

FILE COPY

101895464 —

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 Surf Diva, Inc. ("CONCESSIONAIRE"), to be effective upon execution by the parties and approval by the San Diego City Attorney ("Effective Date"), as follows:

1. Incorporated Documents. This Agreement is created pursuant to the City of San Diego REQUEST FOR PROPOSAL ("RFP") for Surf Instruction Concessions issued by the CITY on January 14, 2019, and CONCESSIONAIRE's proposal in response to the RFP, dated February 8, 2019. Attached and incorporated herein are the following documents: **Exhibit A: Map of Sites; Exhibit B: Operating Plan; Exhibit C: Lifeguard Services Safety Requirements.** Additional terms and conditions listed in the RFP may 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 Concessions within CITY beach sites ("Site(s)") designated by the CITY. The locations of the Sites included under this Agreement are designated below.

Area/Beach	Sites
La Jolla	#10 La Jolla Shores
La Jolla	#11 La Jolla Shores

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 CITY terminates a Concession at an existing Site and an alternate Site is not available to CONCESSIONAIRE, a proportionate amount of CONCESSIONAIRE's Minimum Fee (as specified in Section 10.B.) may be adjusted by CITY for the deleted Site.

3. Allowed Uses. This Agreement is granted to CONCESSIONAIRE for the sole purpose of allowing CONCESSIONAIRE to operate surf instruction school/camp and other incidental operations such as boogie boarding and stand up paddle boarding ("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. to 6:00 p.m. Water instruction is permitted from 9:00

a.m. to 5:00 p.m. All Concessions must be vacated by 6:00 p.m. daily. The CITY reserves the right to change the days and/or hours of operation at its discretion. Operations are permitted seven (7) days a week with the following exceptions:

- A. ***Under no circumstances are operations permitted on the following City holidays: Independence Day, July 4th.***
- B. **Special Events.** Unless otherwise authorized by the CITY, CONCESSIONAIRE will 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 will give CONCESSIONAIRE fourteen (14) days advance written notice of any such "Special Events."
5. **Competent Management.** Throughout the term of this Agreement, CONCESSIONAIRE will provide competent management of the Concessions and the Sites for the permitted uses to the satisfaction of the CITY. CONCESSIONAIRE covenants at all times to operate the Concession for the above-specified purposes and diligently conduct the Concessions to maximize gross revenue.
6. **Term.** The term of this Agreement ("Term") will be will be sixty (60) months, commencing on the Effective Date. Agreement Year ("Agreement Year") as used in this Agreement means each of the five (5) consecutive twelve (12) month periods beginning with the Effective Date. This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other party. Any written notice to this effect will be served in accordance with Section 47 of this Agreement.
7. **Holding Over.** Any use of the Sites by CONCESSIONAIRE after the expiration of this Agreement is not permitted without the written consent of the CITY. Any such extensions will continue as month-to-month extensions of this Agreement. If CONCESSIONAIRE continues use of Sites after the expiration or earlier termination of this Agreement without obtaining CITY approval, such use shall neither constitute a renewal or extension of this Agreement, nor give CONCESSIONAIRE any rights in or to the Sites. Any holdover of the Term of the Agreement beyond sixty (60) months must be approved by CITY.
8. **Revocable License.** This Agreement is not a lease. This Agreement is a license to use CITY-owned property, and may be revoked by CITY, in its sole discretion. CITY will 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 conflicts with or prohibits CONCESSIONAIRE's use the Sites.

9. Special Provisions

- A. Operating Plan. The Operating Plan for the proposed Agreement Year submitted with the CONCESSIONAIRE's response to the CITY's RFP, will be revised by CONCESSIONAIRE, if required by CITY to meet CITY's requirement for approval, and the final CITY approved Operating Plan will be incorporated into this Agreement as **Exhibit B: Operating Plan**, attached hereto. *Within sixty (60) days prior to the beginning of the second Agreement Year, and for every Agreement Year thereafter, the CONCESSIONAIRE will provide the CITY with an Operating Plan for the upcoming Agreement Year (twelve (12) calendar months) for the CITY's approval.* All Operating Plans submitted to CITY should be consistent with the format and content of the originally approved Operating Plan. CITY will have the right to approve or disapprove the proposed plan. Once approved, CONCESSIONAIRE will not make any changes to the plan without prior written approval of CITY. At all times, the CONCESSIONAIRE will ensure that all operations permitted under this Agreement comply with the **Exhibit C: Lifeguard Services Safety Requirements**, attached hereto.
- 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 CONCESSIONAIRE's to provide related Concessions during times not scheduled for operations in the approved Operating Plan at the Sites permitted in this Agreement. However, CITY, by granting this Agreement to CONCESSIONAIRE, makes no warranty that the Sites will be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities will be maintained.
- C. Concession Sites. On each Site included in this Agreement, CONCESSIONAIRE will 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 show the approved Concession sign at all times during normal operating hours. 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 CONCESSIONAIRE must be approved by CITY and will 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 will, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY. City will not be liable to CONCESSIONAIRE in any way for such adjustments.

CONCESSIONAIRE will operate no more and no fewer than the Sites designated in this Agreement unless CITY decides to change the number of Sites.

- D. No Improvements. No improvements, trade fixtures, structures, and installations or additions to the Sites are allowed to be installed by CONCESSIONAIRE. All personal property remaining on the Sites after expiration or termination will 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 daily by CONCESSIONAIRE or more often, as required.
 - F. Standard of Employees. CONCESSIONAIRE and its employees will at all times conduct themselves and the operation of the Concessions in a respectable and courteous manner. CONCESSIONAIRE will thoroughly train its employees in their duties and will regularly monitor its employees to ensure that they behave in a courteous manner, do not disturb the quiet enjoyment of other beach users, and otherwise comply with all requirements of this Agreement.
10. Fees. CONCESSIONAIRE is required to pay to CITY, on a monthly basis, the greater of either the Percentage Fee ("Percentage Fee") or the Minimum Fee ("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 will only pay the Percentage Fee each subsequent month until either a new Agreement Year begins or this Agreement ends.
- A. Percentage Fees. Percentage Fees will consist of sixteen percent (16.00%) of the gross income resulting from the Concession operations permitted under this Agreement during each month of an Agreement Year. The CITY, in its 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, as may be approved in writing by the CITY 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 will be subject to the requirements of Section 10.E.
 - B. Minimum Fee. The annual Minimum Fee established for the first Agreement Year following the Effective Date is \$37,654.72, which is

\$3,137.89 on a monthly installment basis. 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.

