

EXHIBIT B
CITY OF SAN DIEGO
SURF SCHOOL/CAMP CONCESSION AGREEMENT

THIS CITY OF SAN DIEGO CONCESSION AGREEMENT ("Agreement") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and MENEHUNE SURF SCHOOL, LLC ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney (the "Effective Date"), as follows:

1. Incorporated Documents. This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Surf School/Camp Concessions issued by the CITY in 2013, and CONCESSIONAIRE's proposal in response to that RFP. Attached and incorporated herein are the following documents: Site Map (Attachment A), CONCESSIONAIRE'S Operating Plan (Attachment B), Surf Concession Requirements (Attachment C). Additional terms and conditions listed in the RFP shall also apply throughout the term of the Agreement.
2. Right to Enter. Subject to the terms and conditions of this Agreement, CITY hereby grants permission to CONCESSIONAIRE, its employees, agents and contractors to operate Surf School/Camp Concessions ("Concessions") within CITY beach sites ("Sites") designated by the CITY. The locations of the Sites included under this Agreement are referenced below and designated on Attachment A.

Area/Beach	Site
La Jolla Shores	4

Concessions at any of the above Sites may be terminated or changed for any reason by CITY upon thirty (30) days written notice from CITY to CONCESSIONAIRE. If an alternate site is not available, a proportionate amount of the fixed concession Minimum Fee (as specified in Section 10.B.) shall be waived for the deleted Site.

3. Use of Sites. This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction concessions serving the general public under the terms and conditions of this Agreement. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Agreement.
4. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. - 5:00 p.m. Water instruction is permitted from 9:00 a.m. to 4:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Changes in days and/or hours of operation requested by CONCESSIONAIRE must be approved by CITY and included in

an addendum to the current Operating Plan before going into effect. Operations are permitted seven (7) days a week with the following exceptions:

- A. Under no circumstances are operations permitted on the 4th of July holiday.
 - B. Special Events. Unless otherwise authorized by the City Manager, CONCESSIONAIRE shall not be allowed to operate Concessions within certain areas of the Sites during days in which "Special Events," as defined in San Diego Municipal Code section 22.4003, are scheduled by CITY in this area. CITY shall give CONCESSIONAIRE 14 days advance written notice of any such "Special Events."
5. Competent Management. Throughout the term of this Agreement, CONCESSIONAIRE shall provide competent management of the Concession and the Site for the permitted uses to the satisfaction of the City Manager. CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concession to maximize gross revenue.
 6. Term. The term of this Agreement ("Term") shall be sixty (60) months commencing on May 1, 2014 ("Commencement Date"). "Agreement Year" as used in this Agreement means any of the five (5) consecutive twelve (12) month periods beginning with the Commencement Date. This Agreement may be terminated at any time by either party upon ninety (90) days prior written notice to the other party. Any written notice to this effect shall be served in accordance with Section 42 of this Agreement.
 7. Holding Over. Any use of the Concession Sites by CONCESSIONAIRE after the expiration of this Agreement is not permitted. Any extension of the term of the Agreement beyond sixty (60) months shall require approval of CITY Council.
 8. Revocable License. This Agreement is not a lease. It is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by CONCESSIONAIRE as a result of the termination or suspension of this Agreement. CONCESSIONAIRE expressly waives any claim for expense or loss which CONCESSIONAIRE might incur as a result of CITY'S termination or suspension of this Agreement or for the scheduling of any Special Events pursuant to Section 4.B that conflict with or prohibit CONCESSIONAIRE's use the Site.
 9. Special Provisions
 - A. Operating Plan. The Operating Plan(s) for May 1, 2014 through April 29, 2014 submitted with the CONCESSIONAIRE's response to the CITY'S RFP, shall be revised by CONCESSIONAIRE, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Agreement as Attachment B. Beginning with the second Agreement Year, and for every Agreement Year thereafter, the CONCESSIONAIRE shall provide the CITY with an Operating Plan for the coming Agreement Year for the CITY'S approval. These Operating Plans must be submitted by March 1st of each calendar year for the upcoming season under

this Agreement. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Attachment B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE shall not make any changes to the Plan without prior written approval of CITY. At all times, the CONCESSIONAIRE shall ensure that all operations permitted under this Agreement comply with the Surf Instruction Requirements incorporated herein as Attachment C. Failure to provide an Operating Plan as described in this paragraph will constitute a material breach of this Agreement.

- B. Exclusiveness of Agreement and Unauthorized Vending. In addition to Special Events described in Section 4.B., CITY may, during the term of this Agreement, enter into Agreements with other CONCESSIONAIRES to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Agreement. However, CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- C. Concession Sites. On each Site included in this Agreement, CONCESSIONAIRE shall erect no improvements except either: 1) one (1) shade structure no greater than twenty (20) feet long by twenty (20) feet wide; 2) no more than two (2) shade structures each no greater than ten (10) feet long by ten (10) feet wide in size; or 3) any shade structure, in the opinion of the CITY, needed to adequately serve the public. CITY reserves the right to require the CONCESSIONAIRE to modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the CONCESSIONAIRE must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior written approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Agreement at any time falls short of or exceeds the number of Sites needed to adequately serve the public, CONCESSIONAIRE shall, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY. City shall not be liable to CONCESSIONAIRE in any way for such adjustments. CONCESSIONAIRE shall operate no more and no fewer than the Sites designated in this Agreement unless CITY decides to change the number of Sites.
- D. Improvements. Upon expiration or termination of this Agreement, any and all improvements, trade fixtures, structures, and installations or additions to the Sites now existing or constructed on the Sites by CONCESSIONAIRE shall be deemed to be part of the Sites and shall become CITY's property free of all liens and claims. All personal property remaining on the Sites after expiration or termination shall also become the property of CITY.
- E. Maintenance of Sites. CONCESSIONAIRE agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and

rubbish in or about said Sites to the satisfaction of CITY and at CONCESSIONAIRE's sole cost. All Sites must be cleaned up nightly by CONCESSIONAIRE or more often, as required.

- F. Standard of Employees. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations of the Concession in a respectable and courteous manner. CONCESSIONAIRE shall thoroughly train its employees in their duties and shall regularly monitor them to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all of the Surf Instruction Requirements in Attachment C of this Agreement.

