

BLUE ECONOMY AGREEMENT
between
SAN DIEGO UNIFIED PORT DISTRICT
and
SAN DIEGO BAY AQUACULTURE, LLC
for
SHELLFISH FLUPSY DEMONSTRATION PROJECT

THIS BLUE ECONOMY AGREEMENT (“Agreement”) is being made this 15th day of September 2017 (“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 **SAN DIEGO BAY AQUACULTURE, LLC**, a California limited liability company, with its principal place of business located at 2737 E. Coast Hwy., Suite A, Corona Del Mar, CA, 92625 (“SDBA” or “Participant”), with regards to the terms and conditions as set forth herein. The District and SDBA 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 blue tech businesses that 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 purposes of the District include promotion of commerce and fisheries, including aquaculture;

WHEREAS, SDBA proposes to demonstrate operation of a shellfish floating upweller system (“FLUPSY”) to grow shellfish in the San Diego Bay;

WHEREAS, SDBA has applied to participate in the Program and has been selected by the District to participate in such program;

WHEREAS, the District desires to participate in the shellfish FLUPSY demonstration project and business model validation for purposes of determining the feasibility, effectiveness and the potential scalability of such operation in the San Diego Bay (the “Pilot Project” or “Pilot”) by providing funding and other resources to SDBA in connection with the Pilot Project, and in support thereof, and the District desires to receive a certain share of SDBA’s revenue from operation of the Pilot Project; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their respective duties, obligations and revenue sharing arrangements in regards to SDBA’s participation in the Program and the District’s participation and support of SDBA as to the Pilot Project.

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 the date that the first FLUPSY is delivered SDBA (“Commencement Date”) as recorded on Exhibit D, and shall terminate on five (5) years after the Commencement Date (“Term”), subject to earlier termination as provided herein. However, the obligations of SDBA under Section 15, Indemnity, shall survive termination of this Agreement.

3. SDBA to Perform the Pilot Project. SDBA shall perform the Pilot Project in accordance with the attached Scope of Work, Exhibit A.

4. District Support of Pilot Project. District will support the Pilot Project by providing the following, and shall not be responsible for any other support or compensation for the Pilot Project. SDBA shall be responsible for all other costs and expenses of the Pilot Project.

- a. District shall provide Participant the use of one FLUPSY for the duration of the Pilot Project, however, this is subject to adjustment in accordance with Section 5, Participant Buy In, below;
- b. For the Pilot Program only, the District shall provide, at no cost to SDBA (1) staff resources to conduct District's environmental review under the California Environmental Quality Act and California Coastal Act permitting and (2) reasonable assistance to SDBA to help obtain other necessary permits, exemptions, waivers, approvals that may be needed.
- c. District shall provide SDBA with the District-owned location, as more particularly shown on Exhibit E, upon which to conduct the Pilot Project for the duration of the Pilot Project through a Tidelands Use and Occupancy Permit ("Permit"), substantially in the form attached and incorporated herein as Exhibit B. Subject to Section 36 of this Agreement, location may be changed by agreement of the Parties and shall be documented by amendment to the Permit. While said change of location is not reasonably foreseeable at this time, but may require additional environmental review under CEQA and additional permits, including, without limitation, permits required by the Coastal Act.
- d. If removal or relocation of the Pilot Project is triggered in accordance with Section 36, Commercial Fishing Needs, the District shall pay for any repairs required as a result of removal or of the Pilot Project.

5. Revenue Sharing. In consideration of the District providing equipment, staffing resources, and other support as described in Section 4, herein, the District shall be entitled to a share of SDBA's gross revenue in accordance with the terms below. The

intent is to establish minimum compensation which would cover District's out-of-pocket costs of the FLUPSY and, additionally, share in the commercial success of the Pilot.

a. Minimum Revenue Share:

- i. Beginning in the fifth month of the Pilot, and continuing monthly thereafter through the conclusion of the Pilot, SDBA shall pay the District a "Minimum Monthly Revenue Share."
- ii. However, in any month of the Pilot, if the SDBA's gross revenue is less than the applicable amount for that month, SDBA may choose to defer payment of that month's Minimum Monthly Revenue Share, in which case the amount of that month's deferred Minimum Monthly Revenue Share shall be added to an annual calculation for all deferred Minimum Monthly Revenue Share ("Annual Total Deferred Monthly Revenue Share").
- iii. In the first year of the Pilot, the Minimum Monthly Revenue Share shall be Six Thousand Five Hundred Eleven Dollars (\$6,511.00).
- iv. In each subsequent Year of the Pilot, the Minimum Monthly Revenue Share shall be calculated as follows:

$$\$6,511 + \frac{\text{Annual Total Deferred Monthly Revenue Share for the prior year}}{12}$$

For example, if the Annual Total Deferred Monthly Revenue Share for Year 1 is \$13,022 (because two months were deferred) the Minimum Monthly Revenue Share for Year 2 shall be as follows:

$$\$6,511 + \frac{\$13,022}{12} = \$7,596.17$$

- v. At the conclusion of the Pilot, SDBA shall pay District the Annual Total Deferred Monthly Revenue Share for Year 5, if any, in full.

- b. Additional Revenue Share. Beginning in the fifth month of the Pilot, and continuing thereafter through the conclusion of the Pilot, if SDBA achieves

an annual positive Net Operating Income (NOI) then an additional 10% of that year's annual gross revenue, not to exceed the NOI, will be applied as a one-time accelerated payment to the Minimum Monthly Revenue Share. In the event that the FLUPSY has been transferred to SDBA in accordance with Section 6, then the Minimum Monthly Revenue Share will convert to 10% of gross revenues until completion of the Pilot.

- c. Revenue Reports and Payment. Within 10 days of the conclusion of each month of the Pilot, SDBA shall provide District with a written report of SDBA's gross revenue for that month, the Minimum Monthly Revenue Share owed, whether the Minimum Monthly Revenue Share is being deferred pursuant to Section 5.a, and the Additional Revenue Share owed, if any, in a form reasonably required by the District ("Revenue Report"). Also within 10 days of the conclusion of each month of the Pilot, SDBA shall pay District all owed Minimum Monthly Revenue Share and Additional Revenue Share. 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.
- d. In order to ensure that the District receives its bargained-for revenue share, SDBA agrees that all of its dealings involving the Pilot Project and/or other revenue from the FLUPSY operation in the San Diego Bay during the term of this Agreement, whether with independent third parties, SDBA affiliates, owners, insiders, or others, shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less SDBA gross revenue than would have resulted from an arms-length negotiation, for the purpose of calculating the District's revenue shares, for such deals, the higher SDBA gross

revenue that would have resulted from an arms-length negotiation shall be used in the calculation of revenue shares.

