

**AGREEMENT BETWEEN
SAN DIEGO UNIFIED PORT DISTRICT
and
H.P. PURDON AND COMPANY, INC.
for
PORT OF SAN DIEGO BIG BAY BOOM JULY 4TH FIREWORKS SHOW
AGREEMENT NO. 273-2018ND**

The parties to this Agreement are the SAN DIEGO UNIFIED PORT DISTRICT, a public corporation (District) and H.P. PURDON AND COMPANY, INC., a California Corporation (Service Provider).

Recitals:

District and Service Provider desire to enter into an agreement for promotional services at Port of San Diego Big Bay Boom July 4th Fireworks Show.

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 January 7, 2019 and shall terminate on December 31, 2019, 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 \$190,000.00, and provide \$140,000.00 in District Services for a maximum expenditure under this Agreement not to exceed \$330,000.00. Said

expenditure shall include without limitation all sums, charges, reimbursements, costs and expenses provided for herein. Service Provider shall not be required to perform further services after compensation has been expended. In the event that the Service Provider anticipates the need for services in excess of the maximum Agreement amount, the District shall be notified in writing immediately. District must approve an amendment to this Agreement before additional fees and costs are incurred.

- b. **Progress Documentation.** At the District's request, Service Provider shall provide District progress reports in a format and on a schedule as District directs. Progress reports shall include a description of work completed, cumulative dollar costs incurred, anticipated work for the next reporting period, percentage of work complete, and the expected completion date for remaining work. The report shall identify problem areas and important issues that may affect project cost and/or schedule. The report shall present actual percent completion versus planned percent completion.

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 project 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; provided, however, all Service Provider's sub-contractors shall be subject to prior written approval by District. 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 as provided for in this Agreement **or related to the 2019 "Port of San Diego Big Bay Boom July 4th Fireworks Show"**, 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, Advertising Injury, and Products/Completed Operations) coverages, with coverage at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence Form CG 0001) with limits no less than one million dollars (\$1,000,000) per Occurrence and two million dollars (\$2,000,000) Aggregate for bodily injury, personal injury and property damage.

(a) The deductible or self-insured retention on this Commercial General Liability shall not exceed \$5,000 unless District has approved of a higher deductible or self-insured retention in writing.

(b) The Commercial General Liability policy shall be endorsed to include the District; its agents, officers and employees as additional insureds in the form as required by the District. An exemplar endorsement is attached (Exhibit 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) Commercial Automobile Liability (Owned, Scheduled, Non-Owned, or Hired Automobiles) written at least as broad as Insurance Services Office Form Number CA 0001 with limits of no less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
 - (3) Workers' Compensation, statutory limits, is required of the Service Provider and all sub-consultants (or be a qualified self-insured) under the applicable laws and in accordance with "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Employer's Liability, in an amount of not less than one million dollars (\$1,000,000) each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee. This policy shall be endorsed to include a waiver of subrogation endorsement, where permitted by law.
 - (4) Umbrella or Excess Liability insurance with limits no less than one million dollars (\$1,000,000) per occurrence and aggregate. This policy must provide excess insurance over the same terms and conditions required above for the General Liability, Automobile Liability and Employer's Liability policies.
- b. It is understood by Service Provider and the District that Service Provider will contract with a commercial entity to provide transportation services from an offsite parking facility to Harbor Island before and after the event on July 4th, 2019. The hired transportation company will provide evidence

of commercial automobile liability insurance I the amount of two million dollars (\$2,000,000) per accident for bodily injury and property damage with the District name as Additional Insured.

- c. 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.
- d. 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.
- e. 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:

H.P. "Sandy" Purdon
H.P. Purdon and Company, Inc.
747 Golden Park Ave
San Diego, CA 92106-2912
Tel: 619-822-1177
Email: bigbayboom@gmail.com

- 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

**H.P. PURDON AND COMPANY,
INC.**



Yvonne Wise
Director, Waterfront Arts & Activation

H. P. Purdon
Producer

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

Event Date: July 4, 2019

I. SERVICES TO BE PROVIDED BY SERVICE PROVIDER

In return for a sponsorship investment of \$190,000 in District funding and \$140,000 in District services, the Service Provider agrees to do the following:

