

BUSINESS NEGOTIATED EVENT AGREEMENT
BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
AND
WONDERLUST EVENTS
FOR
SPONSORSHIP OF THE 2022 WONDERFRONT MUSIC AND ARTS FESTIVAL

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a Public Corporation (District) and WONDERLUST EVENTS LLC, a California corporation (Event Organizer) and are collectively referred to as “Parties” herein. District and Event Organizer desire to enter into an agreement for District funding and support of the Business Negotiated Event, 2022 WONDERFRONT MUSIC AND ARTS FESTIVAL (Event).

1. TERM OF AGREEMENT

- a. This Agreement shall commence on the date it is fully executed by the all Parties and shall terminate one-hundred and fifty (150) days after the Event on April 20, 2023, subject to earlier termination as provided herein (“Term”).

2. SCOPE OF SERVICES AND MODIFICATIONS

- a. Event Organizer shall provide to the District all of the services and remittances set forth in Attachment A, Scope of Services.
- b. Event Organizer must promptly secure all permits, permissions, entitlements, and other agreements required to lawfully conduct the Event, including, without limitation, District special event permits. It shall be Event Organizer’s sole responsibility to obtain and comply with all permits, permissions, entitlements, and other agreements required to lawfully conduct the Event.
- c. The District shall have the right, in its sole and absolute discretion, to disapprove any proposed changes to the services that are part of the services to be provided by Event Organizer to the District as part of Event, and any changes to the configuration of the Event. Changes to Event must be requested by Event Organizer in writing and are subject to the District’s approval in its sole and absolute discretion.

3. COMPENSATION

- a. Event Organizer shall complete the production of Event and render services pursuant to this Agreement and as further described in Attachment A, Scope of Services, and in return, the District shall compensate the Event Organizer based on the following, subject to the limitation of the maximum expenditure provided herein:
 - i. **Maximum Expenditure.** The District shall pay Event Organizer one-hundred thousand dollars (\$100,000) in direct cash funding, to be

used to support public access to the event and will provide any necessary and appropriate Event-related Harbor Police Department services in an amount up to not to exceed one-hundred thousand dollars (\$100,000). Said expenditure shall include without limitation all sums, charges, reimbursements, costs, and expenses provided for herein.

- b. District shall not collect District permit fees from Event Organizer associated with Event Organizer's Event-related use of properties for the Event as set forth in Parks & Recreation permitting documents. District permit fee waivers apply only to District-issued permits and do not apply to permits issued by any other entity or entities.
- c. Event Organizer is responsible for all other costs, expenses, and fees associated with Event, including but not limited to medical, safety, emergency, transportation, and/or regulatory services, as well as any deposits required by the District to be determined at the District's discretion. In the event that the District incurs expenses associated with any additional materials and/or services as a result of the Event Organizer's use of the property, Event Organizer hereby agrees to reimburse District.

4. PAYMENT BY DISTRICT

- a. The District agrees, to remit to Event Organizer direct cash funding set forth in Section 3 in advance of the Event following successful completion of review and entitlement of Event under the California Coastal Act and 30 days following receipt of an invoice from Event Organizer in conformance with the requirements of this Agreement, provided this Agreement has not been terminated.
- b. Payment by the District pursuant to this Agreement does not represent that the District has made a detailed examination, audit, or arithmetic verification of any documentation submitted by Event Organizer, made an exhaustive inspection to check the quality or quantity of the services performed by Event Organizer, made an examination to ascertain how or for what purpose Event Organizer has used money previously paid on account by the District, or constitute a waiver of Claims against Event Organizer by the District. The District may in its sole discretion withhold payments or seek reimbursement from Event Organizer 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 Event Organizer. Upon ten (10) days written notice to Event Organizer, the District shall have the right to estimate the amount of expenses, miscellaneous charges, or other liabilities or increased costs and to cause Event Organizer to pay the same; and the amount due Event Organizer under this Agreement or the whole or so much of the money due or to become due to Event Organizer 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 Event Organizer 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 and to seek reimbursement of same from Event Organizer. 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 Event Organizer.