6. Ownership of FLUPSY

- a. Buy in by SDBA. In accordance with Section 4, District is providing SDBA the use of a FLUPSY that it owns for the Pilot. At any time during the Pilot, once the total of all Minimum Monthly Revenue Share payments, Additional Revenue Share payments, or additional optional payments made by SDBA to District equal or exceed \$351,600, ownership of the FLUPSY, as is, where is, will be transferred to SDBA. If the Parties jointly agree to cessation of the Pilot Project, in writing, prior to completion of the Pilot and if the total of all Minimum Monthly Revenue Share payments, Additional Revenue Share payments, or additional optional payments made by SDBA to District is less than \$351,600, District shall return all payments.

7. Records and Audit Rights. SDBA shall, at all times, maintain full and complete records relating to revenue from the Pilot Project and/or other revenue from the FLUPSY operation in the San Diego Bay during the term of this Agreement. All such records shall be kept for a minimum of ten (10) years from their creation.

The District shall, at all times, have the right to review such records and to audit such records. Inspection of such records shall occur during business hours at SDBA's offices and/or facilities. SDBA shall, at no cost to District, furnish reasonable facilities and assistance during such review and audit. If any such inspection or audit reveals that SDBA has underpaid any Revenue Share due hereunder by more than 5%, SDBA 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 Share is determined by any such inspection or audit and SDBA does not dispute such finding, then SDBA 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 the Revenue Share for any quarterly period is determined by any such inspection or audit and the District does not dispute such finding, then the District shall pay to SDBA within 30 days thereafter the amount of such overpayment.

8. Representations and Warranties by SDBA.

- a) SDBA 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 SDBA and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of SDBA and no further action is required by SDBA in this regard. This Agreement has been duly executed and delivered by SDBA and constitutes the valid and binding obligation of SDBA enforceable against SDBA 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) SDBA 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 SDBA of this Agreement in accordance with its terms.
- c) The operation of the business of SDBA, as it is currently conducted and as proposed to be conducted, including SDBA's proposed activities in

connection with the Pilot 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) SDBA 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 SDBA as it is currently conducted and as proposed to be conducted, or any act, product or service of SDBA, infringes or misappropriates the intellectual property of any third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

9. Operation of Business. SDBA 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. SDBA 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 SDBA infringes or misappropriates the intellectual property of such third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.

10. Acknowledgement of District Involvement. In recognition of the District's support of the Pilot Project, SDBA agrees to acknowledge such by including the following statement in publicity, publication, marketing, reports and documentation related to the Pilot Project in manner, location, and size reasonably likely to be seen by the intended audience: "This demonstration project is made possible through the Port of San Diego's Blue Economy Program." Without the District's prior consent, which may be withheld or conditioned in each instances in its absolute discretion, SDBA shall not use the District's name, logo, or other intellectual property, or misrepresent the District's involvement or statements related to SDBA or the Pilot Project.

11. Compliance. SDBA 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. SDBA shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable. SDBA 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.

12. Independent Analysis and Waiver. SDBA shall perform, demonstrate and operate the Pilot Project, and provide the services as contemplated by this Agreement independent of the control and direction of the District, other than normal contract monitoring provided; however, SDBA shall possess no authority with respect to any District decision. While SDBA 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. SDBA 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.

13. Assignment. SDBA 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 Executive Director (President/CEO) of the District in each instance, which consent may be withheld in the sole and absolute discretion of the District. A transfer of the interest of persons, firms or entities responsible for the managerial control of SDBA by sale, assignment, bequest, inheritance, operation of law or other disposition, so as to result in a change in the present control of said entity and/or of the

underlying beneficial interests of said entity shall constitute an “assignment” for all purposes of this Agreement. For the purposes hereof, “control” shall be deemed to mean (i) ownership of not less than fifty (50%) percent of all of the membership and/or ownership interest in such entity, or not less than fifty (50%) percent of all of the legal and equitable interests in any entity, or (ii) the ability effectively to control or direct the business decisions of such entity.

14. Share of Revenue Upon Sale and/or Transfer of Majority in Interest in SDBA. In the event that the District has consented to an assignment in which there is (i) a transfer of the interest of persons, firms or entities responsible for the managerial control of SDBA and/or (ii) a transfer of a majority in interest in SDBA, so as to result in a change in the present control of SDBA, the District shall be entitled to receive ONE PERCENT (1%) share of the gross sale proceeds that were paid in connection with the sale of interest in SDBA. Payment shall be made by SDBA to the District within thirty (30) days of closing of the sale and shall be accompanied by all documents reasonably necessary to document the gross sales proceeds and calculate the amount owed to District. The obligations of SDBA and rights of District set forth in Section 7, Records and Audit Rights, shall equally apply to documents related to occurrence triggering this Section 13.

Additionally, in order to ensure that the District receives its bargained-for percentage of the gross sale proceeds, SDBA agrees that all of its dealings involving an occurrence triggering this Section 13, whether with independent third parties, SDBA affiliates, owners, insiders, or others, shall be the result of arms-length negotiations. If any such dealings are not the result of arms-length negotiations and result in less gross sale proceeds than would have resulted from an arms-length negotiation, for the purpose of calculating the percentage of the gross sale proceeds, the higher gross sale proceeds that would have resulted from an arms-length negotiation shall be used in the calculation of District’s percentage.

15. Indemnity. To the fullest extent provided by law, SDBA 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 SDBA's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the Pilot Project, the performance by SDBA as provided for in this Agreement, any materials, products or services provided by SDBA or failure to act by SDBA, its officers, agents, subcontractors and employees. The SDBA duty to defend, indemnify, and hold harmless shall not include any Claim arising from the gross negligence or willful misconduct of the District, its agents, officers, or employees. The duty to indemnify, and the duty to defend the District as set forth herein requires that SDBA 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, SDBA agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

SDBA 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 SDBA in this Agreement;
- (ii) arising out of or related in any way to any breach of any covenant or agreement to be performed by SDBA pursuant to this Agreement;

- (iii) arising out of or related in any way to the infringement by SDBA (including without limitation through use by SDBA or its licensees) of the intellectual property rights of a third party; or
- (iv) arising out of violations by SDBA of applicable law.