A. EVENT SERVICES:

- a. A show titled "The Port of San Diego Big Bay Boom July 4th Fireworks Show" consisting of fireworks that shall be:
 - Launched simultaneously from four (4) locations in San Diego Bay: near Seaport Village, the Embarcadero, Harbor Island, and Shelter Island;
 - Synchronized to music programming from Service Provider's broadcast partner, iHeartMedia; and
 - Launched as part of a show that is in full conformance with the requirements set forth in San Diego Unified Port District Code, Article 14, Fireworks Display Ordinance. Service Provider shall secure from the District a Fireworks Display Event Permit prior to performance of The Port of San Diego Big Bay Boom July 4th Fireworks Show. The current version of the San Diego Unified Port District Code, Article 14, Fireworks Display Ordinance is included as Attachment C.
- b. Service Provider agrees to prepare the "Big Bay Boom July 4th Fireworks Show" to last between fifteen (15) minutes and eighteen (18) minutes and to use commercially reasonable efforts to ensure that this minimum fifteen (15) minute duration is met.
- c. In the event that the 2019 Big Bay Boom July 4th Fireworks Show lasts less than fifteen (15) minutes despite Service Provider's commercially reasonable efforts, Service Provider shall, at the District's request, take commercially reasonable steps at Service Provider's sole expense to enforce Service Provider's contractual rights and remedies resulting from the failure of the Big Bay Boom July 4th Fireworks Show to last a minimum of fifteen (15) minutes to the extent Service Provider has such rights and remedies. After deduction for Service Provider's actual third-party costs of enforcing such rights and remedies, Service Provider shall pay the remaining proceeds to the District up to the sum of \$190,000 plus the value of District services provided hereunder, which are not to exceed \$140,000 for the affected show.

B. PROMOTIONAL SERVICES:

a. Marketing & Advertising Inclusion

- Opportunity to align all artwork and all other marketing opportunities to District branding guidelines with customized artwork included in all materials.
- Visual materials:
 - District logo and 2019 art used in printed event materials including flyers, posters, stickers, barge sheets, and postcards;
 - District logo and 2019 art used in digital event materials including banners, memes, cover art, background art, and e-headers; and
 - District logo and 2019 art used in all print advertising including newspaper and magazine ads.
- Digital materials:
 - District logo and 2019 art on website with link to the District as follows: <https://www.portofsandiego.org/recreation/tidelands-activation-program.html>
- Social Media:
 - Facebook posts mentioning District sponsorship tagging @portofsandiego, #Wonderfront #BigBayBoom, #SanDiegoBay, #GoSanDiego and/or any handles determined and provided by the District
- Broadcast Media:
 - Mention District as sponsor in radio spots on the stations operated by Service Provider's broadcast partner; and
 - Mention District as sponsor and inclusion of 2019 art in television spots on the Service Provider's television advertising outlet(s).

b. Communications & Publicity Inclusion

- Press Releases/Media Relations:
 - Include District's TAP boilerplate with link to District's TAP page on Service Provider's website: www.bigbayboom.com;
 - Include District messaging in media speaking points; and
 - Include District spokesperson in interview opportunities.
- Mention District as sponsor and inclusion of TAP boilerplate in event specific e-blast distribution.

c. On-Site Inclusion

- Prominent District banner placement at all viewing locations (placed by District);
- Opportunity to have District spokesperson participate in interviews;
- Opportunity to distribute District's promotional items and marketing materials at all viewing locations; and
- Other onsite activities tailored to event.

II. SERVICES TO BE PROVIDED BY DISTRICT

As part of the sponsorship investment of \$190,000 in District funding and \$140,000 in District services, the District shall also provide promotional services as follows:

A. Marketing & Advertising

- Customized graphic design of 2019 artwork for all media outlets in alignment with District brand;
- Inclusion of event on District website;
- Event sharing/co-hosting or creation on Facebook with link back to event organization website for more information or ticket purchase as agreed upon; and
- Social media mentions on Facebook (44,000 fans) and Twitter (28,000 followers) tagging handles provided by event organizer, using #Wonderfront, #BigBayBoom, #SanDiegoBay and/or #GoSanDiego.

B. Communications & Publicity

- Mention in list of sponsored Tidelands Activation Program events press release sent out by the District annually;
- Multiple event specific press release showcasing the District's title or presenting role for major events along with logistics information explaining to the public how to navigate event;
- Inclusion in e-blast distributions to District newsletter subscribers Community Events, Recreation & Tours list (5,500 subscribers) and/or Headlines list (2,500 subscribers); and
- Participation in drive-market publicity pitches.

III. The parties acknowledge and agree the total amounts of cash and services provided by District may not equal the sums of cash and services granted in the Agreement, specifically cash and services. In such case, there is not a breach of the Agreement by the District. In the event the applicant disputes terms of the 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.

IV. To ensure compliance with the sponsorship fulfillment requirements, Service Provider will forward to District proof that it provided the above-mentioned promotional services and submit all of the following electronic materials by September 30, 2019:

- A completed Tidelands Activation Program Wrap-Up form (located in the Event Organizer Toolkit on District's website); and
- Promotional samples such as event photographs, press releases, social media posts, advertisements, calendar notices, or other promotional materials.

Submittals shall be emailed to TAP@portofsandiego.org attention of: Terrie Eichholz, Waterfront Arts & Activation.

V. In the event that Service Provider satisfactorily completes the Fireworks Show within the parameters specified above but fails to satisfactorily complete the Promotional Services specified in Attachment A section I. A., Service Provider shall compensate the District in an amount commensurate with the value of the non-performed services but not to exceed \$50,000. 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.

VI. 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 storm drain 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.

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

1. COMPENSATION

- a. For the sponsorship of the services to be performed under this Agreement, District shall pay Service Provider 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 will be performed; and
 - (b) Description of the work to be performed.