5. PAYMENT TO DISTRICT

- a. Concurrently, with the delivery of the Post-Event Economic Impact Report described in Attachment B, and no later than March 20, 2023, Event Organizer shall deliver any payments owed to the District. Event Organizer shall remit payment to the District in the form of a check addressed to the San Diego Unified Port District and deliver such documents to the District at the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101).
- b. This Section 5 shall survive the expiration or earlier termination of this Agreement.

6. INVOICING

- a. Event Organizer shall include the following information on each invoice submitted for payment by District. District shall, at its discretion, return to Event Organizer, without payment, any invoice, which has been submitted without the following information and certification phrase.
 - i. Agreement No.
 - ii. Date(s) of Event
 - iii. Date of invoice
 - iv. A unique invoice number
 - v. The following certification phrase, with printed name, title and signature of Event Organizer'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."
- b. 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 the Event Organizer for the Event. Any overpayment discovered in such an audit may be charged against the Event Organizer's future invoices and any retention funds.

- c. Payment will be made to Event Organizer after receipt of an invoice. Invoices shall be emailed to the Director of Parks & Recreation.

7. FINANCIAL STATEMENTS & RECORDS

- a. Event Organizer shall maintain full and complete books of account, records, financial statements, income and other tax forms and documentation related to Event. Event Organizer shall keep, or cause to be kept, accurate and complete records and double entry books of account of all financial transactions related to its ticket sales and value of complimentary tickets and complimentary community admissions associated with the Event ("Ticket Records"). Ticket Records shall be open to inspection of District at all reasonable times in the City of San Diego.
- b. Event Organizer agrees to furnish the District, upon request, duplicate receipts or other satisfactory evidence showing the prompt payment or possession of any and all permits, permissions, entitlements, and other agreements required to lawfully conduct the Event.
- c. Such records shall be kept and maintained by Event Organizer for a period of at least three (3) years after completion of Event or until all disputes, appeals, litigation, or claims arising from this Agreement have been resolved, whichever is later.
- d. Event Organizer understands and agrees that District, at all times under this Agreement has the right to review project documents and work in progress and to audit financial and ticket sales records, whether or not final, which Event Organizer or anyone else associated with Event has prepared or which relate to the event the Event Organizer is organizing pursuant to this Agreement regardless of whether such records have previously been provided to District. Event Organizer shall provide District, at Event Organizer's expense, a copy of all such records within five (5) business days of a written request by District. District's right shall also include inspection at reasonable times of the Event Organizer's office or facilities, which are engaged in the event pursuant to this Agreement. Event Organizer shall, at no cost to District, furnish reasonable facilities and assistance for such review and audit.

8. ACCURACY OF SERVICES

- a. Event Organizer shall be responsible for the technical accuracy of its services and documents resulting therefrom and District shall not be responsible for discovering deficiencies therein. Event Organizer shall correct such deficiencies at no cost or expense to the District. Furthermore, Event Organizer expressly agrees to reimburse District for any costs incurred as a result of such deficiencies. Event Organizer shall make decisions and carry out its responsibilities hereunder in a timely manner and shall bear all costs incidental thereto so as not to delay District, Event, or

any other person related to Event, including Event Organizer or its agents, employees, or contractors.

9. OWNERSHIP OF RECORDS

- a. Event Organizer and the District agree that the Post-Event Report shall be the property of District and Event Organizer from the moment of its preparation, and all of the above-mentioned parties shall have the perpetual and worldwide right to use, reproduce, distribute, and create derivative works. Event Organizer shall not disclose to any public or private person or entity any information regarding the activities of District, except as expressly authorized in advance in writing by District.

10. INTELLECTUAL PROPERTY

- a. The Event Organizer hereby grants the District a royalty free license to use and distribute all media content for Event, including but not limited to, written articles, photographs, and video content, located on Event Organizer's website, Event website, or received from Event Organizer without any cost or expense to the District. The District shall also have the right to use any media taken by the Event's official media production team for promotion and documentation of Event with no fee payable to Event Organizer or the media production team.
- b. During the term of this agreement, the District hereby grants Event Organizer an exclusive, royalty free license to any intellectual property held by the District relating to specific names of venues or the waterfront. Event Organizer and the District shall have the right to the use each other's logos to promote Event. Any Party may designate a logo for use by written notice to the other Party.
- c. Event Organizer shall own all right, title, and interest to any and all intellectual property related directly or indirectly to the Event that is not already owned by the District.