16. Insurance Requirements.

SDBA 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 C, 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 \$1,000,000 per claim and \$1,000,000 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. SDBA 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 C 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. SDBA 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 SDBA or its sub-contractors or any tier of its sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

17. Independent Contractor. SDBA and any agent or employee of SDBA shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the SDBA's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the SDBA. SDBA shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. SDBA acknowledges that it is aware that because it is an independent contractor. SDBA 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 SDBA and the District.

18. 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 this Agreement.

19. 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.

20. 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.

21. New Inventions. During the term of this Agreement, new innovations, inventions, trade secrets, technology, know-how, applications, and intellectual property, and other rights may be developed related to the Pilot Project or the subject matter of this Agreement by SDBA, the District, or jointly (collectively "New Inventions"). The Parties acknowledge that this Agreement does not contain agreements between SDBA and the District as to inventorship, assignment, ownership, licensing, right to use, or other

intellectual property rights related to New Inventions. Any such agreements relating to New Inventions, if any, shall require a separate and new agreement.

22. 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 in 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 in 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.

23. Compliance With Prevailing Wage Laws. SDBA 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 Pilot Project shall comply with the requirements of California's and any other prevailing wage laws to the extent such laws are applicable.

24. Compliance With All Applicable Laws (including Environmental Laws). SDBA 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 Pilot Project, and shall procure, at its expense, any licenses, permits, insurance, and government approvals necessary to the operation of its business.

25. Servicer 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 may be subject to compliance monitoring and enforcement by the Department of Industrial Relations.

26. 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.

27. 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 fires, embargoes, floods, wars, labor stoppages, government requirements, or acts of God.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 & Green Port
San Diego Unified Port District
P.O. Box 120488
San Diego, CA 92112-0488
Tel. 619-686-6473
Email: jgiffen@portofsandiego.org

If to SDBA

Norman Abell
Principal/Acacia Pacific Aquaculture
Managing Principal/Clausen Oysters, LLC
2737 E. Coast Hwy., Suite A
Corona Del Mar, CA, 92625
541-756-3600 farm office
949-675-2301 office
714-329-2111 cell
Email: norm@acaciapacific.com

33. Integration and Modification. This Agreement, along with the Permit referenced herein, 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.

34. 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 SDBA.

35. 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.

36. Commercial Fishing Needs. The approximate location of the Pilot Program is shown on Exhibit E and is located within Tuna Harbor, a commercial fishing marina. Commercial fishing is a priority water-dependent use under the Coastal Act and while the Pilot Program location is not needed as of the date of the Effective Date of this Agreement, it may be needed for commercial fishing operations sometime during the Term of this Agreement. Accordingly, if the location of the Pilot Program is needed for commercial fishing activities or operations during the Term, as decided by the District, in its sole and absolute discretion, the District shall notify the Participant in writing ("Removal/Relocation Notice") and the Participant shall cease operations of the Pilot Program and shall cooperate with the District to remove or relocate the Pilot Program within 30 days of receipt of said Removal/Relocation Notice ("30-Day Removal/Relocation Period"). The cost of said removal or relocation shall be borne by the District. If another location is not identified by the District within the 30-Day Removal/Relocation Period, this Agreement shall terminate and be of no further force or affect ("Removal/Relocation Termination"). On the date of the Removal/Relocation Termination: (A) if the total of all Minimum Monthly Revenue Share payments, Additional Revenue Share payments, or additional optional payments made by SDBA to District is less than \$351,600, District shall return all payments, and will thereby be relieved of its obligations in Section 4 or (2) if the total of all Minimum Monthly Revenue

Share payments, Additional Revenue Share payments, or additional optional payments made by SDBA to District is equal to or more than \$351,600, SDBA shall pay all outstanding Minimum Monthly Revenue Share payments, Additional Revenue Share payments and District shall keep all payments, and will thereby be relieved of its obligations in Section 4.

37. Best Management Practices. SDBA, as project features of the Pilot Program, shall implement all Best Management Practices listed on Exhibit F, incorporated herein by reference, which may be update from time-to-time by written agreement among the Parties.

[SIGNATURE PAGE TO FOLLOW]

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.

“District”

“San Diego Bay Aquaculture LLC”

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

**San Diego Bay Aquaculture LLC,
a California limited liability company**

By: _____
Signature

By: _____
Signature

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Deputy/Assistant General Counsel

Exhibit A

Scope of Work

San Diego Unified Port District

Background: San Diego Bay Aquaculture (SDBA) shall conduct a pilot project to develop accelerated, year-round shellfish nursery operations in the San Diego Bay, using a Floating Upweller Nursery System (referred to as FLUPSY) technology. The pilot shall help demonstrate that San Diego Bay's competitive advantage over other northern shellfish nursery sites is the Bay's warm, nutrient-rich water which could reduce seed-to harvest time by up to one year.

The current working model for a FLUPSY nursery operation in San Diego Bay relies on importing oyster seed (~3 weeks old) , rearing them until they reach approximately $\frac{3}{4}$ " (~3-4 months old), and then exporting them to a final grow-out location (in northern CA, and Pacific northwest locations as far north as Alaska). In addition, international opportunities will be pursued in Mexico and British Columbia. Shellfish nursery operations present a promising aquaculture business opportunity as FLUPSY production is fast, efficient, and is easily expandable. The project plans on initially Pacific oysters (*Crassostrea gigas*), as this species is the most common species grown in the entire west coast shellfish industry and because seed is readily available from existing hatcheries. In addition, other alternative permitted species including native Purple-Hinged Rock Scallop, green abalone, and seaweeds will be cultivated as operational capacity is available.

This pilot project will allow establishment of operations, proof of concept, and validation that shellfish nursery operations in San Diego Bay could support viable new shellfish aquaculture business lines at the District. The duration of the pilot project is expected to be five years. SDBA's project principals have twelve years of experience in shellfish and seaweed farming, FLUPSY operations and aquafarm ownership. SDBA's will provide executive management joined by a team of on-site operational staff to include a marine biologist manager and technicians.