10. Fees. CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee or the Monthly Minimum Fee, as described below. In the event that the combined total amount of fees paid by CONCESSIONAIRE during any Agreement Year equals or exceeds the Annual Minimum Fee for that Agreement Year, then CONCESSIONAIRE shall only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends. If in any Agreement Year, Monthly Minimum Fees paid plus Percentage Fees paid exceed the Annual Minimum Fee and also exceed the annual fee which would have been paid if the Percentage Fee had been paid on Gross Revenue, the excess over the total fee owed shall be credited against the next payable fee as it become due. It is the intent of this provision that CONCESSIONAIRE shall pay monthly installments of the annual Minimum Fee as a guarantee against the Percentage Fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- A. Percentage Fees. Percentage Fees will consist of ten percent (10.00%) of the Gross Revenue resulting from the surf instruction Concession operations permitted under this Agreement during each month of an Agreement Year. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section 3, Use of Sites, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. However, any activity conducted on the Sites without the prior written approval of the City Manager shall be subject to the requirements of Section 10.E., Unauthorized Use Charge.

- B. Minimum Fees. The Annual Minimum Fee established for the first Agreement Year following the effective date of this Agreement is eighteen thousand one hundred and eighty dollars (\$18,180.00), which is **One Thousand Five Hundred and Fifteen dollars (\$1,515.00)** on a monthly installment basis ("Monthly Minimum Fee").

The Monthly Minimum Fee is to be paid in monthly installments on or before the day of the calendar month when the Percentage Fee is due pursuant to Section 10.J. Time and Place of Payment.

- C. Minimum Fee Adjustment. Beginning with the second Agreement Year, and continuing with each subsequent Agreement Year thereafter, the Annual Minimum

Fee will be increased by a five percent (5%) of the immediately prior Agreement Year's Annual Minimum Fee.

- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE shall pay the delinquent fee plus a late fee equal to five percent (5%) of the delinquent fee. If fees remain unpaid more than fifteen (15) days past the due date, the late fee shall be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE shall pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE shall pay to CITY, as an additional fee, an unauthorized use charge equal to hundred percent (100%) of the Gross Revenue (as defined in Section 10.F.) received from any service or use of the Site by CONCESSIONAIRE that is not allowed under this Agreement. Such payment is subject to the due date provided in the Agreement for fee payments and the provisions for delinquent or unpaid fees. Neither the existence of such an unauthorized use charge nor the payment of such charge, or any part of it, shall constitute an authorization of an unauthorized use, and shall not be waiver of any of the CITY'S rights under the Agreement.
- F. Gross Revenue. "Gross Revenue," as used in this Agreement, shall include all income resulting from the Concession whether received or to become due; provided, however, that Gross Revenue shall not include federal, state, or municipal taxes collected from the CONCESSIONAIRE (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by CONCESSIONAIRE to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenue includes all revenue to CONCESSIONAIRE from internet sales. Gross Revenue includes revenue generated from all equipment rented or leased for use in CONCESSIONAIRE's surf instruction Concessions conducted under this Agreement. Gross Revenues shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee shall be calculated and paid by CONCESSIONAIRE on the basis of Gross Revenue whether the income is received by CONCESSIONAIRE or by any of CONCESSIONAIRE's agents, employees, permittees, or representatives, and all Gross Revenue received by any of CONCESSIONAIRE's agents, employees, permittees, representatives, or other party as a result of occupancy or operation of the Site shall be regarded as Gross Revenue of CONCESSIONAIRE for the purpose of calculating the Percentage Fee required to be paid by CONCESSIONAIRE to CITY, except as may be otherwise specified by this Agreement.

G. Payment Procedure.

CONCESSIONAIRE shall provide CITY with a correct income statement for the Site operated by CONCESSIONAIRE together with a payment of fees on all applicable

Gross Revenue in a form selected by CITY. This income statement shall be due to CITY by the end of the calendar month immediately following the month for which the income statement was generated. The income statement shall be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:

- i. Total Gross Revenue for the subject month itemized as to business categories for which the separate Percentage Fee is established.
- ii. The amount of the Percentage Fee due to CITY and the manner in which such Percentage Fee was computed and totaled.
- iii. The accumulated total of all fees previously paid to CITY for the current Agreement Year.
- iv. Payments in the greater of the two following amounts: The Monthly Minimum Fee or the total Percentage Fee due CITY computed as described in Section

H. Inspection Of Records.

- i. Records. CONCESSIONAIRE shall at all times during the Term keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities conducted upon and financial transactions resulting from the use of the Site. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, tour lists, or other documents as necessary to allow CITY to easily determine the Gross Revenue. Any retail sales or charges will be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. The registers shall be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered shall be read and recorded at the beginning and end of each business day. Regarding admission charges or concession fees, CONCESSIONAIRE shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.
- ii. Financial Statements. By the immediately following July 1 after the end of the each Agreement Year, CONCESSIONAIRE shall at its sole cost and expense, submit to CITY a statement in which the total Gross Revenue and the corresponding amounts of Percentage Fees paid CITY for the year are classified according to the categories of business established for any Percentage Fees and for any other business conducted on or from the Site. The statement shall be signed by

CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which shall be legally binding upon CONCESSIONAIRE. Failure to provide an financial statements as described in this paragraph will constitute a material breach of this Agreement.

- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.H.i, shall be kept for at least five (5) years and made available to CITY in one location within the City of San Diego. These books and records must be maintained separately from all other accounts not relating to the Site. The CITY, at its discretion, shall have the right to inspect and audit the business of CONCESSIONAIRE, its agents, representatives and permittees operating on, and in connection with, the Site as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Agreement. At CITY'S request, CONCESSIONAIRE shall promptly provide, at CONCESSIONAIRE's expense, any necessary data to enable CITY to fully comply with all requirements of the state and federal government for Agreement information or reports concerning the Concessions. Such data will include, if required, a detailed breakdown of CONCESSIONAIRE's receipts and expenses. CITY intends to conduct an audit after the third year of the Agreement, however, CITY reserves the right to conduct such audits at any time.