11. SUB-CONTRACTORS

- a. All sub-contractors that provide services to Event Organizer in support of the Event are subject to prior written approval by District. Event Organizer shall remain responsible to District for any and all services and obligations required under this Agreement, whether performed by Event Organizer or Event Organizer's subcontractors. Event Organizer shall compensate each of its sub-contractors in the time periods required by law. Any sub-contractors employed by Event Organizer in the fulfillment of this Agreement shall be independent Service Providers and not agents of District. Event Organizer shall ensure that its sub-contractors satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification. Event Organizer shall also include a clause in its Agreements with its sub-contractors that 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 Event Organizer'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.

12. NO RELATIONSHIP

- a. Event Organizer and any agent, employee, or contractor of Event Organizer shall act in an independent capacity and not as agents, officers, or employees of the District. The District assumes no liability for Event Organizer's actions and performance, nor assumes responsibility for taxes, bonds, payments, or other commitments, implied or explicit by Event Organizer. Event Organizer shall not have authority to act as an agent on behalf of the District unless specifically authorized to do so in writing. Event Organizer disclaims the right to any fee or benefits except as expressly provided for in this Agreement.

13. COMPLIANCE

- a. Event Organizer and Event Organizer's sub-contractors shall comply with the California Fair Employment and Housing Act, the Americans with Disabilities Act, and all other applicable federal, state, regional, 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. Event Organizer shall comply with the prevailing wage provisions of the Labor Code, and the Political Reform Act provisions of the Government Code, as applicable.
- b. The District has the authority to make and enforce necessary rules and regulations governing, among other things, stormwater management and discharge control. Event Organizer and Event Organizer's sub-contractors shall comply with Article 10 of the San Diego Unified Port District Code (Stormwater Management and Discharge Control) which prohibits all non-stormwater discharges to the stormwater conveyance system and San Diego Bay.
- c. Event Organizer shall also comply with all federal, state, regional, and local laws, and District Ordinances and Regulations, as applicable, including those pertaining to sound level limits and guidelines.

14. ASSIGNMENT

- a. This Agreement is between District and Event Organizer. The Event Organizer shall not assign nor transfer voluntarily or involuntarily any of its

rights, duties, or obligations under this Agreement without the express written consent of District in each instance.

15. ADVICE OF COUNSEL

- a. 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 Agreement and the formation, interpretation, and performance of this Agreement shall be construed, interpreted, and applied in accordance with and governed by and enforced under the laws of the State of California.

16. INDEPENDENT REVIEW

- a. 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.

17. INDEPENDENT ANALYSIS

- a. In the performance of this Agreement, Event Organizer shall arrive at conclusions with respect to the rendition of information, advice, or recommendations, independent of the control and direction of District, other than the normal contract monitoring provided herein; provided, however, Event Organizer shall possess no authority with respect to any District decision.

18. INDEMNIFY, DEFEND, HOLD HARMLESS

- a. To the fullest extent provided by law, Event Organizer 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 Event Organizer's officers, agents, subcontractors, employees, ("Claim"), caused by, arising out of, or related to Event; any 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 the Event; and any Event related approvals by the District. The Event Organizer'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 Event Organizer further agrees that the duty to indemnify, and the duty to defend the District as set forth above, requires that the Event Organizer pay all reasonable attorneys' fees and costs District incurs associated with or related to enforcing the indemnification provisions, and defending any Claim arising from Event by the Event Organizer.
- 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 Event. 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 this event organized by the Event Organizer, Event Organizer agrees to pay all reasonable attorneys' fees and all costs incurred by District.
- d. This Section 18 shall survive the expiration or earlier termination of this Agreement.

19. INSURANCE REQUIREMENTS

- a. Event Organizer shall at all times while utilizing District property maintain, at its expense, the following minimum levels and types of insurance:
 - i. 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 (Form CG 0001) with limits no less than two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate for bodily injury, personal injury, and property damage.
 - 1) The deductible or self-insured retention on this Commercial General Liability shall not exceed five thousand (\$5,000) unless District has approved of a higher deductible or self-insured retention in writing.
 - 2) The Commercial General Liability policy shall be endorsed to include District; its agents, officers, and employees as additional insureds in the form as required by District. (Exhibit A, Certificate of Insurance)
 - ii. The coverage provided to District, as an additional insured, shall be primary and any insurance or self-insurance maintained by District shall be excess of the Event Organizer's insurance and shall not contribute to it.
 - iii. The Commercial General Liability policy shall be endorsed to include a waiver of transfer of rights of recovery against District ("Waiver of Subrogation").

