

2024 SURF CAMP CONCESSION AGREEMENT

(La Jolla Shores, #10 near the Lifeguard Tower)

This CONCESSION AGREEMENT (this “**Agreement**”) is entered into by and between SURF EDUCATION ACADEMY, LLC (“**Concessionaire**”), and THE CITY OF SAN DIEGO, a California municipal corporation (“**City**”), as of June 1, 2024 (“**Effective Date**”) subject to approval as to form by the San Diego City Attorney.

IN CONSIDERATION OF THE RESPECTIVE PROMISES OF CONCESSIONAIRE AND CITY SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE ACKNOWLEDGED, CONCESSIONAIRE AND CITY AGREE AS FOLLOWS:

1. **PURPOSE.** City owns all of the real property in the City of San Diego underlying each of the thirteen (13) City beach sites (each, a “**Site**” and together, the “**Sites**”), described in Section 42 of **EXHIBIT A** attached to this Agreement and depicted in **EXHIBIT B** attached to this Agreement. Concessionaire and City desire to enter into this Agreement to provide Concessionaire certain limited rights to undertake the Permitted Use (defined in Section 37 of **EXHIBIT A** attached to this Agreement) on the specific Sites identified in Section 3.1 below.

2. **DEFINITIONS.** All defined terms or words indicated by initial capitalization in this Agreement and not specifically defined in the main body of this Agreement are defined in **EXHIBIT A** attached to this Agreement.

3. CONCESSION.

3.1 Concession Sites. Subject to the terms, conditions, and agreements of this Agreement, as of the Effective Date, City licenses, permits, and authorizes Concessionaire to use the following Site(s) on a non-exclusive basis solely for the Permitted Use:

Area/Beach	Sites
La Jolla Shores	#10 near the Lifeguard Tower

3.2 Personal Rights; Restriction on Transfers. The licenses, permits and authorizations provided by this Agreement are personal to Concessionaire. Concessionaire shall not have any right to make or allow any Transfer without the prior written consent of City, which may be given or withheld in the City’s sole and absolute discretion. Concessionaire acknowledges and agrees that, under the circumstances that this Agreement is entered into by City and Concessionaire and the public nature of the Property, the restrictions in this Agreement on Transfers are reasonable.

3.3 Property’s Primary Use. The primary use of the Property is as open space for public recreational purposes (“**Primary Use**”). The Primary Use is superior to any rights provided under this Agreement. The Permitted Use may not interfere with the Primary Use. Throughout the Term, subject to the terms and conditions of this Agreement, the Site(s) shall have the secondary purpose

of accommodating the Permitted Use to the extent the Permitted Use does not interfere with the Primary Use, including any disruption of safe access to City facilities or adverse impact on the cost of maintaining City facilities. If City determines that the Permitted Use interferes with the Primary Use, City shall Notify Concessionaire and Concessionaire shall have forty-eight (48) hours to eliminate the interference with the Primary Use.

3.4 No Limitation on Other City Use. Nothing contained in this Agreement is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, as long as such other uses do not materially interfere with the Permitted Use on the Site(s).

3.5 No Property Estate or Interest Conveyed. Notwithstanding any provision of this Agreement to the contrary, City and Concessionaire do not intend to convey any estate, easement, or irrevocable interest in real or personal property between them under this Agreement. Nothing in this Agreement shall be construed or interpreted as a conveyance of any estate, easement, or irrevocable interest in any real or personal property. If this Agreement or any provision of this Agreement is finally (after all appeals) construed or interpreted by a court of competent jurisdiction as conveying an estate, easement, or irrevocable interest in real or personal property between City and Concessionaire, then the provision(s) of this Agreement interpreted as conveying any estate, easement, or irrevocable interest in real or personal property between City and Concessionaire shall automatically be null and void, without further action by or Notice to City or Concessionaire.

3.6 Noise. Concessionaire shall not use or permit the use of the Site(s) in any manner that creates or maintains any noise or sound violating San Diego Municipal Code ("SDMC") Chapter 5, Article 9.5.

3.7 Nuisance. Concessionaire shall not create or allow a nuisance, as defined in State Civil Code section 3479, or a violation of Law on the Site(s).

3.8 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.

3.9 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 6.17.B, that conflicts with or prohibits Concessionaire's use the Sites.

3.10 **ACCEPTANCE OF PROPERTY IN AS-IS CONDITION.** CONCESSIONAIRE ACCEPTS ALL PHYSICAL CONDITIONS OF THE PROPERTY, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE PROPERTY. CONCESSIONAIRE SHALL ENTER THE PROPERTY FOR THE PERMITTED USE UNDER THIS AGREEMENT, IN THE PROPERTY'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. CONCESSIONAIRE

ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE PROPERTY, AS IT DEEMS APPROPRIATE. CONCESSIONAIRE IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY CITY PARTY RELATING TO THE CONDITION OF THE PROPERTY. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 3.11, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE PROPERTY OR WHETHER THE PROPERTY PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 3.11, CONCESSIONAIRE, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE PROPERTY OR COMPLIANCE OF THE PROPERTY WITH ANY LAW APPLICABLE TO THE PROPERTY. CONCESSIONAIRE EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 3.11 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING STATE CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 3.11 SHALL SURVIVE THE TERMINATION DATE.

4. **TERM.** The "**Term**" of this Agreement starts on the Effective Date and ends at 11:59 p.m. on the date of the earliest to occur of the following events ("**Termination Date**"):

4.1 Sixty (60) months from the Effective Date;

4.2 *Concessionaire Notice.* The thirtieth (30th) day after the date Concessionaire both gives City Notice of termination of this Agreement for any reason or no reason and performs all Concessionaire's obligations under Section 16. Any written notice to this effect will be served in accordance with Section 45 of this Agreement;

4.3 *City Notice.* The thirtieth (30th) day after the date City gives Concessionaire Notice of termination of this Agreement for any reason or no reason;

4.4 *Eminent Domain.* Termination of this Agreement under Section 26;

4.5 *Event of Default.* Following the occurrence of an Event of Default, City giving Concessionaire Notice of termination of this Agreement;

4.6 *Casualty.* Termination of this Agreement under Section 11; or

4.7 *Breach of Warranty.* City termination of this Agreement under Section 40 or Section 51.

5. **FEEES.** Concessionaire shall pay monthly 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. This monthly payment shall be made on or before the last day of each calendar month following the calendar month in which the Gross Revenue subject to the Percentage Fee was earned, as part of the consideration to City for permitting Concessionaire to use the Property for the Permitted Use under this Agreement. The first monthly payment shall be made by the last day of the first (1st) full month after the Effective Date, to cover revenue received by Concessionaire in the prior full month. As such, all billing will start on the 1st day of the month following the Effective Date. For example, if the Effective Date is June 1, the first payment will be due no later than July 31 to cover June revenue.

5.1 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 a Year of this Agreement. 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 6, 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 8.

5.2 Minimum Fee. The annual Minimum Fee established for the first two (2) Years of the Agreement following the Effective Date is **\$35,175.87**, which is **\$2,930.99** on a monthly installment basis. The monthly Minimum Fee is to be paid in monthly installments 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.

5.3 Minimum Fee Adjustment. Effective at the beginning of the first day of the third and fifth 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) 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 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 45 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.

5.4 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.

5.5 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 5.6) received from any service or use of the Site by Concessionaire that is not a Permitted Use. 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.

5.6 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 and paid over periodically by Concessionaire to a governmental agency accompanied by a tax return or statement as required by law. To be clear, "taxes" do not include any customer fees or surcharges assessed by Concessionaire that are in fact not taxes assessed by a government entity, including the City, and Concessionaire is expressly prohibited from characterizing any such surcharges as "taxes" or implying or stating that the surcharge is being assessed by the City. Any surcharge amounts collected by Concessionaire shall be included in Gross Revenue for purposes of calculating the Percentage Fee. 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. Any items excluded from Gross Revenue must be separately stated and shown.

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.

5.6.1 Defined Terms. The following terms are defined for use in this Agreement:

- a. Total Fees Paid. The total of all fees paid by Concessionaire to City pursuant to this Section 5 during the specified time period.
- b. Gross Receipts. Refers to Gross Revenues.

5.7 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:*

5.7.1 Total Gross Receipts for the subject month itemized as to business categories for which the separate Percentage Fee is established.

5.7.2 *The amount of the Percentage Fee due to City and the manner in which such Percentage Fee was computed and totaled.*

5.7.3 *The accumulated total of all fees previously paid to City for the current Year.*

5.7.4 *Payments in the greater of the two following amounts: The monthly Minimum Fee or the total Percentage Fee due City computed as described in Section 5.*

5.8 Inspection of Records

5.8.1 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.

5.8.2 Financial Statements. *Within sixty (60) days after the end of each 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 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.*

5.8.3 Right to Inspect. All of Concessionaire's books of account, records, and supporting documentation, as described under Section 5.8.1, 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.

5.8.4 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 of more than five percent (5.00%) or more than \$5,000, whichever is less, between fees due as reported and paid by Concessionaire pursuant to this agreement and fees due as determined by the audit(s); or

b. Concessionaire has failed to properly maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

5.8.5 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 5.3. 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.

5.9 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.

5.10 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. Payments will be made to the City Treasurer in lawful money of the United States of America by good and sufficient check, wire transfer, or electronic funds transfer, at City's election, in its sole and absolute discretion, to such account or address as City designates by Notice to Concessionaire from time to time. Payments sent by mail shall be sent to City by first-class mail through the United States Postal Service with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

Payments made in person shall be hand delivered to:

Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

5.11 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.

5.11.1 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.

5.11.2 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.

5.11.3 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.

5.12 Required Payment Information. *Concessionaire shall include its City customer account numbers (e.g., REportfolio invoice number, SAP invoice number, contract account number, , Lease ID, S/L/A number) with each Fee payment so City can apply the Fee to Concessionaire's account. Concessionaire's failure to include its customer account numbers may result in Concessionaire's payment not being timely applied to Concessionaire's account and the application of late payment charges. If payments are combined, an itemization is required to be provided. Concessionaire assumes all risk of loss and responsibility for all fees or penalties for its failure to include its customer account numbers with a Fee payment. The place of payment may be changed at any time by City upon thirty (30) days prior Notice to Concessionaire. Payments shall be considered paid on the date the payment is actually received by the City, provided Concessionaire's customer account numbers are included with such payment as required in this Section 5.11. Concessionaire assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.*

5.13 Invoicing Courtesy. City may invoice Concessionaire for amounts payable under this Agreement. However, any such invoicing is a courtesy only. Concessionaire shall make all payments under this Agreement on or before each applicable due date, regardless of whether or not City invoiced the required payment.

5.14 No Offsets. Concessionaire shall pay all Fees without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

5.15 City's Net Return. The Fees shall give City an absolutely "net" return for the Term, free of any expenses or charges for the Property, except as this Agreement expressly provides.

5.16 Delinquent Fees. If Concessionaire fails to make payments when due, Concessionaire shall pay, in addition to the unpaid fee, five percent (5%) of the delinquent fee. If the fee is still unpaid at the end of fifteen (15) days past due, Concessionaire shall pay an additional five percent (5%) (being a total of ten percent (10%) of the delinquent fee, which is agreed by the Parties to be the appropriate amount to compensate City for the cost of servicing the delinquent account. In no event shall the charge for late payment of the fee be less than Twenty-Five Dollars (\$25). Acceptance of late charges or any portion of the late payment by City shall neither constitute a waiver of Concessionaire's Default regarding the late payment nor prevent City from exercising any rights or remedies available under this Agreement, at law, or in equity arising from such Default.

6. PERMITTED USE.

6.1 Concessionaire may operate surf instruction concessions and other incidental operations, such as boogie boarding and stand up paddle boarding. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Agreement.

6.2 Approvals. Concessionaire shall not undertake the Permitted Use on the Site(s) without first obtaining all necessary Approvals for the Permitted Use. In obtaining each necessary Approval for the Permitted Use on the Site(s), Concessionaire shall inform the applicable Government in writing that the Property is City-owned. Concessionaire shall promptly deliver to City documentary evidence of all Approvals obtained by Concessionaire regarding the Permitted Use.

6.3 Protection Against Claims or Liens. IF A CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE PROPERTY OR THE CITY FOR MATERIAL OR EQUIPMENT SUPPLIED TO OR LABOR OR SERVICES PERFORMED, DIRECTLY OR INDIRECTLY, FOR CONCESSIONAIRE OR A CONTRACTOR OF CONCESSIONAIRE RELATING TO WORK ON THE PROPERTY, CONCESSIONAIRE SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF CONCESSIONAIRE, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. CITY SHALL NOT BE LIABLE FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO CONCESSIONAIRE OR CONCESSIONAIRE'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIAL, OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE PROPERTY. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT, OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT FOR THE BENEFIT OF CITY OR THE PROPERTY, NOR AS GIVING CONCESSIONAIRE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIAL OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST CITY OR THE PROPERTY.

6.4 No Liens Against Public Property. CONCESSIONAIRE ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE PROPERTY IS OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE PROPERTY IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY. CONCESSIONAIRE FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE PROPERTY HIRED BY OR FOR THE BENEFIT OF ONE OR MORE CONCESSIONAIRE PARTIES OF SUCH FACT AND THAT CITY AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

6.5 Signs. Concessionaire shall not place any banner, pennant, flag, poster, sign, decoration, marquee, awning, or similar device or advertising (each, a "Sign") on the Site(s) without City's prior written consent, in each instance, which consent may be given or withheld in City's sole and absolute discretion. All Signs on the Site(s) will be maintained by Concessionaire in good, clean, and operating condition during the Term. Concessionaire will remove all Signs placed by Concessionaire from the Site(s) on or before the Termination Date and repair all damage caused by placement, installation, or removal of Signs, all at Concessionaire's sole cost and expense. Concessionaire shall comply with all Laws requiring the posting of Signs on the Site(s). If any unauthorized Sign is found on the Site(s), Concessionaire shall remove the Sign at Concessionaire's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Concessionaire does not remove an unauthorized Sign within twenty-four (24) hours after Notice from City requesting the removal, City may enter the Site(s) and remove the Sign at Concessionaire's sole cost and expense. If City performs work required of Concessionaire under this Section 6.5, Concessionaire shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within thirty (30) days after Notice to Concessionaire of such costs. All amounts reimbursable to City by Concessionaire under this Section 6.5 that are not paid within thirty (30) days after Notice to Concessionaire of the amount shall accrue Default Interest until paid.