2. INVOICING

- a. **Payment Documentation.** Service Provider shall include the following information on each invoice submitted for payment by District.
 - (1) Agreement No. 273-2018ND
 - (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) Date of invoice
 - (4) 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 of: 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. In the event that Service Provider fails to provide services in conformance with this Agreement, the District will be entitled to a complete refund of District payment(s) and full compensation for District Services. Any dispute regarding the sufficiency of the Service Provider's performance and the

amount owed by Service Provider to the District shall be resolved in accordance with Agreement Section 18, Dispute Resolution.

- e. Service Provider shall submit the following items via email by September 30, 2019:
 - (1) Completed Tidelands Activation Program Wrap-Up form; and
(can be found in the Event Organizer Toolkit on District's website)
 - (2) promotional samples, as listed in Attachment A.
- f. Payment will be made to Service Provider after receipt of a proper Invoice, which may be submitted following complete execution of the Agreement.

**ATTACHMENT C
ARTICLE 14
FIREWORKS DISPLAY ORDINANCE**

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SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2892

**ORDINANCE ESTABLISHING THE "SAN DIEGO
UNIFIED PORT DISTRICT FIREWORKS DISPLAY
EVENT ORDINANCE" AS ARTICLE 14 OF THE
SAN DIEGO UNIFIED PORT DISTRICT CODE TO
GOVERN EXISTING AND PROPOSED NEW
FIREWORKS DISPLAYS**

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the Legislature in 1962 pursuant to Harbors and Navigation Code Appendix I (Port Act); and

WHEREAS, Sections 4, 21, 35, 55, 56 and 87 of the Port Act grant the District broad general police powers, including the ability to enact ordinances to protect, preserve and enhance physical access to the bay, the natural resources of the bay, and the quality of water in the bay; and

WHEREAS, Section 55(a) of the Port Act requires the Board of Port Commissioners (BPC) to make and enforce all necessary rules and regulations governing the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the territorial limits of the District; and

WHEREAS, Section 55(b) of the Port Act requires the BPC to regulate and control the anchoring, mooring, towing and docking of all vessels; and

WHEREAS, Section 55(c) of the Port Act authorizes the BPC to establish and maintain a harbor police and harbor fire protection within the territorial limits of the District; and

WHEREAS, Section 56 of the Port Act requires the BPC to make and enforce such local police and sanitary regulations relative to the construction, maintenance, operation, and use of all public services and public utilities in the District, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation therein as are now vested in the District; and

WHEREAS, it is necessary for the District to regulate fireworks display events within San Diego Bay or the Imperial Beach oceanfront that require a discretionary action by the District or that are operated by the District's tenants in order to encourage and promote commerce, navigation, fisheries, and recreation in and through its jurisdiction; and

WHEREAS, the regulations included in this Ordinance are adopted pursuant to the authority granted to the District by the Port Act and the Port District Code to regulate the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the territorial limits of the District, to regulate and control the anchoring, mooring, towing and docking of all vessels, and to enact ordinances to protect, preserve and enhance physical access to the bay, the natural resources of the bay, and the quality of water in the bay; and

WHEREAS, on May 25, 2017, the District has considered and certified a Final Environmental Impact Report pursuant to the California Environmental Quality Act, State CEQA Guidelines, and District procedures relative to the adoption of this Ordinance; and

WHEREAS, the District Clerk has caused notice to be duly given of a public hearing in this matter in accordance with law, as evidenced by the affidavit of publication and affidavit of mailing on file with the District Clerk; and

WHEREAS, the District has considered all comments received at the public meeting on May 25, 2017 prior to adoption of this Ordinance; and

WHEREAS, the District's approval of this Ordinance reflects the BPC's independent judgement and analysis.

NOW, THEREFORE, the Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. That the San Diego Unified Port District Code is amended to add Article 14 regulating fireworks display events requiring a discretionary approval from the San Diego Unified Port District as follows:

ARTICLE 14 - FIREWORKS DISPLAY ORDINANCE

Section 14.01 – TITLE

The title of this article shall be known as the "San Diego Unified Port District Fireworks Display Event Ordinance."

Section 14.02 - PURPOSE

The purpose of this article is to establish a defined set of requirements and procedures by which the District and users of the District tidelands may continue to enjoy fireworks displays in and around San Diego Bay and the Pacific Ocean near Imperial Beach. Further, it is the intent of this article to protect the health,

safety and welfare of persons, property and the environment within the District's jurisdiction and to comply with federal, state and local laws and regulations governing the handling, possession, storage, loading, staging, launching and detonating of fireworks.

Section 14.03 – DEFINITIONS

For purposes of this article, certain words and phrases not otherwise defined in District Code section 0.03 shall be defined as follows, unless the context requires a different meaning:

"Alternative fireworks" means fireworks produced with new pyrotechnic formulas that replace perchlorate with other oxidizers and propellants that burn cleaner, produce less smoke and reduce pollutant waste loading to surface waters.