1. **Scope and Timeline:** The pilot project work will be focused on work to include, but not limited to:
 - a. Obtain necessary operational permits to conduct the pilot project.
 - b. Coordinate the installation of the FLUPSY, assess fitness of designated slip and dock areas, test FLUPSY for performance per manufacturer's representations, finalize land-based facilities, and establish operational baseline.
 - c. Hire and train all management and operational staff.

- d. Manage all daily operations to provide optimal rearing conditions for all species: husbandry, cleaning, grading, sorting, biosecurity, and permit compliance requirements.
- e. Manage all necessary daily, or otherwise routine maintenance procedures to ensure operations are running as efficiently as possible.
- f. Negotiate and schedule customer orders; receive customer shipments to capacity on a continuous basis.
- g. Per culture protocols, orders are grown to customer specifications.
- h. Customer orders of finished seed are shipped on a continuous basis.
- i. Continually assess site specific operational procedures and outcomes.
- j. Test and evaluate alternative species and continuously assess market capacity.
- k. Generate quarterly reports throughout the project and final report when pilot project is finished.

2. Success Metrics: SDBA shall ensure the success of the pilot project by tracking performance based on key metrics such as:

- a. Shellfish growth rate
 - i. Measure shellfish growth rate (mm/week) and shell mass (gr/week)
 - ii. Compare growth rate in FLUPSY to growth rate in adjacent SEAPA's baskets
 - iii. Track mortality ratio trends and causes
- b. Rate of customer acquisition
 - i. Number of units subscribed per month
 - ii. Geographic diversity of customer base
 - iii. Customer retention (reorder rates)
- c. FLUPSY energy efficiency – explore solar energy options for potential expanded operations. Parameters to track would include:
 - i. Solar energy production tracking
 - ii. Solar energy versus shore power proportion total energy used
 - iii. Total energy used per unit production and per dollar sales
 - iv. Public viewable display of solar energy production
- d. Effectiveness of operations
 - i. Financial performance
 - ii. Labor per unit of production and per dollar sales
 - iii. Competitive stance
 - iv. Innovation and proof of concept

v. Capacity utilization

- 3. Monitoring and Reporting Requirements:** SDBA shall provide monitoring and progress reports on a quarterly basis with the first report due three months after the agreement is documented. These reports shall include monitoring/metrics results, a discussion of the activities conducted during the quarter, problems encountered and their resolution, and activities planned for next quarter. A final report shall be prepared summarizing the entire pilot project.
- a. The report must provide an assessment of the pilot project performance and should include and not be limited to summaries of success matrices; P&L Statements, and compliance and regulatory reporting.

EXHIBIT B FORM OF TIDELANDS USE AND OCCUPANCY PERMIT

TIDELAND USE AND OCCUPANCY PERMIT

THIS PERMIT, by the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation, hereinafter called "District," to *LEGAL TENANT NAME, hereinafter called "Tenant," is set forth as follows:

District for the considerations hereinafter set forth, hereby grants to Tenant upon the terms and conditions and for the purposes and uses hereinafter set forth, the right to use and occupy a portion of those lands conveyed to the San Diego Unified Port District by that certain Act of the Legislature of the State of California, entitled "San Diego Unified Port District Act," Stats. 1962, 1st Ex. Sess., c. 67, as amended, which lands are more particularly described as follows and are herein referred to as "Premises":

*

This Permit is granted upon the following terms and conditions:

1. **TERM:** The term of this Permit shall be for * year, commencing on the * day of * *, and ending on the * day of * *, unless sooner terminated as herein provided.

2. **RENTAL:** As and for the rental, Tenant is providing consideration under a separate Blue Economy Agreement, and no additional rent shall be paid by Tenant under this Permit unless Tenant breaches a term of this Permit.

3. **USE:** The Premises shall be used only and exclusively for the purpose of a Pilot Project of shellfish aquaculture using a floating upweller system, and for no other purpose whatsoever without the prior written consent of the Executive Director of District in each instance.

4. **ASSIGNMENT-SUBLEASE-ENCUMBRANCE:** Tenant shall not encumber this Permit, the Premises thereof and the improvements thereon by a deed of trust, mortgage, or any other security instrument without the express written consent of the District. Furthermore, neither the whole nor any part of the Premises nor any of the rights or privileges granted by this Permit shall be assignable or transferable in any way without such consent. Nor shall Tenant grant any permission to any other person to occupy any portion of the Premises without such consent.

Any such purported assignment, transfer, sublease, encumbrance, or permission given without such consent shall be void as to District.

5. **CHANGES OR ALTERATIONS:** Tenant shall make no changes or alterations in the Premises, nor make, erect, or install any buildings, structures, signs, machines, or other improvements on the Premises without the consent in writing of the Executive Director of District. Tenant further agrees to provide the proper containers for trash and to keep the Premises free and clear of rubbish, debris, and litter at all times.

6. **MAINTENANCE:** Tenant hereby agrees that the Premises are in a good and tenantable condition, that Tenant will take good care of the Premises and appurtenances, including any personal property belonging to District; and that Tenant, as a part of the consideration for rental stated above, will at Tenant's sole cost and expense keep and maintain the Premises, appurtenances, and personal property in good and sanitary condition and repair during the term of this Permit, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided. District shall at no time during the term of this Permit be required to make any improvements or repairs to the Premises.

7. **TITLE TO IMPROVEMENTS:** On the commencement date of the term of this Permit, all existing structures, buildings, installations, and improvements of any kind located on the Premises are owned by and title thereto is vested in *. All said existing structures, buildings, installations, and improvements as well as all structures, buildings, installations, and improvements placed on the Premises by Tenant subsequent to the commencement date of the term of this Permit shall at the option of District be removed by Tenant at Tenant's expense within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof. District may exercise said option as to any or all of the structures, buildings, installations, and improvements, either before or after the expiration or sooner termination of this Permit. If District exercises such option and Tenant fails to remove such structures, buildings, installations, and improvements within said thirty (30) days, the District shall have the right to have such structures, buildings, installations, and improvements removed at the expense of Tenant. As to any or all structures, buildings, installations, and improvements owned by Tenant for which District does not exercise said option for removal, title thereto shall vest in District, without cost to District and without payment to Tenant.

