

**Attachment C to Agenda File No. 2017-0348****SAN DIEGO UNIFIED PORT DISTRICT**

Development Services Department

P.O. BOX 120488

SAN DIEGO, CA 92112-0488

(619) 686-6291

**COASTAL DEVELOPMENT PERMIT**

**Applicant:** 3D Art Expo LLC  
850 Beech Street, Suite 709  
San Diego, CA 92101

**Project:** U.S. Sand Sculpting Challenge and Dimensional Art Exposition

**Location:** Broadway Pier, 1000 N. Harbor Drive, San Diego, CA 92101

You are hereby granted a Coastal Development Permit (CDP). This permit is issued in conformance with the California Coastal Act of 1976 and the Coastal Permit Regulations of the San Diego Unified Port District, as adopted by the Board of Port Commissioners on July 1, 1980, Resolution No. 80-193, and as amended on December 2, 1980, Resolution No. 80-343, and on February 14, 1984, Resolution No. 84-62, in accordance with the provisions for the issuance of a [ ] Emergency [X] Non-Appealable [ ] Appealable Coastal Development Permit.

**Date of Board Action:** August 8, 2017

**Board of Port Commissioners Resolution Number:** 2017- XXX

**Date of Permit:** xxxxx xx, 20xx

**Application Number:** 2017-110

**Permit Number:** CDP-2017XX

The project is located within the jurisdiction of the San Diego Unified Port District (District) and in the California coastal zone. The project constitutes development pursuant to Coastal Act Section 30106 as it will result in a temporary change in the intensity of use of land. The project is a non-appealable development pursuant to Section 30715 of the Coastal Act as it does not constitute any of the development listed therein and a temporary event on a public pier is considered a "non-appealable" category of development. The project is fully consistent with Chapters 3 and 8 of the Coastal Act, the District's certified Port Master Plan, and the applicable special conditions associated with the North Embarcadero Visionary Plan (NEVP) Phase 1 CDP (A-6-PSD-11-006; Clerk's Doc. No. 58230) approved by the California Coastal Commission on April 13, 2011 (specifically, the Broadway Pier Design Principles and Programming Plan).

This permit is limited to the development described below and set forth in material on file with the District, and subject to the terms, conditions, and provisions hereinafter stated:

## **DEVELOPMENT**

The Project Applicant, 3D Art Expo LLC (referred to herein as “Permittee”), proposes a five-day temporary event, referred to as the U.S. Sand Sculpting Challenge and Dimensional Art Exhibition (event), and the staging, installation, and removal of associated improvements (collectively, “Project”). The event will utilize all of Broadway Pavilion, Pier, and Plaza, located at 1000 N. Harbor Drive in San Diego, California (see Exhibit 1). The entirety of the development, including installation, staging, and removal of the temporary structures and material, and the duration of the event, may take up to 14 days total and will result in intermittent closures of all or portions of the Project site to the general public. All activities associated with the event are to occur on the days preceding, during and following Labor Day weekend.

The Project involves the installation of temporary structures, including amusement rides, concession vendor stands, entertainment stages, and exhibition booths. The portions of the event at Broadway Pier and Pavilion and the area between the promenade and N. Harbor Drive will not be free-of-charge to general public use and will involve the installation of temporary fencing along the eastern end of Broadway Pier and around the installation, approximately 60 feet by 100 feet, in the area between the promenade and N. Harbor Drive to limit access into the event for ticketed guests. The public promenade adjacent to Broadway Pier, running linear to the shoreline, will be partially used for sponsor installations and booths but will remain open to general public use at all times. Unobstructed pedestrian passageway from the promenade to N. Harbor Drive will be maintained at all times. Parking for the event will be accommodated in nearby public parking lots, including the B Street Pier ABM Parking Services parking lot, with approximately 2,000 available parking spaces in the vicinity. Information and incentives for public transit use have been distributed via the event organizers website.

## **STANDARD PROVISIONS**

1. Permittee shall adhere strictly to the current plans for the Project as approved by the District and the Project features, described above, for the Project.
2. Permittee shall notify the District of any changes in the Project and herein described. Notification shall be in writing and be delivered promptly to the District. District approval of the project change may be required prior to implementation of any changes.
3. Permittee and the Project shall meet all applicable codes, statutes, ordinances and regulations, and Permittee shall obtain all necessary permits from local, regional, state, and federal agencies.