"Applicant" means a person who submits an application to the District for a permit pursuant to this article.

"Application" means the District's written form to be submitted by a person requesting a permit pursuant to this article.

"Barge" means a water vessel from which fireworks are launched or detonated.

"Best Management Practices" or "BMPs" means schedules of activities, prohibitions of practices, pollution prevention and educational practices, maintenance procedures, tools and other management practices used to prevent or reduce the discharge of pollutants directly to receiving waters to the maximum extent practicable. BMPs may include any type of pollution prevention and pollution control measure that can help to achieve compliance with this article.

"District" means the San Diego Unified Port District.

"District General Counsel" means the General Counsel of the District or her/his designee.

"Executive Director" means the Executive Director (President/CEO) of the District or her/his designee.

"Fireworks" means any device containing chemical elements and chemical compounds capable of burning independently of the oxygen of the atmosphere and producing audible, visual, mechanical, or thermal effects which are useful as pyrotechnic devices or for entertainment, including aerial shells, low-level comet or multi-shot devices or ground-level displays. The term "fireworks" includes, but is not limited to, devices designated by the manufacturer as fireworks, torpedoes, skyrockets, roman candles, rockets, sparklers, party poppers, paper caps, chasers, fountains, smoke sparks, aerial bombs, and fireworks kits.

“Fireworks Display Event” means the handling, possession, storage, loading, staging, launching or detonating of fireworks on the land or waters within the District’s jurisdiction for viewing by the public or any group of persons exceeding twenty-five (25) in number.

“Fireworks Operator” means a pyrotechnic operator licensed by the State of California, who by examination, experience and training has demonstrated the required skill and ability in the use and discharge of fireworks as authorized by the license granted, and who is responsible for supplying, staging, launching or detonating the fireworks used in a fireworks display event.

“Fireworks Organizer” means a person who proposes to conduct a fireworks display event and who is responsible for obtaining the funding and approvals for a fireworks display event and for contracting with a fireworks operator to produce a fireworks display event.

“Fourth of July Fireworks Display Event” means a fireworks display event that occurs annually on the Fourth of July to express patriotism and civic pride and to celebrate the signing of the Declaration of Independence of the United States of America.

“Non-Fourth of July Fireworks Display Event” means a fireworks display event that occurs on a date other than the Fourth of July.

“Operation Clean Sweep” means the annual cleanup event sponsored by the San Diego Port Tenants Association and District, among others, where volunteers remove trash and debris from San Diego Bay.

“Permit” means the District-issued authorization for an applicant to conduct a fireworks display event pursuant to this article.

“Person” means an individual, association, partnership, nonprofit organization, corporation, limited liability company, trustee, municipality, public agency or other legal entity, or the agent or employee thereof.

“Pounds” means the net explosive weight of fireworks.

“Salute” means an aerial shell as well as other pyrotechnic items whose primary effects are loud noise generated by detonation and flash of light.

“San Diego Bay Fourth of July Fireworks Display Event” means the annual fireworks display event which occurs on the Fourth of July at up to four (4) locations in northern San Diego Bay and is currently known as the “Big Bay Boom.” The San Diego Bay Fourth of July Fireworks Display Event will be referred to in this article as the Big Bay Boom.

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"San Diego Water Board" means the California Regional Water Quality Control Board for the San Diego Region.

"San Diego Water Board General Permit" means California Regional Water Quality Control Board for the San Diego Region Order No. R9-2011-0022/NPDES No. CAG999002, General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Firework Pollutant Waste Discharges to Waters of the United States, including any updates and amendments thereto.

"Sponsor" means a person who contributes funds, services, or other forms of assistance to a fireworks organizer in support of a fireworks display event.

Section 14.04 – PROHIBITIONS

(a) It shall be unlawful for any Person to handle, possess, store, load, stage, launch or detonate Fireworks on land or water within District jurisdiction without first having obtained a Permit from the Executive Director as provided in this section. By signing said Permit, each Permit recipient acknowledges and agrees to comply with all of the applicable terms and conditions that may be specified in such Permit and this article.

(b) Any Person who receives a discretionary lease, permit, license or other entitlement for use or a contract, grant, subsidy, loan or other form of financial assistance from the District in connection with a Fireworks Display Event shall also obtain a Permit from the Executive Director as provided in this article. By signing said Permit, each Permit recipient acknowledges and agrees to comply with all of the applicable terms and conditions that may be specified in such Permit and this article.

Section 14.05 - PERMITS - APPLICATION

Whenever the privilege of doing any of the acts hereinbefore enumerated in this article requires obtaining a Permit from the Executive Director, the following procedure shall be followed:

(a) An application for a Permit shall be filed with the District not less than sixty (60) days before the date on which the Fireworks Display Event is proposed to occur.

