

**MULTI-YEAR
TIDELANDS ACTIVATION PROGRAM
AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
3D ART EXPO LLC
for
ANNUAL U.S. SAND SCULPTING CHALLENGE
AND DIMENSIONAL ART EXPOSITION
AGREEMENT NO. 172-2018ND-20-21**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and 3D ART EXPO LLC, a California Corporation located in San Diego, California (Service Provider).

Recitals:

District and Service Provider desire to enter into a sponsorship agreement, under the Tideland Activation Program, for an Annual U.S. Sand Sculpting Challenge and Dimensional Art Exposition (Event) in 2019 and 2020 to be produced by Service Provider and associated promotional services that support the District's objectives of attracting the public to the Tideland to recreate and learn about the District and its mission. Both parties agree to the following:

1. **SCOPE OF SERVICES.** Service Provider shall furnish all technical and professional labor, and materials to satisfactorily comply with Attachment A, Scope of Services, attached hereto and incorporated herein, as requested by District. Service Provider shall keep the Executive Director of the District or their designated representative informed of the progress of said services at all times.
2. **TERM OF AGREEMENT.** This Agreement shall commence on August 19, 2019 and shall terminate on October 30, 2020, subject to earlier termination as provided below.

3. **COMPENSATION.** For performance of services rendered pursuant to this Agreement and as further described in Attachment B, Compensation and Invoicing, attached hereto and incorporated herein; District shall compensate Service Provider based on the following, subject to the limitation of the maximum expenditure provided herein:

- a. **Maximum Expenditure.** The District shall pay the Service Provider an amount not to exceed \$30,000.00 and provide District Services in an amount not to exceed \$156,900.00, limited in accordance with the chart below, for a maximum expenditure under this Agreement not to exceed \$186,900.00. Said expenditure shall include without limitation all sums, charges, reimbursements, costs, waivers, and expenses provided for herein.

	Not to exceed District funding	Not to exceed District services	Maximum Expenditure
Year 1	\$15,000.00	\$78,450.00	\$93,450.00
Year 2	\$15,000.00	\$78,450.00	\$93,450.00
TOTAL	\$30,000.00	\$156,900.00	\$186,900.00

- b. **All Funding Contingent on Annual Approval by Board.** All District funding and services are contingent on annual approval by the Board of Port Commissioners (Board) in its sole and absolute discretion. Each year, as part of the annual Tidelands Activation Program process, the Board may, in its sole and absolute discretion, approve a budget which includes full funding for this event up to the annual not-to-exceed amount(s) above, lower amounts, or zero for funding and/or services. The District shall not be liable to Service Provider for any damages caused by annual approval of amounts or services less than the not-to-exceed amounts above. Further, nothing in this Agreement limits the discretion of District staff or the Tidelands Activation Program Advisory Committee to make recommendations to the Board.

In any year, if Board approves amounts or services less than the not-to-exceed amounts above, Service Provider, may elect one of the following options by informing District in writing within sixty (60) days of Board's annual decision:

- i. Perform in full accordance with Attachment A for that year's Event in exchange for the reduced amounts approved by the Board; or
- ii. Decline to perform in full accordance with Attachment A for that year's Event and receive no funds or services from District in accordance with this Agreement; or
- iii. Negotiate with staff any modifications to scope of services related to that year's event. Such modifications will not require formal amendment of this agreement or Board approval.

4. **RECORDS**

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

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

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

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

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

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

6. **COMPLIANCE**

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

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

8. **ASSIGNMENT.** This is a personal services Agreement between the parties and Service Provider shall not assign or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

