "Environmental Attribute Sale Agreement" means an agreement of sale between Service Provider and a third party (which shall not be an affiliate of Service Provider) that provides for the sale of Environmental Attributes subject to this Agreement to such third party in return for a cash payment by such third party to Service Provider.
- e. "Invalid Environmental Attributes" shall mean invalidated LCFS Credits, as defined in § 95495 of the LCFS Regulation.
- f. "LCFS Credits" means LCFS credits as defined by the LCFS Program.
- g. "LCFS Program" means the Low Carbon Fuel Standards program established pursuant the California Assembly Bill AB32 and the Governor's Executive Order S-01-07 and implementing regulations, including without limitation, the current LCFS Regulation, and any guidance published ARB with respect to such regulations.
- h. "LCFS Project" refers to the work necessary to generate Environmental Attributes based on kWh used at each of the District's locations that provide shore power to Ocean-Going Vessels, any successor location in the event that one of the LCFS Project locations is closed and subsequently relocated, and any additional locations subsequently agreed

to in writing by the Parties, with each such location and associated work a "LCFS Project".

- i. "LCFS Regulation" means the California Low Carbon Fuel Standard Regulation, codified at 17 CCR § 95480 et seq, as such may be amended from time to time.
- j. "Ocean-Going Vessel" means a commercial, government, or military vessel meeting any one of the following criteria: (A) A vessel greater than or equal to 400 feet in length overall (LOA) as defined in 50 Code of Federal Regulations (CFR) § 679.2, as adopted June 19, 1996; (B) A vessel greater than or equal to 10,000 gross tons (GT ITC) pursuant to the convention measurement (international system) as defined in 46 CFR § 69.51-.61, as adopted September 12, 1989; (C) A vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.

**ATTACHMENT B
DIVISION OF PROCEEDS
San Diego Unified Port District**

I. Division of Proceeds

- a. **Division of Environmental Attribute Proceeds.** To the extent that Service Provider sells any LCFS Credits generated from the LCFS Projects during the Term, Service Provider shall retain Service Provider's Share of Net Proceeds and pay District District's Share of Net Proceeds, as defined as:

Aggregated LCFS Sales	% Net Proceeds to District	% Net Proceeds to Service Provider
0 – 5,000	90%	10%
5,001 – 10,000	91%	9%
10,001 – 15,000	92%	8%
15,001 – 25,000	93%	7%
25,001 – 35,000	94%	6%
35,001 +	95%	5%

- b. **Payment.** Service Provider shall pay District District's Share of Environmental Attribute Proceeds within fifteen (15) business days following Service Provider's receipt of Environmental Attribute Proceeds.
- c. **Monthly Statements.** As soon as reasonably practicable following the end of each quarter, Service Provider shall issue a statement to District showing Environmental Attributes created, Environmental Attribute Proceeds, generated, and the division of Environmental Attribute Proceeds.
- d. **No Other Compensation.** The Parties' only compensation for sold Environmental Attributes under this Agreement shall be as set forth in this Article 5 in Attachment A.

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: 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 the 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: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Professional Liability <input type="checkbox"/> Claims Made Retro-Active Date _____		Commencement Date: Expiration Date:	Each Claim \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	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 the District.

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

Date:

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

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

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

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