

WAVEFRONT MUSIC FESTIVAL PERMIT AGREEMENT

THIS WAVEFRONT MUSIC FESTIVAL PERMIT AGREEMENT (the "Agreement") is made this _____ day of _____ 2013, by and between the CHICAGO PARK DISTRICT, a municipal corporation organized and existing under the laws of the State of Illinois ("Park District"), and Digital Waves Chicago I, LLC/DWC, an Texas Corporation ("DWC "). The Park District and DWC are sometimes referred to herein as the "Parties".

RECITALS

WHEREAS, DWC desires to present an event known as the Wavefront Music Festival (the "Event"); and

WHEREAS, the Park District owns and manages the property known as Montrose Beach, located in Lincoln Park, Chicago, Illinois, ("Site"); and

WHEREAS, DWC desires to hold the Event at the Site; and

WHEREAS, the Park District desires to grant DWC a permit to hold the Event at the Site.

NOW THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. ENGAGEMENT.

1.1 Site. The Park District grants to DWC non-exclusive use of the Site and of Park District facilities situated at the Site, described herein and depicted on the diagram as **Exhibit A**, attached and incorporated herein. DWC's access to the Site is subject to the hours of 6 am – 12 am, and subject to park rules and ordinances and the terms of this Agreement. Hours of access to the Site for public assembly are Friday 3 pm-- 10 pm, Saturday and Sunday 12 pm –10 pm. Subject to Police review Access to the Site outside of regular park hours will require permission from an authorized representative of the Park District.

1.2 Dates and Times. DWC is permitted to use the Site for a period of time each year for the term of the Agreement, in accordance with the schedule listed in **Exhibit B**, attached and incorporated herein.

(a) During the set up period as specified in **Exhibit B**, DWC may construct and set up all equipment and temporary structures needed for the production of the Event ("Set Up"), including but not limited to, booths, tables, tents, lighting, sound systems, stages, fences and any other

necessary equipment in accordance with the terms of this Agreement and conditions of any permits required to be obtained for the Event.

(b) Immediately following the Event, DWC will tear down and remove all items and equipment used in the production of the Event and remove all trash and debris from the Site (“Tear Down”). DWC must move out of the Site by the date established in **Exhibit B**.

2. COMPENSATION.

2.1 Fees. DWC will pay fees and costs to the Park District in the amounts specified herein:

(a) Permit Fee. DWC will pay to the Park District a permit fee (“Permit Fee”) in accordance with the following schedule:

- 1) 2013– Permit Fee in the amount of ~~\$150,000.00~~ \$166,000, with \$15,000.00 payable upon the signature of this agreement.
Remainder of Fee is due 45 days prior to the first day of the event.
- 2) 2014– Permit Fee in the amount of \$191,000, ½ of the fee is due 120 days prior to the first day of the event.
Remainder of Fee is due 45 days prior to the first day of the event.
- 3) 2015– Permit Fee in the amount of \$216,000.00, with ½ of the fee is due 120 days prior to the first day of the event.
Remainder of Fee is due 45 days prior to the first day of the event. Further, 10% of net profit shall be paid to the Park District within 30 days of the conclusion of the event.
- 4) 2016– Permit Fee in the amount of \$216,000.00, ½ of the fee is due 120 days prior to the first day of the event. Remainder of Fee is due 45 days prior to the first day of the event. Further, 12% of net profit shall be paid to the Park District within 30 days of the conclusion of the event.
- 5) 2017– Permit Fee in the amount of \$216,000.00, ½ of the fee is due 120 days prior to the first day of the event.
Remainder of Fee is due 45 days prior to the first day of the event. Further, 12% of net profit shall be paid to the Park District within 30 days of the conclusion of the event.

(b) Security Deposit. A refundable security deposit shall be paid to the Park District 30 days prior to the first day of the event in accordance with the following schedule:

2013 - \$20,850
2014 - \$21,476
2015 - \$22,120
2016 - \$22,784
2017 - \$23,468

2.2 Payment of Expenses.

(a) Records. DWC shall at all times keep accurate and complete books and records of all transactions relating to the Event specified herein, including but not limited to, admission prices and receipts and the amount of funding from sponsorships.