- iv. Audit Cost. The full cost of the CITY'S audit(s) will be borne by CITY unless one or both of the following conditions exists, in which case CONCESSIONAIRE agrees to pay CITY's cost of audit(s):

- A. The audit(s) reveal an underpayment by CONCESSIONAIRE to the CITY of more than five percent (5.00%) on an annual basis for any Agreement Year or more than \$5,000, whichever is less, between the Total Fees Paid as reported and paid by CONCESSIONAIRE pursuant to this Agreement and Concession fees owed as determined by the audit(s).
- B. CONCESSIONAIRE has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.
- i. Any fee deficiency determined by the audit shall be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under this Agreement Section 10.D. CITY shall credit any overpayment by CONCESSIONAIRE determined by the audit, without interest, against future fees due under this Agreement. If no future fees are due under this Agreement, CITY shall refund CONCESSIONAIRE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- I. Default. CONCESSIONAIRE's failure to keep complete and accurate records by means of double-entry bookkeeping and failure to make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a material breach of this Agreement and good cause for termination.
- J. Time and Place of Payment. Payments are due on or before the last day of the calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned. Checks shall be made payable to the City Treasurer and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 129030, San Diego, California 92112-9030, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, San Diego, California. The place and time of payment may be changed by CITY upon thirty (30) days prior written notice to CONCESSIONAIRE. Mailed payments shall be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment shall be deemed paid upon actual receipt by the City Treasurer. CONCESSIONAIRE assumes all risk of loss and responsibility for late payment charges if payments are made by mail.
- K. Security Deposit. The CONCESSIONAIRE shall deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of five thousand dollars (\$5,000.00) in the form of a cashier's or certified check. All or any portion of the principal sum of the security deposit shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by CONCESSIONAIRE, CONCESSIONAIRE's successors or assignees, or for payment of expenses incurred by CITY as a result of CONCESSIONAIRE's failure to faithfully perform all terms, covenants, and conditions of this Agreement. If at the end of the term of this Agreement, CONCESSIONAIRE has performed all of the provisions of the Agreement, the deposit or any remaining balance shall be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. CONCESSIONAIRE shall maintain this security deposit throughout the Term of this Agreement. **Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to deposit or maintain a security deposit as required by this Agreement, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Sites and commence and diligently pursue the removal of its property from the Sites.**
- i. Utilization. If CITY utilizes all or any portion of the security deposit, upon ten (10) days prior written notice, CONCESSIONAIRE shall reimburse the security deposit to the full required amount.
- ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE shall deliver to CITY additional funds as CITY may, in its sole determination, require to adequately secure CONCESSIONAIRE'S obligations under this Agreement.

- iii. Return. Provided CONCESSIONAIRE is not in breach or default of this Agreement, CITY shall return the security deposit, or any balance thereof, to CONCESSIONAIRE within sixty (60) days after the expiration or termination of this Agreement.
11. CITY'S Consent, Discretion. Whenever required under this Agreement, CITY'S consent or approval shall mean the written consent or approval of the City Manager, unless otherwise expressly provided. CITY'S discretionary acts hereunder shall be made in the City Manager's sole and absolute discretion, unless otherwise expressly provided.
12. Acceptance of Sites. CONCESSIONAIRE represents and warrants that it has independently inspected the Sites and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Sites. CONCESSIONAIRE agrees it is relying solely on its independent inspection, tests, investigations, and observations in entering into this Agreement. CONCESSIONAIRE further acknowledges that the Sites are in the condition called for by this Agreement, that CITY has performed all work, if any, related to the Sites and required by this Agreement, and that CONCESSIONAIRE shall hold CITY harmless for any defects, whether apparent or latent, in the Sites, including without limitation the presence of any hazardous substances.
13. Maintenance of the Sites. CONCESSIONAIRE shall, at CONCESSIONAIRE'S sole cost and expense and to CITY'S satisfaction, maintain the Sites in a decent, safe, healthy and sanitary condition at all times during the Term.
14. Standard of Conduct. CONCESSIONAIRE and its employees shall at all times conduct themselves and the operations on the Site in a respectable and courteous manner.
15. Inspection. CITY may, at all times, enter and inspect the Sites.
16. Insurance. On or before the Effective Date, CONCESSIONAIRE shall deliver to CITY a current certificate of insurance for:
- A. Commercial General Liability insurance providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of Two Million Dollars (\$2,000,000). Higher insurance limits may be required by the CITY's Risk Management Department depending on the nature of the activity.
 - B. Workers Compensation. Concessionaire must maintain current workers compensation coverage which meets statutory requirements for all employees. One Million Dollars (\$1,000,000) of employers' liability coverage is also required.
 - C. Liability Insurance for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-hired vehicles) operated in performing any and all Concessions or other services

pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.

- D. Causes of Loss-Special Form Property Insurance. CONCESSIONAIRE shall obtain and maintain, at its own cause and expense, Causes of Loss-Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Site in an amount to recover one hundred percent (100%) of the replacement cost. CONCESSIONAIRE shall deliver to CITY a certificate of such insurance.
- E. CONCESSIONAIRE must maintain a protection and indemnity policy, with limits of not less than One Million Dollars (\$1,000,000) per occurrence subject to an annual aggregate of Two Million Dollars (\$2,000,000). UNLESS proof is submitted that CONCESSIONAIRE's surf school/camp operations are under the commercial general liability policy. A certified copy of the CGL policy will be sufficient to meet this requirement.
- i. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 - ii. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Agreement.
 - iii. Qualified Insurer(s). All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 - iv. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of CONCESSIONAIRE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
 - v. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE shall

provide proof of continuing insurance on at least an annual basis during the Term. If CONCESSIONAIRE's insurance lapses or is discontinued for any reason, CONCESSIONAIRE shall immediately notify the CITY and immediately obtain replacement insurance.

- vi. Modification. To assure protection from and against the kind and extent of risk existing on the Site, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Site in order to meet the requirements of this Agreement.
- vii. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons on the Site or person engaged in the activities permitted under this Agreement. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- viii. Failure to Comply. If CONCESSIONAIRE fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, CITY may obtain the insurance. CONCESSIONAIRE shall reimburse CITY for the premiums paid, with interest on the premium paid by the CITY at the maximum allowable legal rate then in effect in California. CITY shall notify CONCESSIONAIRE of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. CONCESSIONAIRE shall pay such reimbursement and interest on the first (1st) day of the month following CITY's notice. **Notwithstanding any other provision of this Agreement, if CONCESSIONAIRE fails or refuses to obtain or maintain insurance as required by this Agreement, or fails to provide proof of insurance, CITY may terminate this Agreement immediately upon such breach. Upon such termination, CONCESSIONAIRE shall immediately cease its use of the Site and commence and diligently pursue the removal of any and all of its personal property from the Site.**
- ix. All insurers must be licensed to conduct business in the State of California and with exception of workers compensation, be rated "A-, VI" or better by AM Best. If coverage is provided by a surplus lines carrier, it must be listed on the current LESLI list. Any and all deductibles and/or self-insured retentions must be

disclosed to the City at the time proof of insurance is provided. All insurers must be acceptable to the City.

