

BLUE ECONOMY AGREEMENT
between
SAN DIEGO UNIFIED PORT DISTRICT
and
RED LION CHEM TECH LLC
for
COPPER REMEDIATION PILOT PROJECT

THIS BLUE ECONOMY AGREEMENT (“Agreement”) is being made this 21th day of June, 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 **RED LION CHEM TECH LLC**, a Delaware limited liability company, with its principal place of business located at 569 Edgewood Avenue South, Jacksonville, FL 32205 (“Red Lion”), with regards to the terms and conditions as set forth herein. The District and Red Lion 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, Red Lion has developed and owns all intellectual property rights, trade secret rights, technical data, designs, processes, formulae, know-how and other proprietary rights (collectively “IP Rights”) relating to processes for mitigating soluble copper from water including salt water (the “Copper Mitigation Water Technology”);

WHEREAS, the District has a multi-faceted copper reduction program that supports efforts to achieve load reductions and improve water quality in the San Diego Bay;

WHEREAS, Red Lion has applied to participate in the Program and has been selected by the District to participate in the Program;

WHEREAS, the District desires to participate in the technology demonstration and business model validation of Red Lion's Copper Mitigation Water Technology for purposes of determining the effectiveness and the potential scalability of such technology (the "Pilot Project") by providing funding and other resources to Red Lion in connection with the Pilot Project, and in support thereof, the District desires to receive a certain share of Red Lion's revenue, including without limitation, that which Red Lion may receive from the licensing of its Copper Mitigation Water Technology and/or the performance of copper mitigation on and at various other ports, bays and harbors throughout the world via the use of such technology; 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 Red Lion's participation in the Program and the District's participation and support of Red Lion 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.

1. Term. This Agreement shall commence on June 1, 2017 and shall terminate on May 31, 2018 ("Term"). However, the obligations of Red Lion under Section 4, 5, 6, 7, 15, 16, 17 and 18 shall survive Term or earlier termination of this Agreement ("Surviving Obligations"). If the Surviving Obligations are finally determined by a court to be inoperative, unenforceable, to create rights of termination at will by either Party, or to create a term less than ninety-nine (99) years, the Parties agree that the term of the Surviving Obligations shall be less than in perpetuity consistent with said court decision and shall be a term consistent with said court decision.

2. Red Lion to Perform the Pilot Project. Red Lion shall perform the Pilot Project in accordance with the attached Scope of Work, Exhibit A.

3. 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. Red Lion shall be responsible for all other costs and expenses of the Pilot Project.

(a) Upon execution of this Agreement, District shall provide funding in the amount of \$165,000.00 to Red Lion. Payment from District to Red Lion shall be made in one lump-sum.

(b) For the Pilot Program only, the District shall provide, at no cost to Red Lion: (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 Red Lion to help obtain other necessary permits, exemptions, waivers, approvals that may be needed.

District shall provide Red Lion with six sample locations include three within Shelter Harbor Yacht Basin and three in San Diego Bay, all owned by the District, upon which to conduct the Pilot Project for the duration of the Pilot Project Term through a

Tidelands Use and Occupancy Permit ("Permit"), substantially in the form attached and incorporated herein as Exhibit B.

4. Revenue Sharing. In consideration of the District providing funding and staffing resources as described in Section 3, herein, the District, subject to Section 1 of this Agreement, shall be entitled to a one percent (1%) share ("Revenue Share") in perpetuity of any and all gross revenue of any kind that Red Lion earns and receives in connection with the licensing of the Copper Mitigation Water Technology, its performing of copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world, or any other revenue related to the Copper Mitigation Water Technology or copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world.

Red Lion shall pay the Revenue Share to the District, on a quarterly basis. Each payment of Revenue Share shall be accompanied by a written report of Red Lion's applicable gross revenue and Revenue Share calculation, in a form reasonably required by the District ("Revenue Report"). 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. Red Lion shall make each quarterly payment within 30 days of the end of each quarter ("Quarterly Payment"). Red Lion's first Revenue Report and Quarterly Payment, if any revenue has been received, shall be due November 1, 2017 and each Quarterly Payment thereafter in accordance with this Agreement.