6.6 Deliveries to City. If requested by City, Concessionaire shall provide City with a copy of all reports, analyses, findings, and conclusions resulting from the Permitted Use, which may be reasonably redacted for confidentiality purposes.

6.7 Costs. Concessionaire shall pay all costs and expenses related to the Permitted Use.

6.8 Security and Safety. Concessionaire shall be solely responsible for the security and safety of the Site(s). Concessionaire shall be responsible for the cleanup and securing of the Site(s) disturbed by Concessionaire, as appropriate, immediately following each day's work to ensure the daily security and safety of the Site(s). In conducting the Permitted Use, Concessionaire shall comply with all Laws, at Concessionaire's sole cost and expense, with respect to maintaining the Site(s) in a safe and secure manner during the Term.

6.9 City Work. City reserves the right to perform work on the Site(s) at any time. If City intends to perform work on the Site(s), City shall give Concessionaire at least forty-eight (48) hours' Notice prior to commencing the work (except in the event of an emergency, in which case,

no prior Notice is required). Concessionaire shall comply with all safety instructions issued by City to ensure the safety of City personnel or contractors performing work on the Site(s).

6.10 Inspection. City may, at any time, for any reason or no reason, without any obligation to do so, enter the Site(s) for the purposes of inspecting the Site(s) and the Permitted Use conducted on the Site(s) for compliance with this Agreement. Concessionaire shall make a Concessionaire representative available to be present at any City inspection under this Section 6.10 on, at least, 48 hours' advance Notice from City; provided, however, the presence of a Concessionaire representative is not required for City to exercise its inspection rights under this Section 6.10.

6.11 Utilities. Concessionaire shall order, obtain, install, and pay for all utilities, including installation and service charges, required or desired for the Permitted Use. Utilities shall be temporary and constructed and located in accordance with plans approved by City, in City's sole and absolute discretion, before any utility construction or installation commences.

6.12 Superior Interests. This Agreement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases, licenses, permits, easements, or rights-of-way pertaining to the Property existing as of the Effective Date, whether or not of record. Concessionaire shall obtain all licenses, permits, or agreements required from Third Persons holding a superior interest to allow the Permitted Use on the Site(s) in compliance with all such superior interests. If the Permitted Use is or becomes inconsistent or incompatible with a preexisting, superior interest, Concessionaire shall take all action and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

6.13 Vehicular Traffic. All vehicular traffic shall be confined to concrete, asphalt or decomposed aggregate surfaces unless otherwise approved in writing by City, in City's sole and absolute discretion, prior to the commencement of the Permitted Use.

6.14 Limitation on Construction. Concessionaire shall not perform any construction on or related to the Site(s) that is not restoration, repair, or maintenance required to be performed by Concessionaire under this Agreement.

6.15 Contractors. Concessionaire shall provide City with a list of all contractors and subcontractors that will perform any part of the Permitted Use, including name, address, email, fax, and phone number. All work requiring a licensed contractor under the State Contractors' State License Law (State Business & Professions Code sections 7000-7191) shall be done by contractors licensed by the State.

6.16 Unauthorized Use Charge. Concessionaire shall pay City one hundred (100%) of the Gross Revenue, without any deduction, credit, or set-off, from any use of the Site(s) that is not a Permitted Use within thirty (30) days after Concessionaire receives such revenue. Nothing in this Section 6.16 or City's acceptance of any payment under this Section 6.16 is intended to authorize any use of the Site(s) that is not a Permitted Use, waive Concessionaire's Default for conducting or allowing such use, or waive any City right or remedy under this Agreement.

6.17 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 SDMC 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."

7. MAINTENANCE.

7.1 Obligation to Maintain. Concessionaire shall keep and maintain the Site(s) in good order, condition, and repair, in accordance with the Maintenance Standard, subject to reasonable wear and tear and any other condition this Agreement expressly does not require Concessionaire to repair or restore. Concessionaire's obligation to maintain the Site(s) includes an obligation to make all repairs that the Site(s) may require under applicable Law. City has no obligation to maintain or repair the Site(s).

7.2 Maintenance Standard. Concessionaire's obligation to maintain the Site(s) under Section 7.1 includes maintenance, repair, reconstruction, and replacement of all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, signage, ornamentation, and all other improvements on or to the Site(s), now existing or made in the future, as necessary to maintain the appearance, character and level of quality of the Site(s). Concessionaire's obligation to maintain the Site(s) described in the immediately preceding sentence shall include: (a) maintaining the surfaces of the Site(s) in an evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (b) removing all papers, mud, sand, debris, filth, and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep such areas in a clean and orderly condition; (c) removing or covering graffiti in accordance with Section 7.4; (d) placing, keeping in repair and replacing all necessary and appropriate directional signs, markers, and lines; (e) operating, keeping in repair, and replacing where necessary, such artificial lighting facilities as shall be reasonably required; (f) providing security services and taking all reasonably appropriate measures to ensure the safety of Persons using the Site(s); and (g) maintaining, mowing, weeding, trimming, and watering all landscaped areas and making such replacements of plants and other landscaping material as necessary to maintain the appearance, character and level of quality of the landscaping, all at the sole cost and expense of Concessionaire. Concessionaire's obligation to maintain the Site(s) described in the two immediately preceding sentences is, collectively, referred to in this Agreement as the "Maintenance Standard."

7.3 Maintenance Default. If an adverse condition occurs on the Site(s) in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then City may Notify Concessionaire of the Maintenance Deficiency. If Concessionaire fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) days following Concessionaire's receipt of Notice of the Maintenance Deficiency, City shall have the

all acts necessary to cure the Maintenance Deficiency or to take any other action at law or in equity that may then be available to City to accomplish the abatement of the Maintenance Deficiency. Any amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.3 shall be reimbursed to City by Concessionaire within thirty (30) days after Notice to Concessionaire of the amount. Any amount of money expended by City for the cure or abatement of a Maintenance Deficiency under this Section 7.3 that is not reimbursed to City by Concessionaire within thirty (30) days after Notice to Concessionaire of such amount shall accrue Default Interest until paid in full.

7.4 Graffiti. Graffiti, as defined in Government Code section 38772, applied to any exterior surface on the Site(s) and visible from outside the Site(s) shall be removed by Concessionaire by either painting over the evidence of such vandalism with a paint color-matched to the surface on which the paint is applied or removed with solvents, detergents, or water, as appropriate. Notwithstanding Section 7.3, if any such graffiti is not removed within seventy-two (72) hours after the time Concessionaire discovers or receives Notice of the graffiti or, in the case of graffiti that cannot reasonably be removed within seventy-two (72) hours after the time Concessionaire discovers or receives Notice of the graffiti, whichever is earlier, if Concessionaire does not duly commence and diligently complete such cure within a reasonable time under the circumstances, then after Notice to Concessionaire, City shall have the right (but no obligation) to enter the Site(s) and remove the graffiti. Any amount of money expended by City for removal of graffiti from the Site(s) under this Section 7.4 shall be reimbursed to City by Concessionaire, within thirty (30) days after Notice to Concessionaire of such amount. Any amount of money expended by City for removal of graffiti under this Section 7.4 not reimbursed to City by Concessionaire within thirty (30) days after Notice to Concessionaire of such amount shall accrue Default Interest until paid in full.

8. SPECIAL PROVISIONS.

8.1 Operating Plan. The Operating Plan 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 C: Operating Plan**, attached hereto. *Within sixty (60) days prior to the beginning of the second Year of this Agreement, and for every Year thereafter, the Concessionaire will provide the City with an Operating Plan for the upcoming 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 D: Lifeguard Services Safety Requirements**, attached hereto.

8.2 Exclusiveness of Agreement and Unauthorized Vending. In addition to Special Events described in Section 6.17.B., City may, during the term of this Agreement, enter into Agreements with other Concessionaires 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.

8.3 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.

8.4 No Improvements. No improvements, trade fixtures, structures, and installations or additions to the Sites are allowed to be installed by Concessionaire without City's prior written approval. All personal property remaining on the Sites after expiration or termination will become the property of City.

8.5 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.

9. **PREVAILING WAGE LAWS.** On the Effective Date, no public funds are provided by City or any other Person to Concessionaire relating to Concessionaire's use of the Site(s). If Concessionaire obtains any public funds after the Effective Date from City or another Person relating to Concessionaire's use of the Site(s), Concessionaire shall comply with Prevailing Wage Laws in performing all restoration, repair, or maintenance required to be performed by Concessionaire under this Agreement.

10. **CONCESSIONAIRE INSURANCE.** Concessionaire shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this Agreement, the Site(s), or the Permitted Use, at the sole cost and expense of Concessionaire, all the insurance coverage required in **EXHIBIT E** attached to this Agreement.

11. **WASTE OR DAMAGE.** Concessionaire shall immediately Notify City of any waste, casualty, or damage to the Site(s) or other areas of the Property of which Concessionaire becomes aware. Concessionaire shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person on or around the Site(s) or other parts of the Property. If waste, casualty, or damage to the Property arises from the Permitted Use, action by a Concessionaire Party, or failure to act by a Concessionaire Party that had a duty to act, at City's election, in City's sole and absolute discretion, Concessionaire shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Property to its condition existing immediately prior to the waste, casualty, or damage. Concessionaire shall commence preliminary steps toward

restoration of the Property as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Concessionaire shall complete all required repairs or restoration within ninety (90) days after the date the waste, casualty, or damage occurs. Concessionaire must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Property. Following the occurrence of any casualty that materially restricts use of the Site(s) or access to the Site(s) for the Permitted Use for more than one hundred eighty (180) days, City or Concessionaire may terminate this Agreement by seven (7) days' Notice to the other Party. This Section 11 shall survive the Termination Date.

12. ENVIRONMENTAL CONDITIONS. Concessionaire shall not cause or permit any Environmental Condition. If Concessionaire discovers or becomes aware of an Environmental Condition, Concessionaire shall Notify City of such Environmental Condition as soon as possible, but in all cases within twenty-four (24) hours following the Concessionaire becoming aware of such Environmental Condition.

12.1 Remediation. If an Environmental Condition occurs, Concessionaire shall remediate the Environmental Condition in accordance with Law to allow all uses of the Property permitted by Law immediately before the Environmental Condition is discovered, at Concessionaire's sole cost and expense. If Concessionaire knows or has reasonable cause to believe that an Environmental Condition is an imminent danger to public health and safety, Concessionaire shall take all actions necessary to alleviate the imminent danger, at Concessionaire's sole cost and expense.

12.2 Removal. If a Concessionaire Party stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Property in accordance with Law, Concessionaire shall remove all such Hazardous Substances from the Property prior to the Termination Date and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Concessionaire shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Property by Concessionaire in accordance with this Section 12.2.

12.3 Reports. Concessionaire shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after Notifying City of the Environmental Condition. Concessionaire shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

12.4 Environmental Assessment. Upon reasonable cause to believe that an Environmental Condition has occurred, City may cause an environmental assessment of the Property to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Concessionaire's sole cost and expense. Concessionaire shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) days after Notice to Concessionaire of the amount of such costs and expenses. Any amount reimbursable to City by Concessionaire under this Section 12.4 that is not paid within fifteen (15) days after Notice to Concessionaire of such amount, shall accrue Default Interest until paid.

13. COMPLIANCE WITH LAW.

13.1 General. The Permitted Use shall comply with all Laws, at Concessionaire's sole cost and expense. Concessionaire shall comply with all notices, orders, directives, or the like issued by City or any other Government under the authority of current or future Law.

13.2 Compliance with City Standard Contract Provisions. In entering the Site(s) or performing the Permitted Use under this Agreement, Concessionaire shall comply with all City standard contract provisions set forth in **EXHIBIT F** attached to this Agreement.

14. INDEMNIFICATION.

14.1 Concessionaire Indemnity Obligations. In addition to Concessionaire's obligations to Indemnify the City Parties under other provisions of this Agreement, Concessionaire shall Indemnify the City Parties against all Claims arising from: (a) Concessionaire's use of the Site(s); (b) this Agreement; (c) personal injury (including death) or property damage (to property of Concessionaire or any other Person) occurring on the Site(s) or adjoining real property; (d) personal injury (including death) or property damage resulting from Concessionaire's use of the Site(s); (e) a wrongful intentional act or negligence of one or more of the Concessionaire Parties; (f) strict liability relating to Concessionaire's use of the Site(s); (g) all applications for Approvals made by or on behalf of one or more Concessionaire Parties; (h) all agreements that one or more Concessionaire Parties makes with a Third Person regarding this Agreement or the Site(s); (i) services, labor, material, or equipment supplied to, for, on behalf of, or at the request of one or more Concessionaire Parties; (j) a workers' compensation claim by one or more employees or contractors of one or more Concessionaire Parties; (k) all Prevailing Wage Determinations, except to the extent prohibited by Law, including State Labor Code sections 1773.3 or 1781; or (l) an Environmental Condition occurring on or after the Effective Date. Notwithstanding anything to the contrary in this Agreement, Concessionaire's obligations to Indemnify the City Parties excludes Claims arising solely from the established active negligence or willful misconduct of a City Party.

14.2 Independence of Insurance and Indemnity Obligations. Concessionaire's obligations to Indemnify the City Parties under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying Concessionaire's insurance or other obligations under this Agreement. Concessionaire's obligations to Indemnify the City Parties under this Agreement are independent of Concessionaire's insurance and other obligations under this Agreement. Concessionaire's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify Concessionaire's obligations to Indemnify the City Parties under this Agreement and are independent of Concessionaire's obligations to Indemnify the City Parties and other obligations under this Agreement.

14.3 Survival of Indemnification Obligations. Concessionaire's obligations to Indemnify the City Parties under this Agreement shall survive the Termination Date, until all actual or prospective Claims subject to Concessionaire's obligations to Indemnify the City Parties under this Agreement are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

14.4 Indemnification Procedures. Wherever this Agreement requires Concessionaire to Indemnify the City Parties:

14.4.1 *Notice.* The affected City Parties shall Notify Concessionaire of the Claim within a reasonable time.

14.4.2 *Selection of Counsel.* Concessionaire shall select counsel reasonably acceptable to City's City Council. Even though Concessionaire shall defend the Claim, the affected City Parties may, at their respective options, engage separate legal counsel, at Concessionaire's expense, to advise them regarding the Claim and their defense. The affected City Parties' separate legal counsel(s) may attend all proceedings and meetings. Concessionaire's legal counsel shall actively consult with the City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

14.4.3 *Cooperation.* The affected City Parties shall reasonably cooperate with Concessionaire's defense of the City Parties.