- C. Minimum Fee Adjustment. Effective at the beginning of the first day of the third and fifth Agreement Years of this Agreement ("Adjustment Date"), the annual Minimum Fee will be set at eighty percent (80.00%) of the annual average of the Total Fees Paid under this Agreement for the two (2) Agreement Years immediately preceding the Adjustment date. The annual average of the Total Fees Paid will then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments will be calculated by the CITY upon completion of payments due for the preceding years in order to determine the amount of the Minimum Fee. Until such calculations are completed, CONCESSIONAIRE will continue paying the monthly Minimum Fee at the current rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate will be paid to the CITY within thirty (30) days following written notice provided pursuant to Section 47 of the Agreement. In no event will the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the Adjustment Date. In the event that the Total Fees Paid prior to the Adjustment Date do not exceed the current annual Minimum Fee, the annual Minimum Fee will be increased to one-hundred five percent (105.00%) of the annual Minimum Fee most recently in effect.
- D. Delinquent Concession Fee. If CONCESSIONAIRE fails to pay any fees when due, CONCESSIONAIRE will 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 will be increased to ten percent (10%) of the delinquent fee, which CONCESSIONAIRE will pay in addition to delinquent fee. The parties agree that such late fees are appropriate to compensate the CITY for loss resulting from delinquent fees, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- E. Unauthorized Use Charge. CONCESSIONAIRE will 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, will constitute an authorization of an unauthorized use, and will not be waiver of any of the CITY's rights under the Agreement.

- F. Gross Revenue. ("Gross Revenue") as used in this Agreement, will include all income resulting from the Concession operations whether received or to become due; provided, however, that Gross Revenue will 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. Gross Revenue includes all revenue received by CONCESSIONAIRE from internet sales (for example, if using a website such as Groupon, Gross Revenue would include all payment received by CONCESSIONAIRE from a Groupon sale). Possessory interest taxes or other property taxes will not be deducted by CONCESSIONAIRE in computing Gross Revenue. Gross Revenues will not include refund of deposits. The amount of taxes and refunds will be clearly shown on the books and records of CONCESSIONAIRE. The Percentage Fee will 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 will 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 will provide CITY with a correct income statement for the Sites operated by CONCESSIONAIRE together with a payment of fees on all applicable Gross Receipts in a form selected by CITY. This income statement will 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 will be signed by CONCESSIONAIRE and its authorized agent attesting to the accuracy of the income statement. Each statement will include:
- i. Total Gross Receipts 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 Sections 10.B and 10.A.

H. Inspection Of Records.

- i. Records. CONCESSIONAIRE will 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 will 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 will be equipped with devices that lock in sales totals and other transaction numbers and sales details that are not resettable. Totals registered will be read and recorded at the beginning and end of each business day. Regarding admission charges or concession fees, CONCESSIONAIRE will issue serially numbered tickets for such admission or Concession fees and will 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. *Within sixty (60) days after the end of the each Agreement Year, CONCESSIONAIRE will at its sole cost and expense, submit to CITY a statement in which the total Gross Receipts and the corresponding amounts of Percentage Fees paid to CITY for the previous Agreement 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 will be signed by CONCESSIONAIRE and a duly authorized financial representative of CONCESSIONAIRE attesting to the accuracy thereof, which will be legally binding upon CONCESSIONAIRE.*
- iii. Right to Inspect. All of CONCESSIONAIRE's books of account, records, and supporting documentation, as described under Section 10.H.i, will 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, will 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 will 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.

- 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.
- v. Any fee deficiency determined by the audit will be considered a delinquent fee, subject to all penalties and remedies provided to CITY for delinquent Concession fees under Section 10.D. CITY will 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 will 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 will 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 will be deemed paid upon the date such payment is postmarked by the postal authorities. If any such postmark is illegible, the payment will 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 will 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 will be available unconditionally to CITY for payment of delinquent 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 will be returned to the CONCESSIONAIRE without interest. The security deposit may be increased by CITY proportionate to any increase in the Minimum Fee. ***CONCESSIONAIRE will 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 will 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 will reimburse the security deposit to the full required amount.
- ii. Increase. Upon thirty (30) days prior written notice by CITY, CONCESSIONAIRE will 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 will 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 will mean the written consent or approval of the CITY, unless

otherwise expressly provided. CITY's discretionary acts hereunder will be made in the CITY'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 will 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 will, 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 will at all times conduct themselves and the operations on the Sites in a respectable and courteous manner.
15. Inspection. CITY may, at all times, enter and inspect the Sites.
16. Insurance. CONCESSIONAIRE will obtain and maintain throughout the Term of this Agreement, at its sole cost and expense, all insurance required by this Agreement. CONCESSIONAIRE's liabilities under this Agreement, including without limitation CONCESSIONAIRE's indemnity obligations, will not be deemed limited in any way to the insurance coverage required herein. CONCESSIONAIRE's maintenance of the required insurance coverage is a material consideration for this Agreement. Notwithstanding any provision of this Agreement to the contrary, if CONCESSIONAIRE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, CONCESSIONAIRE will be in default of this Agreement. CONCESSIONAIRE will not modify any policy or endorsement thereto which increases CITY's exposure to loss. CONCESSIONAIRE will obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for the following insurance, which will be subject to CITY's written approval thereof:
 - A. Commercial General Liability Insurance ("CGL") written on an *ISO Occurrence form CG 00 01 07 98* or an equivalent form providing coverage at least as broad which will cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There will be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs.

insured claims or contractual liability. All defense costs will be outside the limits of the policy.

- B. Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance will cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Agreement.
- C. Workers' Compensation Insurance, as required by applicable laws, for all of CONCESSIONAIRE's employees who are subject to this Agreement, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.
- D. 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 will 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 will 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.
- E. Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as insureds "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; (b) CONCESSIONAIRE's products; (c) CONCESSIONAIRE's work, including without limitation CONCESSIONAIRE's completed operations performed by CONCESSIONAIRE or on CONCESSIONAIRE's behalf; or (d) the Site.
- F. Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents will be in excess of CONCESSIONAIRE's insurance and will not contribute to it.