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

- a. **Duty to Indemnify, duty to defend and hold harmless:** To the fullest extent provided by law, Service Provider agrees to defend, indemnify and hold harmless the District, its agents, officers or employees, from and against any claim, demand, action, proceeding, suit, liability, damage, cost (including reasonable attorneys' fees) or expense for, including but not limited to, damage to property, the loss or use thereof, or injury or death to any person, including Service Provider's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to the performance of services by Service Provider, its officers, agents, subcontractors and employees, as provided for in this Agreement or related to the **2019 Annual U.S. Sand Sculpting Challenge and Dimensional Art Exposition** and/or **2020 Annual U.S. Sand Sculpting Challenge and Dimensional Art Exposition**, or failure to act by Service Provider, its officers, agents, subcontractors and employees. The Service Provider's duty to defend, indemnify, and hold harmless shall not include any Claim arising from the active negligence, sole negligence or willful misconduct of the District, its agents, officers, or employees.
- b. The Service Provider further agrees that the duty to indemnify, and the duty to defend the District as set forth in 9.a, requires that Service Provider pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from the services of the Service Provider provided for in this Agreement.
- c. The District may, at its own election, conduct its defense, or participate in the defense of any Claim related in any way to this Agreement. 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 arising from the services of Service Provider provided for in this

Agreement, Service Provider agrees to pay all reasonable attorneys' fees and all costs incurred by District.

10. **INSURANCE REQUIREMENTS**

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

(1) Commercial General Liability (including, without limitation, Contractual Liability, Personal Injury, Liquor Liability, 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 a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit A, Certificate of Insurance, attached hereto and incorporated herein).

(c) The coverage provided to the District, as an additional insured, shall be primary and any insurance or self-insurance maintained by the District shall be excess of the Service Provider's insurance and shall not contribute to it.

- (d) The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against the District ("Waiver of Subrogation").
 - (2) Personal Automobile Liability: Covering Owned, Non-Owned, or Hired Automobiles written on an "occurrence," not "claims made" basis in the amount of fifteen thousand dollars (\$15,000) bodily injury per person, thirty thousand dollars (\$30,000) bodily injury per accident, and five thousand dollars (\$5,000) property damage per accident.
- b. Service Provider shall furnish District with certificates of insurance coverage for all the policies described above upon execution of this Agreement and upon renewal of any of these policies. A Certificate of Insurance in a form acceptable to the District, an exemplar Certificate of Insurance is attached as Exhibit A and made a part hereof, evidencing the existence of the necessary insurance policies and endorsements required shall be kept on file with the District. Except in the event of cancellation for non-payment of premium, in which case notice shall be 10 days, all such policies must be endorsed so that the insurer(s) must notify the District in writing at least 30 days in advance of policy cancellation. Service Provider shall also provide notice to District prior to cancellation of, or any change in, the stated coverages of insurance.
- c. The Certificate of Insurance must delineate the name of the insurance company affording coverage and the policy number(s) specifically referenced to each type of insurance, either on the face of the certificate or on an attachment thereto. If an addendum setting forth multiple insurance companies or underwriters is attached to the certificate of insurance, the addendum shall indicate the insurance carrier or underwriter who is the lead carrier and the applicable policy number for the CGL coverage.

- d. Furnishing insurance specified herein by the District will in no way relieve or limit any responsibility or obligation imposed by the Agreement or otherwise on Service Provider or Service Provider's sub-contractors or any tier of Service Provider's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.
11. **ACCURACY OF SERVICES.** Service Provider shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Service Provider shall correct such deficiencies without additional compensation. Furthermore, Service Provider expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Service Provider shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incident thereto so as not to delay the District, the project, or any other person related to the project, including the Service Provider or its agents, employees, or subcontractors.
12. **INDEPENDENT CONTRACTOR.** Service Provider and any agent or employee of Service Provider shall act in an independent capacity and not as officers or employees of District. The District assumes no liability for the Service Provider's actions and performance, nor assumes responsibility for taxes, bonds, payments or other commitments, implied or explicit by or for the Service Provider. Service Provider shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Service Provider acknowledges that it is aware that because it is an independent contractor, District is making no deductions from its fee and is not contributing to any fund on its behalf. Service Provider disclaims the right to any fee or benefits except as expressly provided for in this Agreement.
13. **ADVICE OF COUNSEL.** The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and

conditions of this Agreement, and that the decision of whether or not to seek the advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the parties hereto. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California.