In order to ensure that the District receives its bargained-for Revenue Share, Red Lion agrees that all of its dealings involving the licensing of the Copper Mitigation Water Technology, its performing of copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world, or any other revenue related to the Copper Mitigation Water Technology or copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world, whether with

independent third parties, Red Lion 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 Red Lion gross revenue than would have resulted from an arms-length negotiation, for the purpose of calculating the District's Revenue Share for such deals, the higher Red Lion gross revenue that would have resulted from an arms-length negotiation shall be used in the calculation of Revenue Share.

5. Most-Favored Pricing. In further consideration of the District providing funding and staffing resources as described in Section 3, herein, the District shall be entitled, if it so chooses, to contract with Red Lion for services and/or materials related to the Copper Mitigation Water Technology and/or performance of copper mitigation in San Diego Bay upon prices and terms which are equal to, or more favorable to the District than, prices and terms offered by Red Lion to any other entity or customer in the United States.

6. Records and Audit Rights. Red Lion shall, at all times, maintain full and complete records, including by not limited to service contracts, copper mitigation reports and financial records, and other documents relating to revenue from any licensing of the Copper Mitigation Water Technology, its performing of copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world, or any other revenue related to the Copper Mitigation Water Technology or copper mitigation on or at any ports, bays, harbors or similar bodies of water located anywhere in the world. 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 upon ten (10) business days advance notice, during normal business hours at Red Lion's offices and/or facilities. Red Lion shall at no cost to District, furnish reasonable facilities and assistance during such review and audit. If any such inspection or audit reveals that Red Lion has

underpaid any Revenue Share due hereunder by more than 5%, Red Lion 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 Red Lion does not dispute such finding, then Red Lion 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 Red Lion within 30 days thereafter the amount of such overpayment.

7. Representations and Warranties by Red Lion.

- a) Red Lion 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 Red Lion and the consummation by it of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Red Lion and no further action is required by Red Lion in this regard. This Agreement has been duly executed and delivered by Red Lion and constitutes the valid and binding obligation of Red Lion enforceable against Red Lion 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) Red Lion 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 Red Lion of this Agreement in accordance with its terms.

- c) To the best of Red Lion's knowledge none of the IP Rights or product or service (including the Copper Mitigation Water Technology) of Red Lion is subject to any proceeding or outstanding decree, order, judgment, agreement, contract or stipulation restricting in any manner the use, transfer or licensing thereof by Red Lion, or which may affect the validity, use or enforceability of Red Lion's IP Rights (including the Copper Mitigation Water Technology). All necessary registration, maintenance and renewal fees currently due in connection with registered IP Rights have been made and all necessary documents, recordations and certifications in connection with such registered IP Rights have been filed with the relevant patent, copyright, trademark or other applicable government authorities for the purpose of maintaining such registered IP Rights.
- d) Red Lion owns and has exclusive title and ownership to each item of its IP Rights (including the Copper Mitigation Water Technology) used in connection with the conduct of the business of Red Lion as currently conducted and as proposed to be conducted free and clear of any lien, and Red Lion is the exclusive owner or exclusive licensee of all trademarks and service marks, trade names and domain names used in connection with the operation or conduct of the business of Red Lion, free and clear of all liens.
- e) Red Lion owns exclusively all copyrighted works that are Red Lion products or which Red Lion otherwise expressly purports to own, free and clear of all liens.
- f) The operation of the business of Red Lion, as it is currently conducted and as proposed to be conducted, including Red Lion'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.
- g) Red Lion 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 Red Lion as it is currently conducted and as proposed to be conducted, or any act, product or service of Red Lion, infringes or misappropriates the intellectual property of any third party or constitutes unfair competition or trade practices under the applicable laws of any jurisdiction.
 - h) To the best knowledge of Red Lion, no person, entity or party has or is infringing or misappropriating any of Red Lion's IP Rights (including the Copper Mitigation Water Technology).
 - i) Red Lion has taken steps which it believes reasonable to protect the IP Rights of Red Lion in the Copper Mitigation Water Technology or any trade secrets or confidential information of third parties used, and, without limiting the foregoing, Red Lion has enforced a policy requiring each employee, consultant and independent contractor to execute a proprietary information/confidentiality agreement, and except under confidentiality obligations, or in connection with pursuing patent rights by filing applications for patents in the U.S. or foreign patent and trademark offices, there has not been any disclosure by Red Lion of any such trade secrets or confidential information.
 - j) Red Lion has filed a Provisional Patent Application with the United States Patent and Trademark Office covering the Copper Mitigation Water Technology – Title: Selective Ligands for Toxic Soluble Copper Ion Removal

from Seawater, Application Number: 62/464,179, Filing Date: 02/27/2017, Inventor: Allen David Pronovost (Provisional Application).