- iv. 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.
 - v. **Additional Insurance Requirements: Alcohol.** If alcoholic beverages are served and/or sold at the event, Liquor Liability coverage (Host Liquor Liability is insufficient) in the amount of not less than one million dollars (\$1,000,000) occurrence and two million dollars (\$2,000,000) aggregate shall be obtained by Event Organizer and/or by its designated alcohol and liquor provider (Subcontractor).
 - vi. **Additional Insurance Requirements: Workers' Compensation.** As applicable, including statutory limits, Workers' Compensation insurance is required of the Event Organizer and all sub-contractors (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.
 - vii. **Additional Insurance Requirements: Umbrella or Excess Liability.** 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 Commercial General Liability (including Liquor Liability as applicable), Automobile Liability, and Employer's Liability policies.
- b. Event Organizer 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 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 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. Event Organizer 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 Commercial General Liability coverage.

- d. Furnishing insurance specified herein by District will in no way relieve or limit any responsibility or obligation imposed by this Agreement or otherwise on the Event Organizer or Event Organizer's sub-contractors or any tier of Event Organizer's sub-contractors. District shall reserve the right to obtain complete copies of any of the insurance policies required herein.

20. TERMINATION

- a. 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, due to a breach of the terms, covenants, or conditions of this Agreement, or due to force majeure, by giving written notice to the Event Organizer and specifying the effective date thereof. The District may in its sole discretion, but is not required to, provide the Event Organizer in writing a period to remedy such breach. In the event of a termination, all finished or unfinished documents and other materials shall, at the option of District, be delivered by Event Organizer to the Don L. Nay Port Administration Building (located at 3165 Pacific Highway, San Diego, California 92101). Termination of this Agreement as provided in this paragraph shall release the District from any further fee or claim hereunder by Event Organizer.
- b. In the event that the Event is cancelled for any reason, or Event Organizer fails to satisfy any of the provisions set forth in this Agreement, Event Organizer shall return any and all payments made by the District within ten (10) business days of Event cancellation and without any further notice from the District. If the District, in its sole and absolute discretion, reschedules the Event dates, times, and/or locations, any payment already made by the District and any waived services received by the Event Organizer shall be considered applicable to the rescheduled Event. If the District determines that the rescheduled Event is smaller in scope and/or scale, the District, in its sole and absolute discretion, may require the Event Organizer to return a portion of the direct cash funding payment at no expense to the District.
- c. This Section 20 shall survive the expiration or earlier termination of this Agreement.

21. 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.

22. INTEGRATION AND MODIFICATION

- a. 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.

23. CAPTIONS; SECTION REFERENCES

- a. All captions to, or headings of, the sections, subsections, paragraphs, or sub-paragraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement and will not be used for the interpretation or determination of the validity of this Agreement or any provision hereof. Unless otherwise indicated, references in this Agreement to sections, clauses, exhibits, attachments, and schedules are to the same contained in or attached to this Agreement and all exhibits, attachments and

schedules referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section 23.

24. NO WAIVER

- a. The waiver or failure to enforce any provision of this Agreement by a Party will not operate as a waiver of such Party's right to enforce future defaults or breaches of any such provision or any other provision of this Agreement.

25. PARTIAL INVALIDITY

- a. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, illegal, or unenforceable, that portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force as fully as though the invalid, illegal, or unenforceable portion had never been part of this Agreement.

26. NOTICES

- a. Any notice or notices provided for by this Agreement or by law to be given or served upon the District may be given or served by certified or registered letter, return receipt requested, addressed to the District at Executive Director, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488; with copy, Parks & Recreation, San Diego Unified Port District, P.O. Box 120488, San Diego, CA 92112-0488, and deposited in the United States mail, or may be served personally upon said District or any person hereafter authorized by it in writing to receive such notice; and that any notice or notices provided for by this Agreement or by law to be given or served upon Event Organizer may be given or served by certified or registered letter, return receipt requested, addressed to the authorized representative listed as the signatory on this agreement and deposited in the United States mail, or may be served personally upon Event Organizer or any person hereafter authorized by it in writing to receive such notice. Notices shall be deemed delivered on the date of personal delivery, or if delivered by certified mail, upon the date shown for delivery in the returned receipt. Any Party may designate a different address by giving written notice as set forth in this Section 26.