14. **INDEPENDENT REVIEW.** Each party hereto declares and represents that in entering into this Agreement it has relied and is relying solely upon its own judgment, belief and knowledge of the nature, extent, effect and consequence relating thereto. Each party further declares and represents that this Agreement is being made without reliance upon any statement or representation not contained herein of any other party, or any representative, agent or attorney of any other party.
15. **INTEGRATION AND MODIFICATION.** This Agreement contains the entire Agreement between the parties and supersedes all prior negotiations, discussion, obligations and rights of the parties in respect of each other regarding the subject matter of this Agreement. There is no other written or oral understanding between the parties. No modifications, amendment or alteration of this Agreement shall be valid unless it is in writing and signed by the parties hereto.
16. **OWNERSHIP OF RECORDS.** Any and all materials and documents, including without limitation drawings, specifications, computations, designs, plans, investigations and reports, prepared by Service Provider, if any, pursuant to this Agreement, shall be the property of District from the moment of their preparation and the Service Provider shall deliver such materials and documents to District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101) whenever requested to do so by District. However, Service Provider shall have the right to make duplicate copies of such materials

and documents for its own file, or other purposes as may be expressly authorized in writing by District. Said materials and documents prepared or acquired by Service Provider pursuant to this Agreement (including any duplicate copies kept by the Service Provider) shall not be shown to any other public or private person or entity, except as authorized by District. Service Provider shall not disclose to any other public or private person or entity any information regarding the activities of District, except as expressly authorized in writing by District.

17. **TERMINATION**. In addition to any other rights and remedies allowed by law, the Executive Director (President/CEO) of District may terminate this Agreement at any time with or without cause by giving thirty (30) days written notice to Service Provider of such termination and specifying the effective date thereof. In that event, all finished or unfinished documents and other materials shall at the option of District be delivered by Service Provider to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement by Executive Director (President/CEO) as provided in this paragraph shall release District from any further fee or claim hereunder by Service Provider other than the fee earned for services which were performed prior to termination but not yet paid. Said fee shall be calculated and based on the schedule as provided in this Agreement.

18. **DISPUTE RESOLUTION**

a. If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and is not settled by direct negotiation or such other procedures as may be agreed, and if such dispute is not otherwise time barred, the parties agree to first try in good faith to settle the dispute amicably by mediation administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, prior to initiating any litigation or arbitration. Notice of any such dispute must be filed in writing with the other party within a reasonable time after the dispute has arisen. Any resultant Agreements

shall be documented and may be used as the basis for an amendment or directive as appropriate.

- b. If mediation is unsuccessful in settling all disputes that are not otherwise time barred, and if both parties agree, any still unresolved disputes may be resolved by arbitration administered at San Diego, California, by the American Arbitration Association, or by such other provider as the parties may mutually select, provided, however, that the Arbitration Award shall be non-binding and advisory only. Any resultant Agreements shall be documented and may be used as the basis for an amendment or directive as appropriate. On demand of the arbitrator or any party to this Agreement, sub-contractor and all parties bound by this arbitration provision agree to join in and become parties to the arbitration proceeding.
 - c. The foregoing mediation and arbitration procedures notwithstanding, all claim filing requirements of the Agreement documents, the California Government Code, and otherwise, shall remain in full force and effect regardless of whether or not such dispute avoidance and resolution procedures have been implemented, and the time periods within which claims are to be filed or presented to the District Clerk as required by said Agreement, Government Code, and otherwise, shall not be waived, extended or tolled thereby. If a claim is not timely filed or presented, such claim shall be time barred and the above dispute avoidance and resolution procedures, whether or not implemented or then pending, shall likewise be time barred as to such claims.
19. **PAYMENT BY DISTRICT.** Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of the documentation submitted for payment by the Service Provider, made an exhaustive inspection to check the quality or quantity of the services performed by the Service Provider, made an examination to ascertain how or for what purpose the Service Provider has used money previously paid on