- k) Red Lion is the exclusive assignee of any and all rights in the Copper Mitigation Water Technology from assignor, Dr. Allan Pronovost, the inventor, including without limitation, the right to prosecute patents, license the technology, and practice the invention.

8. Further Terms with respect to IP Rights of Red Lion.

- a) Red Lion shall file a non-provisional application claiming priority to and containing all of the content disclosed in the Provisional Application prior to the one-year anniversary of the filing of the Provisional Application. Furthermore, Red Lion shall use all measures necessary to prosecute a non-provisional application claiming priority to the Provisional Application to allowance unless Red Lion elects not to seek protection for the inventions disclosed in the Provisional Application, in which case, Red Lion agrees to assign to the District, all right, title and interest in the Provisional Application and any related applications claiming priority to the Provisional Application, and District agrees that it shall be responsible for any expenses related to filing and prosecuting of any such related applications claiming priority to the Provisional Application if it chooses to pursue such.
- b) Red Lion shall use best efforts to ensure that no IP Rights of Red Lion related to the Copper Mitigation Water Technology shall become subject to any proceeding or outstanding decree, order, judgment, agreement, contract or stipulation restricting in any manner the use, transfer or licensing thereof by Red Lion, or which may affect the validity, use or enforceability of such IP Rights. Red Lion shall use reasonable best efforts to ensure that Red Lion owns and has good and exclusive title to the Copper Mitigation Water

Technology in connection with the conduct of the business of Red Lion as currently conducted and as proposed to be conducted free and clear of any lien.

- c) 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 or unrelated to the Copper Mitigation Water Technology and existing IP Rights of Red Lion, by Red Lion, the District, or jointly (collectively “New Inventions”). Specifically, and without limitation, New Inventions may include applications for the Copper Mitigation Water Technology. The Parties acknowledge that this Agreement does not contain agreements between Red Lion 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.

9. Operation of Business. Red Lion 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. Red Lion 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 Red Lion 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. Protection Measures. Red Lion shall take all reasonable steps to protect the IP Rights of Red Lion, including without limitation, with respect to the Copper Mitigation Water Technology or any trade secrets or confidential information of third parties used, and, without limiting the foregoing, Red Lion shall enforce a policy requiring each employee, consultant and independent contractor to execute a proprietary information/confidentiality agreement (in form and substance satisfactory to the District),

and except under confidentiality obligations, or in connection with pursuing patent rights by filing applications for patents in the U.S. or foreign patent and trademark offices, there shall not be any disclosure by Red Lion of any such proprietary information.

11. Infringement Claims.

- a) Each Party shall provide the other Party hereto with prompt notice of any alleged, actual or threatened infringement or other improper use of (collectively, "Alleged Infringement") the Copper Mitigation Water Technology of which such Party becomes aware. Upon discovery of such Alleged Infringement, the Parties agree to confer and decide upon an appropriate course of action.
- b) Red Lion retains the right to take action, at its sole expense, to institute and prosecute any actions for any Alleged Infringement, and otherwise to take appropriate action with respect to the Copper Mitigation Water Technology, provided that Red Lion shall provide written notice to the District before taking any such actions. The District shall have the right to join any such proceedings, if necessary as a party, and shall provide Red Lion with all reasonably requested assistance in connection with such proceedings, and Red Lion shall reimburse the District's all reasonable out-of-pocket costs of providing such assistance.

12. Acknowledgement of District Involvement. In recognition of the District's support of the Pilot Project, Red Lion agrees to acknowledge such by including mutually agreed upon 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. Without the District's prior consent, which may be withheld or conditioned in each instances in its absolute discretion, Red Lion shall not use the District's name, logo, or other intellectual property, or misrepresent the District's

involvement or statements related to Red Lion, the Copper Mitigation Water Technology, or the Pilot Project.

13. Compliance. Red Lion and its sub-contractors shall comply with and flow down to its subcontractors 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. Red Lion shall comply with and flow down to its subcontractors the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable. Red Lion shall comply with and flow down to its subcontractors 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.

14. Independent Analysis and Waiver. Red Lion 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, Red Lion shall possess no authority with respect to any District decision. While Red Lion 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.