14.4.4 *Settlement.* Concessionaire may only settle a Claim with the prior written consent of the affected City Parties, in their respective sole and absolute discretion.

14.5 Immediate Duty to Defend. The duty to defend that is within Concessionaire's obligations to Indemnify the City Parties under this Agreement includes Claims for which the City Parties may be liable without fault or strictly liable and applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of Concessionaire or the City Parties have been determined. The duty to defend applies immediately, regardless of whether the City Parties have paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any Claims. It is the express intention of the Parties that the City Parties be entitled to obtain summary adjudication or summary judgment regarding Concessionaire's duty to defend the City Parties at any stage of a Claim within the scope of Concessionaire's obligations to Indemnify the City Parties under this Agreement.

14.6 Savings Provision. Notwithstanding anything in this Agreement to the contrary, if the extent of Concessionaire's obligation to Indemnify the City Parties under this Agreement exceeds the indemnity obligation allowed by applicable Law, Concessionaire's obligation to Indemnify the City Parties shall be reduced to the extent required to comply with applicable Law.

15. **TAXES; POSSESSORY INTEREST TAX.** Concessionaire shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Concessionaire, this Agreement, the Permitted Use, or the Site(s). Concessionaire acknowledges and agrees that this Agreement may create a possessory interest in the Property subject to property taxation and that Concessionaire may be subject to payment of property taxes levied on such interest. Any such possessory interest tax imposed shall be solely a tax liability of Concessionaire and shall be paid before delinquency by Concessionaire. In addition, Concessionaire shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other personal property of Concessionaire or any other Concessionaire Party installed, maintained, or present at or on the Site(s). Concessionaire acknowledges and agrees that it shall bear all responsibility, liability, costs, and expenses connected in any way with any tax consequences experienced by Concessionaire related to this Agreement or the Permitted Use.

16. **END OF TERM.** Before the Termination Date, Concessionaire shall remove or cause the removal of all the personal property of the Concessionaire Parties from the Site(s) and place the Site(s) in a condition as close as possible to the condition of the Site(s) on the day before the

Effective Date, reasonable wear and tear excepted. Without limiting the obligation of Concessionaire to remove all the personal property of the Concessionaire Parties from the Site(s) before the Termination Date, Concessionaire agrees that City may dispose of all personal property on the Site(s) after the Termination Date, at Concessionaire's sole cost and expense.

17. **HOLDOVER.** Any continued use of the Site(s) by Concessionaire or receipt or acceptance of Fee payment(s) by City after the Termination Date shall not renew or extend the Term or this Agreement and all terms and conditions of this Agreement shall apply to such use except: (1) City may terminate this Agreement for any reason or no reason on seven (7) days' Notice to Concessionaire; and (2) the Fee shall be the fair market value of such use of the Site(s), as determined by City. 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.

18. **CITY CURE RIGHT.** If Concessionaire fails to take any action this Agreement requires of Concessionaire, without waiving or releasing Concessionaire from any obligation, Default, or Event of Default and without waiving City's right to take such action as this Agreement may permit as a result of a Default or Event of Default, City may (but need not) take such action. Concessionaire shall reimburse City for all reasonable costs and expenses (including the costs of City staff time, administrative overhead, and Legal Costs) incurred by City in exercising its cure rights under this Section 18 within thirty (30) days after Notice to Concessionaire of such costs. All amounts reimbursable to City by Concessionaire under this Section 18 that are not paid within thirty (30) days after Notice to Concessionaire of the amount shall accrue Default Interest until paid. Nothing in this Section 18 is intended to modify or restrict any other right or remedy available to City under this Agreement or Law.

19. **REMEDIES.** After the occurrence of an Event of Default by the other Party, the non-defaulting Party shall be entitled to take any or all action authorized by this Agreement after the occurrence of an Event of Default by the other Party, including legal proceedings to enforce any or all contractual rights or remedies, or pursue any or all other remedies or damages relating to such Event of Default available to the non-defaulting Party at law or in equity.

19.1 Default by Concessionaire. Except for Safety Violations (as defined under Section 19.2 below) which are grounds for immediate termination, in the event that:

19.1.1 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;

19.1.2 Concessionaire will voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or

19.1.3 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 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.

19.2 Safety Violations by Concessionaire. Notwithstanding Section 19.1 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.

19.3 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:

19.3.1 Acts by City of maintenance, preservation, or efforts to negotiate a new Agreement.

19.3.2 The appointment of a receiver upon initiative of City to protect City's interest under this Agreement.

20. **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.

21. **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.

22. **LEGAL ACTIONS.** Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Agreement or recover damages.

23. **CUMULATIVE RIGHTS AND REMEDIES.** The rights and remedies of the Parties under this Agreement are cumulative with all other rights or remedies of the Parties under this Agreement, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default by the other Party or the same right or remedy for any other Default or Event of Default by the other Party.

24. **LEGAL CHALLENGE OR CHANGE IN LAW.** If a lawsuit is filed against City or Concessionaire to prevent or prohibit Concessionaire's Operations on the Site(s), or a subsequent change in Law prohibits Concessionaire's Operations on the Site(s), either Party shall have the right to terminate this Agreement, in its respective sole and absolute discretion, on thirty (30) days' Notice to the other Party.

25. **CITY'S RESERVATION OF RIGHTS.**

25.1 Government Action. By entering into this Agreement, neither City nor the City Council is obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Site(s), including re-zonings, variances, environmental clearances, or any Approval required to conduct the Permitted Use.

25.2 Resources. City reserves all right, title, and interest in all natural resources relating to the Property, including subsurface natural gas, oil, minerals, and water, on or within the Property.

26. **EMINENT DOMAIN.** If all or part of the Site(s) or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government with the power of eminent domain, the interests of City and Concessionaire shall be as follows:

26.1 Full Taking. If all or substantially all the Property is taken, this Agreement shall terminate on the date of the transfer of title or possession of the Property to the condemning Government, whichever first occurs.

26.2 Partial Taking - Remainder Unusable. If a partial taking of the Property occurs that affects the Site(s) and, in City's sole and absolute discretion, the remaining part of the Site(s) is unsuitable for the Permitted Use, this Agreement shall terminate on the date of the transfer of title or possession of the part of the Property taken to the condemning Government, whichever first occurs.

26.3 Partial Taking - Remainder Usable. If a partial taking of the Property occurs that affects the Site(s) and, in City's sole and absolute discretion, the unaffected part of the Site(s) is suitable for the Permitted Use, this Agreement shall terminate regarding the part of the Property taken on the date of the transfer of title or possession the part of the Property taken to the

condemning Government, whichever first occurs, but shall continue for the part of the Property not taken that is subject to this Agreement.

26.4 Award. Notwithstanding anything to the contrary in this Agreement, in all eminent domain proceedings, settlements, agreements, or other means by which a Government taking of the Property by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City.

26.5 City Transfer. City may transfer its title or interest in the Property in lieu of eminent domain proceedings to any Government entitled to exercise the power of eminent domain over the Property.

26.6 No Inverse Condemnation. City's exercise of any right or power under this Agreement shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon City for inverse condemnation.

27. **NO DISCRIMINATION OR SEGREGATION**. Concessionaire covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, that neither Concessionaire nor any Person claiming under or through Concessionaire shall establish or allow any discrimination against or segregation of any Person or group of Persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the use of the Site(s).

28. **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.

29. **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:

29.1 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

29.2 Establish a drug-free awareness program to inform employees about all of the following:

29.2.1 The dangers of drug abuse in the workplace;

29.2.2 Concessionaire's policy of maintaining a drug-free workplace;

29.2.3 Any available drug counseling, rehabilitation, and employee's assistance programs; and

29.2.4 Penalties that may be imposed upon employees for drug abuse violations.

30. **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:

30.1 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;

30.2 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;

30.3 Concessionaire will post a statement addressing the requirements of the ADA in a prominent place at the work site;

30.4 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.

30.5 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.

31. **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.

32. **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.

33. **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.

34. **SIGNS.** Concessionaire will display the Concession sign displaying this is a City-approved Concession at all times while operating the Concessions. City will provide a sign during the first Year of the Agreement. If such sign is lost or stolen, Concessionaire must obtain a duplicate sign

at 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.

35. **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.

36. **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.

37. **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.

38. **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., SDMC 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.

39. **EQUAL BENEFITS.** Concessionaire will comply with SDMC 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.

40. **EQUAL PAY ORDINANCE.** Unless an exception applies, Concessionaire will comply with the Equal Pay Ordinance codified in SDMC 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. Concessionaire must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

41. **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.

42. **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 SDMC 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.

43. **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.

43.1 **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.

43.2 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.

43.3 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.

43.4 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.

43.5 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.

43.6 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.

43.7 Environmental Assessment. Upon reasonable cause to believe that Concessionaire's occupancy, use, development, maintenance or restoration of the Sites (Concessionaire 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.

44. STORM WATER POLLUTION PREVENTION PROGRAM. Concessionaire will comply with the City's Storm Water Management and Discharge Control provisions codified in SDMC, Division 3 of Chapter 4, 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.

44.1 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.

44.2 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.

45. NOTICES. All Notices submitted by a Party to the other Party under or as required by this Agreement shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), or registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, to the address of the recipient Party designated below in this Section 45. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 45. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, or three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 45. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To City:	The City of San Diego
	Attention: Director, Department of Real Estate and Airport Management
	1200 Third Avenue, Suite 1700 (MS 51A)
	San Diego, CA 92101
	(619) 236-6020

To Surf Education Academy, LLC
Concessionaire: Attn: Sean Brody
 5015 Abuela Dr.
 San Diego, CA 92124
 (858) 208-7533

46. **TIME PERIOD CALCULATION.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months, and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

47. **INTERPRETATION PRINCIPLES.** No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Agreement. The Parties participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Agreement, refers to such document, as modified from time to time (excepting any modification violating this Agreement), and includes all exhibits, schedules, addenda, and riders to such document. The word "or" in this Agreement includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

48. **GOVERNING LAW.** The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Agreement, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Agreement shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

49. **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.

50. **PRIOR AGREEMENT TERMINATION.** As of the Effective Date, all leases, right-of-entry permits, use and occupancy permits, or other agreements between City and Concessionaire concerning the Permitted Use on the Property, other than this Agreement, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

51. **RELATIONSHIP OF PARTIES.** The Parties each intend and agree that City and Concessionaire are independent contracting entities and do not intend by this Agreement to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

52. **WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR AGREEMENT.** Concessionaire represents and warrants to City that: (a) Concessionaire has not employed or retained any Person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Concessionaire; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Concessionaire or any of Concessionaire's agents, employees, or representatives to any elected or appointed official or employee of City in an attempt to secure this Agreement or favorable terms or conditions for this Agreement. Breach of the representations or warranties in this Section 52 shall entitle City to terminate this Agreement immediately. Upon any termination of this Agreement under this Section 52, Concessionaire shall immediately repay to City all payments made to or on behalf of Concessionaire by City (if any) under this Agreement prior to the Termination Date.

53. **UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE.** Performance by either Party under this Agreement shall not be considered to be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of the Unavoidable Delay; and (b) within twenty (20) days after the Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise commercially reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Agreement, no obligation of Concessionaire for payment of money under this Agreement may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay that prevents or materially limits the ability to transfer funds by or between Federal or State chartered financial institutions.

54. **NO OTHER REPRESENTATIONS OR WARRANTIES.** Except as expressly set forth in this Agreement, no Party makes any representation or warranty material to this Agreement to the other Party.

55. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in this Agreement intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

56. **TIME OF THE ESSENCE.** As to the performance of any obligation under this Agreement of which time is a component, the performance of such obligation within the time specified is of the essence of this Agreement.

57. **WAIVERS AND AMENDMENTS.** Each waiver of a term, provision, covenant, condition, restriction, or agreement contained in this Agreement must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on strict

compliance with a term, provision, covenant, condition, restriction, or agreement contained in this Agreement at any time or times shall not constitute a waiver of such term, provision, covenant, condition, restriction, or agreement at any other time, nor shall any waiver or relinquishment of any right or power under this Agreement at any time or times constitute a waiver or relinquishment of such right or power at any other time. Each amendment to this Agreement must be in writing and signed by the authorized representative(s) of both City and Concessionaire.

58. **ACCESSIBILITY ASSESSMENT.** City discloses to Concessionaire that the Property has not been inspected by a Certified Access Specialist (CASP). City further states:

A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

59. **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.

60. **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.

61. **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.

62. **SURVIVAL OF AGREEMENT.** All the provisions of this Agreement shall be applicable to any dispute between the Parties arising from this Agreement, whether prior to or after the Termination Date, until any such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Agreement relating to dispute resolution and remedies shall survive the Termination Date.

63. **INTEGRATION.** This Agreement includes thirty-one (31) pages and seven (7) exhibits (the exhibits are incorporated into this Agreement by reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Agreement and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Agreement.

64. **TITLES AND HEADINGS FOR REFERENCE ONLY.** The titles and headings of the articles, paragraphs, or sections of this Agreement are for convenience of reference only, are not to be considered a part of this Agreement, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Agreement.

65. **SEVERABILITY.** If a term, provision, covenant, condition, restriction, or agreement contained in this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such a term, provision, covenant, condition, restriction, or agreement to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms, provisions, covenants, conditions, restrictions, or agreements contained in this Agreement shall be valid and enforced to the fullest extent Law allows.

66. **COUNTERPARTS.** This Agreement may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

67. **ELECTRONIC SIGNATURES.** The Parties agree: (a) to deliver and accept signatures on or under this Agreement by e-mail or electronic means (including digital signatures); and (b) that signatures delivered by e-mail or electronic means (including digital signatures) shall be binding as originals upon the Party so signing and delivering.

68. **EXHIBITS.** All the exhibits attached to this Agreement are described as follows:

EXHIBIT A	Definitions
EXHIBIT B	Property and Site(s) Description
EXHIBIT C	Operating Plan
EXHIBIT D	Lifeguard Services Safety Requirements
EXHIBIT E	Insurance Requirements
EXHIBIT F	City Standard Contract Provisions
EXHIBIT G	Prevailing Wage Requirements

[Remainder of page intentionally blank. Signatures appear on immediately following page.]