17. Indemnification. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONCESSIONAIRE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Site, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY 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 related to this indemnification, CONCESSIONAIRE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
18. No Discrimination. CONCESSIONAIRE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in CONCESSIONAIRE'S use of the Site, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
19. Local Business and Employment. CONCESSIONAIRE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. CONCESSIONAIRE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. CONCESSIONAIRE agrees to hire qualified local residents and firms whenever feasible.
20. Drug-free Workplace. CONCESSIONAIRE shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
 - A. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Sites and specifying the actions that will be taken against employees for violations of the prohibition; and
 - B. Establish a drug-free awareness program to inform employees about all of the following:

- i. The dangers of drug abuse in the workplace;
 - ii. CONCESSIONAIRE'S policy of maintaining a drug-free workplace;
 - iii. Any available drug counseling, rehabilitation, and employees assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- 21. Disabled Access Compliance. CONCESSIONAIRE shall comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities.
- 22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with CONCESSIONAIRE'S occupancy, use, development and maintenance of the Site and any damages to the improvements on, under, or in the vicinity of the Site resulting directly or indirectly thereby.
- 23. No Nuisance. CONCESSIONAIRE shall not use the Sites in any manner which, in CITY'S opinion, creates a nuisance or disturbs the quiet enjoyment of persons in and to the surrounding area.
- 24. No Assignment. CONCESSIONAIRE shall not assign any rights granted by this Agreement or any interest herein without CITY'S prior written consent. Approval of any such proposed assignment may be withheld in CITY'S sole and absolute discretion. Any assignment by operation of law shall automatically terminate this Agreement.
- 25. Signs. CONCESSIONAIRE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY'S prior written consent. If any such unauthorized item is found on the Sites, CONCESSIONAIRE shall remove the item at its expense within 24 hours notice by CITY, or CITY may thereafter remove the item at CONCESSIONAIRE'S cost.
- 26. Charter Section 225. Pursuant to San Diego City Charter Section 225, CONCESSIONAIRE and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Agreement and the precise nature of all interests of all persons therein. CONCESSIONAIRE's failure to fully disclose all of the information required by Charter Section 225 or CONCESSIONAIRE's failure to require each of its assignees to fully disclose such information shall be a default of this Agreement. Pursuant to City Charter Section 225, every person or entity that will have an interest in this Agreement as an assignee must be reviewed and approved by City.
- 27. Advertisement and Marketing. Any advertising or marketing which reference the City of San Diego may not be distributed by the CONCESSIONAIRE without the advanced written approval of the CITY. If CONCESSIONAIRE uses the City of San Diego in any context to promote its business operations without prior written approval by CITY, CONCESSIONAIRE shall be considered to be in default. No advertising or marketing

materials of any kind may be posted or distributed on any City beach without the advanced written approval of the CITY.

28. Encumbrances. CONCESSIONAIRE shall keep the Site free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with this Agreement or CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Sites, including without limitation CONCESSIONAIRE's failure or the failure of any contractor or subcontractor hired by CONCESSIONAIRE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.

29. Defaults and Remedies.

- A. Default by CONCESSIONAIRE. Except for Safety Violations (as defined under subsection b below) which are grounds for immediate termination, in the event that:

- i. CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and CONCESSIONAIRE shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
- ii. CONCESSIONAIRE shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
- iii. CONCESSIONAIRE shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, immediately terminate this Agreement and all rights of CONCESSIONAIRE and of all persons claiming rights through CONCESSIONAIRE to the Concession Sites or to possession thereof, and CITY may then enter and take possession of the Sites and expel CONCESSIONAIRE and all persons so claiming rights thereto. Provided; however, in the event that any default described in Part (1)a. of this section is not curable within thirty (30) days after written notice to CONCESSIONAIRE, CITY shall not terminate this Agreement pursuant to the default if CONCESSIONAIRE immediately commences to cure the default and diligently pursues cure to completion. In any event, either party may terminate this Agreement without cause by giving ninety (90) days written notice of intent to terminate to the other party.

- B. Safety Violations by CONCESSIONAIRE. Notwithstanding subsection A above, in the event CONCESSIONAIRE shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by CONCESSIONAIRE, including any covenant or condition in CONCESSIONAIRE's Operating Plan, and said default by CONCESSIONAIRE consists of any violation of municipal, state or federal law, or any covenants or conditions in CONCESSIONAIRE's Operating Plan or Attachment C that, in the CITY's sole discretion, relate to public safety ["Safety Violations"], CITY may, at its option, require CONCESSIONAIRE to immediately cure said default, or, without further notice or demand upon CONCESSIONAIRE or upon any person claiming rights through CONCESSIONAIRE, suspend or revoke this Agreement.
- C. Abandonment by CONCESSIONAIRE. In the case that CONCESSIONAIRE breaches this Agreement and abandons the Site, this Agreement shall continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of CONCESSIONAIRE's right to possession or operation:
- i. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
 - ii. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Agreement.
30. Damages. CITY, in the event of CONCESSIONAIRE's default under this Agreement, may recover the outstanding annual Minimum Fees due for the remaining term of the Agreement, less any mitigation measures taken by CITY. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.
31. Compliance with Laws. CONCESSIONAIRE shall, at its sole cost and expense, comply with all the requirements of all rules, regulations, ordinances, laws and direction of governing authorities now in effect or which may hereafter be in effect, which pertain to CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Site.
32. Taxes. CONCESSIONAIRE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon CONCESSIONAIRE by reason of the business or other CONCESSIONAIRE activities related to the Sites, including any licenses or permits. CONCESSIONAIRE acknowledges that this Agreement may create a possessory interest subject to property taxation, and that CONCESSIONAIRE may be subject to the payment of taxes levied on that interest. CONCESSIONAIRE shall be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE'S payment for

taxes, fees, and assessments shall not reduce any payment due CITY under this Agreement.

33. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the CONCESSIONAIRE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of Section 43.03, Stormwater Ordinance.

Therefore, CONCESSIONAIRE shall, at a minimum, implement and comply as applicable with the BMPs for industrial and commercial facilities adopted under the San Diego Municipal Code Section 43.0307 (a).

It is ultimately CONCESSIONAIRE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, CONCESSIONAIRE shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

34. Hazardous Substances. CONCESSIONAIRE shall not allow the installation or release of hazardous substances in, on, under, or from the Site. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors shall not store, utilize, or sell any hazardous substance on the Site without CITY's prior written consent. For the purposes of this provision, a release shall include but not be limited to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leeching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean those hazardous substances listed by the Environmental Protection Agency in regularly released reports and any other substances incorporated into the State of California's list of hazardous substances. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and by this reference is incorporated into this Agreement.