15. Assignment. Red Lion shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement (including without limitation any of its rights, title and interests in the Copper Mitigation Water Technology) 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 Red Lion 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.

16. Share of Revenue Upon Sale and/or Transfer of Majority in Interest in Red Lion.

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 Red Lion and/or (ii) a transfer of a majority in interest in Red Lion, so as to result in a change in the present control of Red Lion, the District shall be entitled to receive one percent (1%) share of the gross sale proceeds that were paid in connection with the transfer of interest in Red Lion Copper Mitigation Water Technology. Payment shall be made by Red Lion 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 Red Lion and rights of District set forth in Section 7, Records and Audit Rights, shall equally apply to documents related to occurrence triggering this Section 17.

Additionally, in order to ensure that the District receives its bargained-for percentage of the gross sales proceeds, Red Lion agrees that all of its dealings involving an occurrence triggering this Section 17, whether with independent third parties, Red Lion 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 sales proceeds than would have resulted from an arms-length negotiation, for the purpose of calculating the percentage of the gross sales proceeds,

the higher gross sales proceeds that would have resulted from an arms-length negotiation shall be used in the calculation of District's percentage.

17. Indemnity. To the fullest extent provided by law, Red Lion 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 Red Lion's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the Pilot Project, the Copper Mitigation Water Technology, the performance by Red Lion as provided for in this Agreement, any materials, products or services provided by Red Lion or failure to act by Red Lion, its officers, agents, subcontractors and employees. The Red Lion 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 Red Lion 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, Red Lion agrees to pay all reasonable attorneys' fees and all costs incurred by the District.

Red Lion 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 Red Lion in this Agreement;

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

18. Insurance Requirements.

Red Lion 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. Red Lion 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. Red Lion 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 this Agreement or otherwise on Red Lion 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.

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

20. Advice of Counsel. The Parties agree that they are aware that they have the right to be advised by counsel of their choice with respect to the negotiations, terms and conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

21. 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.

22. 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.

23. 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.

24. Compliance With Prevailing Wage Laws. Red Lion ensures 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.

25. Compliance With All Applicable Laws (including Environmental Laws). Red Lion 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.

26. 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.

27. 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.

28. 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

29. 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.

30. 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.

31. 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.

32. 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.

33. 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 Red Lion

Salvatore Gaglio
CEO, Red Lion Chem Tech LLC.
569 Edgewood Avenue South,
Jacksonville, FL 32205
Tel: 858-521-8440
Email: salg@redlionchemtech.com

34. 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.

35. 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 Red Lion.

36. 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.

[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”

“Red Lion”

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

**RED LION CHEM TECH LLC,
a Delaware limited liability company**

By: _____
Signature

By: _____
Signature

Name: _____

Name: _____

Title: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Assistant/Deputy General Counsel

EXHIBIT A SCOPE OF WORK

Background: Red Lion shall conduct a pilot project demonstration of adsorbent media filtration technologies (resin) designed to remove dissolved copper from seawater. The proposed pilot project will determine the efficiency of the Red Lion's resin technology under both a passive (Ballast Flow Through) and active (Pump and Treat Flow Through) filtration systems.

Red Lion shall coordinate with the District to determine appropriate locations for the pilot project. The active filtration system will require power and a land side location, and a dock with ready access to the Bay. The passive filtration system will be attached to a pier in a marina. District retains absolute discretion as to final selection of locations. Locations may be changed by agreement of the Parties and shall be documented by amendment to the Permit.

The duration of the pilot project is expected to be one year for the purpose of determining the cost-effectiveness and potential baywide scalability of the technology for both the passive and active filtration systems. Pilot project shall not exceed one year without consent of the District, which may be conditioned or withheld in its complete and absolute discretion.

The proposed pilot project shall demonstrate a removal rate of dissolved copper greater than or equal to 75-percent, for the technology to be considered effective. Determination of effectiveness shall be demonstrated by measuring the amount of dissolved copper in water samples collected pre-filtration (basin conditions) and post-filtration as shown in Table 1.