**SIGNATURE PAGE
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

Concessionaire and City sign and enter into this Agreement by and through the signatures of their respective authorized representatives, as follow:

CITY:

The City of San Diego,
a California municipal corporation

By: Lucy Contreras

Lucy Contreras, Deputy Director
Real Estate and Lease Administration,
Economic Development Department

CONCESSIONAIRE:

Surf Education Academy, LLC

By: 

Name: Sean Brody

Title: Founder

Approved as to form on

_____:

MARA W. ELLIOTT
City Attorney

By: Brian Byun
Brian Byun (Jun 12, 2024 08:29 PDT)

Brian Byun
Deputy City Attorney

**EXHIBIT A
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

DEFINITIONS

1. [Intentionally Deleted].
2. Approval. Excluding this Agreement, all licenses, permits (including building, grading, demolition, alteration, use and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete the Permitted Use on the Site(s).
3. Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.
4. City. Defined in the first paragraph of this Agreement.
5. City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.
6. City Party. Individually, City, the City Council, and each City elected official, employee, agent, or attorney.
7. Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses, investigation costs of whatever kind or nature, and Legal Costs) and any judgment.
8. Concessionaire. Defined in the first paragraph of this Agreement.
9. [Intentionally Deleted].
10. Concessionaire Parties. Collectively, Concessionaire, its directors, officers, members, partners, employees, agents, contractors, attorneys, and all other Persons whom Concessionaire authorizes or allows to enter the Site(s).
11. Concessionaire Party. Individually, Concessionaire, its directors, officers, members, partners, employees, agents, attorneys, or other Person whom Concessionaire authorizes or allows to enter the Site(s).

12. County. The County of San Diego, California.
13. Default. Any Monetary Default or Non-Monetary Default.
14. Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.
15. Effective Date. Defined in the first paragraph of this Agreement.
16. Environmental Condition. Any of the following events relating to the Property and arising from the Permitted Use, any action by a Concessionaire Party, or any failure to act by a Concessionaire Party that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.
17. Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property or relating to the Permitted Use); (c) occupational or environmental conditions on, under or about the Property or relating to the Permitted Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.
18. Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.
19. Event of Default. The occurrence of any one or more of the following:

19.1 *Monetary Default.* A Monetary Default continuing for seven (7) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

19.2 *Sign Removal.* Concessionaire's failure to remove an unauthorized Sign in accordance with Section 6.5;

19.3 *Concessionaire Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 3.2 in the main body of this Agreement;

19.4 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Sections 19.2 or 19.3, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of Notice of such Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) within thirty (30) days after the date of

Notice of such Non-Monetary Default, commence curing the Non-Monetary Default; and (c) complete the cure of the Non-Monetary Default within a reasonable time.

20. Federal. Relating to or under the authority of the federal government of the United States of America.

21. Fees. Defined in Section 5 of this Agreement.

22. Government. Every governmental agency, authority, bureau, department, quasi-governmental body, utility, utility service provider, or other entity or instrumentality having or claiming jurisdiction over the Property or the Permitted Use, including the Federal, State, County, City (in City's governmental capacity) governments and their subdivisions and municipalities, including City, any planning commission, board of standards and appeals, building department, zoning board of appeals, design review board or committee, the California Coastal Commission, and all other applicable governmental agencies, authorities, and subdivisions having or claiming jurisdiction over the Property or any activities on or at the Property.

23. Gross Revenue. Defined in Section 5.6 of this Agreement.

24. Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

25. Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Property, or during transportation of any Hazardous Substance to or from the Property, or arising at any time from activities conducted at, on, under, or from the Property, whether or not caused by a Party.

26. Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including Legal Costs and other costs incurred in enforcing the Party's indemnity obligation(s) relating to the Claim.

27. Law. Every law, ordinance, requirement, order, proclamation, directive, rule, or regulation of any Government applicable to a Party, the Property, or the Permitted Use, or otherwise relating to a Party, this Agreement, the Permitted Use, or any Party's rights, obligations, or remedies under this Agreement, whether in force on the Effective Date or passed, enacted, modified, amended, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

28. Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and reasonable consultant and expert witness fees and expenses.

29. Mayor. The Mayor of City or his or her designee or successor in function.
30. Monetary Default. Any failure by a Party to pay, deposit, or provide, when and as this Agreement requires, any amount of money or evidence of insurance coverage, whether to or with a Party or a Third Person.
31. Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) the failure of a Party to perform one of its obligations under this Agreement; (b) the failure of a Party to comply with a material restriction or prohibition in this Agreement; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Agreement.
32. Notice. Any consent, demand, designation, election, notice, or request relating to this Agreement. All Notices must be in writing.
33. Notify. To give a Notice.
34. Parties. Collectively, City and Concessionaire.
35. Party. Individually, either City or Concessionaire, as applicable.
36. Permitted Use. Operation of surf instruction concessions and other incidental operations, such as boogie boarding and stand up paddle boarding. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this Agreement.
37. Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.
38. Prevailing Wage Law. Defined in 1, Section 1.
39. Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.
40. Primary Use. Defined in Section 3.3.
41. Property. That certain real property owned by City underlying each Site as depicted in Exhibit B attached hereto.
42. SDMC. Defined in Section 3.6.
43. Sign. Defined in Section 6.5.

44. Sites. The thirteen (13) Concession sites shown in Exhibit B attached hereto and the specific Concession sites that are the subject of this Agreement as identified in Section 3.1, as applicable depending on context.

45. Special Events. Defined in SDMC section 22.4003.

46. State. The State of California.

47. Term. Defined in Section 4.

48. Termination Date. Defined in Section 4.

49. Third Person. Any Person that is not a City Party, a Concessionaire Party, or an affiliate of a Party.

50. Transfer. Any of the following events, whether occurring by operation of law, voluntarily or involuntarily, or directly or indirectly: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, license, or other transfer, whether direct or indirect, of all or any part of Concessionaire's legal, beneficial, or equitable interest in this Agreement; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Concessionaire by the owner(s) of such Equity Interest(s); (c) any transaction described in clause "(b)" affecting any Equity Interest(s) or any owner of Equity Interests (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the transactions described in clauses "(a)" through "(c)" of this Section 51. A transaction affecting Equity Interests, as referred to in clauses "(b)" through "(d)" of this Section 51 shall be deemed a Transfer by Concessionaire even though Concessionaire is not technically the transferor. A "Transfer" shall not, however, include any transaction (provided that the other Party receives Notice of such transaction at least fifteen (15) days before the transaction is final) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State real estate transfer tax; or (b) to any Person that, as of the Effective Date, holds an Equity Interest in, or is under common control with, the Person whose Equity Interest is being transferred.

51. Unavoidable Delay. A delay in either Party performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble or other union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

52. Year. Each of: (a) the twelve (12) calendar month period beginning on the Effective Date and continuing through the day before the immediately following anniversary of the Effective Date; and (b) every subsequent period of twelve (12) calendar months beginning on each anniversary of the Effective Date and ending on the day before the immediately following anniversary of the Effective Date. Each Year is referred to in this Agreement in consecutive chronological order, starting with "Year 1" and continuing with "Year 2," "Year 3," etc.

**EXHIBIT B
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

PROPERTY & SITES DESCRIPTION

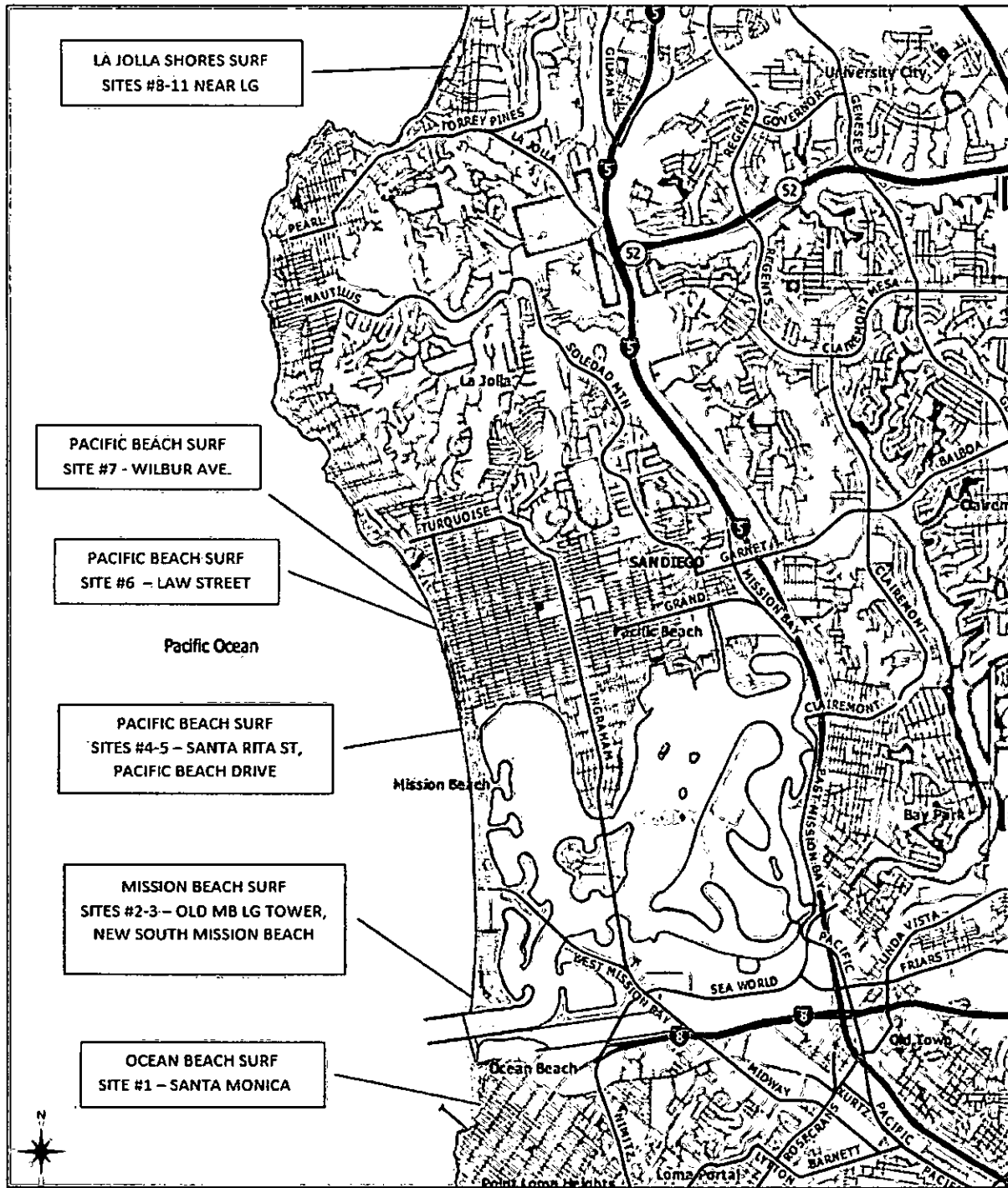


EXHIBIT B- 1
Property and Sites Description

**EXHIBIT C
TO
CONCESSION AGREEMENT**

Operating Plan

1. PROGRAM SPECIFICS

Days of Operation

Monday - Sunday

** Closed 4th of July in accordance with City regulations*

Hours of Operation

Land-based Operation: 8:30am - 6:00pm

Water Instruction: 9:00am - 5:00pm

Schedule of Classes

Surf Education Academy offers a variety of classes and programs, with expertise in all areas of the surfing development pathway and curriculum spanning first time and novice surfers all the way through to training elite competition surfers.

SEA also offers top notch Stand Up Paddleboarding lessons, guiding and instructor training, with curriculum centered around safety, preparation and global best practices. Our SUP programming also has a pathway for continued progression, teaching novice paddlers basic concepts and progressing them to essential skills and concepts for safe and enjoyable open water paddling.

Additionally, SEA specializes in teaching Adaptive Surfing and Adaptive SUP and working with surfers with disabilities and special populations. All of our programs are inclusive to ensure anyone can join any program and we bring on additional staff as needed.

An outline of our programming follows.

SEA PRICE LIST

PROGRAM OR SERVICE	PRICE	DURATION	DAYS / TIMES
Private Surf Lessons	\$165	1.5 hours	Upon request
Private Surf Coaching	\$199	1.5 hours	Upon request
Private Adaptive Surf Coaching	\$165 + \$35/additional coach(es)	1.5 hours	Upon request
Private Group Sessions	\$129/surfer	1.5 hours	Upon request
GROUP CLASSES			
Future Legends Surf Club	\$99/session = After school Sessions \$149/session = Saturday Sessions Memberships starting at \$289/month	After School = 2.5 hours Saturdays = 4 hours	Varies
Future Legends Surf Squads	\$139/session Memberships starting at \$589/month	2.5 hours	Varies
Surfing Fundamentals	\$99/session Memberships starting at \$189/month	1.5 hours	Varies
Surfing Mastery	\$99/session Membership starting at \$189/month	1.5 hours	Varies
Surfing Fitness	\$99/session Membership starting	1.5 hours	Varies

	at \$189/month		
Surfing Wellness	\$99/session Membership starting at \$189/month	1.5 hours	Varies
Adaptive Surfing	\$99/session Membership starting at \$189/month	1.5 hours	Varies
Summer Camps	\$495/week	3.5 hours	M-F AM Session 8:30am - 12:00pm PM Session 1:00pm - 4:30pm

Private Surf Lessons - One on one private instruction with one of our world-class Surf Coaches.

Number of Surfers per session: 1

(1.5 hours)

Summary of Material Covered:

Private Surf Lessons cover the foundational skills that are essential to novice surfer safety and success, ensuring that each surfer develops the correct habits to help them truly become confident and independent in the ocean. Common mistakes are reviewed and correction cues are provided. Positive and immediate feedback from our expert Surf Coaches in a private setting is excellent way to make progress and identify areas that have room for improvement. Each surfer is treated as an individual, with their own goals, confidence, abilities and expectations and each private session is custom tailored to maximize the experience for each surfer, whether they are a local resident or a visitor to the City of San Diego.

Each Private Surf Lesson is accompanied by a "Local Knowledge" discussion, where our SEA Surf Coaches share information on the unique beaches of San

Diego, the weather patterns that affect this stretch of coastline, the great organizations that exist in the area and across the planet that work towards protecting the coastlines, local marine life you may encounter in the waters around San Diego, and great surf related destinations to visit in San Diego, to name a few topics.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over the Foundational Skill Lesson for the day (or Progressive Skill Lesson for intermediate to advanced surfers)

45 Minutes - One on one water time with the SEA Surf Coach

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?