COASTAL DEVELOPMENT PERMIT NO. CDP-2017-XX  
Page 3 of 10

4. Permittee shall conform to, and this permit is subject to, the permit rules and regulations of the District, including, but not limited to, the District's Coastal Development Permit Regulations.
5. Permittee shall be responsible for compliance with ADA and Title 24 specifications.
6. Permittee shall commence development within two (2) years following the date of the permit issuance by the District. Installation and preparation shall be pursued in a diligent manner and completed within a reasonable period of time.
7. The permit is in no way intended to affect the rights and obligations heretofore existing under private agreements nor to affect the existing regulations of other public bodies.
8. This permit shall not be valid unless two copies have been returned to the Development Services Department of the District, upon which copies the Permittee has signed a statement agreeing that the Permittee will abide by the terms, conditions, limitations, and provisions of the permit.
9. The Permittee and contractor shall perform all best management practices (BMPs) during installation, preparation, and maintenance operations. This includes no pollutants in the discharges to storm drains or to Pacific Ocean, to the maximum extent practicable.
10. All District tidelands are regulated under Regional Water Quality Control Board Order No. R9-2013-0001, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS0109226, Waste Discharge Requirements for Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds Within the San Diego Region (Municipal Permit). The Municipal Permit prohibits any activities that could degrade stormwater quality.

The Permittee shall ensure that operational use of this Project site complies with the Municipal Permit and District direction related to permitted activities including the requirements found in the District's Jurisdictional Runoff Management Program (JRMP). The JRMP is available on the District website: <https://www.portofsandiego.org/environment/clean-water> or by contacting the Stormwater Department, (619) 686-6254.

11. In the discretion of the District, prior to commencement of installation and preparation, Permittee may be required to require that their contractor(s) furnish security, naming the District as a dual obligee, in the form of a performance bond and a payment bond, each in an amount deemed appropriate by the District to guarantee payment of the subcontractors, completion of the approved work under this permit, and compliance with the conditions and limitations upon which such permit is granted. Prior to commencement of installation and preparation, Permittee

COASTAL DEVELOPMENT PERMIT NO. CDP-2017-XX  
Page 4 of 10

may also be required by the District to furnish security in the form of a payment bond in an amount deemed appropriate by the District to guarantee payment to the contractor(s) for work performed under this permit.

12. By accepting this permit, Permittee acknowledges and agrees (a) that the project site may be subject to environmental conditions and hazards; (b) to assume the risks to the Permittee of injury and damage from such conditions in connection with the implementation of the project; (c) to unconditionally waive any claim of damage or liability against the District, its Board of Port Commissioners, officers, agents and employees ("District" for purposes of this condition) for injury or damage from such conditions to persons performing the work for which this permit is issued; (d) to defend, indemnify and hold harmless, and require that Permittee's contractor(s) engaged to perform the work on the project defend, indemnify and hold harmless, the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the performance of the work by Permittee's contractor(s) for which this permit is issued, with the exception of any claim, action, damages, liability or costs arising or resulting from the project caused by the gross negligence or willful misconduct of the District; (e) to defend, indemnify and hold harmless the District from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the District's approval of the project, the granting of this permit, and the District's adoption of the Final Negative Declaration; and (f) that Permittee will require Permittee's contractors to name the District as an additional insured on all policies of insurance, now in existence or to be obtained by them, for the work conducted pursuant to this permit.
  
14. Permittee acknowledges and agrees that: (a) it is the sole and exclusive responsibility of Permittee, and not the District, to ensure that all persons and/or entities who provide any labor, services and/or equipment in connection with the project, shall comply with the requirements of California's prevailing wage laws (the "PWL"), to the extent such laws are applicable; and (b) it is the sole and exclusive responsibility of Permittee, and not the District, to determine whether the project is subject to the PWL by obtaining a determination by means that do not involve the District. If the project is determined to be subject to the PWL, Permittee shall comply with all applicable provisions of the PWL, and shall take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the project shall likewise comply with all applicable provisions of the PWL.