- G. Severability of Interest. Each policy must be endorsed to provide that CONCESSIONAIRE's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and will provide cross-liability coverage.
- H. Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Agreement will only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers will be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer will be subject to CITY's approval in each instance.
- I. 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.
- J. Continuity of Coverage. All policies will be in effect on or before the first day of the Term, except "course of construction fire insurance" will be in force on commencement of all authorized construction, and full applicable fire insurance coverage will be effective upon completion of each insurable improvement. The policies will be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, CONCESSIONAIRE will furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. CONCESSIONAIRE will provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, CONCESSIONAIRE will immediately notify CITY and will immediately obtain replacement insurance as soon as possible.
- K. Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving CONCESSIONAIRE thirty (30) days prior written notice. CONCESSIONAIRE will 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 Allowed Uses.
- L. Accident Reports. CONCESSIONAIRE will immediately report to CITY any accident causing property damage or injury to persons on the Site or otherwise

related to the Allowed Uses. Such report will 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.

M. Causes of Loss - Special Form Property Insurance. CONCESSIONAIRE will obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of CONCESSIONAIRE's insurable property related to the Allowed Uses of the Site under this Agreement or the Site in an amount to cover 100 percent (100%) of the replacement cost. CONCESSIONAIRE will deliver a certificate of such insurance to CITY's Real Estate Assets Department

17. Indemnification. CONCESSIONAIRE will defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents 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, maintenance, restoration, or improvement of the Sites, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that CONCESSIONAIRE's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. City may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If City elects 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 will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs.
18. Nondiscrimination. This Agreement is made and accepted upon and subject to the covenant and condition, which will run with the land, that CONCESSIONAIRE or any person claiming under or through CONCESSIONAIRE will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Sites or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Sites.
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 will 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. Accessibility Compliance. CONCESSIONAIRE will, as applicable to the Sites and CONCESSIONAIRE's possession, use, and occupancy of the Sites, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, CONCESSIONAIRE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). CONCESSIONAIRE's compliance will include without limitation the following:

- A. CONCESSIONAIRE will not discriminate against qualified individuals with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment;

- B. No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of CONCESSIONAIRE;
 - C. CONCESSIONAIRE will post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - D. Where required by law, all improvements, fixtures, structures, or installations on the Sites will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Sites which deny access to individuals with disabilities. All improvements and alterations will be at CONCESSIONAIRE's sole expense.
 - E. CONCESSIONAIRE's failure to comply with the accessibility requirements of this section, or submitting false information in response to these accessibility requirements, or both, will be a default of this Agreement.
22. CONCESSIONAIRE'S Risk. CONCESSIONAIRE will 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 will 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 will 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 will automatically terminate this Agreement.
25. Signs. CONCESSIONAIRE will display the Concession sign displaying this is an CITY-approved Concession at all times while operating the Concessions. CITY will provide a sign during the first Agreement Year. If such sign is lost or stolen, CONCESSIONAIRE must obtain a duplicate sign and its sole expense. CONCESSIONAIRE will 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 will remove the item at its expense within 24 hours from receiving 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - ii. CONCESSIONAIRE will voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or

law; or

- iii. CONCESSIONAIRE will 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 will 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 will 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 Lifeguard Services Safety Requirements that, in 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 will 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 will be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein will be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein will be construed so as to defeat any other rights or remedies to which CITY may be entitled.
31. Compliance with Laws. CONCESSIONAIRE will, 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 will 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 will be fully and solely responsible for payment of all such possessory interest taxes. CONCESSIONAIRE's payment for taxes, fees, and assessments will not reduce any payment due CITY under this Agreement.
33. Equal Opportunity. CONCESSIONAIRE will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. CONCESSIONAIRE will not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. CONCESSIONAIRE will cause the foregoing provisions to be inserted in all of CONCESSIONAIRE's contracts for work related to this Agreement so that such provisions will be binding upon each of CONCESSIONAIRE's contractors. CONCESSIONAIRE will fully cooperate with any investigation conducted by CITY pursuant to CITY's Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request CONCESSIONAIRE will submit a current Workforce Report. CONCESSIONAIRE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contracts for a period of not less than one (1) year.

34. Equal Benefits. CONCESSIONAIRE will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require concessionaires of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Agreement, CONCESSIONAIRE certifies that it will maintain such equal benefits throughout the term of this Agreement. CONCESSIONAIRE's failure to maintain equal benefits will be a default of this Agreement.
35. Equal Pay Ordinance. Unless an exception applies, CONCESSIONAIRE will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Agreement, CONCESSIONAIRE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- A. Notice Requirement. CONCESSIONAIRE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.
36. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Agreement if CONCESSIONAIRE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of CONCESSIONAIRE for this Agreement. It is not the intent of this policy that these provisions apply to members of the City Council.
37. Water Quality Assurances. The CITY and CONCESSIONAIRE are committed to the implementation of control (best management practices, or BMPs) to manage activities on the Sites 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 will, 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 will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
38. Hazardous Substances. CONCESSIONAIRE will not allow the illegal installation, storage, utilization, generation, sale or release of a Hazardous Substance or otherwise regulated substance in, on, under or from the Sites. CONCESSIONAIRE and CONCESSIONAIRE's agents and contractors will not install, store, utilize, generate or sell any Hazardous Substance on the Sites without CITY's prior written

consent. CONCESSIONAIRE will, prior to initiating any operations, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- A. Release. A "release" will include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of a hazardous substance.
- B. Hazardous Substance. "Hazardous Substance" will mean any substance listed by the Environmental Protection Agency or the State of California as a hazardous substance, and all types of petroleum-related substances and their chemical constituents.
- C. Remediation. If CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Sites results in a release of a Hazardous Substance, CONCESSIONAIRE will pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Sites, and in accordance with all applicable laws, rules and regulations of governmental authorities.
- D. Removal. If CONCESSIONAIRE or CONCESSIONAIRE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances or hazardous wastes to the Sites, CONCESSIONAIRE and/or CONCESSIONAIRE's contractor or agent will remove all Hazardous Substances and hazardous wastes in any type of container, equipment or device from the Sites immediately upon or prior to the expiration or earlier termination of this Agreement. Upon CITY's request, CONCESSIONAIRE will deliver to CITY true copies of documentation demonstrating the legal removal and/or disposal of the Hazardous Substances and/or hazardous wastes, containers, equipment or devices from the Sites. CONCESSIONAIRE will be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.
- E. Indemnity. CONCESSIONAIRE will 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, maintenance or restoration of the Sites, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any

necessary CITY response costs; (v) all fines, penalties or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, CONCESSIONAIRE's officers, employees, invitees, guests, agents or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

