

ATTACHMENT B FOR PURCHASE ORDER NO. 450002XXXX

**SAN DIEGO UNIFIED PORT DISTRICT
PURCHASE AGREEMENT
with
SNOW & COMPANY, INC.
for
CUSTOM MADE FLOATING UPWELLER SYSTEM (FLUPSY)
AGREEMENT NO. 120-2017MA**

The parties to this purchase agreement are the San Diego Unified Port District, a public corporation (District) and Snow & Company, Inc., a Corporation based in the state of Washington (Vendor). This purchase agreement is included as an attachment of District Purchase Order (PO) No. 450002XXXX, and is in conjunction with Services Agreement No. 120-2017MA, Attachment A of the PO.

The parties agree:

1. **ITEM SPECIFICATIONS AND FEE SCHEDULE :**

District agrees to purchase items from Vendor as specified in Purchase Agreement Attachment A, Purchase Item Specifications and Fee Schedule, made a part of this agreement.

2. **RIGHT OF INSPECTION:**

District will have the right to inspect and accept or reject the goods when received at the Place of Delivery, and the right, within five (5) business days after receipt, to give notice to Vendor of any claim for damages on account of the condition, quality, or grade of the goods. The District retains the right to inspect and accept or reject any goods to be delivered to a bailee, as if such were delivered to the District itself, and in such instance, Vendor will tender to District a valid and adequate negotiable document of title covering the goods or written acknowledgement from the bailee of the District's right to possession of the goods. Any attempt by District to correct any of the goods delivered in a defective or non-working condition will not constitute an acceptance of such goods where such efforts are commercially reasonable in extent and cost, and District may subsequently revoke its acceptance and reject the goods where the attempt to correct such defect has proved unsuccessful.

3. **DELIVERY:**

Delivery shall be made within the time set forth. Time is of the essence as to delivery. Vendor shall not be held liable for failure to make delivery because of strikes, conscription of property, governmental regulations, acts of God or any other causes beyond control of vendor, provided a written extension of time to make delivery is obtained from the District.

4. **FIRM PRICES:**

Prices of a bid shall be firm prices not subject to escalation. In the event the specifications provide for escalation the maximum limit shall be shown. If no limit is set to this escalation, the bid shall be rejected. In the event of a decline in market price(s) below the price(s) bid, District shall receive the benefit of such decline.

5. **ROYALTIES AND PATENTS:**

The successful vendor shall pay all royalties and patent fees. Said Vendor shall defend all suits and claims for infringements of any patent rights and shall save District harmless from loss on account thereof, including reasonable attorney's fees.

6. **TAXES:**

Sales tax will be paid by District on applicable items.

7. **ASSIGNMENT:**

No assignment by either party of any rights, including rights to moneys due or to become due under this Contract, or delegation of any duties under this Agreement or under any orders subject to this Agreement, will be binding upon the other party until its written consent has been obtained.

8. **CALIFORNIA LAW:**

The validity, construction, and interpretation of this bid and any Agreement shall be governed by the laws of the State of California.

9. **PAYMENT:**

Payment for the materials shall be made according to Attachment A, Purchase Item Specifications and Fee Schedule.

10. **ANTITRUST CLAIMS:**

These provisions are included in this Agreement as required by California Government Code Section 4550 et seq: In submitting a bid to the District, the Vendor offers and agrees that if the bid is accepted, it will assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, materials or services by the Vendor for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment to the vendor, without further acknowledgment by the parties.

11. **VENDOR'S WARRANTIES:**

In addition to any manufacturer's warranties associated or provided with the goods, copies of which shall be delivered by Vendor with the goods and their incorporation herein shall be deemed made by this reference, without attachment, as though fully set forth herein, Vendor expressly warrants that the goods are fit for the purpose to which Buyer desires the goods to be used, which is a Custom Made Floating Upweller System (FLUPSY) (new and unused goods).

Furthermore, the parties intend that the provisions of Division 2 of the California Uniform Commercial Code ("CUCC") will apply to this Section, except where this Contract may expressly provide otherwise, and thereby Vendor intends all implied warranties there under, without limitation by reference herein, to apply to this Contract, including, but not limited to: (i) a warranty that the goods are now free, and at the time of delivery will be free, from any security interest or other lien or encumbrance, (ii) a warranty that at the time of signing the Contract, Vendor neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Vendor in the goods, (iii) a warranty that the goods are of merchantable quality, and (iv) a warranty that the goods are fit for the purpose to which Buyer desires the goods to be used, which is a Custom Made Floating Upweller System (FLUPSY).

12. **INDEMNIFICATION:**

Vendor agrees to indemnify, defend and hold harmless District, its officers, agents, and employees, from and against any and all claims, liabilities, damages, demands, losses, costs, and expenses including reasonable attorney's fees arising directly or indirectly out of the obligations of this Agreement, except claims arising through the sole negligence or willful misconduct of the District.