27. ATTORNEYS' FEES

- a. In the event any suit is commenced to enforce, protect, or establish any right or remedy of any of the terms, covenants, and conditions hereof, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

28. THIRD PARTIES; NO THIRD PARTY BENEFICIARIES

- a. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Event Organizer and the District and their respective

permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provisions give any third persons any right of subrogation or action over or against any Party to this Agreement.

29. REPRESENTATION AND WARRANTY

- a. Event Organizer represents and warrants to the District that it has or will obtain at its sole cost and expense all of the rights, permits, and approvals necessary to produce Event, provide the District with Attachment A, Scope of Services, and perform all of its obligations under this Agreement. The terms of this Section 29 shall survive the expiration or earlier termination of this Agreement.

30. CAPACITY OF PARTIES

- a. Each signatory and Party to this Agreement warrants and represents to the other Party that it has the legal authority, capacity, and direction from its principal(s) to enter into this Agreement and that all resolutions, ordinances, or other actions have been taken so as to enter into this Agreement.

31. SIGNATURE OF THE PARTIES

- a. It is an express condition of this Agreement that said Agreement shall not be complete nor effective until signed by both the Executive Director of the District, or their authorized designee on behalf of the District, and by the authorized representative(s) of Event Organizer.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

SAN DIEGO UNIFIED PORT DISTRICT

EVENT ORGANIZER

Date

Jun 3, 2022

Date

Yvonne Wise
Director, Parks & Recreation
Unified Port of San Diego

Paul Thornton

Paul Thornton
Chief Executive Officer
Wonderlust Events, LLC
550 West B Street, 4th Floor
San Diego, CA 92101
619-340-1070
stayclassy@wonderfrontfestival.com

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

1. **PURPOSE:** The District is entering into an event partnership with the Event Organizer to activate the waterfront with a three-day music and arts festival. The Event will generate visitorship, local and regional tourism, and positive economic impact to the District and its tenant businesses by attracting tourists from across the southwestern United States to the region. The 2022 festival is expected to attract more than 60,000 people to the Port of San Diego.
2. **EVENT OVERVIEW:** The three-day Wonderfront Music and Arts Festival is a locally produced and run event that features a diverse lineup of musicians across multiple stages at various locations on the waterfront in San Diego. The Event serves to activate multiple locations on the tidelands with a variety of entertainment, arts, and culinary experiences. Additionally, the Event will include free entertainment and activation components to increase public access to the Event for all communities.
3. **SCHEDULE:** Event Organizer shall produce the 2022 Wonderfront Music & Arts Festival, a three-day event, to be held from November 18 through 20, 2022. Event Organizer is anticipated to utilize District property for Event production beginning on Sunday, November 13, 2022, and ending on Wednesday, November 23, 2022, or as otherwise set forth in Parks & Recreation permitting documents.
4. **LOCATION(S):** The Event shall occur on District tidelands at the locations identified on the permitting documents in a configuration mutually agreed upon by the District and Event Organizer. There shall be no changes made by the Event Organizer to the configuration of the Event layout that have not been expressly authorized by the District in writing in its sole and absolute discretion.
5. **DISTRICT PERMIT REQUIREMENTS:** Event Organizer shall submit all required documents for all Event activities requiring District permits through the District's online permitting Service Portal by September 13, 2022, or as otherwise set forth in Parks & Recreation permitting documents. Without valid District permits, Event shall not be authorized to occur. The conditions set forth in this section are for the benefit of the District and may only be waived by the District. The District expressly reserves the right to deny any required consent and approvals.
6. **DISTRICT REVENUE**
 - a. **Per Ticket Revenue.** Event Organizer shall provide the District revenue for each single-day and multi-day ticket sold for Event. The revenue provided to the District shall be based on a mutually agreed upon rate per ticket that is a minimum of three dollars per single-day ticket and five dollars per multi-day ticket. The per ticket revenue paid to the District shall be a minimum of one-hundred thousand dollars (\$100,000). There shall be no maximum amount of revenue paid to the District, and revenue paid to the District may increase above the minimum amount based on the quantity of tickets sold for Event.
 - b. **Gross Ticket Sale Revenue.** In addition to Per Ticket Revenue payments to the District, Event Organizer shall provide the District with revenue based on the total gross ticket sales for Event. The District shall receive revenue on the total gross ticket sales after a threshold quantity of gross ticket sales is attained by the Event Organizer. The District shall be paid revenue in the amount of 3.5% on all gross ticket sales over the threshold amount of seven million, two-hundred and fifty thousand (\$7,250,000) dollars.