- F. Notice of Release. If CONCESSIONAIRE knows or has reasonable cause to believe that a Hazardous Substance or petroleum related substance or its chemical constituents has been released on, from or beneath the Sites, CONCESSIONAIRE will immediately notify CITY and any appropriate regulatory or reporting agency in compliance with California Code of Regulations Title 19 and all other applicable laws or regulations. CONCESSIONAIRE will deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If CONCESSIONAIRE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, CONCESSIONAIRE will take all actions necessary to alleviate the danger. CONCESSIONAIRE will immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Sites.
- G. Environmental Assessment. Upon reasonable cause to believe that CONCESSIONAIRE's occupancy, use, development, maintenance or restoration of the Sites ("CONCESSIONAIRE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Sites, CITY may cause an environmental assessment under regulatory oversight of the suspect area to 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 will be obtained at CONCESSIONAIRE's sole cost and expense, and will establish what, if any, Hazardous Substances have more likely than not been caused by CONCESSIONAIRE's Operations on, in, from or under the Sites, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by city, county, state or federal laws, statutes, ordinances or regulations, or require future restricted re-use of the Sites, then the environmental assessment will include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. CONCESSIONAIRE will cause, or if CONCESSIONAIRE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Sites and compliance with environmental law and regulations are achieved, and CONCESSIONAIRE will pay all costs and

expenses therefor.

39. Storm Water Pollution Prevention Program. CONCESSIONAIRE will comply with the CITY's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the San Diego Municipal Code, as may be amended, and any and all applicable Minimum Best Management Practice requirements, as defined in the City's Jurisdictional Runoff Management Plan, in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of CITY regardless of location.
- A. CONCESSIONAIRE will comply with the CITY's Jurisdictional Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within CITY boundaries as adopted by the CITY's City Council on July 1, 2015, via Resolution No. 309791, as may be amended.
- B. CONCESSIONAIRE will comply with each CITY facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.
40. Waiver. The property constituting the Sites is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of CONCESSIONAIRE's obligations under this Permit, in one or more instance, will not be construed as a waiver of any such obligation, and the same will remain in full force and effect. CITY's waiver of a default will not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy will not be deemed a waiver of that or any other right or remedy under this Agreement, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default will not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents will not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default will not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.
41. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination will survive such expiration or termination.
42. Joint and Several Liability and Responsibility. If CONCESSIONAIRE includes more than one person or legal entity, each such person and legal entity will be jointly and severally liable and responsible for the performance of each and every obligation of CONCESSIONAIRE under this Agreement.
43. 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.

44. Number and Gender. Words of any gender used in this Agreement will include any other gender, and words in the singular number will include the plural, when the tense requires.
45. Captions. Section headings and captions will 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 will have no effect on the enforceability of this Agreement.
46. Entire Agreement. This Agreement, along with all exhibits 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 will be in writing and signed by all the parties hereto.
47. Notices. Any notice required or permitted to be given under this Agreement will 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:

Fuzzy & Coco Tihanyi
SURF DIVA, Inc.
2160 Avenida de la Playa
La Jolla, CA 92037

48. 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.

49. San Diego's Strong Mayor Form of Governance. All references to "CITY" in this Agreement will be deemed to refer to "the Mayor or his/her designee." This section will 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.
50. City's Not-Liability. CITY will 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.
51. 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 will provide CITY with evidence, satisfactory to CITY, that such authority is valid.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

CONCESSIONAIRE

By: [Signature]
Name: Isabelle C. Tihanyi
Title: CEO/owner

THE CITY OF SAN DIEGO, a California
municipal corporation

By: [Signature]
Cybele L. Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity (i.e. Concession Agreement) is categorically exempt from CEQA pursuant to State CEQA Guidelines Sections 15301 (Existing Facilities) and 15311 (Accessory Structures).

Date: 5/29/19

BY: [Signature]
Name: Alyssa Muto
Planning Department

Approved as to form this

14 ~~100~~ ^{NJB} Day of May, 2019

MARA W. ELLIOTT, City Attorney

BY: [Signature]
Name: Noah J. Brzicz
Title: [Signature]