(b) The application shall be in writing, in a form approved by the District, and shall include, at minimum, the following information: the Person who proposes to handle, possess, store, load, stage, launch or detonate Fireworks, including if applicable the Fireworks Organizer, Fireworks Operator and Sponsor of the Fireworks Display Event; the date, time and duration of the proposed Fireworks Display Event; the location(s) of the proposed Fireworks Display Event, including the loading, staging and launching sites; the total number of

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pounds, shell sizes and types of Fireworks to be used; and the proposed event transportation and parking management plan for the Fireworks Display Event.

(c) The application shall include copies of the Applicant's Notice of Intent for coverage under the San Diego Water Board General Permit, the San Diego Water Board's Notice of Enrollment of the proposed Fireworks Display Event under said General Permit, and the Best Management Practices Plan approved by the San Diego Water Board for the proposed Fireworks Display Event.

(d) When the application is deemed complete, the Executive Director shall review the application and determine whether the proposed Fireworks Display Event complies with all of the requirements of section 14.07 (Permit – Conditions of Approval) of this article. If the proposed Fireworks Display Event complies with all of the requirements of section 14.07 (Permit – Conditions of Approval) of this article, the Executive Director shall issue a Permit.

(e) Each Permit issued shall state the date, time and location of the Fireworks Display Event for which it is issued, the name of the Person to whom it is issued and all mandatory conditions upon which the Permit is given.

(f) An application for a permit for a Fireworks Display Event at a location not identified in Section 14.07(a) of this article may be granted by the Executive Director provided that (i) environmental review for the proposed Fireworks Display Event has been completed and approved or certified by the District as required by the California Environmental Quality Act, Public Resources Code § 21000, et seq. prior to issuance of a permit and (ii) the applicant has obtained all other permits and approvals as required by law, including without limitation approvals and permits required under the California Coastal Act, Public Resources Code § 30000, et seq.

Section 14.06 - PERMITS – PUBLIC NOTICE

(a) Within five (5) business days after the issuance of a Permit pursuant to this article, the Executive Director shall give public notice of the issuance of such Permit by posting a copy of the Permit on the District's website.

Section 14.07 - PERMITS - CONDITIONS OF APPROVAL

All permits issued by the Executive Director shall be subject to the following terms and conditions:

(a) Location of Fireworks Display Events.

1. Fourth of July Fireworks Display Events shall occur only at the following locations:

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A. Big Bay Boom, at up to four (4) locations in northern San Diego Bay;

B. Fourth of July Imperial Beach Fireworks, at one (1) location along the Imperial Beach Pier;

C. Fireworks Over Glorietta Bay, at one (1) location in Glorietta Bay;

D. Chula Vista Fourth of July, at one (1) location adjacent to the Chula Vista Bayfront; and

E. National City Fourth of July, at one (1) location adjacent to the National City Bayfront.

2. Non-Fourth of July Fireworks Display Events shall occur only at the following locations:

A. National Steel and Shipbuilding Company (NASSCO) shipyard, not to exceed two (2) displays per year along NASSCO Pier 12;

B. U.S.S. Midway Museum, not to exceed twenty-three (23) displays per year on or adjacent to the U.S.S. Midway Museum;

C. San Diego Symphony Summer Pops Concerts, not to exceed twenty (20) displays per year adjacent to Embarcadero Marina Park South;

D. Our Lady of Rosary Church Annual procession, not to exceed one (1) display per year along Harbor Drive and at end of Grape Street Pier; and

E. Chula Vista Bayfront, not to exceed two (2) displays per year adjacent to the Chula Vista Bayfront.

(b) Duration of Fireworks Display Events.

1. Fourth of July Fireworks Display Events shall not exceed twenty (20) minutes in duration.

2. Non-Fourth of July Fireworks Display Events shall not exceed ten (10) minutes in duration.

(c) Size of Fireworks Display Events.

1. Fourth of July Fireworks Display Events:

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A. Big Bay Boom, not to exceed a cumulative 5,342 pounds of fireworks with shell sizes not to exceed 10 inches;

B. Fourth of July Imperial Beach Fireworks, not to exceed 456 pounds of fireworks with shell sizes not to exceed 10 inches;

C. Fireworks Over Glorietta Bay, not to exceed 397 pounds of fireworks with shell sizes not to exceed 10 inches;

D. National City Fourth of July, not to exceed 400 pounds of fireworks with shell sizes not to exceed 8 inches; and

E. Chula Vista Fourth of July, not to exceed 400 pounds of fireworks with shell sizes not to exceed 8 inches.

2. Non-Fourth of July Fireworks Display Events:

A. NASSCO shipyard, not to exceed 281 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 439 pounds of fireworks per year;

B. U.S.S. Midway Museum, not to exceed 235 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 1,759 pounds of fireworks per year;

C. San Diego Symphony Summer Pops Concerts, not to exceed 95 pounds of fireworks per display with shell sizes not to exceed 6 inches, or a cumulative total of 1,498 pounds of fireworks per year;

D. Our Lady of Rosary Church Annual procession, not to exceed 18 pounds of fireworks with shell sizes not to exceed 6 inches; and

E. Chula Vista Bayfront, not to exceed 114 pounds of fireworks per display with shell sizes not to exceed 8 inches, or a cumulative total of 228 pounds of fireworks per year.