Machines, appliances, equipment, and trade fixtures of any kind placed on the Premises by Tenant are owned by and title thereto is vested in Tenant and shall be removed by Tenant within thirty (30) days after the expiration of the term of this Permit or sooner termination thereof; provided, however, Tenant agrees to repair any and all damage occasioned by the removal thereof. If any such machines, appliances, equipment, and trade fixtures are not

removed within thirty (30) days after the termination of this Permit, the same may be considered abandoned and shall thereupon become the property of District without cost to the District and without payment to Tenant, except that District shall have the right to have the same removed at the expense of Tenant.

During any period of time employed by Tenant under this paragraph to remove structures, buildings, installations, improvements, machines, appliances, equipment and trade fixtures, Tenant shall continue to pay the full rental to District in accordance with this Permit which said rental shall be prorated daily.

8. **REMOVAL OF MATERIALS:** Tenant hereby agrees that upon the expiration of this Permit or the sooner termination as herein provided, it will remove within thirty (30) days all ships, vessels, barges, hulls, debris, surplus, and salvage materials from the land area and water area forming a part of or adjacent to the Premises, so as to leave the same in as good condition as when first occupied by Tenant, subject to reasonable wear and tear; provided, however, that if any said ships, vessels, barges, hulls, debris, surplus, and salvage materials shall not be so removed within thirty (30) days by Tenant, District may remove, sell, or destroy the same at the expense of Tenant; and Tenant hereby agrees to pay District the cost of such removal, sale, or destruction; or at the option of District, the title to said ships, vessels, barges, hulls, debris, surplus, and salvage materials not removed shall become the property of District.

During any period of time employed by Tenant under this paragraph to remove ships, vessels, barges, hulls, debris, surplus and salvage materials, or test for and/or remediate Contaminants as required in this Permit, Tenant shall continue to pay the full rental to District in accordance with this Permit which said rental shall be prorated daily.

9. **TERMINATION:** This Permit may be terminated by Executive Director of District or his and her duly authorized representative or Tenant as a matter of right and without cause at any time upon the giving of thirty (30) days' notice in writing to the other party of such termination.

10. **HOLD HARMLESS:** In addition to and over and beyond its obligations under the separate Blue Economy Agreement between the Parties, Tenant shall, except for Claims (as that term is defined below) arising from the sole negligence or willful misconduct of District, defend, indemnify and hold harmless the District and its officials, officers, representatives, agents, and employees from any litigation, claim, action, proceeding, loss, damage, cost, expense (including, without limitation, all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment (collectively, "Claims") arising directly or indirectly out of, from, or in connection with: (a) the obligations undertaken in connection with this Permit; (b) the

possession, use, occupancy, operation or development of the Premises by Tenant or Tenant's representatives, agents, employees, consultants, contractors, invitees, subtenants, successors, assigns or similar users/affiliates (collectively, "Tenant Affiliate"); (c) the approval of this Permit, or other permits or approvals granted to Tenant or a Tenant Affiliate related to the Premises, including, but not limited to, approvals or permits for the development of any structures, buildings, installations, and improvements on the Premises, or use of the Premises (collectively, "Related Approvals"); and (d) environmental documents, mitigation and/or monitoring plans, or determinations conducted and adopted pursuant to the California Environmental Quality Act or the National Environmental Policy Act for this Permit or Related Approvals.

Tenant acknowledges and agrees that it is the sole and exclusive responsibility of Tenant, and not the District, to: (a) ensure that all persons and/or entities (including, but not limited to, Tenant or a Tenant Affiliate) who provide any labor, services, equipment and/or materials (collectively, "Services") in connection with the development, construction, possession, use, occupancy, or operation of the Premises, this Permit and Related Approvals 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. The obligations to defend, indemnification and hold the District harmless shall apply to, in addition to other Claims, any and all PWL Claims, except for those arising from the sole negligence or willful misconduct of District.

The District may, in its sole and absolute discretion and in good faith, participate in the defense of any Claims and the Tenant shall reimburse District for said defense, including, but not limited to, reimbursement for outside attorneys' and experts' fees, and other costs. The District's participation shall not relieve the Tenant of any of its obligations under this Paragraph. The District shall provide reasonable notice to the Tenant of its receipt of any Claims.

This Paragraph and the other obligations of Tenant under this Permit are independent of, and in addition to, the obligations of Tenant under any existing lease(s), other contractual agreement(s) or permits with or granted by the District, and are binding upon Tenant, and its agents, representatives, successors and assigns. This Paragraph shall survive the term of this Permit.

11. **INSURANCE:** Tenant shall maintain insurance acceptable to District in full force and effect throughout the term of this Permit in accordance with the terms of the separate Blue Economy Agreement between the Parties.

12. **TAXES AND UTILITIES:** This Permit may result in a taxable possessory interest and be subject to the payment of property taxes. Tenant agrees to and shall pay before delinquency all taxes and assessments of any kind assessed or levied upon Tenant or the Premises by reason of this Permit or of any buildings, machines, or other improvements of any nature whatsoever erected, installed, or maintained by Tenant or by reason of the business or other activities of Tenant upon or in connection with the Premises. Tenant shall also pay any fees imposed by law for licenses or permits for any business or activities of Tenant upon the Premises or under this Permit, and shall pay before delinquency any and all charges for utilities at or on the Premises.

13. **CONFORMANCE WITH RULES AND REGULATIONS:** Tenant agrees that, in all activities on or in connection with the Premises, and in all uses thereof, including the making of any alterations, changes, installations, or other improvements, it shall abide by and conform to all laws and regulations. Said laws and regulations shall include, but are not limited to those prescribed by the San Diego Unified Port District Act; any ordinances of the city in which the Premises are located, including the Building Code thereof; any ordinances and general rules of District, including tariffs; and any applicable laws of the state of California and federal government, as any of the same now exist or may hereafter be adopted or amended. In particular and without limitation, Tenant shall have the sole and exclusive obligation and responsibility to comply with the requirements of: (i) Article 10 of District Code entitled "Stormwater Management and Discharge Control," and (ii) the Americans With Disabilities Act of 1990, including but not limited to regulations promulgated thereunder, and District shall have no obligations or responsibilities as to the Premises.