EXHIBIT A: MAP OF SITES

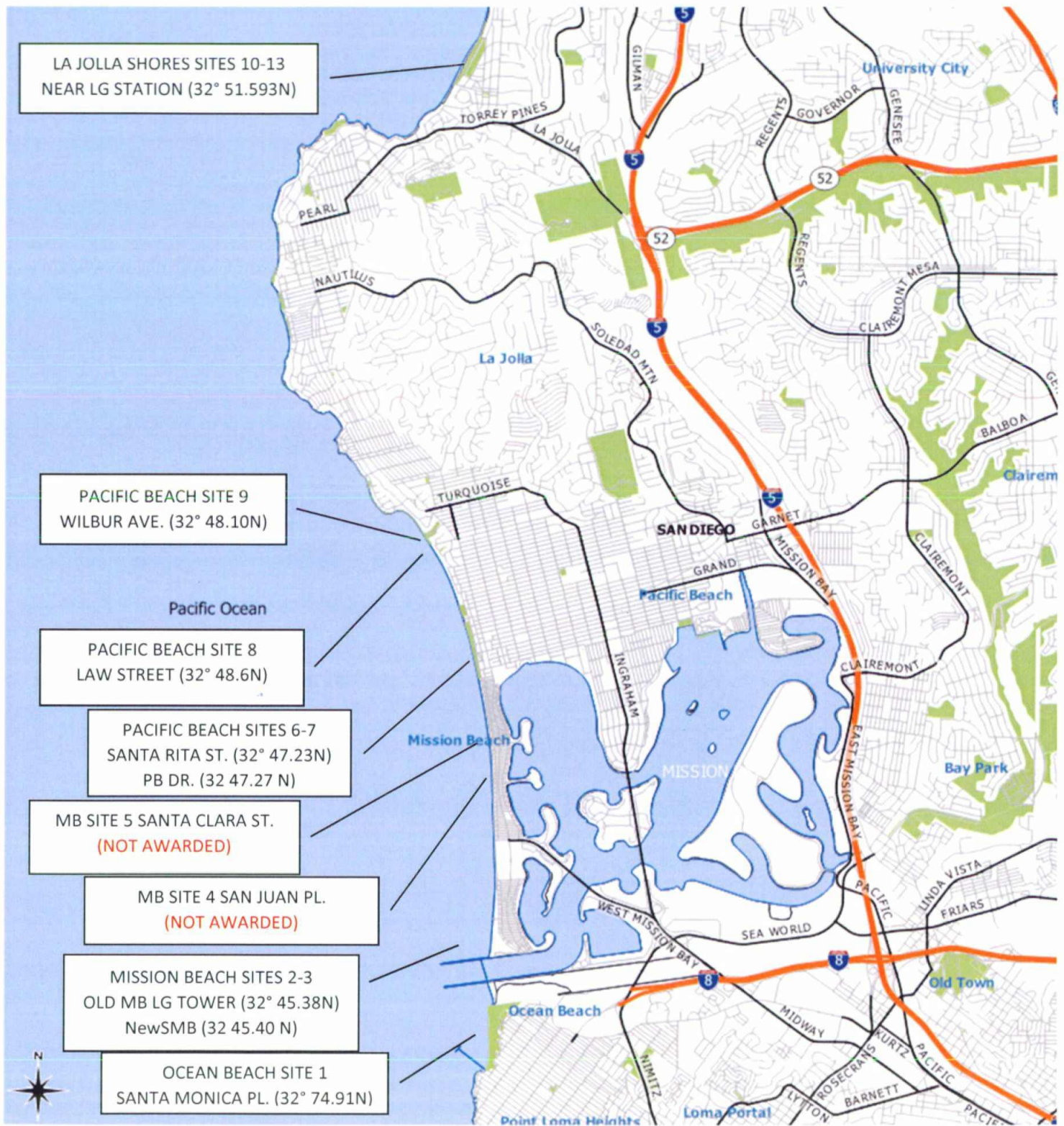


EXHIBIT C: LIFEGUARD SERVICES SAFETY REQUIREMENTS

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 with a leash; hardboards must have nose guard and tail guard protection.

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, of 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.

EXHIBIT B: OPERATING PLAN

**OPERATING PLAN FOR Surf Diva, Inc.
Surf Diva Surf School/American Surf Academy**

La Jolla Shores Site # 10 | May 14, 2019 – April 30, 2020

Surf and SUP instruction; camps, private lessons,
corporate events. Surf Camp for 5 to 17 year old
boys & girls Advanced coaching for surf team



**AMERICAN SURF
ACADEMY** 



SURF AND SUP INSTRUCTION

Surf Diva Surf School

SCHEDULE OF CLASSES:

2-Day Weekend	Clinics for Women & Girls	(2 hours per day)
5-Day Weeklong	Clinics for Women & Girls	(2 hours per day)
2-Day Co-ed Weekend	Clinics	(2 hours per day)
5-Day Co-ed Weeklong	Clinics	(2 hours per day)
Private Lessons daily for Women, Girls, Men, and Boys	(Surf Divas & Divos)	(1 to 3 hours)
Corporate Events	(Co-Ed)	(2 hours)
Birthday Parties	(Co-Ed)	(2 hours)
Special Events & Group Lessons	(Co-Ed)	(1 – 3 hour lessons)
Girl Scout Special Surf Lessons – to obtain the Surfing Badge		(1.5 hours)
Stand-up Paddle Boarding (SUP) – Paddle Boarding Lessons		(1 – 3 hours)
Party Wave daily drop in class for kids 5–11 and adults 12 & up		(1.5 hours)
Stoked! Saturdays Intermediate skills class for kids 5–11 and adults 12 & up		(1.5 hours)
Advanced coaching for elite athletes and Special Needs		(2 hours)

American Surf Academy

SCHEDULE OF CLASSES:

Week-long classes/camps	Monday – Friday
Private & Semi-private lessons	Daily
Standup paddleboard (SUP)	Saturdays
ASP/Surf Team /“Stay Stoked Coaching”	Sundays

NUMBER OF STUDENTS PER CLASS:

Surf Diva, Inc. has a maximum of 25 students in the water and 50 on land at any time.

Ratio: 1 instructor for every 5 students.

Surf Diva Surf School

DAYS AND HOURS OF OPERATION:

Monday-Friday Morning Session: 8:30 am – 12:30 pm
(water instruction begins at 9:00am)

Monday-Friday Afternoon Session: 1:00 pm – 5:00 pm
Saturday & Sunday "Weekend Clinic": 9:00 am – 11:00 am
12:00pm – 2:00pm
3:00pm – 5:00pm

Mon.–Sun. Private & Group Lessons: 8:30 am – 6:00 pm
(water instruction begins at 9:00am)

No classes on July 4th

American Surf Academy

DAYS & HOURS OF OPERATION:

Monday-Friday Morning Session: 9:00 am – 12:30 pm
Monday-Friday Afternoon Session: 1:00 pm – 4:00 pm
Monday-Friday All Day Session: 9:00 am – 4:00 pm
Mon.–Sun. Private & Group Lessons: 8:30 am – 6:00 pm
(water instruction begins at 9:00am)

No classes on July 4th

SURF DIVA SURF SCHOOL:**PRICE LIST**

Weekend Clinics for Women or Co-Ed option	\$170 2-Day
2-Day Weekend Clinics for Women or Co-Ed option	\$120 (Level Two)
5-Day Weeklong Camps for Women or Co-Ed option	\$395
Private Lessons per person for 1 Hour (SUP add +\$10)	\$99 / 1 person \$75 / 2-3 people \$65 / 4-5 people
Private Lesson per person for 2 Hours	\$175 / 1 person \$143 / 2-3 people \$122 / 4-5 people
Private Lessons per person for 3 Hours	\$220 / 1 person \$185 / 2-3 people \$160 / 4-5 people
Private Lessons Monday through Sunday for anyone ages 5 & up Adult clinics are ages 12 & up	
Special Events, Corporate & Group Lessons (Co-Ed) 1.5 hours	\$110 & up
Girl Scout Special Surf Lessons – to obtain the Surfing Badge 1 hour	\$49
Party Wave Drop-in Group Lesson 1.5 hours	\$75

AMERICAN SURF ACADEMY**PRICE LIST:**

Half-Day Session (Morning or Afternoon)	\$395 / Camper
Full-Day Session (All Day)	\$650 / Camper
Private Lessons per person for 1 Hour (SUP add +\$10)	\$99 / 1 person \$75 / 2-3 people \$65 / 4-5 people
Private Lesson per person for 2 Hours	\$175 / 1 person \$143 / 2-3 people \$122 / 4-5 people
Private Lessons per person for 3 Hours	\$220 / 1 person \$185 / 2-3 people \$160 / 4-5 people