Table 1: Targets for reduction of dissolved copper ($\mu\text{g/L}$) in Bay water

Dissolved Copper	Post-filtration ($\mu\text{g/L}$)			
Pre-filtration ($\mu\text{g/L}$):	75%	85%	90%	95%
5.0	1.25	0.75	0.5	0.25
8.0	2.0	1.2	0.8	0.4
10.0	2.5	1.5	1.0	0.5

1. Scope and Timeline

Within ninety (90), Red Lion shall submit a detailed project sampling and analysis plan (SAP) to the District for review and approval prior to starting the pilot project. The SAP should include the study design, schedule, site location, proposed field testing and methodology, proposed water quality sampling, proposed laboratory analysis and all QA/QC procedures that will be used for the project for both the following active and passive filtration systems. The following items are to be included in the SAP.

- a. **Active filtration system:** shall consist of a pump and treat flow through system consisting of moving bay water through the pump and through resin, to remove dissolved copper. The duration of the active filtration system demonstration shall be a minimum of two weeks and a maximum of 2 months. Red Lion shall demonstrate the copper reduction potential of their resin technology, given the equipment (pumping capacity, resin loading capacity) and project duration for the dissolved copper scenarios in table 1.
 - i. Red Lion shall mobilize, set up, and secure all field equipment (i.e. filtration unit, pumps, tubing, etc.). Red Lion is responsible for ensuring all materials are in working condition and functional for the duration of the project. Red Lion is responsible for maintaining safety and ensuring that the project is not impeding access or other facility operations. Red Lion must follow all facility rules and requirements when mobilizing, operating, and securing the project equipment.
 - ii. Red Lion shall collect water (both bay water and effluent) samples and resin samples at regular intervals during the course of the project. Effluent samples for total and dissolved copper will be taken before treatment and after treatment, based on the frequency identified in the SAP. Bay water samples for total and dissolved copper will also be collected at 5 spatially defined GPS-specific locations as outlined in the SAP. In addition, Bay water samples shall be collected at each of the 5 locations prior to the start of the project to obtain a baseline of total and dissolved copper levels in the adjacent waters. Resin samples will be collected as identified in the SAP and submitted to the laboratory for analysis to determine the amount of for (total and dissolved) copper recovered over time.
 - iii. Red Lion shall ensure that the pilot project design is such that the

pre/post filtration sampling can adequately assess the effectiveness of the resin technology to remove dissolved copper from San Diego Bay. Determination of effectiveness shall be demonstrated by comparing the measurement of dissolved copper in water samples collected pre- versus post-filtration as shown in Table 1, and further discussed in the SAP. Red Lion shall design the project such that the resin efficiency rate (one use without regeneration) meets the targets identified in Table 2.

Table 2 Resin Efficiency Rate Targets

Resin Efficiency Rate	Binding capacity for Cu+2 without Regeneration	Binding capacity for Cu+2 without Regeneration	Binding capacity for Cu+2 without Regeneration
(one use without regeneration)	(ppb/gm)	(ppb/kg)	(gm/kg)
100%	57,100	57,100,000	57.1
95%	54,200	54,200,000	54.2
90%	51,400	51,400,000	51.4
85%	48,500	48,500,000	48.5
75%	42,800	42,800,000	42.8

1 ppb = 0.000010 g/L, or 10 ug/L

Red Lion shall ensure all quality assurance/quality control (QA/QC) procedures are met by the laboratory, including: calibration procedures and frequency, data analysis, validation, reporting, internal quality control checks, preventative maintenance, procedures to assess data precision accuracy and completeness, sample storage and tracking. All laboratory reports will be typewritten, well presented, easily understood, and consistent in format. QA/QC results will also be included with the analytical results. All laboratory report pages will contain the name of the laboratory, sample identification number, name of the analytical test, analytical results, date the samples were

analyzed, the time analysis was initiated, percent standard deviation, page number of the laboratory report, description of and results of control runs and method blank analysis, and the name of the person responsible for analysis.