account by the District, or constitute a waiver of claims against the Service Provider by the District. The District may in its sole discretion withhold payments or seek reimbursement from the Service Provider for expenses, miscellaneous charges, or other liabilities or increased costs incurred or anticipated by the District which are the fault of or as result of work performed or negligent conduct by or on behalf of the Service Provider. Upon five (5) day written notice to the Service Provider, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause the Service Provider to pay the same; and the amount due the Service Provider under this Agreement or the whole or so much of the money due or to become due to the Service Provider under this Agreement as may be considered reasonably necessary by the District shall be retained by the District until such expenses, miscellaneous charges, or other liabilities or increased costs shall have been corrected or otherwise disposed of by the Service Provider at no expense to the District. If such expenses, miscellaneous charges, or other liabilities or increased costs are not corrected or otherwise disposed of at no expense to the District prior to completion date of the Agreement, the District is authorized to pay for such expenses, miscellaneous charges, or other liabilities or increased costs from the amounts retained as outlined above or to seek reimbursement of same from the Service Provider. It is the express intent of the parties to this Agreement to protect the District from loss because of conduct by or on behalf of the Service Provider.

20. **CAPTIONS.** The captions by which the paragraphs of this Agreement are identified are for convenience only and shall have no effect upon its interpretation.
21. **EXECUTIVE DIRECTOR'S SIGNATURE.** It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by either the Executive Director (President/CEO) or Authorized Designee on behalf of the District and by Authorized Representative of the Service Provider.

- a. Submit all correspondence regarding this Agreement to:

Terrie Eichholz
 TAP - Waterfront Arts & Activation
 San Diego Unified Port District
 P.O. Box 120488
 San Diego, CA 92112-0488
 Tel: 619-686-6551
 Email: TAP@portofsandiego.org

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

Joyce Summer or Gordon Summer
 3D Art Expo LLC.
 850 Beech St., #709
 San Diego, CA 92101
 Tel: 619-980-6651 or 619-994-3752
 Email: js@usasand.org or gs@usasand.com

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

SAN DIEGO UNIFIED PORT DISTRICT

3D ART EXPO LLC.

Yvonne Wise
 Director, Waterfront Arts & Activation

Gordon Summer
 Gordon Summer
 Co-Producer

Jul 24, 2019

Approved as to form and legality
GENERAL COUNSEL

By: Assistant/Deputy

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

ATTACHMENT A SCOPE OF SERVICES

San Diego Unified Port District

Tidelands Activation Program Agreement: The parties acknowledge and agree the total amounts of cash and services provided by District through the FY2019-20 and/or FY2020-21 Tidelands Activation Program may not equal the sums of cash and services granted in the Tidelands Activation Program Agreement, specifically cash and services. In such case, there is not a breach of the Tidelands Activation Program Agreement by the District. In the event the applicant disputes terms of the Tidelands Activation Program Agreement, applicant shall have no right to a credit or offset in any other agreements inclusive of the Tidelands Use & Occupancy Permit or leases between Parties.

Expected Event Date(s): FY20: 8/31/2019-9/2/2019 and FY21: 9/5-9/7/2020

SERVICE PROVIDER TO PROVIDE:

Event Production

Service Provider will put on the Event in substantial compliance with their Tidelands Activation Program application. Service provider must secure all permits, permissions, entitlements and other agreements required to lawfully conduct the event, including without limitation District special event facility use permits. Changes to event must be authorized by the District in writing.

Pre-Event Advertising & Publicity:

- Inclusion of Port of San Diego Experiences in logo in event-related media, electronic and print materials;
- Inclusion of direct link back to the District's website on the Event website;
- Inclusion of Port of San Diego (@portofsandiego) tagging on social media outlets used to promote the Event.
- Opportunity for District spokesperson to participate in media interview(s);
- Mention of District as title or presenting sponsor in broadcast/streaming television, radio commercials and other appearances;
- Mention of District as title or presenting sponsor in event-related press releases, social and e-blasts;
- District-provided welcome letter and/or advertisement in printed program or schedule; and
- Event sharing/co-hosting on Facebook for information and ticket purchases, as applicable.