Permittee further acknowledges and agrees that Permittee's failure to comply with all applicable provisions of the PWL, and/or their failure to take reasonable steps to ensure that all persons and/or entities who provide any labor, services, equipment and/or materials in connection with the project comply with all applicable provisions of the PWL, shall render Permittee, and not the District, liable for all remedies

(inclusive of all applicable fines and penalties), afforded by law as a consequence of such non-compliance. Permittee expressly agrees to defend, indemnify and hold harmless the District, from any claim, demand, liability, loss, action, damage, cost, expense (including all attorneys' fees and consultant/expert fees), award, fine, penalty or judgment arising out of, resulting from, or in any way related to the PWL (collectively "PWL Claim") made against or incurred by the District in any capacity (including, without limitation, as a real party in interest), except for any PWL Claim arising out of the sole negligence or willful misconduct of the District.

15. The conditions of this permit are independent of, and in addition to, the obligations of the Permittee under any existing lease(s), Tidelands Use and Occupancy Permit(s), or other contractual agreement(s) with the District, and are binding upon Permittee and its agents, representatives, successors and permitted assigns.

#### INSTALLATION AND PREPARATION MEASURES

1. To minimize noise during installation and preparation, the Permittee will require the installation and preparation contractor (contractor) to (a) restrict normal installation and preparation activities from 7:00 am to 7:00 pm; (b) keep installation and preparation equipment as far as possible from sensitive receptors; and (c) provide acoustical shielding around equipment operating at night, from 10:00 pm to 7:00 am.
2. To minimize nuisance effects from lights or glare during installation and preparation, the Permittee will require the contractor to shield and direct night lighting away from adjacent areas.
3. All installation and preparation equipment shall be maintained in peak condition to reduce operational emissions.
4. Diesel equipment shall use low-sulfur diesel fuel.
5. Electric equipment shall be used to the maximum extent feasible during installation and preparation.
6. The Permittee shall require the contractor to provide installation and preparation employees with transit and ride share information.
7. The Permittee shall ensure that any site contamination is identified and a site restoration plan, acceptable to the appropriate regulatory agencies, is prepared and implemented to reduce any existing contamination to a level that has no potential to threaten employee or human health as defined under existing regulations. If any potential exists for impacts to employee health from exposure to hazardous materials, workers shall be provided with adequate protective gear.
8. The Permittee shall require all employees that are exposed to noise levels in excess of Occupational Safety and Health Administration hearing protection thresholds,

COASTAL DEVELOPMENT PERMIT NO. CDP-2017-XX  
Page 6 of 10

during installation and preparation or operation, to wear noise protection devices (ear plugs and covers) that are protective of individual hearing.

### SPECIAL PROVISIONS

1. Permittee shall comply with the Project Description under the above "DEVELOPMENT" section of this permit.
2. This Permit shall have a term of ten (10) years from its effective date and shall only permit the annual temporary development described in the "DEVELOPMENT" section of this Permit. This condition shall not be interpreted or construed as an admission or guarantee of District sponsorship or funding of the development or event.
3. Prior to the start of development, described under the "DEVELOPMENT" section of this Permit, Permittee must apply for and obtain all other appropriate permits or agreements from the District, including without limitation, the Real Estate Division, the Marketing and Communications Department, and other relevant local, regional, State or federal agencies, each year the event is proposed to be held.
4. Per the California Coastal Commission Temporary Event Guidelines (adopted by the California Coastal Commission on 5/12/1993), the event must be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with this approved event in order to rely on this Permit and be excluded from further Coastal Act permitting requirements. The Permittee must demonstrate conformance with these Guidelines each year the development is proposed, or an amendment to this Permit or a new Permit would be required to be obtained prior to commencement of the development.
5. The Permittee shall provide adequate parking off-site and/or shuttle access to the special event and shall not rely exclusively on public shoreline parking to accommodate guest demand. Information on special event parking locations must be conveyed to attendees through various methods such as promotional material and the special event website. Evidence of said secured parking and/or shuttle access must be submitted to the District for its review and approval (in the District's sole and absolute discretion) prior to the start of development.
6. No temporary fencing shall not be placed within the promenade fronting Broadway Pier, linear to the shoreline.
7. The Permittee shall clean and restore the site to the condition it was in prior to the commencement of development.