13. **COMPLIANCE WITH LAWS:**

The Parties will comply with all applicable governmental laws, regulations, orders, and other rules of duly constituted authorities.

14. **TERMINATION:**

The District also reserves the right, at any time prior to delivery and acceptance of the goods and after delivery of written notice to Vendor at the above address or fax number, to terminate this Agreement, with or without cause, even though there has not been any act or omission sufficient to constitute an anticipated or actual breach of the Agreement or of any implied warranty. Termination of this Agreement in accordance with the section will serve to release both Parties from any further obligations hereunder, including but not limited to delivery of and payment for the goods.

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15. **NOTICES:**

All notices and other communications required or authorized under this Agreement will be given in writing by: (i) personal delivery, delivered to the respective party at the address indicated at the beginning of this Agreement, or (ii) registered mail or overnight express delivery service addressed to the respective party at the address indicated at the beginning of this Agreement, or (iii) facsimile with proof of delivery to the fax number indicated at the beginning of this Contract. Each party will advise the other promptly of any change in its address. It is an express condition of this Agreement that this contract shall not be complete or effective until signed by the Executive Director or his designee on behalf of the District.

VENDOR:

Snow & Company, Inc.

Vendor's Legal Entity Listing (DBA, etc)

Vendor's Signature

Date

Brett Snow, President

Signatory's Printed Name and Title

SAN DIEGO UNIFIED PORT DISTRICT:

Jason H. Giffen

Printed Name

Assistant Vice President, Planning & Green Port

Title

Signature

Date

APPROVED AS TO FORM AND LEGALITY:

Port Attorney

Date

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

ATTACHMENT A

Purchase Item Specifications and Fee Schedule

FLUPSY DETAILS/ ITEM SPECIFICATIONS:

The FLUPSY barge is custom built by Vendor. The size of the FLUPSY for this pilot project is 26ft wide and 80ft long. A standard FLUPSY has 32 seed bins with a volume capacity of 533 liters each, giving a total capacity of 17,056 liters in rearing area volume. The footprint of the project would be 26' wide X 80' long, and 3' deep, for a total surface area of 2,080 ft².

The FLUPSY barge seed bins are arranged in two rows on either side of a 3ft deep, 4ft wide channel. A paddle wheel at the end of the barge moves water through the channel. The paddle wheel technology is simple and efficient utilizing a 1HP electric motor with a 300:1 gearbox. The FLUPSY also has support structure to accommodate for solar power options. The paddlewheel moves up to 8 million gallons of water through the channel per day. Water flow is easily regulated by changing the speed of the paddle wheel, or at individual bins by adjustable gates installed just below the waterline between the bins and the river channel.

The outer sides of the bins contain long floats with 2 gantry tracks spanning the entire FLUPSY to ease the movement of bins required to maintain the oysters. The oyster bins lay on top of adjustable brackets that are bolted to the barge. The gantries enable movement of the bins out of the water for cleaning and sorting, and for cleaning and maintenance of the paddle wheel.

The FLUPSY is modular, comprised of 4 basic components, which are bolted together and delivered by truck. The modules are welded aluminum construction, utilizing marine alloys to provide the highest corrosion resistance. All parts are uniform for ease of assembly and for future additions. All modules have a series of different size holes below the decking, allowing numerous options for water piping and conduit runs. Once assembled, the FLUPSY is secured to the boat dock utilizing the existing cleats. The FLUPSY is not bolted to the existing dock infrastructure.

Task summary

The following is a summary of the various tasks to be completed by Vendor:

- 1) Custom design and fabricate paddle wheel dock; 4-40 foot docks, 1-16 foot dock, 1-19 foot dock, bin holders and river channels.**
- 2) Fabricate connector trusses, stop gaps, river channel end caps, seed bins, seed screens, and gantries.**
- 3) Deliver FLUPSY materials to San Diego. Vendor to coordinate with District staff for off-loading of FLUPSY components from delivery vehicle into water**

FEE SCHEDULE:**a. Compensation for Contingency amount via Task Authorization**

Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted each month for services performed during the preceding month. Invoice(s) shall be on a Lump Sum basis and shall include:

Date work performed;
Description of the work performed;
Direct Costs.

b. Fee Schedule for Total Purchase Order

Compensation for Goods (PO Attachment A, Purchase Agreement)	
50% Down Payment	\$164,300.00
25% Mid Construction	\$82,150.00
5% Prior to Delivery	\$16,430.00
20% After Installation	\$65,720.00
Delivery	\$12,000.00
Compensation for Services (PO Attachment B, Service Agreement)	
Installation	\$6,000.00
Contingency for Purchase or Service (Issued via Task Authorization)	
NOT TO EXCEED	\$5,000.00
TOTAL Purchase Order Amount	\$351,600.00