During Event District Inclusion:

- Placement of Port of San Diego TAP banner(s), supplied by District, in prominent location(s) near stage or entry at all events associated with this sponsorship;

- 20 General Admission tickets to event; 10 VIP Admission tickets to special sections, with reserved seating at no cost to District, **commensurate with total sponsorship value**;
- Invitations to Pre-opening Media Reception Event
- Mention of appreciation on stage during speaking program;
- Opportunity for District spokesperson to participate in speaking program;
- Opportunity to distribute District promotional items and marketing materials at information booth or in gift bags; and
- Opportunity for District to have a booth at the Event (typically 10x10 or 10x20).
- Provide promotional materials for distribution and/or display, as available

Production Specifications and Responsibilities:

Service Provider shall provide production specifications for all advertising and promotional submittals containing District logo or related content to District staff no later than 90 days before production deadline. Any advertising, promotional materials, and communications developed by Service Provider shall be submitted to District for review prior to production.

Service Provider to schedule pick up of banner(s) from Port Administration Building a minimum of 30 days before event. Service Provider shall return to the District banners and unused District-supplied promotional materials no later than thirty (30) days post-event.

Written Activation Results

To ensure compliance with the Tidelands Activation Program award-recipient's fulfillment requirements, Service Provider shall forward to District proof that it produced an activation event that attracted the public to the Tidelands and provided the District with promotional services. **Submit all the following electronic materials within forty-five (45) days of completion of work** represented by the request under the Agreement:

- 1) A completed Tidelands Activation Program Wrap-Up form
- 2) Promotional material samples including, but not limited to event photographs, press releases, social media posts, advertisements, calendar notices, or other similar items.
- 3) A minimum of five high-resolution full-color **digital files** of photographs from the event at Services Provider's expense. The District and its assigns are granted use of all images produced from this agreement for noncommercial purposes. Images will be supplied by the Service Provider and used by the District without a watermark.

Economic Impact Analysis

If so directed by District, Service Provider will, at its own expense, generate an analysis of the economic impacts of Event. Such analysis shall be completed by an independent, professional third-party provider and shall contain, at a minimum, the following information:

- Hotel room-nights generated by Event, both on- and off District tidelands;

- Spending by out-of-region attendees, estimated for both on- and off District tidelands, by category, i.e. lodging, food and beverage, attractions, and other appropriate categories;
- Direct, indirect and total economic impacts of Event on the District Tidelands and on the San Diego region;
- Estimated tax revenue generated, by type, i.e. TOT, sales and any other tax types identified.
- Anecdotal information illustrating business impacts of Event.
- Assumptions and methodology used.

Submittals shall be emailed to TAP@portofsandiego.org attention: Terrie Eichholz, Waterfront Arts & Activation. Compliance with the award-recipient's fulfillment requirements and District Stormwater Conditions will be considered in the District's review of any future sponsorship applications.

District Stormwater Conditions

The District has the authority to make and enforce necessary rules and regulations governing, among other things, stormwater management and discharge control. The District's stormwater regulations are found in Article 10 of the San Diego Unified Port District Code ("District Code"). Among other things, the District Code prohibits all non-stormwater discharges to the stormwater conveyance system and San Diego Bay.