\$37.50 La Jolla Surf Club Membership \$150 or \$165/month (locals rate)
weekly practice 1.5 hours

SUMMARY OF MATERIALS COVERED IN CLASS:

At Surf Diva, Inc. our Surf Instructors teach class participants the basic fundamentals of surfing. Before our students even step into the water, our Surf Instructors thoroughly review the following:

- Ocean Awareness
- Ocean Currents/Formation of Waves (different types of beaches, etc...)
- Safety (priority rules, right of way in the water, board handling, etc...)
- Wave Riding (foot position, "pop-ups", hand placement, paddling, etc...)
- Surfing Etiquette
- Environmental Awareness
- Marine Life
- Stretching Techniques
- Parts of the Surfboard
- History of Surfing
- Surfing Terminology and Lingo
- Geography of Surfing

INTERPRETIVE PROGRAM OR ACTIVITY:

Surf Diva, Inc. teaches all participants the importance of keeping our natural resources and the ocean environment clean and healthy. It is everyone's responsibility to respect the environment. Teaching this respect of the surfing environment and beach community is an integral part of what we do.

Surf Diva, Inc. uses an interpretive program or activity for each of its classes. For a week-long class, Surf Diva, Inc. uses one of the following interpretive programs each day. For a one-time class the Surf Instructor will discuss one or more of the following elements depending on the participants' previous experience.

-
- | | |
|---|--|
| 1 | Ocean Awareness/ Currents/ Surfing Etiquette (how to stay out of someone's way, when not to go out surfing, how to not panic, the importance of using sunscreen, etc...) |
|---|--|
-
- | | |
|---|--|
| 2 | Paddling Out (different ways to go over the waves, including: duck dive, push up over wave, turn turtle, sitting on tail of board, turning for a wave) |
|---|--|
-
- | | |
|---|---|
| 3 | Evolution of Surfboard and Surfing Equipment Design (shaping of boards, what the fin does, how the shape affects function, what materials are used in making boards, how the design has changed over time, how a wetsuit works) |
|---|---|
-
- | | |
|---|--|
| 4 | Environmental Conservation (how to minimize our impact on the environment, how human actions affect the beach and ocean environment, restoration plan, why it's important to pick up trash). |
|---|--|
-
- | | |
|---|--|
| 5 | What is a City Beach and Its Importance (purpose of City beaches in preserving nature and teaching people about our environment) |
|---|--|
-
- | | |
|---|--|
| 6 | The Marine Environment (observing the ocean, tides, wave structure, the surrounding environment, and marine biology and habitat) |
|---|--|
-
- | | |
|---|---|
| 7 | Keeping Active (the importance of exercise and using our City's many parks and recreational programs to help us stay healthy) |
|---|---|
-
- | | |
|---|--|
| 8 | Beach Games for American Surf Academy students |
|---|--|
-

**SAMPLE LESSON PLAN FOR A
2 HOUR LESSON**

- 1** 35 minute Land Lecture discussing Ocean Safety, Ocean Awareness, Surfing Etiquette, Parts of the Surfboard
- 2** Students suit up, apply sunscreen
- 3** Students are divided into groups of 5 with matching rashguards
- 4** Review conditions
- 5** Review on how to get in the surf, 5 practice 'pop ups' before entering surf
- 6** Correct techniques in the surf
- 7** Demonstrate and teach students how to move across the board once they are standing, to get more speed in the wave
- 8** How to angle the board across the wave (front-side and backside). This action requires a proper explanation of 'dropping in' and inside positioning.
- 9** Explain that, in surfing, as with all sports, there are rules. They are not written down, but you must learn them- the beauty is that the rules apply EVERYWHERE around the world
- 10** Code of conduct for surfing etiquette and explain to students how surfers at the peak have priority
- 11** Finish lesson, review on what they have learned and experienced. Next steps to progressing skills
- 12** Student receives Surfing Diploma

**SAMPLE LESSON PLAN
AMERICAN SURF ACADEMY**

1. ☐ 20 minute Land Lecture discussing Ocean Safety, Ocean Awareness, Surfing Etiquette, Parts of the Surfboard
2. ☐ Students suit up, apply sunscreen
3. ☐ Students are divided into groups of 5 with matching rashguards
4. ☐ Review conditions
5. ☐ Review on how to get in the surf, 5 practice 'pop ups' before entering surf
6. ☐ Correct techniques in the surf
7. ☐ Take 5 minute break with the students on the sand (review what they have learned)
8. ☐ Back in water and show students how to paddle
9. ☐ Explain that, in surfing, as with all sports, there are rules. They are not written down, but you must learn them- the beauty is that the rules apply EVERYWHERE around the world
10. ☐ Finish lesson, review on what they have learned and experienced. Next steps to progressing skills
11. ☐ Student receives Surfing Diploma

OPERATING PLAN - STANDUP PADDLEBOARD
(SUP) INSTRUCTION



Sup-Basics:-Surf-Diva-Style;-Lesson-Plan:-Basic-Paddling

Getting Started-1.5 Hour Plan

-
- 1** Meet student at the beach in front of the Surf Diva site. Have board, paddle, and wetsuit ready.

 - 2** Go over safety plan and emergency procedures. 5 min.

 - 3** Paddle handling: hold T bar, paddle facing back, basic forward motion, turning, stroke skills. 5 min.

 - 4** How to fall off and get back on the board: Cover head, avoid landing on board or paddle. 5 min.

 - 5** Start out by paddling on knees through small whitewater waves in the channel. Avoid other surfers and crowds. Stay out of the mix. Make sure not to drift into swim areas.

 - 6** Once past the breakers (out of traffic), students wait for the rest of the group to catch up. 10 min.

 - 7** Re-group and demonstrate the pop up: face oncoming swell, knee paddle a few strokes for glide to create balance, hands on paddle laying on board, stand up gently to parallel stance, put paddle into water immediately to assist with balance, start paddling to the horizon. Practice 5 min.

 - 8** Head to the flat water and paddle parallel to the beach. 20 minute paddle practice

 - 9** Work on turns for 10 min.

 - 10** 5-minute break; sit on boards in a semi-circle (bring students in close to answer questions, point out the sights: LJ Cove, Black's, Pier, waves on inside Slides, etc.). 5 min.

 - 11** Start to paddle back: 10 minutes. Re-group before coming in through surf zone. Remind safety rules: don't jump off board in shallow water, avoid other people.