(b) Audits. DWC shall be subject to reasonable audits by the Park District, and shall make available to the Park District by written request, the access to all financial records directly connected with the Wavefront Festival which would impact the fee derived from the profit sharing calculations in Paragraph 2.1(a) 3-5.

3. TERM OF AGREEMENT.

This Agreement shall begin on _____, 2013 and remain in effect through December 31, 2017 (“Term”).

Termination for Convenience. The Agreement may be terminated at anytime for convenience by the Park District or DWC before the Term ending date, upon thirty (30) days written notice to the other Party.

4. CONDITION OF SITE.

(a) DWC has examined and knows the condition of the Site and acknowledges that the same is in a clean and sightly condition. The Park District makes no representations as to the condition of the Site or its fitness for a particular purpose. DWC accepts the Site “as is” and “where is”. DWC will conduct a walkthrough with designed Park District personnel within 48 hours prior to set-up and load-in of the Event, and within 24 hours after the conclusion of breakdown and load-out of the Event to determine the extent of any damage which occurred during the course of the Event.

(b) DWC warrants that after the Event, the Site will be restored to the same condition prior to use by DWC . DWC will pay or reimburse the Park District for

any costs of labor, services, material, equipment and any other expenses incurred by the Park District as a result of requests made by DWC , or for which the Park District, in its sole discretion may require, for the preparation of the Site for the Event. All such costs are in addition to the security deposit and any other fees specified in this Agreement.

(c) DWC will be responsible for clean-up and removal of debris from the Site. Any costs incurred by the Park District for removal of trash or debris shall be reimbursed by DWC .

(d) If use of the Site by DWC should in any way render the Park District unable to provide the Site in a suitable condition for any subsequent event scheduled by the Park District, DWC shall assume any and all liability for the Park District's failure to fulfill those obligations. DWC may retain an expert at its expense to inspect the Site; however, the Park District's determination shall be final.

5. STAFFING.

(a) Any gatemen, building tradesmen, security forces, medical personnel or other staff provided by DWC shall be at DWC 's sole expense. The cost of gatemen, security forces, medical personnel or other staff provided by the Park District shall be reimbursed by DWC . DWC will not hire any Park District employees without the written consent of the Park District.

(b) In connection with the actual presentation of each Event, DWC shall reimburse the Park District for the costs of staffing such Event. DWC expressly recognizes that most of the Park District employees are members of labor unions and are operating under the agreements and contracts between the Park District and those unions. DWC specifically agrees to honor those union agreements.

6. PERMITS AND LICENSES.

No later than forty five (45) days prior to the start of the Event, DWC is responsible for obtaining a Park District Special Events permit and all additional City of Chicago and Park District permits and/or licenses that are necessary for the Event, including any required food, sanitation or liquor licenses, structure/tent/building or transportation permits, parking permits along public right of way, and any other documents, permits or licenses deemed necessary by the Park District.

(a) DWC warrants that they will not sell any commodities, food, or beverages that are in conflict with existing Park District sponsorships.

(b) DWC will provide the Park District with copies of all obtained permits, licenses and/or any other documentation as deemed necessary by the Park District upon request.

7. CONSTRUCTION.

DWC will consult with the Park District's Director of Revenue prior to the commencement of Set Up. DWC shall provide, at DWC's sole expense, the labor, services, materials, and equipment necessary to ensure the protection of the grass and for construction of any temporary structures, booths, fences or the like which it requires in connection with the Event. DWC shall submit structural drawings and/or information regarding any protective field covering and/or construction to the Park District at least 45 days prior to the Event. DWC expressly acknowledges and agrees that the Event may not be presented until the Park District has inspected and approved the grass protection and any construction in anticipation of the Event.