Special events have been identified by the District as a potential source of non-stormwater discharges to the storm drain system and San Diego Bay. Discharges to the storm drain system or the Bay that are not entirely stormwater violate the District's Code. To help prevent illicit discharges, the District requires the implementation and maintenance of Best Management Practices (BMPs) at special events. **The discharge of any event-related material (including trash, bacteria, or metals) into the storm drain system or the bay will result in a citation.** BMPs specific to the activities planned for each special event are to be identified in writing prior to the event time. The following BMPs are routinely required:

- Trash dumpsters, portable toilets, or generators shall have secondary containment and must be located at least 10 feet away from any open stormdrain inlets or catch basins and the water's edge.
- All waste containers must be covered when not in use. Dumpsters must have lids closed and covered.
- Waste containers should be kept at acceptable levels (not overflowing).
- Full trash bags must be transported in a spill proof container to ensure that any leaks from the bags do not spill on the ground.
- Keep outdoor areas neat and clean before, during, and after the event.
- Remove and dispose of debris generated by the event.
- Regularly conduct outdoor sweeping of hardscape areas like the parking lot, (if spaces have been requested) sidewalks or any other paved area within your event site to adequately control dust and debris.
- Minimize outdoor material storage areas in and around your event space.

- Keep outdoor material storage areas clean and dry.
- Keep materials stored under overhead cover (e.g. tarps or canopies) or within secondary containment.
- Keep stored materials closed and secure with proper labels.
- Keep the event site clear from indoor activities being tracked outdoors (e.g. dirt or spilled liquids being stepped in and tracked outside)
- A spill kit is to be easily accessible at all locations that have the potential to pollute (wash stations, dumpsters, portable restrooms, etc.)
- All spills (oil, grease, trash juice and beverages) must be cleaned up immediately. Some spills will require the use of a power washer to remove any stain.
- Capture, contain, and properly dispose of all wash water used before, during, and after the event. If hazardous materials are present, you must hire someone who is a licensed hazardous waste removal company to properly dispose of the water.
- Minimize the volume of cleaning water to decrease wastewater
- Keep event clear of illegal connections and unauthorized non-stormwater discharges to the storm drain system or the bay. **Only rain is allowed in the storm drain system or the bay.**
- Keep site clear of leaking fluids from vehicles and equipment. Use drip pans under vehicles or equipment.
- Regularly conduct preventive maintenance on all vehicles and equipment directly associated with the event to ensure no leaks are present.
- Have absorbent booms or spill materials available when fueling vehicles and equipment on-site.
- Train employees in stormwater, spill response, and pollution prevention.
- Conduct routine inspections of BMPs and storm drain system to ensure that BMPs are functioning properly and that no discharges to the storm drains have occurred.

BMP implementation record and the stormwater training will be filled out and signed by event organizer during a pre-event environmental walk-through. Direction related to permitted special event activities can be found in the District’s Jurisdictional Runoff Management Document (JRMP). The JRMP is available on the District website: (<https://www.portofsandiego.org/environment/clean-water.html>) or by contacting the Environmental Protection Department, (619) 686-6254.

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**ATTACHMENT B
COMPENSATION & INVOICING
San Diego Unified Port District**

1. COMPENSATION

- a. For the satisfactory performance and completion of the services under this Agreement, District shall pay Service Provider compensation as set forth hereunder.
- (1) Service Provider shall be compensated and reimbursed by District on the basis of invoices submitted. Each invoice shall include:
- (a) Date work performed;
- (b) Description of the work performed;

2. INVOICING

- a. **Payment Documentation.** Service Provider shall include the following information on each invoice submitted for payment by District.
- (1) Agreement No. 172-2018ND-20-21
- (2) The following certification phrase, with printed name, title and signature of Service Provider's project manager or designated representative:
- "I certify under penalty of perjury that the above statement is just and correct according to the terms of Document No. _____, and that payment has not been received."
- (3) Dates of service provided
- (4) Date of invoice
- (5) A unique invoice number
- b. District shall, at its discretion, return to Service Provider, without payment, any invoice, which has been submitted without the above information and certification phrase.
- c. Invoices shall be emailed to TAP@portofsandiego.org attention: Terrie Eichholz, Waterfront Arts & Activation.
- d. Should District contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. District may, at any time, conduct an audit of any and all records kept by Service Provider for the Services. Any overpayment discovered in such an audit may be charged against the Service Provider's future invoices and any retention funds.