- A. Remediation. If any release of a hazardous substance occurs, CONCESSIONAIRE shall pay all costs of remediation and removal of the hazardous substance in accordance with all applicable laws and rules and regulations of governmental authorities.
- B. Indemnity. CONCESSIONAIRE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from CONCESSIONAIRE'S occupancy, use, development, or maintenance of the Sites, including but not limited to costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- C. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that any hazardous substance has been released on or beneath the Site, CONCESSIONAIRE shall give written notice to CITY within three (3) days of

receipt of the knowledge or cause for belief. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent and substantial danger to public health and safety, CONCESSIONAIRE shall notify CITY immediately upon receipt of such knowledge or belief and shall take all actions necessary to alleviate the danger. CONCESSIONAIRE shall notify CITY immediately of any notice of violation received or initiation of environmental actions or private suits related to the Site.

D. Environmental Assessment. At CITY's option upon expiration or termination of this Agreement, an environmental assessment of the Site shall be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at CONCESSIONAIRE's sole cost and expense, and shall establish what, if any, hazardous substances exist on, in, or under the Site, and in what quantities. If any hazardous substances exist in quantities greater than that allowed by CITY, county, state, or federal laws, statutes, ordinances, or regulations, then the environmental assessment shall include a discussion of these substances with recommendations for remediation and removal necessary to effect compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE shall cause the remediation and/or removal recommended in the environmental assessment such that compliance with environmental law is achieved, and CONCESSIONAIRE shall pay all costs and expenses therefore.

35. Waiver. CITY'S failure to insist upon the strict performance of any of CONCESSIONAIRE'S obligations under this Agreement, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Sites is CITY-owned and held in trust for the benefit of CITY'S citizens. CITY'S failure to discover a breach of any obligation of this Agreement or take prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.
36. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination shall survive such expiration or termination.
37. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity shall be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
38. Partial Invalidity. If any term, covenant, condition, or provision of this Agreement is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect.
39. Number and Gender. Words of any gender used in this Agreement shall include any other gender, and words in the singular number shall include the plural, when the tense

requires.

40. Captions. Section headings and captions shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Agreement. The numbers of the paragraphs and pages of this Agreement may not be consecutive. Such lack of consecutive numbers shall have no effect on the enforceability of this Agreement.
41. Entire Agreement. This Agreement, along with all attachments and incorporated documents, constitutes the entire Agreement between the parties and supersedes any and all prior understandings, representations, warranties and Agreements between them and pertaining to this Agreement and CONCESSIONAIRE'S occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Agreement shall be in writing and signed by all the parties hereto.
42. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to CITY or CONCESSIONAIRE, respectively, as follows:

The CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Ste 1700 MS 51A
San Diego, CA 92101

CONCESSIONAIRE:

menehune Surf School, LLC
2222 Avenida de la Playa
La Jolla, CA. 92037
858. 551. 9510

43. Governmental Approvals. By entering into this Agreement, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for CONCESSIONAIRE's occupancy, use, development, or maintenance of the Sites.
44. San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Agreement shall be deemed to refer to "the Mayor or his/her designee." This section shall remain in effect for the duration CITY operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.
45. City's Not-Liability. CITY shall not be liable to CONCESSIONAIRE, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any

weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of CITY, or in the CITY's performance of any act related to protecting the public health and safety.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

46. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing Agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity shall provide CITY with evidence, satisfactory to CITY, that such authority is valid.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the Effective Date.

Date: 7 MAY 14

THE CITY OF SAN DIEGO, a California municipal corporation

BY: [Signature]
Scott Chadwick, Chief Operating Officer

Date: _____

MENEHUNE SURF SCHOOL, LLC:

BY: [Signature]
Name: Angela Harrell
Title: CEO

Environmental Analysis Section Environmental Clearance:

CEQA Section 15301 allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use. This permit will allow use of limited areas where no environmental impacts would result; and where none of the exceptions listed in CEQA Guidelines Section 15003.2 would apply.

Date: 5/5/14

BY: [Signature]
Name: Miguel Herrmann
Title: Senior Planner

APPROVED AS TO FORM AND LEGALITY:

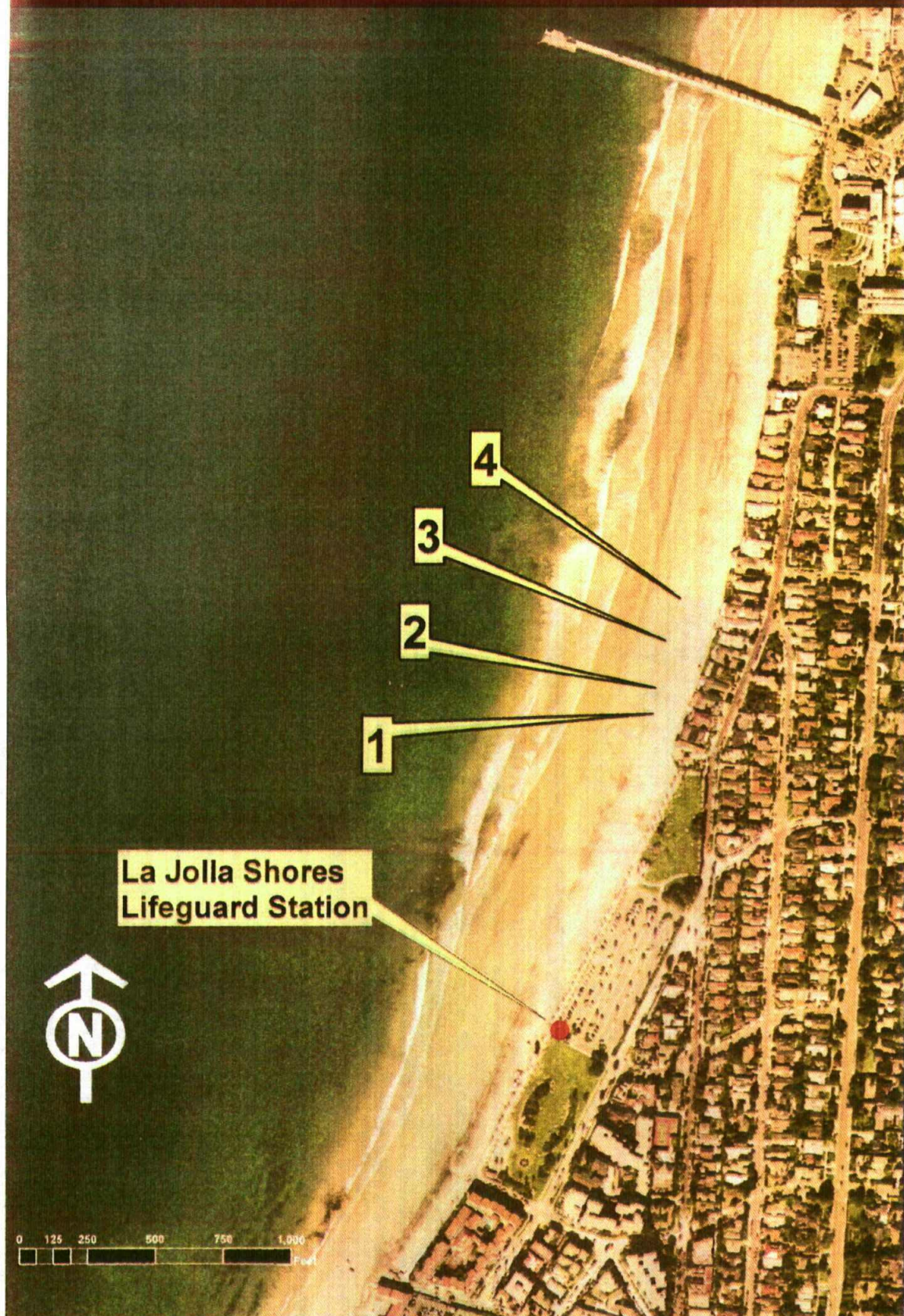
Effective Date: 14 May 2014

JAN I. GOLDSMITH, City Attorney

BY: [Signature]
Noah J. Brazier
Deputy City Attorney

ATTACHMENT A
Site Map

Surfing Vendor Permit Locations La Jolla Shores



ATTACHMENT B
Operating Plan

Operating Plan 2014 Menehune Surf School, LLC

This operating plan refers to one surf site in La Jolla Shores - #4, as was assigned by the City of San Diego.

Full and Half Day Surf Camp

Menehune offers full and half day surf camps from June 1 through August 31. We may also offer them on Thanksgiving break, Christmas break and Spring break depending on demand.

The full day camp is held Monday through Friday from 9am to 4pm. Half day camps are held from 9am to 12pm (AM session) and 1pm to 4pm (PM session). The student to instructor ration is 1:4 (occasionally 1:5 if there is an extra child). We limit our camps to 25 kids per session. The camp age groups are: 5-7 years, 8-12 years and 13-17 years old. We consider all campers to be beginner level abilities. We recommend our private lessons and surf team for those who want to take their surfing skills to the next level. Camp is designed to be a mix of surfing, education, and social emersion. We endeavor to help build confidence through skill, knowledge and building friendships (with other campers and instructors).

Campers meet at the North end of Kellogg park and we walk as a group to our surf site where we have a canopy set up with wetsuits and rash guards waiting for all the campers. At the end of camp the campers are walked back to the same meeting spot to be handed off to their parents. The campers remain with their instructor during the entire camp. We do have a beach support personnel available for restroom breaks or individual rest periods so that campers are always with an adult.

Each 3 hour camp is divided into 40 minute blocks of surf/water time and 20- minute interpretive programs conducted on the beach every day Monday through Friday. The interpretive programs cover:

- *Water safety – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and sting ray shuffle.
- *Surf etiquette – no tailgating, not lining up with other surfers, safe distance and being aware of those around them.
- *Surf Instruction – paddling out, popping up, how to carry the board, not to put the board in front of you across your body, keeping the nose forward, and how to use the leash and board.
- *Wave and tidal information
- *Surf history
- *Surf board construction and repair
- *Fitness and nutrition
- *Coastal/Ocean stewardship and preservation
- *Marine life, shorebirds and marine plants
- *Surf technique and balance exercises
- *Games and fun

We always gear our programs toward safety first, surf instruction second and then all of the other mini-lessons are intended to instill the student with a sense of wonder and curiosity about the ocean and what they can do to preserve and protect such an amazing resource.

Camp Schedule:

Monday 8:30 to 9 – check in

Monday through Friday

9:00 to 9:20 – Ocean and surf safety and stretching

9:20 to 10:00 – Surf session #1

10:00 to 10:20 – Ocean wildlife games/sharing and conservation

10:20 to 11:00 – Surf session #2

11:00 to 11:20 – Surf etiquette and making friends

11:20 to 12:00 – Surf Session #3

AM Half day surf camp ends and children are picked up by their parents.

Full day campers enjoy a long lunch hour with their fellow campers and instructors

Monday 12:30 to 1 – check in for PM Half day campers

Monday through Friday

1:00 to 1:20 – Ocean and surf safety and stretching

1:20 to 2:00 – Surf session #1

2:00 to 2:20 – Ocean wildlife games/sharing and conservation

2:20 to 3:00 – Surf session #2

3:00 to 3:20 – Surf etiquette and making friends

3:20 to 4:00 – Surf Session #3

Full day and PM half day camps end at 4 pm and children are picked up by their parents.

On Fridays the campers receive a graduation certificate and a participation T-shirt.

Private and Semi Private Surf Lessons

Menehune offers private lessons daily from 9am to 4pm year round. All lessons are scheduled at least a day in advance either by telephone or on our website. Private lessons are offered in increments of 1, 1.5 and 2 hours. Private lessons are one instructor per “party” of up to 5 people. We teach surf lessons to people ages 5 and up.

Customers check in at our store front located at 2222 Avenida de la Playa. They are required to sign a waiver and pay for the lesson (unless it was purchased on line). We then outfit the customer with a wetsuit and a rash guard. The rash guard is worn on the outside of the wetsuit in order to identify them as a surf student both for our instructors and the lifeguards. Once the customer is ready we give them directions to our surf site on the beach and their instructors name and send them on their way.

At the beach the customer is greeted by their instructor and the following 15 (average – some students require more and have more questions) minutes are spent going over ocean conditions, safety, and surf etiquette. The surf instructor covers the following information:

Surf Lesson Material

- *Water safety – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and sting ray shuffle.

- *Surf etiquette – no tailgating, not lining up with other surfers, safe distance and being aware of those around them.

- *Surf Instruction – paddling out, popping up, how to carry the board, not to put the board in front of you across your body, keeping the nose forward, and how to use the leash and board.

- *Marine and Ocean conservation and preservation

The remaining time is spent teaching the customer to surf with hands on attention and instruction. Our surf instructors do not have their own surf board during lessons. They are in the water with the students helping them “catch waves.”

Corporate and Group Surf Lessons

Menhune offers Corporate and Group lessons daily from 9am to 4pm year round. All lessons are scheduled at least a day in advance by telephone. Group lessons are 1.5 to 2 hours long. Group lessons are one instructor per 5 people. We offer group surf lessons to people ages 5 and up.