- b. **Passive filtration System:** includes the placement of bags filled with resin which allows bay water to filter through. This ballast flow through approach consists of incorporating the resin in sealed ballasts (bags) hung off pier pilings, to remove dissolved copper from Bay water through tidal and wave action. For this pilot, five 25-pound ballast bags will be placed along a dock finger to assess the effectiveness of passive filtration with Red Lion technologies. The location of the bags/ballast shall be placed in coordination with the District and described in the SAP. The passive filtration system demonstration shall not exceed one year.
 - i. Red Lion shall mobilize, set up, and secure all field equipment (i.e. ballast bags, dock supports, etc.). Red Lion is responsible for ensuring all materials are in working condition and functional for the duration of the project. Red Lion is responsible for maintaining safety and ensuring that the project is not impeding access or other facility operations. Red Lion must follow all facility rules and requirements when mobilizing, placing, and securing the project equipment.
 - ii. Red Lion shall collect water (both bay water and effluent) samples and resin samples at regular intervals during the course of the project. Effluent samples for total and dissolved copper will be taken before treatment and after treatment, based on the frequency identified in the SAP. Bay water samples for total and dissolved copper will also be collected at 5 spatially defined GPS-specific locations as outlined in the SAP. In addition, bay water samples shall be collected at each of the 5 locations prior to the start of the project to obtain a baseline of total and dissolved copper levels in the adjacent waters. Resin samples will be collected as identified in the SAP and submitted to the laboratory for analysis to determine the amount of for (total and dissolved) copper recovered over time.
 - iii. Red Lion shall analyze all samples using EPA-approved analytical methods that are consistent with the analytical methods used for the annual TMDL water quality monitoring that is conducted in the Shelter Island Yacht Basin as outlined in the SAP.

- iv. Red Lion shall inspect the resin bags/ballast on a weekly base to check for fouling, if any. Bay water and Resin samples for total and dissolved copper will be collected at locations and frequencies identified in the SAP and processed for copper recovery over time. In addition, water samples shall be collected and analyzed for total and dissolved copper at each of the bay sampling locations prior to the start of the project to obtain a baseline of total and dissolved copper levels in the adjacent waters.
- v. Red Lion shall notify the District of the start date of the field work no later than one (1) week prior to initiating field testing.

2. **Success Metrics:** Red Lion shall monitor the success of the pilot project by tracking performance based on key metrics as follows;

- a. Technology efficiency based on methodology, in terms of total and dissolved amount of copper removed over time and the efficiencies of each proposed method. Dissolved Copper in Bay water shall be analyzed pre and post filtration system by sampling multiple times using a California EPA approved lab and proper chain of custody protocols as follows:
 - i. For Active Filtration System (Pump and Treat Flow Through Treatment):
 - 1. Amount of total and dissolved copper measured before and removed after treatment by greater than an – average of 75%.
 - 2. Amount of total and dissolved copper removed from bay water once it passes through the resin at each sample collection time point, and cumulatively over time. Sampling should be conducted pre and post filtration as set forth in the SAP.
 - 3. Measurement of the effect on bay water quality and load removal at each collection time point in bay water and effluent samples.
 - 4. Amount of resin used and cost associated with production and analysis

- ii. For Passive filtration System (Ballast Flow Through Treatment):
 - 1. Amount of total and dissolved copper removed from resin at each sample collection time point and cumulatively over time.
 - 2. Measurement of the effect on bay water quality and load reduction at each collection time point in bay water.
 - 3. Monitoring for fouling of ballast bags after placement.
 - 4. Amount of resin used and cost associated with production and analysis
- 3. **Monitoring and Reporting Requirements:** Red Lion shall provide a detailed project sampling and analysis plan (SAP) to the District for review and approval prior to starting the pilot project. Red Lion shall provide a quarterly and a final report at the end of the pilot project. Each report shall include a discussion of the activities conducted during the project, monitoring results, and an effectiveness assessment, as applicable for the work conducted during that period. .
 - a. The final report will provide an assessment of efficacy as it compares to the 75-percent recovery rate target. At minimum, this final report assessment must include the following:
 - i. An assessment of the pre/post-filtration water results for both total and dissolved copper. The average of these results should be compared to the project's targets and clearly discuss whether the target was or was not achieved.
 - ii. A discussion comparing proposed project criteria for (1) volume of water filtered, (2) resin efficiency rates, and (3) copper reduction potential for the 5ppb, 8ppb, and 10ppb water scenarios to the actual results observed for each of these metrics. Any variances from proposed criteria shall include an explanation of why such variance may have occurred.
 - iii. A section on the scalability of the project. This discussion should identify potential equipment needs such as space constraints, water volumes (GPM) treated, and costs, to scale up a treatment system to remove dissolved copper from the Shelter Island Yacht Basin. Scaled up treatment estimates should be assessed for removal of 10%, 25%, 75%, and 100% of the dissolved copper load in Bay water. For purposes of this exercise, the dissolved copper load has been identified as 1,250 kg/yr.