- e. Service Provider shall submit the following items with their invoices via email:
 - (1) Completed Tidelands Activation Program Wrap-Up form (can be found in the Event Organizer Toolkit on District's website)
 - (2) Promotional samples, as listed in Attachment A
 - (3) Event photographs, as listed in Attachment A

- f. Service Provider shall submit all invoices within thirty (30) days of completion of work represented by the request under the Agreement. Payment will be made to Service Provider after receipt of a proper Invoice.

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EXHIBIT A CERTIFICATE OF INSURANCE San Diego Unified Port District

By signing this form, the authorized agent or broker **certifies** the following:

- (1) The Policy or Policies described below have been issued by the noted Insurer(s) [Insurance Company(ies)] to the Insured and is (are) in force at this time.
- (2) As required in the Insured's agreement(s) with the District, the policies include, or have been endorsed to include, the coverages or conditions of coverage **noted on page 2 of this certificate**.
- (3) Signed copies of **all** endorsements issued to effect require coverages or conditions of coverage are attached to this certificate.

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

Name and Address of Insured (Consultant)	SDUPD Agreement Number: _____ This certificate applies to all operations of named insureds on District property in connection with all agreements between the District and Insured.
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CO LTR	TYPE OF INSURANCE	POLICY NO.	DATES	LIMITS
	Commercial General Liability <input type="checkbox"/> Occurrence Form <input type="checkbox"/> Claims-made Form Retro Date _____ <input type="checkbox"/> Liquor Liability Deductible/SIR: \$ _____		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____
	Commercial Automobile Liability <input type="checkbox"/> All Autos <input type="checkbox"/> Owned Autos <input type="checkbox"/> Non-Owned & Hired Autos		Commencement Date: Expiration Date:	Each Occurrence: \$ _____
	Workers' Compensation – Statutory Employer's Liability		Commencement Date: Expiration Date:	E.L. Each Accident \$ _____ E.L. Disease Each Employee \$ _____ E.L. Disease Policy Limit \$ _____
	Excess/Umbrella Liability		Commencement Date: Expiration Date:	Each Occurrence: \$ _____ General Aggregate: \$ _____

CO LTR	COMPANIES AFFORDING COVERAGE	A. M. BEST RATING
A		
B		
C		
D		

A. M. Best Financial Ratings of Insurance Companies Affording Coverage Must be A-VII or better unless approved in writing by the District.

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

SAN DIEGO UNIFIED PORT DISTRICT
REQUIRED INSURANCE ENDORSEMENT

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

Notwithstanding any inconsistent statement in the policy to which this endorsement is attached or in any endorsement now or hereafter attached thereto, it is agreed as follows:

1. The San Diego Unified Port District, its officers, agents, and employees are additional insureds in relation to those operations, uses, occupations, acts, and activities described generally above, including activities of the named insured, its officers, agents, employees or invitees, or activities performed on behalf of the named insured.
2. Insurance under the policy(ies) listed on this endorsement is primary and no other insurance or self-insured retention carried by the San Diego Unified Port District will be called upon to contribute to a loss covered by insurance for the named insured.
3. This endorsement shall include a waiver of transfer of rights of recovery against the San Diego Unified Port District ("Waiver of Subrogation").
4. The policy(ies) listed on this endorsement will apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
5. As respects the policy(ies) listed on this endorsement, with the exception of cancellation due to nonpayment of premium, thirty (30) days written notice by certified mail, return receipt requested, will be given to the San Diego Unified Port District prior to the effective date of cancellation. In the event of cancellation due to nonpayment of premium, ten (10) days written notice shall be given.

Except as stated above, and not in conflict with this endorsement, nothing contained herein shall be held to waive, alter or extend any of the limits, agreements or exclusions of the policy(ies) to which this endorsement applies.

 (NAME OF INSURANCE COMPANY)

 (SIGNATURE OF INSURANCE COMPANY AUTHORIZED REPRESENTATIVE)

MAIL THIS ENDORSEMENT AND NOTICES OF CANCELLATION:

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