Private Surf Coaching - Private coaching using our state of the art coaching tools and video analysis to track progress and improve the learning curve.

Number of Surfers per session: 1

(1.5 hours)

Summary of Material Covered:

Private Surf Coaching Sessions are geared towards intermediate to advanced surfers and utilize our proprietary SEA Surfing Development Pathway and Curriculum with photo and video analysis tools to drastically increase the rate of learning. Each surfer is provided with guidance for their unique goals for the session and their overall surfing goals and the sessions are filmed for analysis. The waves are broken down for each surfer by our elite SEA Surf Coaches and the clips are utilized to track progress over time and increase the rate of learning with instant visual feedback and expert coach analysis. Private Surf Coaching is great for the local youth and other residents that enjoy surfing on a regular basis and are focused on developing their confidence and skills, or potentially training for competitions. We also have many

international surfers travel to train with us, as our services are very specialized and our results are proven.

Each Private Surf Coaching Session is accompanied by a "Local Knowledge" discussion, where our SEA Surf Coaches share information on the best conditions for different waves around San Diego and discuss the intricacies of surfboard design and equipment selection. Advice is also given on the best San Diego resources for any of our client's surfing needs and we always have great local restaurant, cafe and juice bar recommendations to round out the authentic surfing experience.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over the Foundational Skill Lesson for the day (or Progressive Skill Lesson for intermediate to advanced surfers)

45 Minutes - Surf time with waves being filmed and analyzed by the SEA Surf Coach

15 Minutes - Debrief. Breakdown video footage for the student. What went well? What was challenging? What should we focus on moving forward?

Adaptive Surf Coaching - SEA specializes in working with surfers with disabilities and we want to encourage surfers from all walks of life to come train with us. We are always excited to take people out for their first surfing experience or glad to work with surfers for extended periods.

Number of Surfers per session: 1

(1.5 Hour Session)

** There are many grants available by several organizations who support adaptive sports, such as Challenged Athletes Foundation, who could help offset the costs.*

Summary of Material Covered:

We work with each client to assess their abilities and determine the best approach for riding waves. We have access to a variety of equipment that can accommodate surfers riding waves in the prone, kneeling, seated or standing positions and our staff have all been trained to teach surfers with disabilities.

After working in the adaptive surfing space it became clear that there is an opportunity to bridge the gap between the programs that are currently being offered, where participants can participate in a clinic and get a taste of surfing or then they can compete in an event, but there has not been much available to help those who want to develop their surfing skills in between events. However not every surfer is aiming to surf competitively. We provide a platform for surfers with disabilities to surf on a regular basis, without having to wait for specialty events, and they can develop their skills with the same top of the industry resources and elite Surf Coaches.

Session Outline:

30 Minutes - Discuss abilities, disabilities, and limitations. Go over goals, strengths, and areas of opportunity. (Feedback from previous sessions for returning athletes). Discuss safety, equipment and any necessary modifications.

45 Minutes - Water time with the SEA Surf Coach or Coaches

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?

Private Group Sessions - Multiple surfers in the same session with our world-class Surf Coaches.

Number of Surfers per session: 2+

(1.5 Hour Session)

Summary of Material Covered:

Private Group Sessions are geared towards novice to intermediate surfers and are also great for team building, birthday parties and other special events.

In our Private Group Sessions each individual is assessed for their own past swimming/ocean/surfing experience, their abilities, confidence and their goals, as it is best to treat each group as a group of individuals. This allows our coaches to truly customize the experience for each individual amongst the group, ensuring the entire group has an excellent and safe time. This lends itself to a higher rate of client satisfaction, as opposed to offering a scripted, "one size fits all" group surf lesson and having some members of the group succeed and others fail.

Our Private Group Sessions cover the foundational skills that are essential to novice surfer safety and success, ensuring that each surfer develops the correct habits to help them truly become confident and independent in the ocean.

Just like our Private Surf Lessons, common mistakes are reviewed and correction cues are provided. Positive and immediate feedback from our expert Surf Coaches is provided to round out the experience for each surfer.

Each Private Group Surf Session is accompanied by a "Local Knowledge" discussion, where our SEA Surf Coaches share information on the unique beaches of San Diego, the weather patterns that affect this stretch of coastline, the great organizations that exist in the area and across the planet that work towards protecting the coastlines, local marine life you may encounter in the waters around San Diego, and great surf related destinations to visit in San Diego, to name a few topics.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over basic Foundational Skills for safety and technique

45 Minutes - Surf time with SEA Surf Coach or Coaches providing immediate feedback

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?

Private Group Surf Coaching - Multiple surfers get filmed and reviewed by our coaches, learning from the other surfers in the small group setting and from the years of experience of our coaches.

Number of Surfers per session: 2+

(1.5 hours)

Summary of Material Covered:

Private Group Surf Coaching Sessions are geared towards groups of intermediate to advanced surfers and utilize our proprietary SEA Surfing Development Pathway and Curriculum with photo and video analysis tools to drastically increase the rate of learning. Each surfer is assessed as an individual, based on their own goals, progress, confidence, etc. Surfers are provided with guidance for their unique goals for the session and their overall surfing goals and the sessions are filmed for analysis. The waves are broken down for each surfer by our elite SEA Surf Coaches and the clips are utilized to track progress over time and increase the rate of learning with instant visual feedback and expert coach analysis. Private Group Surf Coaching is great for each surfer to learn in the small group setting because surfers get to learn from the analysis of each surfer in the groups' waves, not just their own waves.

Each Private Surf Coaching Session is accompanied by a "Local Knowledge" discussion, where our SEA Surf Coaches share information on the best conditions for different waves around San Diego and discuss the intricacies of surfboard design and equipment selection. Advice is also given on the best San Diego resources for any of our client's surfing needs and we always have great local restaurant, cafe and juice bar recommendations to round out the authentic surfing experience.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over the Foundational Skill Lesson for the day (or Progressive Skill Lesson for intermediate to advanced surfers)

45 Minutes - Surf time with waves being filmed and analyzed by the SEA Surf Coach

15 Minutes - Debrief. Breakdown video footage for the student. What went well? What was challenging? What should we focus on moving forward?



Regularly Scheduled Programs

SEA is breaking new ground with regularly scheduled group programs that surfers and visitors can attend to improve their confidence and to also meet

similar and like minded individuals who have a common love for surfing and the ocean. Surfers can drop into classes and memberships are available as well.

Future Legends Surf Club - Our youth surfing development program for surfers of all experience levels

Number of Surfers per session: 1 - 15

Summary of Material Covered:

The Future Legends Surf Club is like Little League for kids who love to surf! Our program works with small groups of kids over the course of a season to develop confident, independent surfers, and admirable members of the global surf community. In addition to learning core skills, safety and techniques, members of this exclusive program will also learn about surf history, culture, etiquette, and sustainability through surfing. We pride ourselves in offering safe, positive and rewarding surfing experiences for the youth in our care and our team approach to surfing development creates an enriching environment for kids of all ages.

Our Future Legends Surf Club motto is "Develop Rad Habits" and we encourage all the kids to live healthy lifestyles and make good decisions, in and out of the water. We find that the confidence of our young surfers translates to the classroom, the school yard, at home and beyond. We often have Guest Surf Coaches, consisting of Professional Surfers, surf photographers, journalists, surfing firefighters and other positive role models for the kids.

2.5 Hour Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.
(Feedback from previous sessions for returning athletes)

15 Minutes - Go over basic Foundational Skill of the day

60 Minutes - Surf time with SEA Surf Coach or Coaches providing immediate feedback

30 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?

30 Minutes - Cross training activity, Mental training activity

4 Hour Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over basic Foundational Skill of the day

60 Minutes - Surf time with SEA Surf Coach or Coaches providing immediate feedback

30 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?

30 Minutes - Cross training activity, Mental training activity

15 Minutes - Break, snack and hydrate. Reapply sunscreen

15 Minutes - Go over the second Foundational Skill of the day

45 Minutes - Surf time with SEA Surf Coach or Coaches providing immediate feedback

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?



Future Legends Surf Squads - Our youth Surfing Development Program for intermediate surfers.

Number of Surfers per session: 1 - 5

Summary of Material Covered:

The Future Legends Surf Squads Program is an extension of our Future Legends Surf Club and is designed for small groups of young surfers who are comfortable surfing open face waves on days when the waves are 4-6 feet on the face. Up to five surfers will surf together and their sessions will be critiqued and documented by our Coaches, Photographers and Videographers. Surfers will have access to their videos from each session in order to increase the learning curve and surfers can receive video edits of their best waves. The young surfers who come through this program definitely become standouts in their local lineups. Young surfers come from near and far to participate in our programming, learn from our curriculum and train with our Surf Coaches and the Future Legends Surf Squads program is one of our most popular services.

The Future Legends Surf Squads curriculum helps young surfers by guiding them in all areas of surf training, not just focusing on technique, but also covering mental preparation, physical preparation, and tactical preparation.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

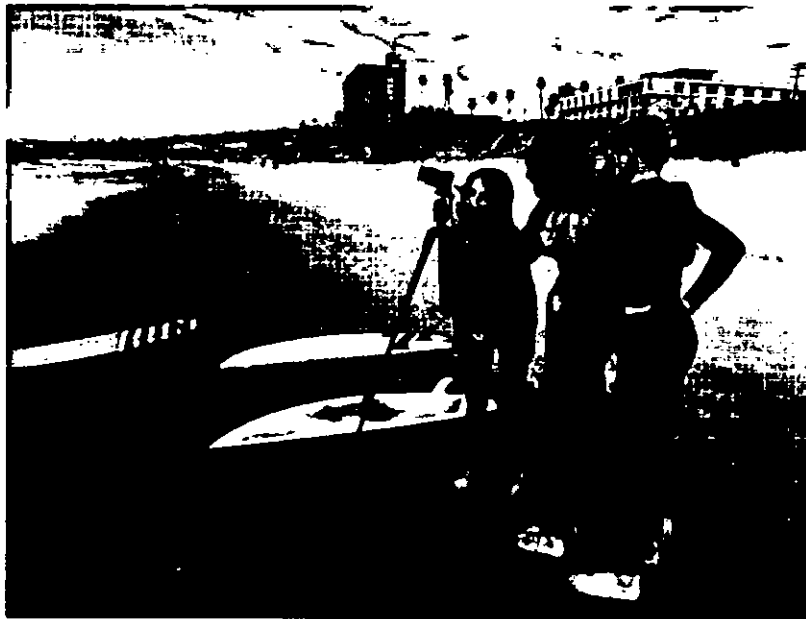
(Feedback from previous sessions for returning athletes)

15 Minutes - Go over basic Foundational (or Progressive) Skill of the day

60 Minutes - Surf time with waves filmed and analyzed by the SEA Surf Coach

30 Minutes - Debrief. Video footage review and wave breakdown. What went well? What was challenging? What should we focus on moving forward?

30 Minutes - Cross training activity, mental training activity, or surf topic discussion



Surfing Fundamentals - Adult Novice program

Number of Surfers per session: 1 - 15

Summary of Material Covered:

Our Surfing Fundamentals Program is the best way to develop surfing skills and confidence in the ocean, hands down. Our Surf Coaches are top-notch and our curriculum provides a tool kit and easy to follow road map to set each surfer up for a lifetime of safe and enjoyable surfing adventures.

Learn how to:

- Read the surf forecast and pick the best break for your skill level on any given
- Paddle through the waves with confidence
- Understand the "Rules of the Water"
- Position yourself in the line up
- Surf in a crowd
- Pick a good wave and know which direction to ride
- Catch an unbroken wave
- Control your surfboard on a wave
- Speed up and slow down
- Develop other intermediate surfing skills

Safety, Etiquette & Best Practices

Surfers Learn the safety, etiquette and best practices to keep themselves and others safe. Our programming helps each surfer develop the right habits and questions to ask themselves each time they paddle out to ensure that their session is always fun and never out of your control.

Core Skills & Common Mistakes

Our Surf Coaches break down the fundamental building blocks to developing quality surfing, helping surfers to develop essential core skills, while avoiding common mistakes or bad habits.

Custom Curriculum & Training Programs

Every surfer has their own goals, comfort levels and abilities and we cater our programming to fit the needs of each surfer. Working with small groups of surfers over an extended period of time allows us to drill down on learning styles and create long term training programs, as opposed to just shouting, "Stand up!".

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.

(Feedback from previous sessions for returning athletes)

15 Minutes - Go over basic Foundational Skills for safety and technique

45 Minutes - Surf time with SEA Surf Coach or Coaches providing immediate feedback

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?



Surfing Mastery - Adult Intermediate and up

Number of Surfers per session: 1 - 5

Summary of Material Covered:

The SEA Surfing Mastery Program is designed for adult surfers that are at the intermediate and up experience level. Surfers who participate in this program should complete the SEA Surfing Fundamentals program or be at equivalent competency.

There is a large population of adult surfers that desire to continue developing their skills and confidence, however, no programming (other than ours) is available. Currently, most Surf Schools offer lessons geared towards novice surfers or tourists and then the next level of training available is elite coaching for top athletes; SEA has created programming, curriculum and pathway to bridge this gap, offering surfers of all ages and experience levels the opportunity to continually improve upon their personal best.

We use Cutting Edge Photo and Video Analysis Tools:

We use photo and video analysis tools to improve the rate of progression for the surfers in our program. Reviewing the photos and footage with the expert analysis of Surf Coaches is incredibly valuable, as we have the ability to provide specific visual and audio guidance, compare footage side by side, and review previous sessions.

We Document and Chart Surfers' Progress:

Each surfer creates their own goals and we create custom programming to work towards success. Each surf session is documented with session goals, drills, and Surf Coach Notes and this information is paired with the photos and video to track progress and document improvement.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.
(Feedback from previous sessions for returning athletes)

15 Minutes - Go over the Progressive Skill Lesson for the day

45 Minutes - Surf time with waves being filmed and analyzed by the SEA Surf Coach

15 Minutes - Debrief. Breakdown video footage for the student. What went well? What was challenging? What should we focus on moving forward?



Surfing Fitness - Surf training to build up cardiovascular capacity and to learn how to conserve energy while surfing and in the ocean.