Customers check in at our store front located at 2222 Avenida de la Playa. They are required to sign a waiver and pay for the lesson (unless it was purchased on line). We then outfit the customer with a wetsuit and a rash guard. The rash guard is worn on the outside of the wetsuit in order to identify them as a surf student both for our instructors and the lifeguards. Once the customers are ready we give them directions to our surf site on the beach and their instructors name and send them on their way.

At the beach the customers are greeted by their instructors and the following 15 (average – some students require more and have more questions) minutes are spent going over ocean conditions, safety, and surf etiquette. The instructors also do some basic stretching and warm up exercises with the students. The surf instructor covers the following information:

Surf Lesson Material

- *Water safety – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and sting ray shuffle.

- *Surf etiquette – no tailgating, not lining up with other surfers, safe distance and being aware of those around them.

- *Surf Instruction – paddling out, popping up, how to carry the board, not to put the board in front of you across your body, keeping the nose forward, and how to use the leash and board.

- *Marine and Ocean conservation and preservation

The remaining time is spent teaching the customers to surf with hands on attention and instruction. Our surf instructors do not have their own surf board during lessons. They are in the water with the students helping them “catch waves.”

Surf Team

Menehune has a surf team that has anywhere from 7 to 15 members at any given time. All surf team members have to apply to the team and participate in “try-outs”. Surf team practices 3 times a week – Wednesdays from 3-5, Saturdays from 9-11 and Sundays from 9 to 12pm. There are 3 coaches for our surf team, all of whom were competitive surfers either in high school or college. Surf team members have their own equipment, however, we do require that hard boards have a nose and tail guard. They do have Menehune surf team rash guards that they wear at practice.

Our surf team coaches cover

- *Water safety – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and sting ray shuffle.
- *Surf etiquette – no tailgating, not lining up with other surfers, safe distance and being aware of those around them.
- *Surf Instruction – paddling out, popping up, how to carry the board, not to put the board in front of you across your body, keeping the nose forward, and how to use the leash and board.
- *Surf contest participation
- *Higher level surf skills when the team member is prepared to do so
- *Surf history
- *Surf board construction and repair
- *Fitness and nutrition
- *Coastal/Ocean stewardship and preservation

Our surf team practices and competes throughout the year on San Diego and Orange County.

Surf team practices also include working with Indo boards, visiting shaping studios, viewing surf movies, fitness training, nutrition talks and ocean awareness/preservation. Surf team meets at our shop in La Jolla, Kellogg parking lot and our surf site.

Stand Up Paddle Board Surf Lessons (SUP)

Menehune offers Stand up paddle Board (SUP) lessons daily from 9am to 4pm year round. All lessons are scheduled at least a day in advance by telephone. SUP are group lessons and are 1.5 hours long. Group lessons are one instructor per 5 people. We offer group SUP lessons to people ages 14 and up.

Customers check in at our store front located at 2222 Avenida de la Playa. They are required to sign a waiver and pay for the lesson (unless it was purchased on line). We then outfit the customer with a wetsuit and a rash guard. The rash guard is worn on the outside of the wetsuit in order to identify them as a SUP student both for our instructors and the lifeguards. Once the customers are ready we give them directions to our surf site on the beach and their instructors name and send them on their way.

At the beach the customers are greeted by their instructors and the following 15 (average – some students require more and have more questions) minutes are spent going over ocean conditions, and safety. The instructors also do some basic stretching and warm up exercises with the students. The surf instructor covers the following information:

Surf Lesson Material

- *Water safety – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and sting ray shuffle.

- *SUP Instruction – paddling out on knees, standing up, how to use the leash and board and staying out beyond the surf zone.

- *Marine and Ocean conservation and preservation

The remaining time is spent teaching the customers to paddle board hands on attention and instruction.

If the surf is too large Menehune will seek prior approval from the Lifeguards to launch the SUPs from the boat launch. All SUP customers will have a life vest.

Surf Concession Requirements: Operating Plan Related to Exhibit C

Menehune prides itself on being one of the safest surf schools in the industry. Menehune has a lower volume of camps and lessons, and as such, can ensure our highly trained surf instructors have dedicated hands on attention with their students. Our staff and company leadership recognizes the risks of surfing and look forward to working with the City of San Diego Lifeguards to ensure a safe and successful surf school operation. Below are details of our operation plan that outline how we will adhere to the “Surf School/Camp Concession Requirements” outlined in Exhibit C of the permit. Most of the requirements in schedule C have been a part of the permit requirements and our operations over the last three years. Menehune will adhere to both the continued and all additional requirements new to this permit.

1) Maximum Number of Participants/boards on the beach and in the water

The maximum students allowed per site is 50, Menehune limits our number of students to 25. The permit allows for 25 students to be in the water and 25 to be on land. We feel it is easier to limit the camp or group lesson to 25 so that our Surf Instructors are free to be on land or in the water at any given time during the camp or lesson based on conditions and how the surfers are doing.

2) Identifying Markers

All Menehune Surf instructors wear a red rash guard with our company name, logo and the “Surf Instructor” designation on it. The red rash guard is worn at all times while they are in the water. If they are on land they will be wearing our corporate blue T-shirt that

also has our company name and logo. All Menehune surf students will wear a blue Menehune rash guard with our company name and logo on the rash guard.

If the customer wants to rent a surf board at the end of a lesson the rash guard will be given back to the instructor so that the lifeguards will know that customer is no longer in a supervised lesson.

Menehune displays our City issued permit sign at the surf site during all surf lessons and surf camps. The sign is always clearly posted.

3) Student to Instructor Ratios

Menehune maintains a 1:4 instructor to student ratio for all surf camps and a 1:5 instructor to student ratio for all private and group lessons. An American Red Cross certified instructor is always present at all surf camps and lessons.

4) Beach Access

Menehune will not obstruct beach access in anyway. Menehune does not exclude the public from our site. We keep all of our boards and gear under or right beside our canopy in the most condensed fashion as is possible when the equipment is not in use.

5) Concession Site/Location

Menehune operates from the location that we have been assigned on the beach and in the water directly in front of that area. The only time we may not be in the water directly in front of our site is when we have been directed by the Lifeguards to surf in another location (usually due to rip currents). Menehune follows the direction that we are given by the City of San Diego Life guards.

Menehune private lesson customers meet their instructors at our surf site on the sand. Menehune surf campers meet at the north end of La Jolla shores at Kellogg Park and are then escorted by the camp surf instructors to our location on the sand. We do not set up anything in the park, it is simply a meeting spot for parents to drop off their children.

6) Equipment

Menehune uses soft foam boards ranging in size from 6 feet to 9 feet for all lessons and camps. All boards have a leash. All stand up paddle boards also have leashes and PFD (personal flotation devises).

The Menehune Surf team uses their own equipment for practices and competitions. If they have a hard board we do require that they have a nose and tail guard on the board during all practices.