7.1 Permits. Prior to the commencement of Set Up, DWC must obtain all permits and approvals required, if any, by any Federal, state and local governmental authorities having jurisdiction over the work.

7.2 Lighting. During the presentation of the Event and during Set Up and Tear Down, DWC shall be responsible for any lighting, including theatrical lighting, which it requires in addition to the normal lighting provided by the Park District. DWC shall be responsible for any union personnel required therefore.

7.3 Sound System. DWC shall be responsible for any sound systems required for production of the Event and for any union personnel required therefore. All sound must face the lake and sound levels are subject to City Ordinances.

8. PORTA-TOILETS AND WATER FOUNTAINS.

DWC shall provide, at DWC's sole cost and expense, a reasonable number of porta-toilets for use during the Event. The porta-toilets shall be in good working order, and include a number of wheelchair accessible toilets, as specified in the Park District permit. DWC shall provide for their prompt pick-up and disposal after the Event.

9. PARK DISTRICT RESPONSIBILITIES

The Park District will be responsible for the following:

9.1 Reasonable tree trimming and grass cutting prior to the Event, especially in the area east of N. Simonds Drive;

10. ENTERTAINMENT.

All musical or other talent hired by DWC for the Event must be approved by the Park District.

11. ADVERTISING AND MEDIA.

DWC shall not display, deposit or distribute any placard, handbill, pamphlet, circular, book or other writing containing commercial advertising matter on or about the Site without first obtaining written permission from an authorized representative of the Park District.

Any of DWC's communications with the media relating to the Site or the activities of the Park District shall be subject to the prior approval of the Park District's Press Secretary.

12. COPYRIGHT APPROVAL.

DWC agrees to comply fully with any and all copyright laws in force and effect at the time of presentation of the Event. DWC will not use Park District trademarks, design marks or logos without first obtaining express written permission of the Park District.

13. INSURANCE.

No later than forty five (45) days prior to the Event, DWC shall provide the Park District with original certificates evidencing the type(s) of insurance specified in **Exhibit C**, attached hereto and incorporated herein by reference. DWC must also submit an Endorsement issued under their General Liability policy of insurance for the Event showing that the Park District is an additional insured.

14. INDEMNIFICATION.

DWC agrees to indemnify, save and hold harmless, and at the Park District's option, defend the Park District, its Commissioners, officers, employees, volunteers, contractors and agents (collectively, the "Indemnitees") against any losses, claims, damages, liabilities, actions, suits, proceedings, costs or expenses that the Indemnitees may suffer, incur, or sustain or for which it or they may become liable (including, but not limited to, mechanic's liens, personal and bodily injury to or death of persons or loss or damage to property) resulting from, arising out of, or relating to any negligence or intentional misconduct in the performance of DWC under this Agreement, and any negligence or intentional misconduct by DWC in its use of the Site. The obligation to indemnify the Park District shall survive termination of this Agreement.

DWC shall require their Event vendors or sponsors to list the Chicago Park District as an additional insured party on their liability coverage.

15. FORCE MAJEURE.

It is mutually agreed that no Party shall be held responsible for any losses resulting from the failure to fulfill any terms, conditions or provisions of this Agreement,

if the Party shall be delayed or prevented because of war, revolution, riot, or other disorder, fire, flood or act of God.

16. DEFAULT AND CANCELLATION FEE.

DWC agrees that: For any breach of this Agreement, other than the failure to present the Event, the Park District shall have the right to apply any monies on deposit with the Park District for the payment of (i) any expenses actually incurred by the Park District, and/or (ii) any claims by the Park District for damages, provided however, if the monies paid are insufficient to cover the expenses and/or damages incurred, it is expressly understood and agreed that in addition to the damages provided for herein, the Park District may pursue appropriate legal proceedings to recover any additional expenses and/or damages.