Number of Surfers per session: 1 - 15

Summary of Material Covered:

For far too long "surf instruction" has been largely limited to teaching new surfers to catch white water waves and how to pop up. In addition to delivering much more comprehensive techniques, SEA also offers programming to help surfers add longevity to their surf sessions, catch more waves, surf bigger waves, and be more safe in the ocean by being in better overall "surfing shape". SEA can help surfers get fit for the surf.

Session Outline:

15 Minutes - Discuss how fitness and cross training compliment surfing

15 Minutes - Go over the Surfing Fitness Lesson for the day

45 Minutes - Surfing, fitness, and cross training circuit

15 Minutes - Cool down and debrief. What went well? What was challenging? What should we focus on moving forward? How will this compliment our surfing?



Surfing Wellness - Surf training to increase flexibility and mobility, to prevent injury and stay healthy.

Number of Surfers per session: 1 - 15

Summary of Material Covered:

In addition to offering surf specific training to increase cardio capabilities for our surfers, we also offer programs that focus on keeping surfers moving and help to prevent injuries by doing surf specific training for mobility, flexibility and overall wellness. Our curriculum also touches on diet and nutrition, breathing exercises and includes thought provoking exercises for the mind to keep our surfers positive and alert.

Session Outline:

15 Minutes - Discuss how surfing and wellness go hand in hand and how we need to do more than just surf to be healthy surfers

15 Minutes - Go over the Surfing Wellness Lesson for the day

45 Minutes - Surfing, Wellness activity, flexibility and mobility circuit

15 Minutes - Cool down and debrief. What went well? What was challenging? What should we focus on moving forward? How will this compliment our surfing?

SUMMER CAMPS

Future Legends Surf Camp - Surf Education Academy will offer Summer Surf Camps as a great opportunity for kids to develop and improve their surfing skills and confidence by working with our world-class surf coaches throughout the summer.

- All levels
- SUP and boogie board

Number of Surfers per session: 5 - 15

Offered: Weekly during Summer months

Monday - Friday

AM Session: 8:30am - 12:00pm

PM Session: 1:00pm - 4:30pm

Summary of Material Covered:

Our programming and curriculum provides a fun and safe environment, while creating great surfers in and out of the water. Our small group format allows us to work with each young surfer to customize and achieve their goals and we use photo and video analysis tools to improve the pace of development for surfers of all levels.

In addition to using photo and video to improve the skills of our students, we also capture plenty of great images throughout the week, both in the water and on the beach.

Surfing is the go-to pastime at our Summer Surf Camps, but we have plenty of fun drills, games, challenges, arts and crafts and other activities to wear out any grom.

Our surf camps are crafted to help kids become lifelong surfers. We also focus on ocean awareness, the global surf community and discuss careers in surfing, as well as equipment, etiquette and life lessons. Each week we have a friendly surf contest and a mini beach luau to celebrate on Fridays.

Weekly Outline:

Monday - Meet and greet, ice-breakers, safety discussion, swim and surf assessment, ocean activity time

Tuesday - Surf Camp Lesson 1: Currents, Critters and Waves, Ocean time with SEA Coaches

Wednesday - Surf Camp Lesson 2: Foundational Skills, ocean time with SEA Coaches

Thursday - Surf Camp Lesson 3: What is health? How surfing helps us feel great, ocean time with SEA Coaches

Friday - Surf Camp Lesson 4: "Our Surfing Toolbox of skills", friendly surf competition and lunchtime luau

STAND UP PADDLEBOARDING PROGRAMS

Private Stand Up Paddleboarding Lessons - One on one private coaching with one of our expert SEA SUP Coaches.

Number of Surfers per session: 1

Summary of Material Covered:

Private SUP Lessons cover the foundational skills that are essential to novice paddler safety and success, ensuring that each paddler develops the correct habits to help them truly become confident and independent in flat water environments, as well as in the ocean. Common mistakes are reviewed and correction cues are provided. Positive and immediate feedback from our expert SUP Coaches in a private setting is an excellent way to make progress and identify areas that have room for improvement. Each paddler is treated as an individual, with their own goals, confidence, abilities and expectations and each private session is custom tailored to maximize the experience for each paddler, whether they are a local resident or a visitor to the City of San Diego.

Each Private SUP Lesson is accompanied by a "Local Knowledge" discussion, where our SEA SUP Coaches share information on the unique beaches of San Diego, the weather patterns that affect this stretch of coastline, the great organizations that exist in the area and across the planet that work towards protecting the coastlines, local marine life you may encounter in the waters around San Diego, and great surf related destinations to visit in San Diego, to name a few topics.

Session Outline:

15 Minutes - Discuss ocean and beach safety, equipment, ideal positioning, grip, stance, paddling, turning, slowing and entry and exit points.

15 Minutes - Go over the Foundational Skills for safely using a SUP and navigating the board in the ocean.

45 Minutes - Stand Up Paddle time with immediate feedback provided by the SEA SUP Coach

15 Minutes - Debrief. Breakdown session. What went well? What was challenging? What should we focus on moving forward?



Group Stand Up Paddleboarding Lessons - Group sessions with our expert SEA SUP Coaches.

Number of Surfers per session: 2+

Summary of Material Covered:

Group SUP Lessons cover the foundational skills that are essential novice paddlers' safety and success, ensuring that each paddler develops the correct habits to help them truly become confident and independent in flat water environments, as well as in the ocean. Common mistakes are reviewed and correction cues are provided. Positive and immediate feedback from our expert SUP Coaches in a private setting is excellent way to make progress and

identify areas that have room for improvement. Each paddler is treated as an individual, with their own goals, confidence, abilities and expectations and each private session is custom tailored to maximize the experience for each paddler, whether they are a local resident or a visitor to the City of San Diego.

Each Group SUP Lesson is accompanied by a "Local Knowledge" discussion, where our SEA SUP Coaches share information on the unique beaches of San Diego, the weather patterns that affect this stretch of coastline, the great organizations that exist in the area and across the planet that work towards protecting the coastlines, local marine life you may encounter in the waters around San Diego, and great surf related destinations to visit in San Diego, to name a few topics.

Session Outline:

15 Minutes - Discuss ocean and beach safety, equipment, ideal positioning, grip, stance, paddling, turning, slowing and entry and exit points.

15 Minutes - Go over the Foundational Skills for safely using a SUP and navigating the board in the ocean.

45 Minutes - Stand Up Paddle time with immediate feedback provided by the SEA SUP Coach

15 Minutes - Debrief. Breakdown session. What went well? What was challenging? What should we focus on moving forward?

Available at: La Jolla Shores site



Private Stand Up Paddleboard Coaching

Number of Surfers per session: 1

Price: \$165/session (1.5 hours)

Summary of Material Covered:

Private SUP Coaching helps the intermediate level paddler improve upon their techniques, stamina, and mindset. Our SUP Coaches help each paddler refine their stroke, their posture, and their equipment, assisting each athlete in improving upon their personal best, while setting goals for the future. Athletes also have the ability to work with our coaches on nutrition, cross training and mental preparation.

We use state of the art photo and video analysis tools to help increase the learning curve of our athletes and incorporate this into our SUP training and coaching as well. Sessions are reviewed, mistakes are identified and correction cues are provided. Positive and immediate feedback from our

expert SUP Coaches in a private setting is excellent way to make progress and identify areas that have room for improvement. Each paddler is treated as an individual, with their own goals, confidence, abilities and expectations and each private session is custom tailored for to maximize the experience for each paddler, whether they are a local resident or a visitor to the City of San Diego.

Each Private SUP Coaching Session is accompanied by a "Local Knowledge" discussion, where our SEA SUP Coaches share information on the unique beaches of San Diego, the weather patterns that affect this stretch of coastline, the great organizations that exist in the area and across the planet that work towards protecting the coastlines, local marine life you may encounter in the waters around San Diego, and great surf related destinations to visit in San Diego, to name a few topics.

Session Outline:

15 Minutes - Discuss safety, goals, strengths, and areas of opportunity.
(Feedback from previous sessions for returning athletes)

15 Minutes - Go over the Foundational Skill Lesson for the day

45 Minutes - One on one water time with the SEA SUP Coach

15 Minutes - Debrief. What went well? What was challenging? What should we focus on moving forward?



REGULARLY SCHEDULED SUP PROGRAMS

SUP Fitness - SUP training to get a nice workout, build up cardiovascular capacity and to learn how to conserve energy while paddling and in the ocean.

Number of Surfers per session: 1 - 15

Price:

\$99/session (1.5 hours)

Or SEA memberships starting at \$189/month

Summary of Material Covered:

SEA offers programming to help paddlers to add longevity to their paddle sessions, paddle faster, paddle longer, and be more safe in the ocean by being in better overall "paddle shape". SEA can help paddlers, and anyone who wants to get involved, get in excellent shape with our SUP Fitness course.

Session Outline:

15 Minutes - Discuss how fitness and cross training compliment SUP.

15 Minutes - Go over the SUP Fitness Lesson for the day

45 Minutes - SUP, fitness, and cross training circuit

15 Minutes - Cool down and debrief. What went well? What was challenging? What should we focus on moving forward?

SUP Endurance - SUP training to get an intense workout, get in the best shape of your life, and improve your speed and stamina.

Number of Surfers per session: 1 - 15

Price:

\$59/session (1.5 hours)

Or SEA memberships starting at \$149/month

Summary of Material Covered:

This program is designed for those who want to truly get a great workout and feel their personal best, or for serious athletes who want to improve their endurance, and focus on their times. There is also a great social component to this program, as the athletes motivate each other with a bit of friendly competition.

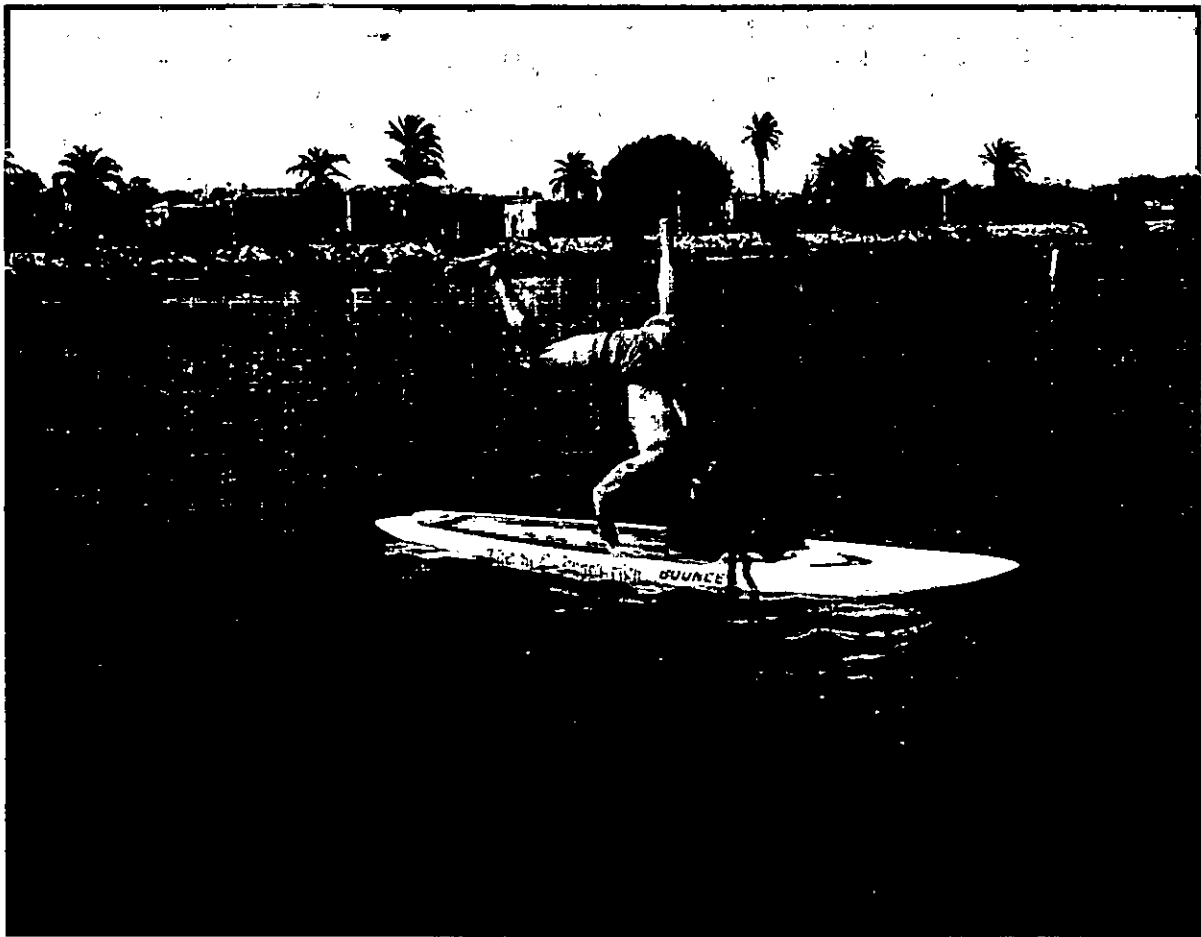
Session Outline:

15 Minutes - Stretching, breathing, mental preparation

15 Minutes - Go over the SUP Endurance Lesson for the day

45 Minutes - SUP, Endurance, and cross training circuit

15 Minutes - Cool down and debrief. What went well? What was challenging? What should we focus on moving forward?



"Local Knowledge" - Interpretive Programs & Discussion Topics

All SEA programs and sessions are accompanied by educational discussions with topics including but not limited to:

- Sustainable Surf Tourism
- Local Marine Creatures
- San Diego wave anatomy
- Topography of Blacks Beach and the submarine canyon off of Scripps Pier
- Information about the Scripps Pier, UCSD and the Birch Aquarium
- Best practices for being a conscious surf traveler
- General water safety procedures
- Great local resources for surfers
- Information about surfing equipment, surf competitions, surf destinations
- Knowledge about the history of surfing
- Local surf history and local legends and icons
- Recommendations for cross training and other complimentary activities
- Using surfing as our natural high, staying positive and make good choices
- Inside knowledge about the surf industry
- Expertise about wave pools and surf parks
- Advise and knowledge about adaptive surfing, opportunities and events
- Greater connections for the global surf community

LIFEGUARD SAFETY REQUIREMENTS

Surf Education Academy goes above and beyond to deliver safety and best practices and we always plan ahead for every session on every day to ensure everything is in order for safe and rewarding surfing experiences for the surfers or paddlers in our care.