#### Exhibits:

1. Project Location Map



## 2. Site Plan

If you have any questions on this permit, please contact the Development Services Department of the San Diego Unified Port District at (619) 686-6291

RANDA CONIGLIO  
President/Chief Executive Officer

By: \_\_\_\_\_  
Wileen C. Manaois  
Director, Development Services

COASTAL DEVELOPMENT PERMIT NO. CDP-2017-XX  
Page 8 of 10

I have read and understand the terms, conditions, limitations, and provisions of this permit and agree to abide by them.

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Signature of Permittee  
Gordon Summer  
Principal, 3D Art Expo LLC

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Date



Exhibit 1: Project Location Map

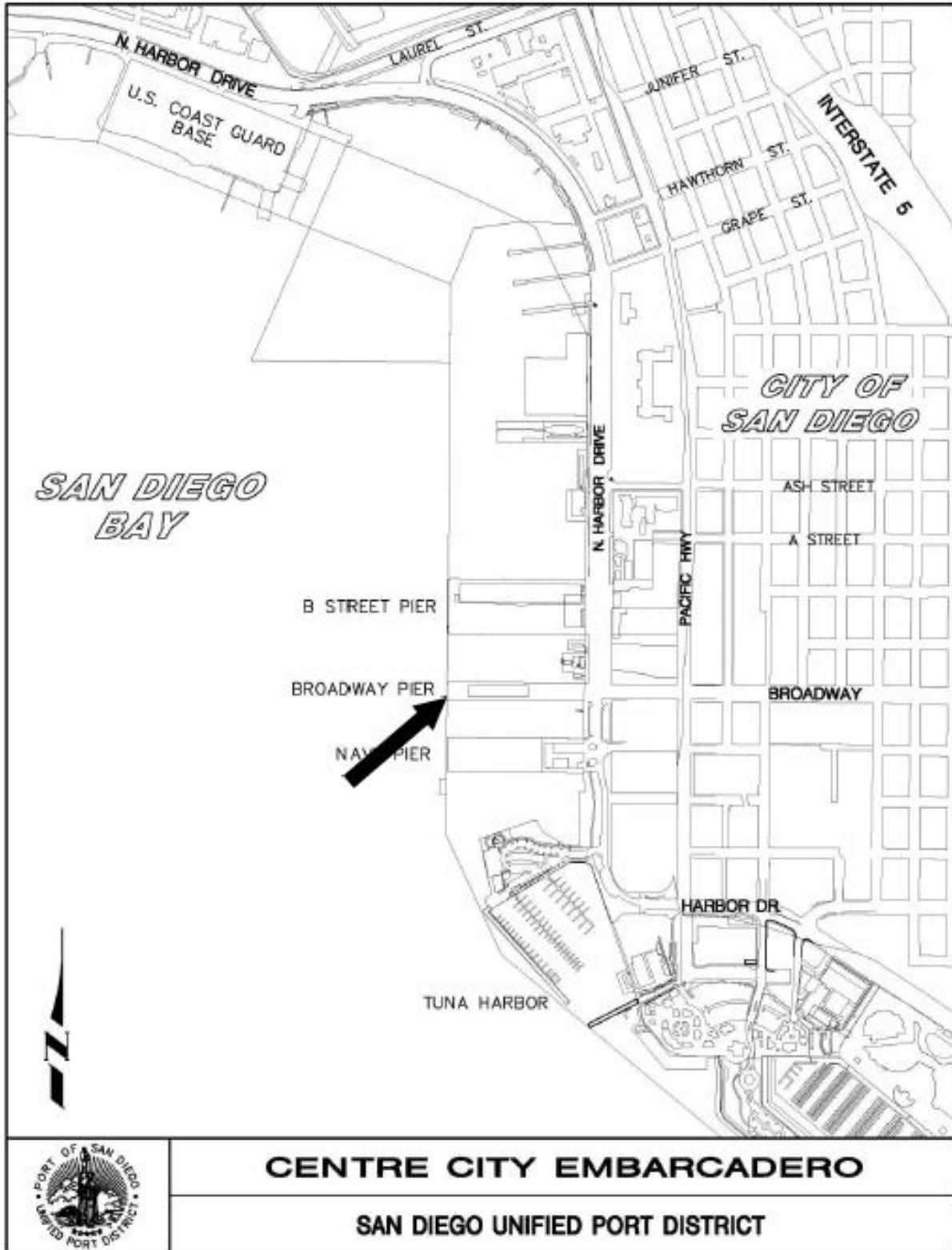


Exhibit 2: Site Plan