17. COMPLIANCE WITH ALL LAWS GENERALLY.

DWC shall comply with all applicable federal, state and local laws, statutes, ordinances and codes, including the Code of the Chicago Park District, in effect now or as applicable to or as affecting any work or services performed under this Agreement. DWC must pay all taxes and obtain all licenses, certificates and other authorizations required by them in conjunction with the provisions of this Agreement. DWC must require all subcontractors to do so, also.

This Agreement shall not be legally binding on the Park District if entered into in violation of the provisions of 50 ILCS 105, the Public Officer's Prohibited Activities Act.

18. NOTICE.

All notices required herein shall be in writing and shall be deemed received when a copy thereof, addressed to such party as provided herein, is delivered by personal delivery of facsimile, or the next business day after being sent by a generally recognized overnight delivery service, or three (3) days after being sent by certified or registered mail return receipt requested, postage prepaid, to the address listed below or in such other address as one party may designate in writing to the other party.

For the Park District:

Chicago Park District
541 N. Fairbanks Court
Chicago, Illinois 60611
Attn: General Superintendent

With Copies to:

Chicago Park District
541 N. Fairbanks Court

Chicago, Illinois 60611
Attn: 1st Dept. General Counsel

For DWC:
Digital Waves Chicago I, LLC
Attn : A. David Lynd
8000 IH-10 W. Ste. 1200
San Antonio, TX 78230

With Copies to:
Greenberg Traurig
77 W. Wacker Dr. Ste. 3100
Chicago, IL 60601
Attn: Michael Fishman, Esq.

19. ASSIGNS.

All of the terms and conditions of the Agreement are binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and assigns.

20. SEVERABILITY.

In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court of any other governmental body, this Agreement shall be construed as not containing such provision, and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

21. COUNTERPARTS.

This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

22. GOVERNING LAW AND JURISDICTION.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois.

23. AMENDMENTS.

No changes, amendments, modifications or discharge of the Agreement, or any part of it are valid unless in writing and signed by the authorized agents of the Parties or their respective successors and assigns.

24. NO PERSONAL LIABILITY.

DWC expressly agrees that no member, official, employee or agent of the Park District will be individually or personally liable to it, its successors or assigns under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement or in the event of any default or breach by the Park District or under this Agreement. The limitations on liability in this Section shall survive the expiration or termination of this Agreement and the expiration or termination of any obligation owing to any Party under this Agreement.

25. ENTIRE AGREEMENT.

This Agreement and the Exhibits attached to it, constitutes the entire agreement between the Parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement.

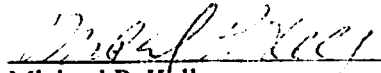
26. AUTHORITY.

The individual officers, agents and employees of DWC and the Park District who have executed this Agreement hereby individually represent and warrant that they have full power and lawful authority to execute this Agreement and perform the transactions contemplated hereunder on behalf of and in the name of their respective principals and/or employers.

[Signature Page to Follow]

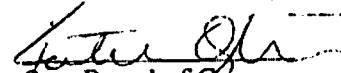
IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed and delivered by their duly authorized representatives as of the date first above written.

CHICAGO PARK DISTRICT



Michael P. Kelly
General Superintendent & CEO

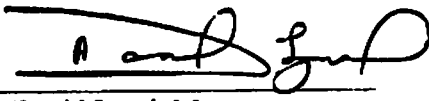
Attest:



Sec. Board of Cmsrs.

DIGITAL WAVES CHICAGO I, LLC

By: Digital Waves Manager, LLC

By: 

A. David Lynd, Manager

Exhibit A
Diagram and Description of Site

(Parking issues should be addressed here)

Exhibit B

EVENT SCHEDULE

2013

Construction/ Set-UP: July 1st – July 3rd

Event Runs: July 5th – July 7th

Tear Down: July 8th – July 10th

2014

Construction/Set-UP: June 30th – July 3rd

Event Runs: July 5th – July 6th

Tear Down: July 7th – July 9th

2015

Construction/Set-UP: June 29th – July 2rd

Event Runs: July 3rd – July 5th

Tear Down: July 6th – July 8th

2016

Construction/Set-UP: June 27th – June 30th

Event Runs: July 1st – July 4th

Tear Down: July 5th – July 8th

2017

Construction/Set-UP: June 26th – June 29th

Event Runs: June 30th – July 3rd

Tear Down: July 3rd – July 5th

Exhibit C

CHICAGO PARK DISTRICT, RISK MANAGEMENT DEPARTMENT INSURANCE REQUIREMENTS

DWC will procure and maintain at all times during the contract term, at DWC's own expense, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations under this contract, whether performed by DWC or by any subcontractors.