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 Copper Mitigation Water technology as more fully set forth in a separate Blue Economy Agreement between the Parties, 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]

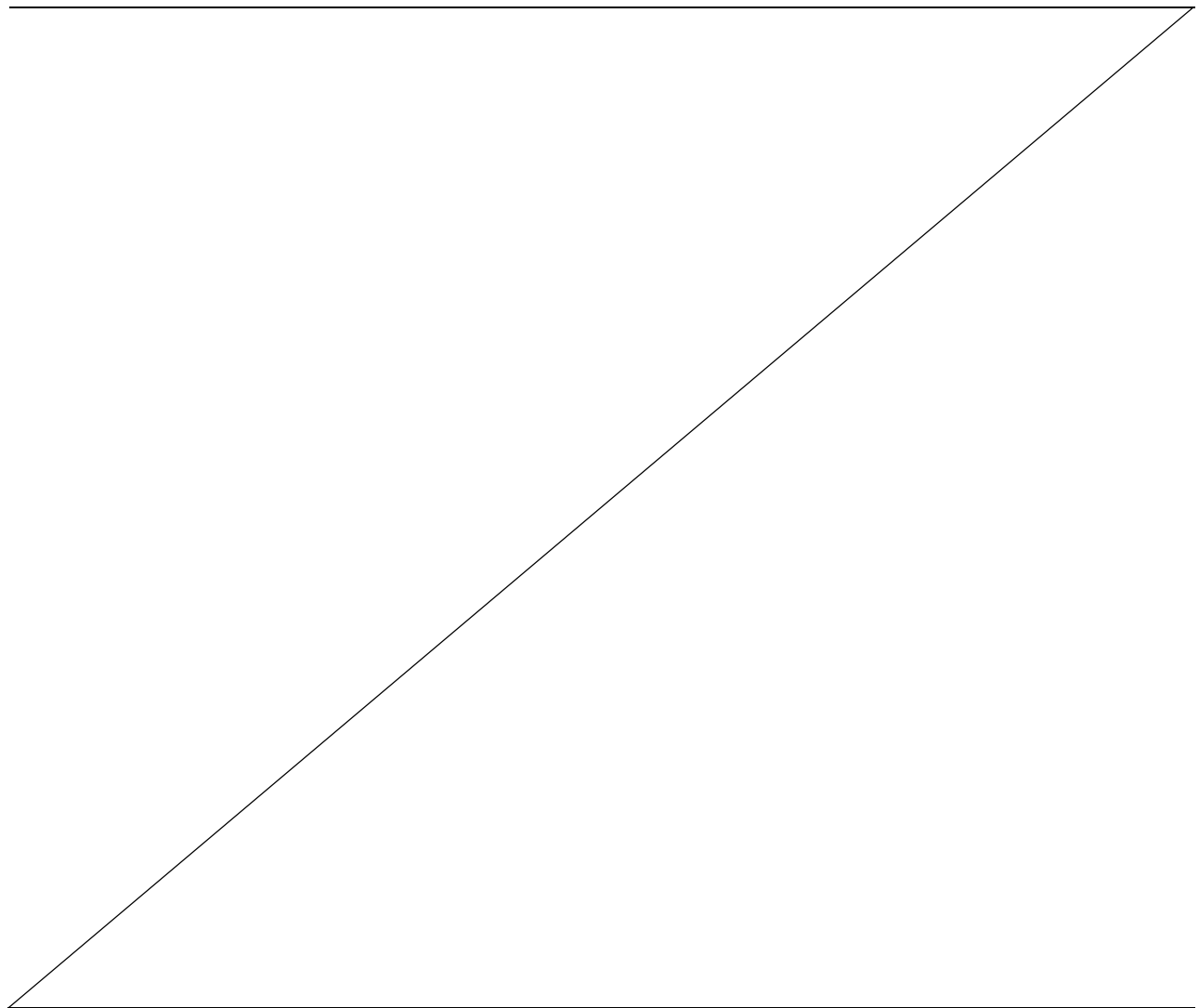
31. DISPUTE RESOLUTION: Except for (i) a dispute or disagreement as to the amount of rent that Tenant is to pay District or (ii) a default in the payment of rent, all other disputes or disagreements between or among the parties arising out of or relating to the terms, conditions, interpretation, performance, 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: _____	