7) Minimum Requirements for Instructors

All of Menehune's surf instructors are 18 years old or older and have the following certifications:

1. Water Safety Specialist, "Surfing Instructor Safety Training"
2. American Red Cross CPR as a professional rescuer or healthcare provider
3. American Red Cross First Aid

In addition to the formal training received from Water Safety Specialists and the American Red Cross, all Menehune Surf Instructors are required to complete an in-house 2 day training that covers emergency situations and our emergency response plan, ocean conditions and water safety, dehydration, sun related illnesses, injuries and reporting protocol, work place professional conduct and drug-free work place compliance. A detailed outline of our training follows.

ATTACHMENT C
Surf School/Camp Concession Requirements

The following requirements are subject to revision at any time by the CITY:

1. **Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
2. **Identifying Markers**
Instructors must wear red rashguards with CONCESSIONAIRE's name. Students must wear a color specific rashguard with CONCESSIONAIRE's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the CONCESSIONAIRE's name must be clearly posted at each Site, whenever classes are in progress.
3. **Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
4. **Beach Access**
CONCESSIONAIRE shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
5. **Concession Site/Location**
Surf CONCESSIONAIRE'S must operate from their assigned Site on the beach sand only. In-water operations should be conducted in the immediate surfing area in front of CONCESSIONAIRE'S beach site. Based on safety considerations, Lifeguards may approve an alternate water operations site. CONCESSIONAIRES may meet and escort participants from the parks facilities, parking lots and/or nearest street but may not set up any concession operations in the park.

When standup paddleboards (SUP) are not able to be launched in front of the CONCESSIONAIRE'S beach site at La Jolla Shores because of large surf, approval may be granted by the lifeguards to enter and exit from the Boat Launch. In these situations, the SUP will be considered a vessel and must have proper carriage requirements, including personal floatation device (PFD). Furthermore, the SUP's must remain outside the surf at all times.
6. **Equipment**
All CONCESSIONAIRES that provide equipment to students must provide a soft foam surfboard; or hardboards must have nose guard and tail guard protection. All boards must have leashes

SUP's are required to have a leash.

7. Minimum Requirements for Instructors

The minimum age for an instructor is eighteen (18) years of age.

Surf camp instructors must possess any one (1) of the following certifications:

- a. American Red Cross, "Lifeguarding"
- b. Miramar College, "Introduction to Open Water Lifeguard"
- c. Water Safety Specialist, "Surfing Instructor Safety Training"
- d. Other certification whose curriculum is approved by the Lifeguard Division.

Additionally, surf camp instructors must possess any one (1) of the following CPR certifications:

- a. American Red Cross
- b. American Heart Association
- c. Any other nationally recognized basic CPR training with certification

Finally, surf camp instructors must possess any one (1) of the following certifications:

- a. Emergency Medical Technician (EMT)
- b. American Red Cross Emergency Response
- c. American Red Cross First Aid Basic
- d. Any other nationally recognized first aid course with certification.

8. Waivers

The CONCESSIONAIRE must have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the CITY, its agents, officers and employees harmless and indemnifies the same from any claims relating to the participants' activities on the CITY beach which arise from or are in any manner connected with the services provided to the participants under this Agreement.

9. First Aid Kit

An American Red Cross first aid kit, approved by a City of San Diego Lifeguard, must be onsite at all times. Prior to the initial class, the operator must arrange with the lifeguard for an initial equipment and first aid safety inspection.

10. EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS

The following plan is the minimum level of response and readiness for Surf Concessions during emergency situations. CONCESSIONAIREs are required to read the plan and cover all aspects of the plan with each employee working on the beach under this Concession Agreement.

Ocean Conditions

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students.

General Rescue Procedures for Water Emergencies

1. Survey the scene.
2. The rescuer should consider his/her level of rescue skill prior to attempting a rescue.
3. Ensure proper use of rescue equipment.
4. Safely approach and determine if the victim is distressed.
5. Perform and rescue based on American Red Cross training.
6. Move the victim to safety.
7. Remove the victim from the water.
8. Perform a primary survey.
9. If an emergency exists, ensure that someone activates 911 and requests San Diego Lifeguard assistance.
10. Provide first aid until emergency medical services (EMS) arrive.
11. If other instructors and students are in the water, they should be directed to the beach until the emergency is clear. Other instructors should provide assistance as needed.

General Rescue Procedures for Land Emergencies

1. Survey the scene.
2. Approach the victim when it is safe for the rescuer.
3. Perform a primary survey.
4. If an emergency exists requiring EMS, activate the 911 system and ensure paramedics and San Diego Lifeguards are responding.
5. Provide appropriate care until EMS arrives.

Cellular Communications

All surf concessions shall keep a fully charged and functioning cellular phone on the beach in a location where it can be immediately accessed in case of emergency.

Emergency Signals

Pre-designated signals will be used to communicate with instructors and other surf-camp personnel in the event emergency assistance is needed. **WHISTLES** will be immediately available to all instructors and surf camp personnel. One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

Any emergency signal observed by an instructor or any surf camp personnel will cause the immediate activation of the emergency response plan.

Accidents, Injuries and Incident Slips

CONCESSIONAIRE shall notify the lifeguard supervisor on duty, as soon as feasible, or any accident or injury occurring in the operation of the Concession, regardless of severity. All rescues and medical aids involving surf camp students, instructors or other personnel will be documented on company incident slips.

11. Termination of Surf Camp Operations

Lifeguards reserve the right to suspend or terminate surf camp operations based on safety considerations

12. Notice of Violation

Concessionaire understands and fully agrees that keeping patrons safe while engaged in surf camps shall be its highest priority. Should San Diego Fire-Rescue Lifeguards or other official City personnel find violations or a pattern of violations of any requirement of the Concession Agreement, then a "Violation of Concession Agreement/Safety Notice" will be issued by the Fire-Rescue Department Lifeguards Division.

The CITY reserves the right to perform inspections and/or reviews with or without advance notice. These inspections and/or reviews may be for any or all aspects related to the Concession Agreement and its attachments, including, but not limited to, ensuring that Concessionaire: (a) possesses all of the requisite certificates and qualifications of its instructors; (b) properly addresses all safety issues; (c) adheres to all aspects of the concession agreement. Violation of any aspect of the Concession Agreement may result in suspension or revocation of the Agreement.

When a Concessionaire, its employee, agent, or representative is issued a "Violation of Concession Agreement/Safety Notice," the CITY shall evaluate the notice of violation for an appropriate and reasonable sanction, up to and including a suspension or revocation of the Concession Agreement.