14. **DEFAULT:** If any default be made in the payment of the rental herein provided or in the fulfillment of any terms, covenants, or conditions hereof, and said default is not cured within ten (10) days after written notice thereof, this Permit shall immediately terminate and Tenant shall have no further rights hereunder and shall immediately remove from the Premises; and District shall immediately thereupon, without recourse to the courts, have the right to reenter and take possession of the Premises. District shall further have all other rights and remedies as provided by law, including without limitation the right to recover damages from Tenant in the amount necessary to compensate District for all the detriment proximately caused by Tenant's failure to perform its obligations under this Permit or which in the ordinary course of things would be likely to result therefrom.

15. **LIENS:** Tenant agrees that it will at all times save District free and harmless and defend and indemnify it against all claims and liens for labor, services or materials in connection with improvements, repairs, or alterations on the Premises caused to be performed by Tenant, and the costs of defending against such claims, including reasonable attorney's fees.

16. **BANKRUPTCY:** In the event Tenant commences a proceeding under Chapter XI of the Federal Bankruptcy Act, or is adjudicated bankrupt or insolvent, or a judicial sale is made of Tenant's interest under this Permit, this Permit shall at the option of District immediately terminate and all rights of Tenant hereunder shall immediately cease and terminate.

17. **EASEMENTS:** This Permit and all rights given hereunder shall be subject to all easements and rights-of-way now existing or heretofore granted or reserved by District in, to, or over the Premises for any purpose whatsoever, and shall be subject to such rights-of-way for reasonable access, sewers, pipelines, conduits, and such telephone, telegraph, light, heat, or power lines as may from time to time be determined by District to be in the best interests of the development of the tidelands.

District agrees that such easements and rights-of-way shall be so located and installed as to produce a minimum amount of interference to the business of Tenant.

18. **TITLE OF DISTRICT:** District's title is derived from the provisions of the San Diego Unified Port District Act, Appendix 1, Harbors & Navigation Code, and is subject to the provisions of said Act. This Permit is granted subject to the terms and conditions of said Act.

19. **JOINT AND SEVERAL LIABILITY:** If Tenant, as a party to this Permit, is a partnership or joint venture, or is comprised of more than one party or entity or a combination thereof, the obligations imposed on Tenant under this Permit shall be joint and several, and each general partner, joint venturer, party, or entity of Tenant shall be jointly and severally liable for said obligations. Furthermore, nothing contained herein shall be deemed or construed as creating a partnership or joint venture between District and Tenant or between District and any other entity or party, or cause District to be responsible in any way for the debts or obligations of Tenant, or any other party or entity.

20. **NONDISCRIMINATION:** Tenant agrees at all times to fully comply with all laws prohibiting discrimination against any person or class of persons by reason of sex, color, race, religion, handicap or national origin. If the use provided for in this Permit allows the Tenant to offer accommodations or services to the public, such accommodations or services shall be offered by the Tenant to the public on fair and reasonable terms. In complying with all such laws, including, without limitation, the Americans With Disabilities Act of 1990, Tenant shall be solely responsible for such compliance and required programs and there shall be no allocation of any such responsibility between District and Tenant.

21. **ENTIRE UNDERSTANDING:** This Permit contains the entire understanding of the parties, and Tenant, by accepting the same, acknowledges that there is no other written or oral understanding between the parties in respect to the Premises. No modification, amendment, or alteration of this Permit shall be valid unless it is in writing and signed by the parties hereto.

22. **PEACEABLE SURRENDER:** Upon the termination of this Permit by the expiration thereof or the earlier termination as by the terms of this Permit provided, Tenant will peaceably surrender the Premises in as good condition, subject to normal and ordinary wear and tear resulting from the use of the Premises as herein provided, as the same may be at the time Tenant takes possession thereof, and to allow District to take peaceable possession thereof.

23. **HOLDOVER:** This Permit shall terminate without further notice at expiration of the term. Any holding over by Tenant after either expiration or termination shall not constitute a renewal or extension or give Tenant any rights in or to the Premises. If Tenant, with District's consent, remains in possession of the Premises after expiration or termination of the term or after the date in any notice given by District to Tenant terminating this Permit, such possession by Tenant shall be deemed to be a month-to-month tenancy terminable on thirty (30) days' notice given at any time by either party. During any such month-to-month tenancy, Tenant shall pay all rent required by this Permit; and if percentage rent is required by the Permit, it shall be paid monthly on or before the tenth (10th) day of each month.

All provisions of this Permit, except those pertaining to term, shall apply to the month-to-month tenancy.

24. **ACCEPTANCE OF PREMISES:** BY SIGNING THIS PERMIT, TENANT REPRESENTS AND WARRANTS THAT IT HAS INDEPENDENTLY INSPECTED THE PREMISES AND MADE ALL TESTS, INVESTIGATIONS AND OBSERVATIONS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PREMISES. TENANT AGREES IT IS RELYING SOLELY ON SUCH INDEPENDENT INSPECTION, TESTS, INVESTIGATIONS AND OBSERVATIONS IN MAKING THIS PERMIT. TENANT ALSO ACKNOWLEDGES THAT THE PREMISES ARE IN THE CONDITION CALLED FOR BY THIS PERMIT, THAT DISTRICT HAS PERFORMED ALL WORK WITH RESPECT TO PREMISES AND THAT TENANT DOES NOT HOLD DISTRICT RESPONSIBLE FOR ANY DEFECTS IN THE PREMISES. TENANT FURTHERMORE ACCEPTS AND SHALL BE RESPONSIBLE FOR ANY RISK OF HARM TO ANY PERSON AND PROPERTY, INCLUDING WITHOUT LIMITATION EMPLOYEES OF TENANT, FROM ANY LATENT DEFECTS IN THE PREMISES.

Initial: _____
 District Tenant

25. **WARRANTIES-GUARANTEES:** District makes no warranty, guarantee, covenant, including but not limited to covenants of title and quiet enjoyment, or averment of any nature whatsoever concerning the condition of the Premises, including the physical condition thereof, or any condition which may affect the Premises; and it is agreed that District will not be responsible for any loss or damage or costs which may be incurred by Tenant by reason of any such condition or conditions.