7. ECONOMIC DEVELOPMENT

- a. **Event Services.** Event Organizer shall make reasonable efforts to utilize District Tenants and local businesses to supply concessions, merchandise, and other event services and items sold and provided during, and as a part of, the Event's official hours of operation.
- b. **Lodging.** Event Organizer shall make reasonable efforts to utilize District Tenant hotels to provide paid lodging accommodations for its staff, subcontractors, and performers. Event Organizer shall promote District Tenant hotels as preferred lodging providers to Event attendees.
- c. **Supplemental Event Activities.** For supplemental event activities held in conjunction with Event, the Event Organizer shall make reasonable efforts to give District Tenant businesses the first opportunity to provide the needed services.

8. **PUBLIC ACCESS:** As part of its commitment to ensure public access to the Event, the District requires the Event Organizer to provide free community programming during all days and hours that the Event is open to ticketed attendees. Free community programming shall include, but is not limited to, the Event Organizer providing, at no cost to members of the public, a community stage programmed with free live music and entertainment for the full duration of the festival.

9. EVENT ACCESS

- a. Event Organizer shall provide the District's Parks & Recreation staff access to inspect the Event for the full duration of time it will utilize District property for Event production to ensure permitting compliance and ensure that execution of the Event satisfies the terms set forth in the Agreement.
- b. Event Organizer shall provide the District, at no cost or expense to the District, with the following Event admission passes:
 - i. Twenty-four (24) highest-level unlimited access VIP admission passes with reserved seating, or their equivalent, that may be used each day of the Event.
 - ii. Thirty (30) single-day general admission passes to Event shall be allotted among dates agreed upon by District and Event Organizer.

10. DISTRICT PROMOTIONAL SUPPORT SERVICES

- a. In addition to the Compensation, and provided Event Organizer has furnished the District with all information necessary and requested by the District, the District may provide promotional support to create additional awareness for Event in its sole discretion. District tidelands have an inherent promotional value because of their high-visibility location on the waterfront that provides substantial exposure and awareness for the Event Organizer to visitors, residents, and patrons of the many area businesses. District promotional support may consist of inclusion of Event information on District-owned communications platforms and/or promotion through its available promotional channels. Event Organizer and District may collaborate on, and mutually agree upon, the ways in which the District may provide promotional support for the Event.

11. EVENT ORGANIZER PROMOTIONAL SUPPORT SERVICES

- a. The Event organized by Event Organizer benefits District through its ability to activate the tidelands and generate tourism that attracts a substantial number of visitors to the waterfront, thereby increasing awareness of District and its mission. To generate this awareness for Event attendees, Event Organizer shall recognize

the District as a presenting sponsor of the Event. The Event Organizer agrees to promote the District's sponsorship by using "2022 Wonderfront Music & Arts Festival at the Port of San Diego" in all Event promotional activities and materials. Additionally, at the District's request Event Organizer shall recognize and promote the District as a presenting sponsor of Event through promotional support services that shall include, but are not necessarily limited to, inclusion of the District in all official media, promotions, messaging, and promotional materials of any and all kinds related to the Event. Event Organizer shall also make reasonable efforts to promote District businesses and District-sponsored activities and programming to Event attendees. Event Organizer and District shall collaborate the ways in which the District will be further recognized and promoted as presenting sponsor of the Event, subject to the District's sole discretion.