(d) Fireworks Chemical Composition and Packaging.

1. Chemical Composition.

A. The Big Bay Boom Fourth of July Fireworks Display Event shall use Fireworks which contain no more than 0.32% copper (Cu) per pound of explosive firework material, unless the Applicant establishes in writing and to the satisfaction of the Executive Director that the total copper emissions from the proposed Big Bay Boom Fireworks Display Event will not exceed seventeen (17) pounds. Fireworks which do not conform to the foregoing

requirement, but were lawfully purchased prior to the effective date of this article, may be used for a period of six months after the effective date of this article.

B. All Fireworks Display Events shall use Alternative Fireworks produced with pyrotechnic formulas which replace perchlorate with other oxidizers and propellants that burn cleaner, produce less smoke and reduce pollutant waste loading to surface waters, unless the Applicant establishes in writing and to the satisfaction of the Executive Director that such Alternative Fireworks are not commercially available.

2. Packaging.

A. Prior to commencement of a Fireworks Display Event, the Fireworks Operator shall remove and properly dispose of all packaging, wrapping and labels (excluding labels mandated by State or Federal laws) from all Fireworks to be used in the event.

B. Fireworks that include a plastic outer casing or non-biodegradable inner components that make up more than five (5) percent of the mass of the shell or device are prohibited.

(e) Protection of Sensitive Species and Habitat. The following conditions shall apply to Fireworks Display Events that occur between February 15 and September 15 (i.e., avian breeding season) and are located less than one (1) mile from any federally or state-listed avian species nesting colonies:

1. Location. Fireworks Display Events shall be located not less than one (1) mile from any federally or state-listed avian species nesting colony unless the maximum size of shells used in the event is limited to eight (8) inches.

2. Salutes. Fireworks Display Events shall not use concussion type, non-color shells such as "salutes" or "reports" during the initial twenty-five percent (25%) of the duration of any display (e.g., within the first 5 minutes of a 20-minute display).

3. Security. For Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) that occur within one-half mile of unprotected (i.e., unfenced) federally or state-listed nesting colonies or habitat areas, the Fireworks Organizer shall provide a minimum of two professional security guards to direct persons away from and to discourage trespass into sensitive nesting areas or habitat during such displays. In addition, the fireworks organizer shall provide security patrols of the water area to enforce the existing restrictions on access to unauthorized areas during such fireworks display events in the South Bay.

4. Signage. For Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) that occur within one half-mile of nesting colonies or habitat areas for federally or state-listed species, the Fireworks Organizer, in cooperation with the District, shall post temporary signage along primary access points to sensitive nesting colonies and habitat areas to identify safe viewing locations, to educate visitors on locations of sensitive wildlife habitats, to prevent viewers from trespassing into sensitive areas and to encourage appropriate viewing behavior.

5. Education. Beginning not less than seven (7) days before Fireworks Display Events with public viewing areas (i.e., parks, promenades, publicly accessible piers, and other similar facilities) located within one-half mile of federally or state-listed nesting colonies or habitat areas, the Fireworks Organizer shall implement a public education program using daily announcements on social media, press releases, and information posted at parks, boat launch facilities, marinas, yacht clubs and other viewing locations, to educate potential viewers regarding appropriate viewing and boat docking areas, to discourage trespass into sensitive wildlife habitat, and to remind viewers of appropriate viewing behavior in and near sensitive nesting colonies and habitat areas (e.g., appropriate disposal of trash, prevention of illegal fireworks, and safe boating procedures).

(f) Best Management Practices. Fireworks Display Events shall implement the following BMPs for Fireworks Display Event preparation, discharge and clean-up:

1. Fireworks Display Events on barges shall be set up at a loading facility in accordance with the requirements and under the supervision of the municipal fire department with jurisdiction over the event. Barges shall be inspected for leaks and other potential safety issues. Idling time for delivery trucks and loading equipment shall not exceed three (3) minutes and all such trucks and equipment shall be shut down when not in use.

2. Fireworks shall be brought to the barge and loaded in their U.S. Department of Transportation (DOT)-approved shipping cartons. Fireworks shall be encased in paper to prevent spillage of loose compounds. All packaging material and debris, including fuses, wires, shipping cartons and other wrapping, shall be properly disposed of in trash receptacles as the Fireworks Display Event is set up. Unless prohibited by the municipal fire marshal with jurisdiction over the Fireworks Display Event, barges shall be equipped with a fire-retardant debris barrier that extends six feet (6') in height, with openings no larger than ¼ inch, around the perimeter of the Fireworks launch area to contain debris.

3. Wires from the electric match placed in the Fireworks fuse shall be secured to avoid strain (such as wrapped around nails that are on the racks, tied to the racks, or tied to the mortar) to prevent wires from being pulled

out and falling into the water. Wire cables connected to computer firing equipment modules shall also be properly secured to ensure they remain on the barge during the Fireworks Display Event.