 - 12** Paddle in to shore on knees through surf zone. Once onshore, remove leash, wrap it around board and carry paddle to the sand. Buddy-carry board to grass. Make sure boards are not in the way of beach users. 5 min.
-

NEUTRAL STANCE

Feet parallel

Knees slightly bent

Shoulders back

Head up

Core engaged

Hips loose

STANDING UP

There are three different options, all work great.
HOLD on to the paddle when getting up:

From the knees, use paddle as a balance
while bringing up one foot at a time.

Get some speed while paddling on your knees, then pop
up (good when in choppy water; forward motion will in-
crease stability).

Stand up with both feet directly to a NEUTRAL parallel
stance (cool guy pop-up).

POSITION

Neutral stance in sweet spot

Too far back = stall and fall

Too narrow stance/Too wide = wobbles

Look at horizon, not at your feet

PADDLING

Shift weight side to side for balance

Keep paddle in the water to maintain stability

Hold top of paddle with one hand and shaft with the other

Short strokes to maintain balance

Sculling to stay still

Paddle perpendicular into the oncoming waves so the
chop does not rock the sides of your board

Momentum makes it easier to balance (like riding a bike)

Paddle on LEFT = going RIGHT

Paddle on RIGHT = going LEFT

PADDLING OUT

Lay paddle flat on board with the blade
under the chest, "surfer" paddle out.

ADVANCED PADDLING TIPS

Tip the blade sideways to slice through onshore breeze

Bring elbows up to forehead level before dipping paddle

Pull with straight arms

Use core and abs to move paddle through water

Keep strokes fast and steady to move smoothly over the water: Go for the glide!

TURNING

Three main types of turns (all take some practice):

- 1) **Backpaddle:** put the brakes on-3 backpaddles/2 forward strokes on opposite side and go.
 - 2) **Heelside Kick Turn:** surf stance pivot turn, don't sink tail, constant paddle, bend knees and put more pressure on back foot.
 - 3) **Frontside Kick Turn**
 - 4) **Bonus turn: Fin-first turns**
-

ADVANCED TURNING

Pivot Turn: Surfer stance, knees bent low for balance, take small short strokes in tight circle to turn on a dime. Weight should be on the tail of the board, nose of board out of the water. This is very tippy so remind students that "practice makes perfect".

EXHIBIT B: OPERATING PLAN

**OPERATING PLAN FOR Surf Diva, Inc.
La Jolla Surf Camp / Menehune Surf**

La Jolla Shores Site # 11 | May 14, 2019 – April 30, 2020

Surf and SUP instruction; camps, private lessons,
corporate events. Surf Camp for 5 to 17 year old
boys & girls; Advanced coaching for surf team



**MENEHUNE
SURF**



SURF AND SUP INSTRUCTION

La Jolla Surf Camp

SCHEDULE OF CLASSES:

Weeklong classes / Camp	Monday – Friday
Boogie Bees (Bodyboard) Camp	Monday – Friday
Birthday parties	Monday – Friday
Private lessons	Daily
Standup paddleboard (SUP)	Daily



Menehune Surf

SCHEDULE OF CLASSES:

Week-long classes/ Camp	Monday – Friday
Private Lessons	Daily
Standup paddleboard (SUP)	Daily
Surf Team	Saturday & Sunday
Ocean Adventure Camp	Monday-Friday

Surf Diva, Inc. has a maximum of 25 students in the water and 50 on land at any time.

~~Ratio: 1 instructor for every 5 students~~ with 1:4 for the younger students

La Jolla Surf Camp

DAYS & HOURS OF OPERATION:

Monday-Friday Morning Session:	9:00 am – 12:30 pm (water instruction begins at 9:00am)
Monday-Friday Afternoon Session:	1:00 pm – 4:00 pm
Monday-Friday All Day Session:	9:00 am – 4:00 pm 8:30 am – 6:00 pm
Mon.-Sun. Private & Group Lessons:	8:30 am – 6:00 pm (water instruction begins at 9:00am)

No classes on July 4th

Menehune Surf

DAYS & HOURS OF OPERATION:

Check-in (land based operations only)	8:30am to 9:00am	Monday
Ocean and surf safety and stretching	9:00am to 9:20am	Monday – Friday
Surf session #1	9:20am to 10:00am	
Ocean wildlife games/sharing and conservation	10:00am to 10:20am	
Surf session #2	10:20am to 11:00am	
Surf etiquette and making friends	11:00am to 11:20am	
Surf Session #3	11:20am to 12:00pm	

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

Lunch & Activities	12:00pm to 1:00 pm
Surf session #4	1:00pm to 2:30 pm
Review daily lesson, clean up our beach area, prepare for pick up.	2:40pm to 3:00 pm

Full day camps ends at 3pm and children are picked up by their parents.

On Mondays upon check-in campers receive a Menehune Surf hat to wear daily at camp.

On Fridays the campers receive a graduation certificate and stickers.



Ocean Adventure Camp 8:30am-1:00pm Monday-Friday

No classes on July 4th

LA JOLLA SURF CAMP:**PRICE LIST**

Half-Day Session (Morning or Afternoon)	\$395 / Camper
Full-Day Session: (All Day)	\$650 / Camper
Private Lessons per person for 1 Hour (SUP add +\$10)	\$99 / 1 person \$75/2-3 people \$65/4-5 people
Private Lesson per person for 2 Hours	\$175 / 1 person \$143/2-3 people \$122/4-5 people
Private Lessons per person for 3 Hours	\$220 / 1 person \$185/2-3 people \$160/4-5 people
\$37.50 La Jolla Surf Club Membership \$150 or \$165/month (locals rate) weekly practice 1.5 hours	
Special Events, Corporate & Group Lessons (Co-Ed) 1.5 hours	\$110 & up
Girl Scout Special Surf Lessons – to obtain the Surfing Badge 1 hour	\$49
Party Wave Drop-in Group Lesson 1.5 hours	\$75

MENEHUNE SURF**PRICE LIST:**

Half-Day Session: Morning or Afternoon (8:30am-12:00pm)	\$355 / Camper
Ocean Adventure Camp (8:30am-1:00pm)	\$495 / Camper
Full-Day Session: (8:30am-2:30pm)	\$520 / Camper
Standup Paddleboarding includes paddleboard, paddle, life vest and leash	\$90 / person \$75/2 to 3 people (per person)
Menehune Surf Team includes up to 10 surf coaching sessions per month, video feedback, 1 local surf contest per season. Surfer must have own board and wetsuit.	\$300/month
Group Lesson "Aloha Wave" 12pm-1:30pm	\$65/person
Corporate Groups, Birthday Parties, etc...	\$90 for 2 h/person

SUMMARY OF MATERIALS COVERED IN CLASS:

At Surf Diva, Inc. our Surf Instructors teach class participants the basic fundamentals of surfing. Before our students even step into the water, our Surf Instructors thoroughly review the following :

Ocean Currents/Formation of Waves (different types of beaches, etc...)