26. **ATTORNEY'S FEES:** In the event any suit is commenced to enforce, protect or establish any right or remedy of any of the terms and conditions hereof, including without limitation a summary action commenced by District under the laws of the State of California relating to the unlawful detention of property, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

27. **HAZARDOUS MATERIALS:** Tenant shall comply with all laws regarding hazardous substances, materials or wastes, or petroleum products or fraction thereof (herein collectively referred to as "Contaminants") relative to occupancy and use of the Premises. Tenant shall be liable and responsible for any Contaminants arising out of the occupancy or use of the Premises by Tenant. Such liability and responsibility shall include, but not be limited to, (i) removal from the Premises any such Contaminants; (ii) removal from any area outside the Premises, including but not limited to surface and groundwater, any such Contaminants generated as part of the operations on the Premises; (iii) damages to persons, property and the Premises; (iv) all claims resulting from those damages; (v) fines imposed by any governmental agency, and (vi) any other liability as provided by law. Tenant shall defend, indemnify and hold harmless the District, its officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorney's fees therefor. District shall have a direct right of action against Tenant even if no third party has asserted a claim. Furthermore, District shall have the right to assign said indemnity.

If Tenant has in the past or continues to use, dispose, generate, or store Contaminants on the Premises, District, or its designated representatives, at District's sole discretion, may at any time during the term of this Permit, enter upon the Premises and make any inspections, tests or measurements District deems necessary in order to determine if a release of Contaminants has occurred. District shall give Tenant a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in District's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Tenant's operations. If such tests indicate a release of Contaminants, then District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on the Premises. If District has reason to believe that

any Contaminants that originated from a release on the Premises have contaminated any area outside the Premises, including but not limited to surface and groundwater, then District, at District's sole discretion, may require Tenant, at Tenant's sole expense, and at any time during the term of this Permit, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the Premises.

The tests conducted by Tenant's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Tenant shall expeditiously, but no longer than thirty (30) days after District's request for such tests, furnish to District the results of said tests, sampling plans, and analysis thereof identifying any Contaminants which exceed then applicable levels permitted by federal, state, or local laws. Tenant shall report such contamination to the District within seventy-two (72) hours and shall diligently proceed to identify the extent of contamination, how it will be remediated, when it will be remediated, by whom, and the cost of such remediation.

28. **UNDERGROUND STORAGE TANKS:** In the event any underground storage tanks are located on the Premises or hereinafter placed on the Premises by any party during the term or extension of this Permit, Tenant shall be responsible for tank monitoring of all such underground storage tanks as required by the County of San Diego Hazardous Material Management Division (HMMD) or any other responsible agency. Tenant further agrees to take responsibility for reporting unauthorized releases to HMMD and the District within twenty-four (24) hours of such unauthorized release. Tenant will be responsible for all fees and costs related to the unauthorized release of Contaminants including but not limited to investigative, surface and groundwater cleanup, and expert and agency fees. Tenant shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system. Tenant further agrees to be responsible for maintenance and repair of the storage tanks, obtaining tank permits, filing a business plan with HMMD or other responsible agency and for paying underground storage tank fees, permit fees, and other regulatory agency fees relating to underground storage tanks.

Tenant agrees to keep complete and accurate records on the Premises for a period of not less than thirty-six (36) months from the applicable events, including, but not limited to permit applications, monitoring, testing, equipment installation, repairing and closure of the underground storage tanks, and any unauthorized releases of Contaminants and make such records available for District or responsible agency inspection. Tenant further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Tenant and any Operator of such underground storage tanks.

Furthermore, Tenant shall be responsible for compliance with all other laws and regulations presently existing or hereinafter enacted applicable to underground storage tanks, including without limitation any such laws and regulations which alter any of the above requirements.

29. ABOVEGROUND STORAGE TANKS: Tenant shall be responsible for any aboveground storage tanks on the Premises. Tenant shall, in accordance with this Permit and applicable laws and regulations, secure and pay for all necessary permits and approvals, prepare a spill prevention control counter measure plan and conduct periodic inspections to ensure compliance therewith, including conformance with the latest version of said laws and regulations. In addition, Tenant shall maintain and repair said tanks and conform and comply with all other applicable laws and regulations for aboveground storage tanks, including without limitation all of the requirements of Health & Safety Code, Sections 25270 through 25170.13 as presently existing or as hereinafter amended, including without limitation conducting daily visual inspection of said tanks, allowing the San Diego Regional Water Quality Control Board, District, or responsible agency, to conduct periodic inspections and complying with valid orders of said Board, filing the required storage tank statement and payment of the fee therefor, establishing and maintaining the required monitoring program and systems, reporting spills as required, and payment of lawfully imposed penalties as provided therein and as otherwise provided by law. Tenant shall be responsible for all costs associated with an unauthorized release from such tanks, including but not limited to, investigative, surface and groundwater cleanup, expert and agency fees.