1. Maximum number of participants/boards on the beach and in the water:

Surf Education Academy will strictly adhere to the Lifeguard requirements and will never exceed 50 students per site or 25 students in the water at any given time. All students, on land in the water, will be accompanied by our expert Surf Coaches in the ratios outlined below.

2. Identifying Markers:

All SEA Surf Coaches will wear RED rashguards with the Surf Education Academy name and logo. All SEA students will wear colored rashguards with the Surf Education Academy name and logo.

All SEA Adaptive Surfers will wear ROYAL BLUE rashguards with the words "ADAPTIVE SURFER" clearly displayed, along with the Surf Education Academy name and logo. Additionally, we will have special ROYAL BLUE rashguards available for visually impaired surfers with the words "VISUALLY IMPAIRED" clearly visible, along with the Surf Education Academy name and logo.

3. Student to instructor ratios:

SEA will clearly adhere to the Lifeguard requirements, ensuring there will always never be more than five surfers to one SEA Surf Coach. All SEA Surf Coaches will be American Red Cross certified, plus additionally certified to the standard of global best practices in the surf industry, clearly outlined in the following points. Ratio will always be tighter for younger participants or those with more needs.

4. Beach Access:

At no time will SEA exclude the public from any site. Additionally, Beach and Lifeguard access will be kept clear at all times. Surfboards will be kept in a position that does not obstruct beach access or block the Lifeguards' line of site.

5. Concession Site/Location:

SEA will always operate from our assigned Site on the beach and our water-operations will take place in the immediate surfing area in front of our beach Site. The Lifeguards may approve an alternate water operations site based on safety conditions. SEA may meet and escort participants from the park's facilities, parking lots and/or nearest street but may not set up any concession operations in the park.

When stand up paddleboards (SUP) are not able to be launched in front of the SEA 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 will have proper carriage requirements, including personal flotation device (PFD). Furthermore, the SUPs will remain outside the surf at all times.

6. Equipment

SEA will only provide soft foam surfboards with a leash to novice surfers. Intermediate surfers may use hard surfboards equipped with a leash and necessary protection.

SEA has a range of surfboards available for our clients and members to try so they can best fine tune their equipment and find the surfboards that work the best for them. All surfers must graduate from the foam surfboards by proving they are competent in the key safety skills (covering your head, keeping your surfboard to the side, etc.) before being allowed to ride any hard surfboards.

SEA has a range of Stand Up Paddleboards and Boogie Boards available for our guest, from novice to intermediate, and each SUP participant is provided a personal flotation device.

All SUPs will have a leash, a personal flotation device (PFD) and will remain outside of the surf zone.

We also provide full wetsuits, rashguards, sunscreen, water, and wetsuit booties upon request.

7. Minimum Requirements for Instructors

BACKGROUND CHECK

All SEA Coaches, Instructors and Team Members go through an extensive background check to adhere to global best practices and safe guidelines.

SEA IN-HOUSE TRAINING AND SEA TEAM MEMBER MANUAL

Additionally, all SEA Coaches, Instructors and Team Members go through an extensive and exhaustive in-house SEA Training and onboarding process, which covers all policies, protocols, procedures and expectations and provides detailed guidance for each position and associated responsibilities, as well as comprehensive training on SEA operating systems. All SEA team members will receive a Sea Team Member Manual.

DRUG FREE WORKPLACE

SEA is a Drug Free Workplace and we have created a "Drug Free SEA" policy and awareness program, which abide by the omnibus drug legislation passed by Congress in 1988.

MINIMUM AGE

The minimum age for a SEA Surf Instructor or Coach is 18 years of age.

REQUIRED CERTIFICATIONS

All Surf Coaches employed by SEA will hold the following minimum certifications:

1. Water Safety Certification- Must possess one of the following certifications:
 - a. American Red Cross, "Lifeguarding"
 - b. Miramar College, "Introduction to Open Water Lifeguard"
 - c. Water Safety Specialist, "Surfing Instructor Training"
 - d. International Lifesaving/International Surfing Association
 - e. Other certification whose curriculum is approved by the Lifeguard Division
2. CPR Certification - Must possess one of the following CPR certifications:

- a. American Red Cross
 - b. American Heart Association
 - c. Any other nationally recognized basic CPR training with certification
3. First Aid Certified - Must possess one of the following certifications:
- a. Emergency Medical Technician
 - b. American Red Cross Emergency REsponse
 - c. American Red Cross First Aid Basic
 - d. Wilderness First Responder
 - e. Any other nationally recognized first aid course with certification

SPORT SPECIFIC CERTIFICATIONS

- All SEA Surf Coaches are encouraged to be ISA Level 1 Surf Instructor certified.
- All SEA Managing Surf Coaches are required to be ISA Level 2 Surf Coach certified.
- All SEA SUP Coaches are required to be ISA SUP Flat Water Instructor certified.

Surf Education Academy goes above and beyond to reach global best practices in the surf industry and we require all of our Surf Coaches obtain certification through the ISA.

One of the core mottos at SEA is, "Be the Fire Marshall, not the Fireman." We believe it is much better to prepare adequately for all possible scenarios, instead of having to react to challenges or dangerous situations that could have (and should have) been prevented by proper planning.

Currently, the City of San Diego only requires that Surf Instructors obtain a water safety certificate and maintain a valid CPR certification, which is all very valuable and highly recommended. However, the City of San Diego does not currently require any sport specific knowledge about how teach surfing or SUP safely and properly.

The ISA certifications are *required* for Surf Instructors and coaches in most countries that have surfing tourism and sports markets, including Australia, Brazil, South Africa, all over Europe and most nations with surfing programs.

In addition to the certifications that we require, all SEA employees are hired for their ability to be exceptional, life-changing coaches who have the ability to move our students in and out of the water, inspiring confidence that transcends the ocean. Our team at SEA is comprised strictly of individuals with the most desirable personalities who represent our beautiful city of San Diego as model ambassadors.

EQUAL OPPORTUNITY EMPLOYER

SEA is an equal opportunity employer and we seek to employ residents of San Diego.

8. Waivers:

SEA will keep 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, will be onsite at all times. Prior to the initial class, SEA will arrange with the Lifeguard for an initial equipment and first aid safety inspection.

Additionally, SEA also keeps on site a cell phone for communication with SEA Headquarters and any necessary emergency response, swim fins and rescue board.

SEA also keeps on hand plenty of sunscreen and water to prevent sunburn and dehydration of our clients.

10. Emergency Response Plan

SEA has a thorough Emergency Response Plan in place and we cover all aspects of the plan with each of our team members, so that there is clear communication and action steps in place for emergencies of all kinds.

We are firm believers in being prepared for every session by having a vast understanding of who our students are, their confidence and skill levels in the ocean, and any special considerations. We always work to prevent incidents from occurring before they take place by offering proper guidance and education to our students and the general public. With that said, we have a detailed Emergency Response Plan in place that has very specific protocols for different situations.

The following plan is a basic outline of response and readiness for Surf Education Academy during emergency situations. More specific details follow in regards to various water related emergencies and Minor and Major land based emergencies. The plan is thoroughly read, covered and studied by each employee and team member of SEA:

ALL SEA TEAM COACHES MUST BE WELL VERSED IN THE FOLLOWING DROWNING PREVENTION STRATEGIES, SURF INSTRUCTOR RESCUE TECHNIQUES, AND EMERGENCY ACTION PROTOCOLS:

- General Emergency Procedures
- General Rescue Procedures for Water Emergencies
- General Rescue Procedures for Land Based Emergencies
- Scanning
- Ladder of Risk
- Rescue with rescue board or surfboard of conscious victim
- Rescue with rescue board or surfboard of unconscious victim
- Use of the Torpedo Buoy or other floatation device for conscious victim
- Use of the Torpedo Buoy or other floatation device for unconscious victim

- Use of the Torpedo Buoy or other floatation device for multiple victim rescues
- Use of the Torpedo Buoy or other floatation device for removal of victim from deep water with a suspected spinal injury
- Rescue of victim with no floatation device
- "Buddy Paddle" / "Save a mate"

Additional Emergency Scenarios that SEA Team Members are trained and prepared for:

- Lost Child procedure
- Extreme weather conditions - lightning (reverse triage)
- Civil unrest/terrorist/shooting
- Fire procedures
- Earthquake and Tsunami Action Plan

EMERGENCY CONTACT NUMBERS

Emergency Situation - 911

Lifeguards (emergency) - (619) 221-8800

Lifeguards (non-emergency) - (619) 221-8899

Police (non-emergency) - (858) 484-3154

Poison Control - (800) 222-1222

SEA HQ - (858) 208-7533

GENERAL EMERGENCY PROCEDURES:

1. RECOGNIZE
 - Recognize there is an emergency
2. ACTIVATE EMERGENCY RESPONSE PLAN AND SIGNAL
 - Activate ERP and signal others
 - Contact EMS if necessary
 - On water: Lifeguards: (619)221-8800
 - On Land: 911

3. RESCUE

- Perform Rescue or provide care
- Is the scene safe to enter?
- Primary Assessment (life threatening)
- Secondary Assessment
- Clear the water if necessary
- Evacuate or pass off care if necessary
- Secondary rescuers: ensure EMS is called, assist, guide EMS to site, control bystanders, notify SEA HQ

4. FOLLOW UP

- Report the incident
- Incident report
- Work with authorities if necessary
- Check equipment
- Debrief

OCEAN CONDITIONS AND VENUE ANALYSIS

Ensure that the ocean conditions are safe to conduct class based on the skill levels of the instructor and the students. Ensure the venue is safe of hazards and anticipate any challenges that may present themselves.

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

SEA 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

SEA 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.

EMERGENCY EQUIPMENT ON SITE

Rescue Board

Emergency Bag

- First Aid Kit
- Safety Blanket
- Flare/smoke can
- Water
- Swim fins
- Cell phone
- Sunscreen
- "Jellyfish juice" (vinegar)

Communication Tools

- Cell phone
- Flares and smoke cans

DETAILED EMERGENCY RESPONSE PLAN

All SEA Surf Coaches must be well versed in the following:

SURF INSTRUCTOR PREVENTION AND RESCUE TECHNIQUES

SCANNING

It always best to act in a preventative manor to ensure the safety of ourselves, the surfers in our care, and other beach goers. Scanning is a preventative measure which involves constantly looking left to right, back and forth, and near and far to observe the scene safety, including but not limited to the surfers in your care, the ocean, other people, weather, hazards, etc.

Scanning helps us identify problems before they occur and we can often prevent rescue situations by:

- a. Talking to people that seem "out of place" about the hazards of the ocean and the venue and safety rules and precautions to minimize risk.
- b. Distancing ourselves from potential hazards or hazardous people to avoid danger
- c. Keeping our eyes on hazardous people to ensure they do not get into an unsafe situation.

A few things to watch for while scanning:

- a. Poor swimmer

- b. Swimmers becoming tired or weak
- c. Unattended children
- d. People who are knocked over by waves
- e. Rule violators
- f. Unnatural or excessive splashing with arms
- g. Poor swimmers going out over their heads
- h. People in the water with street clothes on
- i. People possibly under the influence of alcohol or drugs
- j. Body boards without leash
- k. Drop offs or holes
- l. Rip currents
- m. people who look out of place
- n. Backwash
- o. Drift
- p. Sandbars
- q. Hole between bar and beach
- r. Hazards

LADDER OF RISK FOR RESCUER

It is important to minimize risk whenever possible by using the ladder of risk to assess possible rescue techniques. Going into the water to rescue someone should be a last resort and done with extreme caution.

* Never enter into conditions that are beyond your ability and, if possible, always communicate with others on land before entering the water.

Voice – Yell to the victim. Examples: "Stand up!", "Stay calm, help is on the way", "Swim that way!", "Stay on your board!"

Reach – Try to reach the victim by extending an object for them to grab onto so that you can pull them to safety.

Throw – Throw an object to the victim for them to float on and/or to reel them in. Examples: Rescue Buoy, pool floatation ring, a rope, a surfboard, anything that floats

Row - Paddle or row something to the victim. Examples: Boat, rescue board, surfboard, SUP, kayak, etc.

Go – If no other resources are available or not viable options, then you "go" into the water to swim to your victim.

WATER RELATED EMERGENCIES

RESCUE WITH A RESCUE BOARD OR SURFBOARD: UNCONSCIOUS VICTIM

1. Approach victim using a "J" shape and approach the victim parallel
2. Flip over the board and pull the victims arms over the board until the rail of the board is in the victim's armpits. Be sure and secure the victim by holding them firmly.
3. Flip the board over, use your feet or knees on the rail of the board for extra leverage as you pull, if needed. This will help pull the victim further up on the board.
4. Swing the victims legs on the board
5. Begin to paddle, taking care to secure the victim through the surf zone. Cover the nose and mouth as best as possible to prevent further ingestion of more water.
6. Get victim to hard pack sand, a boat deck or another firm surface to begin CPR.

RESCUE WITH A BOARD: CONSCIOUS VICTIM

1. Approach victim using a "J" shape and approach the victim from behind and move parallel to the victim
2. Use clear communication to explain you are here to help.
3. If the victim is non aggressive or panicked assist them onto the board by asking them to grab the rails and pull up their chest and swing up their feet.
4. The victim is pinned to the board while the rescuer paddles in, being cautious to maintain the victim while negotiating the surf.
 - If there are multiple victims then the board can be turned sideways and everyone can grab on. The rescuer can wait for more help to come and assist. If no help is available than the rescuer would move slowly towards shore with each victim holding tightly.

USE OF BUOY OR FLOATATION DEVICE FOR CONSCIOUS VICTIM

If other equipment is not available, you must swim and take a torpedo buoy or another other floatation device.

When to use:

- a. For rescues a short distance away
- b. For rescues in the bathing area
- c. When a rescue board, PWC or boat *are not* available or practical.

When inadvisable to use:

- a. For rescues where a long water distance must be covered
- b. When a rescue board, personal watercraft or surfboat *are* available.

1. When the rescuer is going out for a rescue, he holds the torpedo buoy while running through the shallow water. When the water becomes too deep for running, he drops the torpedo buoy to his side. This procedure will keep him from getting entangled in the torpedo rope. When the water is too deep to run, the rescuer dolphins until swimming becomes faster. Dive under waves encountered in the surf zone and grab the bottom on very large waves.

2. The rescuer stops just out of reach of the victim and puts the torpedo buoy between his/herself and the victim.

3. It is important to talk to the victim during this process. Explain what you are doing, and assure them that everything will be fine.