4. Once the Fireworks are prepared for launch, all trash and debris shall be removed from the barge while it is at the loading facility and prior to the barge being moved into position. No loose material shall be allowed on the barges during the Fireworks Display Event.

5. Following the Fireworks Display Event and upon expiration of any safety period required by the municipal fire marshal with jurisdiction over the Fireworks Display Event, the Fireworks Operator shall pick up all loose material on the barge, including all trash and debris resulting from the discharge of the Fireworks, to prevent it from being discharged into the water while the barge is underway.

6. Upon return to the loading facility, the Fireworks Operator shall clean the barge of all Fireworks related material and shall photograph and properly dispose of all Fireworks trash and debris. Unexploded Fireworks and related components shall be collected and disposed of by the Fireworks Operator in accordance with all applicable regulations. Fireworks Operators shall photograph the barge prior to and after cleaning.

7. Following the Fireworks Display Event and upon expiration of any safety period required by the municipal fire marshal with jurisdiction over the event, the Fireworks Organizer shall provide cleanup crews and boats to conduct sweeps of the fireworks detonation zone to gather any floating debris from spent Fireworks using hand held fishnets, pool skimmers, or other similar equipment.

8. The morning after the Fireworks Display Event, the Fireworks Organizer shall conduct another sweep of the fireworks detonation zone and quays, piers and docks adjacent to the fireworks detonation zone to remove Fireworks trash and debris. The Fireworks Organizer shall collect, bag, weigh and photograph all trash and debris collected prior to its disposal.

9. The morning after the Fireworks Display Event, the Fireworks Organizer shall perform a cleanup of the shoreline using crews of not fewer than five persons per barge on the shoreline adjacent to each barge location. Each crew member shall be equipped with trash bags and a trash grabber. The Fireworks Organizer shall collect, bag, weigh, and photograph all trash and debris collected prior to its disposal.

10. Within ten (10) business days after a Fireworks Display Event, the Fireworks Organizer shall provide the Executive Director with the photographs and written evidence of the weight of the Fireworks trash and debris

collected pursuant to subdivisions (5) through (9) above. If the dry weight of the Fireworks trash and debris collected is less than fifty percent (50%) of the net weight of fireworks launched during the Fireworks Display Event, the Fireworks Organizer shall offset the remaining amount by providing a crew of not fewer than two (2) persons for each barge or other launch site used in the Fireworks Display Event to participate in the next scheduled "Operation Clean Sweep" or other District-sponsored clean-up event prior to the end of the calendar year to recover trash and debris from San Diego Bay and/or the Imperial Beach Oceanfront.

11. For all Fourth of July Fireworks Display Events and for Non-Fourth of July Fireworks Display Events which are advertised to the public, the Fireworks Organizer shall double the number of trash receptacles at major viewing areas prior to each fireworks display event; trashcans shall be emptied and parks and viewing areas shall be cleaned following the event.

(g) Eelgrass Avoidance and Mitigation. For Fireworks Display Events with launching sites located in shallow water with the potential for eelgrass to occur, fireworks barges shall be held in place by tugboats and shall not require temporary moorings. To the extent practicable, barges shall be located in unvegetated deep water channels outside of eelgrass beds. Pre-event and post-event eelgrass surveys shall be completed to identify the distribution of eelgrass to assist tug operators and to assess any impacts to eelgrass that may occur. Through a pre-event training, tug operators shall be made aware of shallow eelgrass and instructed not to use high thrust in the vicinity of eelgrass beds. If an unanticipated impact to eelgrass occurs, this impact shall be mitigated by replacing the eelgrass at a ratio determined by the California Eelgrass Mitigation Policy.

(h) Event Transportation and Parking Management Plans. For all Fourth of July Fireworks Display Events and for Non-Fourth of July Fireworks Display Events which are advertised to the public, the Fireworks Organizer shall prepare and submit an event transportation and parking management plan (ETPMP) to the Executive Director for approval as part of the Application, which shall be designed to ensure safe and convenient access to public viewing areas while limiting conflicts between transportation modes and reducing impacts on surrounding transportation facilities to the maximum extent feasible. The ETPMP shall take into account anticipated attendance, existing transportation and parking facilities, and other concurrent public events in the surrounding areas, and shall include but is not limited to the following:

1. Transportation management strategies, including but not limited to, a public awareness program, traffic management and enforcement, incident management, and public transit and alternative modes of transportation management, which shall be implemented for the Fireworks Display Event; and

2. Parking management strategies, including but not limited to a public awareness program, coordination with parking vendors, off-site parking arrangements, designated areas for taxi and rideshare pick up/drop off, promotional programs with rideshare vendors, joint event ticketing programs with public transit agencies, and expanded shuttle operations.

(i) Compliance with San Diego Water Board General Permit.

1. Prior to the Executive Director's issuance of a permit pursuant to this article, the Applicant shall demonstrate that it has applied for coverage and has been enrolled under the San Diego Water Board General Permit.