- b. Event Organizer shall provide District media access credentials to capture media and document Event. District staff, its officers, or its designees, shall have the right to capture footage at Event, all pre and post activities related to Event, and at all press day(s) at no cost or expense to the District, to be used for Port of San Diego promotional purposes only and in alignment with all artist release requirements. For any commercial uses the Event Organizer waives any fee rights for such use, but the Port of San Diego would be required to negotiate any artist release rights for such commercial uses.
- c. Event Organizer shall provide the District high-resolution event photos and video for the District's unlimited promotional use. A minimum of twenty (20) images from each event day is required. A minimum of one (1) high-resolution digital video file highlighting and demonstrating all aspects of the festival attendee experience is required. The length of all videos shall be mutually agreed upon by the District and Event Organizer.

12. TRADEMARK LICENSING

- a. The District will grant the Event Organizer an exclusive, limited license of the District-owned trademark. "WONDERFRONT" as further described in Attachment C, Wonderfront Trademark Usage.
- b. The Event Organizer will grant the District a limited license of the Event Organizer-owned trademark "WONDERFRONT MUSIC AND ARTS FESTIVAL" and/or "WONDERFRONT FESTIVAL" as further described in Attachment C.

13. SEAPORT VILLAGE MAINTENANCE RESPONSIBILITY AND COST ALLOCATION

- a. Because of the anticipated festival footprint, the District anticipates there may be a unique level of impact to the Premises at Seaport Village ("Premises") and other District properties. Therefore, Event Organizer hereby agrees that the Premises and other District properties are in good condition and Event Organizer will take good care of the Premises, appurtenances, and other District properties, including any personal property belonging to District. Event Organizer shall, at Event Organizer's sole cost and expense, keep and maintain the Premises, appurtenances, and other District properties and any personal property of the District in good and sanitary condition and repair during the full duration of the Event Organizer's permitted period of use of Premises and other District properties for Event. Event Organizer hereby agrees to reimburse District for any and all costs, expenses, and fees incurred by District at the Premises and other District properties required to repair or restore damages to the Premises and other District properties resulting from the Event. Additional requirements will be outlined in the use and permitting documents

requiring the Event Organizer to keep and maintain District properties in good and sanitary condition and repair during the full duration of the Event Organizer's permitted period of use and to reimburse District for any and all costs, expenses, and fees incurred by District required to repair or restore damages to the property resulting from Event Organizer's use of the Premises and other District properties for Event.

- b. A representative of the District, or its designee, and Event Organizer shall complete at minimum, one (1) pre-event site inspection and one (1) post-event site inspection to identify any damages sustained during the Event Organizer's use of the Premises and other District properties for Event. Event Organizer agrees that it is solely responsible to repair and restore any damages to the Premises other District properties identified by the District during the Post-Event Inspection to the condition that existed at the time of the Pre-Event Site Inspection within thirty (30) days after the final permitted Event day. Required repairs and restoration to the Premises may include but are not necessarily limited to restoring and/or replacing plants and other landscape materials; repairing broken lights and/or sprinkler heads; and repairing asphalt, concrete, and other hardscape areas.
- c. The District shall at no time during the term of this Agreement be required to make any improvements or repairs to the Premises other District properties. If any repairs are made by District, to be determined in its sole discretion, during Event for damage resulting from the Event Organizer's use of the Premises other District properties for Event, the cost of labor and materials will be billed by the District, or its designee, to Event Organizer after the final permitted Event day and Event Organizer shall reimburse the District for its costs within 30 days of billing.
- d. Event Organizer hereby agrees to reimburse District for any and all costs, expenses, and fees incurred by District at the Premises for additional services required as a result of the of the Event's impact on the daily operational needs of the Premises. The service costs, expenses, and fees to be reimbursed include, but are not limited to, utilities (i.e., water, electrical) janitorial, pressure washing, maintenance, and security services.

ATTACHMENT B
POST-EVENT ECONOMIC IMPACT REPORT
San Diego Unified Port District

1. POST-EVENT ECONOMIC IMPACT REPORT REQUIREMENTS: At its sole cost and expense, Event Organizer shall retain an independent consultant, approved by the District in its reasonable discretion, to prepare a Post Event Economic Impact Report ("Post Event Report") specific to the region and District tidelands. This report shall include an overview of the return on the District's investment in the Event and must include detailed documentation and data of the Event activities, the scope of which is set forth below. The Post Event Report shall be delivered to the District on March 20, 2023, unless an alternate date is authorized in writing by District in its sole discretion. The Post-Event Report shall include, at a minimum, the following data and information related to Event:

- a. Summary of Event's operating budget, including private sponsorship funding and itemized funding investments in Event made by regional agencies and/or municipalities;
- b. Documented direct and indirect economic impact of Event on the District, the city, and the region;
- c. Documented room nights at District tenant and non-tenant hotels attributable to the Event;
- d. Summary of local business and District tenant utilization by the Event Organizer in support of Event operations;
- e. Event Organizer's complete Ticket Records, including gross ticket sales data for all tickets sold. Ticket Record data shall be aggregated, broken down by day, and broken down by ticket type. In addition to tickets that vary by duration and level, ticket type data shall include tickets sold, as well as complimentary tickets and sponsor tickets set aside by the Event Organizer;
- f. Documented total and daily Event attendance numbers;
- g. Documented demographic data about Event attendees, including attendee residential city and/or zip code;
- h. Detailed media activities and promotional impact data, including value of individual components; and
- i. Detailed description of the methodologies used to obtain all the foregoing quantitative and qualitative data and information.

The requirements set forth in this Attachment B shall survive the expiration or earlier termination of this Agreement.

ATTACHMENT C
WONDERFRONT TRADEMARK USAGE
San Diego Unified Port District

1. LICENSED RIGHTS

- a. The parties acknowledge that District is the exclusive owner of the trademark WONDERFRONT. The United States trademark application for WONDERFRONT (Ser. No. 88282951) (the "Application"), and all rights associated therewith. These rights include the District's common law rights in WONDERFRONT based on its use of the WONDERFRONT trademark in connection with various goods and services since at least as early as November 1, 2017, including but not limited to those listed in the Application. District hereby grants Event Organizer, subject to all the terms and conditions of this Agreement, a non-transferable license to use District's trademark WONDERFRONT only in connection with, and in reference to, the Wonderfront Music and Arts Festival event in San Diego, California which is the subject of this Agreement, and for no other purposes whatsoever ("Licensed Rights"). Such license shall expire upon termination of this Agreement as set forth in Agreement Section 1.
 - b. Furthermore, Event Organizer agrees not to object to or take any action contesting or in any way impairing District's use and/or registration of any mark containing or comprising of "WONDERFRONT" for any goods and/or services now or in the future as long as said use does not consist of the logos and proprietary property of Event Organizer. District acknowledges that Event Organizer shall be the exclusive owner of the term and/or trademarks WONDERFRONT MUSIC AND ARTS FESTIVAL and/or WONDERFRONT FESTIVAL.
- 2. STANDARDS:** Event Organizer agrees that all Event Organizer goods and services offered and sold under the WONDERFRONT trademark shall be of quality and design not contrary to the values and standards of the District.
- 3. INSPECTION:** Event Organizer agrees to cooperate with District on an ongoing basis to monitor and evaluate Event Organizer's use of the WONDERFRONT trademark and quality of Event Organizer's goods and services provided thereunder.
- 4. PROMOTIONAL MATERIALS:** Event Organizer agrees that all advertising and promotional materials, including but not limited to packaging, labeling, fliers, social media posts, giveaway items, and collateral materials that make use of the WONDERFRONT trademark will comply with all the terms and conditions of this Agreement.
- 5. DISTRICT'S USE OF WONDERFRONT FESTIVAL OR WONDERFRONT MUSIC & ARTS FESTIVAL:** Without limiting any of its rights to the trademark WONDERFRONT, District agrees not to use or explicitly grant rights to any third party to use the specific phrase WONDERFRONT FESTIVAL or WONDERFRONT MUSIC & ARTS FESTIVAL except in connection with, or in reference to, an event put on by Event Organizer or otherwise with the consent of Event Organizer. Event Organizer shall not unreasonably withhold its consent to allow District to use the exact phrase WONDERFRONT FESTIVAL or WONDERFRONT MUSIC & ARTS FESTIVAL. This consent and request must take into the consideration the potential confusion of the use of WONDERFRONT FESTIVAL and WONDERFRONT MUSIC & ARTS FESTIVAL with Event Organizer's exclusive use and actual event. If District requests consent in writing and Event Organizer does not provide a response within thirty (30) days in writing, then consent to use WONDERFRONT FESTIVAL shall be deemed granted. This paragraph shall be void if Event Organizer dissolves, goes out of business, or otherwise ceases to operate or exist.

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. |
|--|--|

| 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