- 1) **Workers' Compensation and Employer's Liability Insurance**
Worker's Compensation and Occupational Disease Insurance, in accordance with the laws of the State of Illinois, or any other applicable jurisdiction, covering all employees of DWC, including Employer's Liability coverage with limits of not less than **\$1,000,000** each accident or illness.
- 2) **Commercial General Liability Insurance (Primary and Umbrella)**
Commercial Liability Insurance or equivalent with limits not less than **\$1,000,000** combined single limit, per occurrence and in the aggregate amount of **\$2,000,000**, for bodily injury, property damage occurring while DWC is in possession of or upon Park District property, personal injury and bodily injury. Umbrella coverage in limits no less than **\$10,000,000** on a non-contributory basis. Coverages to be included are products/completed operation, independent contractors, broad form property damage and contractual liability. **The Chicago Park District is to be named as additional insured on a primary, non-contributory basis.**
- 3) **Commercial Automobile Liability Insurance**
DWC will provide Automobile Liability Insurance with limits not less than **\$1,000,000** per occurrence combined single limit, for bodily injury and property damage, covering all DWC-owned vehicles, any non-owned (employee-owned or borrowed) or hired (rental) vehicles used by DWC for its operations in conjunction with its activities at the Park District location. **The Chicago Park District is to be named as additional insured.**
- 4) **Dramshop Insurance**
Over **\$1,000,000**
- 5) **Other Property Insurance**
When any personal property owned by DWC is located/stored in a Chicago Park District building, it is recommended that property insurance be carried at 100% replacement cost value (the Chicago Park District cannot be responsible for loss of or damage to property caused by insurable hazards, including, but not limited to, fire, wind, explosion, smoke, or theft).

6) **Other Insurance**

In certain instances, the Risk Management Department of the Chicago Park District may determine that other insurance coverages may be required, and will so advise DWC with an Addendum to the agreement outlining the specific type of insurance and limits required.

DWC will furnish the Chicago Park District, Risk Management Department, 541 N. Fairbanks Ct., Chicago, IL, original certificates of insurance, policy language, declaration pages or endorsements evidencing the required coverage to be in force on the date of this contract, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date during the term of this contract. DWC will submit evidence of insurance at the time of execution of the contract. Failure to keep such insurance in force may constitute a violation of the Contract and the Chicago Park District maintains the right to suspend operations until proper insurance is provided. Failure of the Chicago Park District to obtain such evidence before permitting DWC to commence operations will not be deemed a waiver by the Chicago Park District, and DWC will remain under continuing obligation to maintain insurance coverage.

Insurance will provide for 30 days prior written notice to be given to the Chicago Park District, Department of Risk Management, in the event coverage is canceled, non-renewed, or materially changed, and the certificates will so state.

DWC will require any subcontractors to carry the insurance herein, or it may provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted will so stipulate. Any and all deductibles on referenced insurance coverages will be borne by DWC or subcontractors. DWC and each subcontractor expressly understands and agrees that any insurance coverages and limits furnished by DWC will in no way limit the liabilities and responsibilities specified within the contract documents or by law, that their insurers will waive their rights of subrogation against the Chicago Park District and, further, that any insurance maintained by the Chicago Park District will apply in excess of and not contribute with insurance provided by DWC under the contract.

The Chicago Park District, Department of Risk Management, maintains the right to change, modify, alter or delete these requirements.