2. The Applicant shall comply with all applicable terms, conditions and Best Management Practices required by the San Diego Water Board General Permit, which shall be incorporated into and considered in the terms, conditions and Best Management Practices of any permit issued by the Executive Director pursuant to this article.

3. The Applicant shall submit to the District copies of all applications, plans, reports and other documentation required by the San Diego Water Board General Permit, including without limitation the Notice of Intent, Fireworks Best Management Practices Plan, Public Fireworks Display Log and the Public Display of Fireworks Post Event Report, within the time required for the submission of such reports to the San Diego Water Board.

(j) Compliance with Other Required Permits: Prior to the Executive Director's issuance of a Permit pursuant to this article, the Applicant shall demonstrate that it has obtained and shall comply with all other permits and approvals required by federal, state and local laws and regulations including, without limitation, such permits and approvals as are required by the United States Coast Guard, California Coastal Act, the District Code, including Article 10 (Stormwater Management and Discharge Control), and the fire marshal of any city which has jurisdiction over all or any part of the activity allowed under said Permit.

(k) Compliance with Laws: The Applicant shall comply with any and all applicable rules and regulations promulgated by the District, including without limitation the District Code, the Chula Vista Bayfront Master Plan Settlement Agreement and Natural Resources Management Plan, and with the laws, rules and regulations of the United States of America and the State of California, and of any department or agency thereof, and with the applicable ordinances, rules and regulations of any city which has jurisdiction over all or any part of the activity allowed under said Permit. The Applicant's failure to comply with any applicable law, ordinance, rule or regulation shall be cause for immediate revocation of said permit and for the denial of applications for future Permits.

(l) Indemnity: The Applicant shall indemnify and hold harmless the District, its board, officers and employees, from any and all claim of loss, liability or damage arising out of the Fireworks Display Event, including but not limited to the issuance of the District Permit, or in connection with the handling, possession, storage, loading, staging, launching or detonating of Fireworks by the Applicant, its officers, employees, contractors, agents or other representatives, howsoever caused, whether such loss, liability or damage results, either directly or indirectly, from the acts, omissions or negligence of the Applicant, its officers, employees, contractors, agents or other representatives, in connection with the handling, possession, storage, loading, staging, launching or detonation of Fireworks pursuant to said Permit.

(m) Insurance: The Applicant shall file with the Executive Director, in a form approved by the District General Counsel, a policy of public liability and property damage insurance, in such amounts and form as the Executive Director may specify, indemnifying the District, its boards, officers and employees, as their interest may appear under the terms and conditions of said Permit. The Permit shall not become effective until after such policy of insurance has been received by the District.

(n) Performance Bond: For public Fireworks Display Events with over 500 spectators the Applicant shall post a faithful performance bond, in a form approved by the District General Counsel, or in lieu thereof the equivalent in cash, in an amount sufficient in the opinion of the Executive Director to cover costs associated with the Fireworks Display Event allowed under the permit, including without limitation the costs of providing security for the protection of sensitive species and habitat, and cleaning up and removing debris, rubbish and trash. The permit shall not become effective until after such faithful performance bond, or cash in lieu thereof, has been posted with and received by the District.

(o) Mitigation Measures: All permit applications shall be reviewed by the District for consistency with the Mitigation Monitoring and Reporting Program (MMRP) from the Final Environmental Impact Report for the San Diego Bay and Imperial Beach Oceanfront Fireworks Display Events Project, as certified by the Board of Port Commissioners, and all applicable mitigation measures from the MMRP shall be identified as required conditions of the approved permit issued by the District.

Section 14.8 – GENERAL PROVISIONS

(a) Preemption. The provisions of this article do not apply where any federal or state law regulates the handling, possession, storage, loading, staging, launching or detonating of Fireworks if the federal or state law preempts local regulation or the federal or state law is more restrictive.

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(b) Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this section are severable.

(c) Cost Recovery. The Applicant shall pay a fee to the District for the cost of services and administrative acts of the District incurred in processing a permit application.

Section 14.9 – ENFORCEMENT

Any person who violates this article or who fails to comply with the terms and conditions of a permit issued pursuant to this article shall be subject to punishment in accordance with District Code section 0.11, General Penalty, and section 0.13, Permit Violations.

Section 2. The administrative record for the District's approval of this Ordinance is maintained at the District's Administrative Building located at 3165 Pacific Highway, San Diego, CA 92101. The custodian of records is the District Clerk.

Section 3. This Ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners.

APPROVED AS TO FORM AND LEGALITY:
GENERAL COUNSEL



By: Assistant/Deputy

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PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 25th day of May, 2017, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, and Valderrama

NAYS: None.

EXCUSED: None.

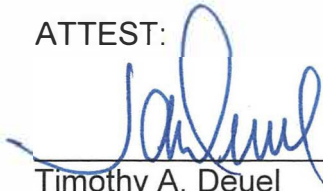
ABSENT: None.

ABSTAIN: None.



Robert Valderrama, Chair
Board of Port Commissioners

ATTEST:



Timothy A. Deuel
District Clerk

(Seal)

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