30. SECURITY DEPOSIT: [Intentionally Deleted]

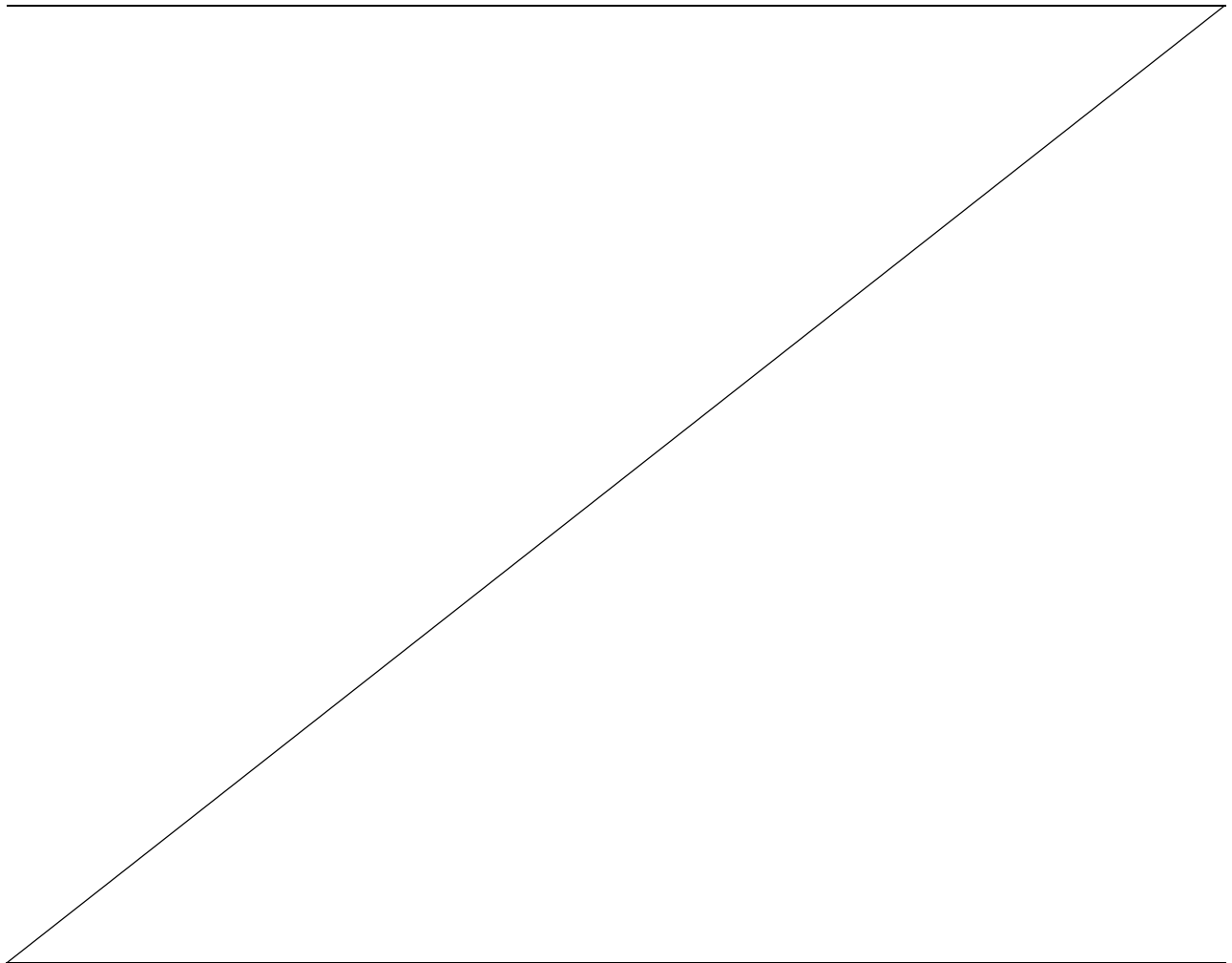
31. DISPUTE RESOLUTION: Except for (i) a dispute or disagreement as to the amount of rent that Tenant is to pay District or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, default or any other aspect of this Permit shall be governed by the terms of the separate Blue Economy Agreement between the Parties.

32. NOTICES: Any notice or notices provided for by this Permit or by law to be given or served upon Tenant may be given or served by certified or registered letter addressed to Tenant at * and deposited in the United States mail, or may be served personally upon said Tenant or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Permit or by law to be served upon District may be given or served by certified or registered letter addressed to Executive Director of District at the Administrative Offices of the San Diego Unified Port District, Post Office Box 120488, San Diego, California 92112-0488, and deposited in the United States mail, or may be served personally upon said Executive Director or his and her duly authorized representative; and that any notice or notices

given or served as provided herein shall be effectual and binding for all purposes upon the parties so served.

33. **SECTION HEADINGS:** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

(SIGNATURE PAGE FOLLOWS)



34. **SIGNATURE OF PARTIES:** It is an express condition of this Permit that said Permit shall not be complete nor effective until signed by either the Executive Director or his and her authorized designee on behalf of District and by other party.

APPROVED AS TO FORM AND LEGALITY **SAN DIEGO UNIFIED PORT DISTRICT**

GENERAL COUNSEL

By: _____

Assistant/Deputy

By: _____

Shaun D. Sumner
Assistant Vice President, Real Estate

TENANT NAME, including type of entity

By: _____

Signature

PRINT NAME: _____

PRINT TITLE: _____

SDUPD Docs No. _____

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 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: \$ _____ 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: _____	

EXHIBIT D
Commencement Date Notification

On _____ the first FLUPSY was delivered to SDBA and
this date shall constitute the Commencement date for Agreement No. _____
(District Document No.)

San Diego Unified Port District

By: _____

Title: _____

SBDA Acknowledgement:

By: _____

Title: _____

EXHIBIT E

Pilot Program Location



EXHIBIT F

Best Management Practices

Seed Stocking:

- The bottom of the upwelling bins of the FLUPSY are a 1.2 - 1.8 mm mesh screen, which allows water to come up through the upwelling bin and exit the bin at the top. Shellfish seed would be placed in the FLUPSY bins at 2.5 - 3.5 mm in size and removed before they reach 20mm in size. After removal from the FLUPSY the seed would be washed at a nearby onshore facility and shipped to various offsite locations for further grow-out.

Cleaning and Maintenance:

- The operator would carry out all daily maintenance activities on the FLUPSY rafts, including sorting and grading the shellfish and pressure washing the upwelling bins with seawater pumped from San Diego Bay to prevent establishing fouling organisms.
- All other maintenance and cleaning operations of the FLUPSY hull and bottom not including the seed bins would be done according to Best Management Practices that are recognized by the hull-cleaning industry and as being effective and environmentally sound. At minimum, hull and bottom areas would be scrubbed by divers before any buildup of biofouling organisms or materials occur. In the event that biofouling organisms or materials are sufficiently built up, scraping or scrubbing of the bottom can still occur but biofouling materials would be contained using tarps, or screens. No discharge of biofouling materials into San Diego Bay would occur during maintenance cleaning operations.

Non-native species management:

- The operator shall: 1) use screens during washdown of all seed and equipment to contain all seed regardless of size and prevent seed from falling into the bay; 2) remove all seed from the FLUPSY system prior to reaching 20 mm shell size, at which size they are not sexually mature; and 3) not discard culled shellfish into San Diego Bay.
- The pilot project would limit cultivation of seed to immature sizes, and all shellfish seed is to be collected and removed from the FLUPSY bins before individual shellfish reach maturity and are capable of reproducing or generating larvae.

Marine Wildlife:

- The FLUPSY would have handrails and exclusionary fencing installed along the perimeter of the barge to prevent marine mammal haul out on the barge itself.