- Safety (priority rules, right of way in the water, etc...)
- Wave Riding (foot position, "pop-ups", hand placement, paddling, etc...)
- Surfing Etiquette
- Environmental Awareness
- Marine Life
- Stretching Techniques
- Parts of the Surfboard
- History of Surfing

Ocean Adventure Camp is a blended camp of surf, snorkel, SUP, bodysurf, and kayak

THE INTERPRETIVE PROGRAM for Menehune Surf COVERS:

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

***Surf etiquette** – no tailgating, not lining up with other surfers, safe distance, and being aware of those around them. "Stay out of the mix"

***Surf Instruction** – paddling out, popping up, how to carry the board, refraining from positioning the board across your body, keeping the nose forward, and how to use the leash and board.

- * Wave and tidal information
- * Surf history
- * Surfboard construction and repair
- * Fitness and nutrition
- * Coastal/Ocean stewardship and preservation
- * Marine life, shore birds and marine plants
- * Surf technique and balance exercises
- * Games and fun



INTERPRETIVE PROGRAM OR ACTIVITY:

Surf Diva, Inc. teaches all participants the importance of keeping our natural resources and the ocean environment clean and healthy. It is everyone's responsibility to respect the environment. Teaching this respect for the surfing environment and beach community is an integral part of what we do.

La Jolla Surf Camp uses an interpretive program or activity for each of its classes.
Lesson plans are geared for 5-10 year olds, for boys and girls.

-
- | | |
|---|--|
| 1 | Ocean Awareness / Currents / Surfing Etiquette how to stay out of someone's way, when not to go out surfing, how to not panic, the importance of using sunscreen, etc... |
|---|--|
-
- | | |
|---|--|
| 2 | Paddling Out different ways to go over the waves, including: duck dive, push up over wave, turn turtle, sitting on tail of board, turning for a wave |
|---|--|
-
- | | |
|---|---|
| 3 | Evolution of Surfboard and Surfing Equipment Design shaping of boards, what the fin does, how the shape affects function, what materials are used in making boards, how the design has changed over time, how a wetsuit works |
|---|---|
-
- | | |
|---|--|
| 4 | Environmental Conservation how to minimize our impact on the environment, how human actions affect the beach and ocean environment, restoration plan, why it's important to pick up trash. |
|---|--|
-
- | | |
|---|---|
| 5 | What is a City Beach and Its Importance purpose of City beaches in preserving nature and teaching people about our environment. |
|---|---|
-
- | | |
|---|--|
| 6 | The Marine Environment observing the ocean, tides, wave structure, the surrounding environment, and marine biology and habitat |
|---|--|
-
- | | |
|---|---|
| 7 | Keeping Active the importance of exercise and using our City's many parks and recreational programs to help us stay healthy |
|---|---|
-
- | | |
|---|---|
| 8 | Beach Games Beach relays, water alligator game, face painting, ice breakers |
|---|---|
-

SAMPLE LESSON PLAN

15 min. Land Lecture discussing Ocean Safety, Ocean Awareness, Surfing Etiquette,

Parts of the Surfboard

Students suit up, apply sunscreen

Students are divided into groups of 5 with matching rashguards

Review conditions

Review on how to get in the surf, 5 practice 'pop ups' before entering surf

Correct techniques in the surf

Take 5 minute break with the students on the sand
(review what they have learned)

Back in water and show students how to paddle

Explain that, in surfing, as with all sports, there are rules. They are not written down, but you must learn them- the beauty is that the rules apply **EVERYWHERE** around the world

Finish lesson, review on what they have learned and experienced.
Next steps to progressing skills

Student receives Surfing Diploma / Surfers are part of the solution, the ocean is our life.

#Sharethestoke

Menehune Surf has a competitive youth surf team program with up to 15 members. All surf team members have to apply to the team and participate in try-outs. Surf team practices 2-3 times a week – Wednesdays from 3pm-5pm, Saturdays from 9am-11am and Sundays from 9am to 11am. There are 3 coaches for our surf team, all of whom were competitive surfers either in high school or college. Surf team members bring their own equipment, however, we do require that hard boards have a nose and tail guard.

OUR SURF TEAM COACHES COVER:

- *Water safety** – ocean swells (size, direction and force), riptide identification and reaction/instruction, natural and man-made hazards, and stingray shuffle.
- *Surf etiquette** – no tailgating, not lining up with other surfers, safe distance, do not drop in on other surfers. Know the rules of the peak. Do not paddle around locals to claim priority on a wave. Give up waves to less skilled surfers and respect the lineup.
- *Surf Instruction** – duck diving, (don't bail your board), timing, wave selection, generating speed, maneuvers, tricks, turns, tubes and tail slides.
- *Surf contest participation**
- *Higher level surf skills**
- *Surf history and respect for the craft**
- *surfboard construction and repair**
- *Fitness and nutrition**
- *Coastal/Ocean stewardship and preservation:** how we all impact the environment.

Standup Paddleboard Surf Lessons (SUP)

Surf Diva, Inc. offers Standup paddleboard (SUP) lessons daily from 9am to 5pm 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 2160 Avenida de la Playa. At check-in, they are required to sign a waiver and pay for the lesson (unless it was purchased online). We then outfit the student with a wetsuit and a rashguard. The rashguard is worn on the outside of the wetsuit in order to identify them as a SUP student, a visual key 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.

SUP Lesson Material

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

*SUP Instruction – paddling out on knees, standing up, how to use the paddle and board, and positioning beyond the surf zone and wind direction to be able to paddle back in.

*Marine and Ocean conservation and preservation

The remaining time is spent teaching the students to standup paddleboard with hands-on attention and instruction, depending on student needs.

If the surf is too large Surf Diva, Inc. will seek prior approval from the Lifeguards to launch the SUPs from the boat launch. All SUP students will have a personal flotation device (PFD) when utilizing the boat launch.