4. When the victim grabs the buoy, the rescuer can proceed to shore by towing the victim or...

5. If the victim is weak, the rescuer goes behind the victim and secures the victim on the buoy before returning to shore.

6. Tell a victim when a wave is coming so they can hold their breath or if they cannot do it themselves you must cover their nose and mouth for them.

USE OF BUOY OR FLOATATION DEVICE FOR UNCONSCIOUS VICTIM

1. Place the victim's arms on top of the torpedo with the victim's back to the rescuer. The rescuer then puts his arm under the victim's armpit and holds the buoy against the victim's chest. Check breathing, consider rescue breathing with protection.

2. Proceed to the shore by swimming

3. Get an unconscious victim to shore the fastest way possible. Make sure that the victim's face is out of the water. Cover the victim's mouth and nose when a wave passes over.

USE OF BUOY OR FLOATATION DEVICE FOR MULTIPLE VICTIMS

1. A rescuer will approach and assist the victim in the most trouble first. Additional victims may be assisted by bringing the buoy to the victim or bringing the victim to the buoy using non-equipment rescue techniques.
* Your judgment is necessary with multiple victims because every situation is different.
 - Conscious victims may hang on to the buoy in a multiple rescue.
 - Unconscious victims must be held onto the buoy by a rescuer.

2. When all victims are secure, the lifeguard and victims may proceed to shore by swimming.

USE OF BUOY OR FLOATATION DEVICE FOR REMOVAL OF VICTIM FROM DEEP WATER WITH A SUSPECTED SPINAL INJURY

1. If the victim is face up, the first rescuer will approach the victim from the side facing the victim while carefully moving the victim's arms parallel to the side of the victim's head. The rescuer's right hand secures the victim's right arm and left hand secures the left arm. The rescuer will grasp the victim's arm between the shoulder and elbow. The victim's arm must then be held securely against the victim's head at about the ears. The rescuer's hand holding the victim's far arm will be under the victim's head. This method of immobilization is referred to as the head splint method.

If the victim is face down, the rescuer will approach the victim from the side. The rescuer will move the victim's arms carefully to the side of the victim's head. The rescuer's right hand will grasp the victim's right arm between the elbow and shoulder while doing the same with the left hand and left arm. The victim's arms are held securely against the victim's head to maintain in-line stabilization of the neck and body. To rotate the victim to a face-up position, push the victim's near arm under water while pulling the victim's far arm toward you. The rescuer now has one arm under the victim's head grasping the far arm with the other hand holding the near arm. Maintaining pressure

on both the victim's arms against his/her head allows for in-line stabilization of the head and neck.

2. If additional support of the back is needed, the lifeguard can maintain pressure on the victim's near arm with his/her chest while supporting the victim's back with his/her free arm. Holding a rescue buoy with the arm supporting the lower back or hips is an option for more buoyancy.

3. The single rescuer should now make his/her way to shore or to a location where it is safe to await assistance while maintaining head splint with victim's head toward in coming surf.

4. When a second rescuer arrives, this person will support the hips and legs while holding the rescue buoy similar to if additional buoyancy is needed.

5. At this point, a decision is made based on conditions to:

- a. Remain at this location and wait for a backboard
- b. Move the victim to a safer location and await backboard
- c. Bring the victim to shore before attempting to backboard the victim

6. a. If a decision is made to remain at the present location, when the backboard arrives, the rescuer applying the head splint will carefully move to a position above the head maintaining head splint, so the backboard can be placed under the victim. The victim is now moved to shore where the victim is secured to the backboard.

b. If a decision is made to move to a safer location or shore, the rescuer applying the head splint will carefully move from the side of the victim to a position above the head maintaining the head splint. The victim will now be moved feet first to a safer location. The head splint rescuer's back is to the waves to shield the victim from wave action. Rescuers will remain in this safer location until other rescuers arrive with a backboard. When the backboard arrives, the rescuer applying the head splint will maintain the head splint from a position above the victim while the backboard is positioned under the victim. While maintaining the head splint move the victim to shore where the victim is secured to the backboard as described in section.

c. If a decision is made to move the victim to shore without a backboard, the rescuer supporting the head will carefully move from the side of the victim to a position above the victim maintaining in-line stabilization with the head splint method. The victim will now be moved feet first to shore. The rescuer using the head splint method will have his/her back to oncoming waves to shield the victim.

- As the victim gets closer to shore, additional rescuers will help carry the victim to shore to await the backboard.
- If three rescuers are not available, the rescuer applying the head splint will move back to the victim's side using his/her chest and one arm to maintain the victim's arms against the head. The rescuer's other arm is now free to lift and support the victim's back as the second rescuer supports the victim's mid-section.
- The victim will be placed on the beach or backboard while maintaining in-line stabilization. The victim will be secured to the backboard.

NOTE:

The victim's airway, breathing and pulse should be assessed as soon as possible after immobilization is accomplished in water. Swim fins may be helpful in deep water.

RESCUE A VICTIM WITH NO FLOATATION DEVICE

1. Communicate with others (whenever possible) to call for help (lifeguards or 911) and let them know that you are entering the water to perform a rescue.
2. If the victim is conscious, communicate to them that you are here to help and tell them to remain calm.
3. Take a rear approach to the victim and use a seat-belt style grip over one shoulder and under the opposite armpit.
 - If the victim is not calm or trying to take you under kick them away and attempt another approach. Swim beneath the victim and surface at their back to obtain your grip.
4. Position the victim's face and chest towards the sky and rotate your body so your chest is facing up, but your hip is also pointed towards the sky, so that the victim's lower back and butt are resting on your hip. Use your chest to provide buoyancy for the victim's head and upper body and use your hip to prevent the victim's legs from sinking.
5. Kick towards shore. If the victim is unconscious cover their nose and mouth when waves are approaching to avoid the victim ingesting water. If they are conscious tell them to close their nose and mouth when waves are approaching.

BUDDY PADDLE / SAVE A MATE

1. Approach the fatigued or drowning victim and keep a distance. Communicate that it will be ok and you are here to help.

2. If they have a surfboard and are too fatigued to paddle out of a current or get themselves safely to shore you can have them stay on their board and grab your ankles or your leash and you can paddle and tow them to safety. If they do not have a surfboard, boogie board or floatation device, there are options depending on the size of the victim and the board available for the rescue: For a smaller victim or child, place them on the board and clamp them to the board and paddle and kick them to safety. For a larger victim, you can either turn the board sideways so you and the victim can hold on and kick to safety, or the victim can roll to their back (belly to the sky) and hook their arms around your legs and rest their head on the back of the board as you paddle to safety.

LAND BASED EMERGENCIES

MINOR EMERGENCIES

Minor Emergencies are classified as incidents or emergencies that can be addressed at the site. Examples: bumps, scrapes, bruises, sting-rays, dehydration, etc.

MAJOR EMERGENCIES

Require lifeguard intervention and may need to be passed to a higher level of care.

Examples: lacerations, head and neck injuries, broken bones, etc.

ADDITIONAL EMERGENCIES

LOST CHILD OR MISSING PERSON

If a child or person has been separated from the group, immediately activate procedures for finding a lost child or missing person:

LOST PERSON IN OCEAN/WATER

Issue immediate signal for all other kids/participants to exit water. (Loud whistle, wave hand over head signifying all kids to exit water to surf camp base.

- Notify the head coach on site/secure all other children in safe area under adult supervision

Immediately notify lifeguards

Institute a systematic search, beginning with high-risk areas

- Notify director (if not on site) at soonest possible moment it is safe/viable (Sean 858-208-7533) or Jessica if Sean is unavailable 858-254-9358.

If search is unsuccessful, notify police.

Notify parents.

LOST CHILD IN OTHER AREAS

- Assemble all other children in a secure place under supervision.

Notify the head coach on site/secure all other children in safe area under adult supervision

Notify lifeguards or any other local officials on duty

Institute a systematic search, beginning with high-risk areas (e.g., water)

Notify director (if not on site) at soonest possible moment it is safe/viable (Sean 858-208-7533) or Jessica if Sean is unavailable 858-254-9358.

- If search is unsuccessful, notify police.

Notify parents.

FIRE ACTION PLAN

(Information from ReadyforWildFires.org on best practices for fire evacuation and safety)

- Have group meet at designated meeting spot
- If designated meeting spot is in affected in fire area yell and direct group to the safest area
- Identify safest and clear evacuation route.
- If evacuating group safely in a vehicle is not an option immediately direct group to evacuate safest known route
- If there is no safe land evacuation route available, direct group to ocean to stand in water at safe distance if safest option to avoid fire.

EARTHQUAKE & TSUNAMI ACTION PLAN

DURING EARTHQUAKE:

OUTDOORS:

- Drop, Cover, then Hold On. Cover your head and neck with your arms. Hold on to any sturdy furniture until the shaking stops.
- Crawl only if you can reach better cover without going through an area with more debris.
- If near slopes, cliffs, or mountains, be alert for falling rocks and landslides.
- If near ocean immediately retreat to higher ground
- Do not wait for tsunami warning proceed to higher grounds then asses the situation at that time.

IN OCEAN:

- Once earthquake stops head to beach immediately
- If near slopes, cliffs, or mountains, be alert for falling rocks and landslides.
- Do not wait for tsunami warning proceed to higher grounds then asses the situation at that time.

INDOORS:

- Drop, Cover, then Hold On. Cover your head and neck with your arms. Hold on to any sturdy furniture until the shaking stops.
- If inside, stay there until the shaking stops. DO NOT run outside.
- If in a vehicle, stop in a clear area that is away from buildings, trees, overpasses, underpasses, or utility wires.
- If near slopes, cliffs, or mountains, be alert for falling rocks and landslides.

AFTER EARTHQUAKE:

- Expect aftershocks to follow the largest shock of an earthquake.
- Check yourself for injury and provide assistance to others if you have training.

- If in a damaged building, go outside and quickly move away from the building.
- Do not enter damaged buildings.
- If you are trapped, cover your mouth. Send a text, bang on a pipe or wall, or use a whistle instead of shouting so that rescuers can locate you.
- If you are in an area that may experience tsunamis, go inland or to higher ground immediately after the shaking stops.
- Save phone calls for emergencies.

ACTIVE SHOOTER ACTION PLAN

(from Department of Homeland Security)

HOW TO RESPOND WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

Quickly determine the most reasonable way to protect your own life. Remember that customers and clients are likely to follow the lead of employees and managers during an active shooter situation.

Account for students/clients/campers and immediately proceed to the following steps:

1. Evacuate

If there is an accessible escape path, attempt to evacuate the premises. Be sure to:

- Have an escape route and plan in mind
- Leave your belongings behind
- Help others escape, if possible
- Prevent individuals from entering an area where the active shooter may be
- Keep your hands visible

- Follow the instructions of any police officers
- Call 911 when you are safe

2. Hide out

If evacuation is not possible, find a place to hide where the active shooter is less likely to find you.

Your hiding place should:

- Be out of the active shooter's view
- Provide protection if shots are fired in your direction and locked door)• Not trap you or restrict your options for movement

(i.e., an office with a closed

To prevent an active shooter from entering your hiding place:

- Lock the door
- Blockade the door with heavy furniture

HOW TO RESPOND WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

- Lock the door
- Silence your cell phone and/or pager
- Turn off any source of noise (i.e., radios, televisions)
- Hide behind large items (i.e., cabinets, desks)
- Remain quiet

If evacuation and hiding out are not possible:

- Remain calm
- Dial 911, if possible, to alert police to the active shooter's location
- If you cannot speak, leave the line open and allow the dispatcher to listen

3. Take action against the active shooter

As a last resort, and only when your life is in imminent danger, attempt to disrupt and/or incapacitate the active shooter by:

- Acting as aggressively as possible against him/her
- Throwing items and improvising weapons
- Yelling
- Committing to your actions

How to react when law enforcement arrives:

- Remain calm, and follow officers' instructions
- Put down any items in your hands (i.e., bags, jackets)
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid making quick movements toward officers such as holding on to them for safety
- Avoid pointing, screaming and/or yelling
- Do not stop to ask officers for help or direction when evacuating, just proceed in the direction from which officers are entering the premises

Information to provide to law enforcement or 911 operator:

- Location of the active shooter
- Number of shooters, if more than one
- Physical description of shooter/s
- Number and type of weapons held by the shooter/s • Number of potential victims at the location

12. Notice of Violation

SEA 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.

Organizational Structure

**EXHIBIT D
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

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. (Ocean Beach & Pacific Beach, #1 Santa Monica, #6 Law St & #7 Wilbur Ave.)
- 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 E
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death), and property damage covering all owned, leased, hired, and non-owned vehicles used by Concessionaire in connection with the Permitted Use, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). If applicable, such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death, or property damage occurring upon, in or about the Site(s) or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Site(s).
- 1.3. *Property Insurance.* Insurance providing coverage for the Site(s) and all improvements on or to the Site(s) against loss, damage, or destruction by fire or other hazards encompassed under Cause of Loss – Special Form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with “ordinance or law” coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Site(s), an “increased cost of construction” endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer’s liability insurance policy, with a minimum liability limit of One Million Dollars (\$1,000,000) per accident for bodily injury, or disease, covering all employees of Concessionaire.

2. **Nature of Insurance.** The contents of this 0 are sometimes referred to as the “**Insurance Requirements.**” All Liability Insurance, Automobile Liability Insurance, Property Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current “Best’s Key Rating Guide—Property/Casualty—United States & Canada” publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of “A-” and a minimum financial size category of “VII” (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Concessionaire may provide any insurance under a “blanket” or “umbrella” insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Site(s), which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the City Parties as “additional insured.” The coverage afforded to the City Parties shall be at least as broad as that afforded to Concessionaire regarding the Site(s) and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Concessionaire.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Concessionaire under these Insurance Requirements and shall not contribute with any insurance required to be maintained by Concessionaire under these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for Concessionaire’s Indemnity obligations under this Agreement. Concessionaire’s obtaining or failing to obtain such contractual liability coverage shall not relieve Concessionaire from nor satisfy any Indemnity obligation of Concessionaire under this Agreement.
 - 3.4. *Deliveries to City.* Evidence of Concessionaire’s maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than ten (10) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Concessionaire shall deliver to City evidence of Concessionaire’s maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days’ advance Notice of such action to City. Phrases such as “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company” shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties under these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* Concessionaire shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage under these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Concessionaire obtains an insurance policy covering both the Concessionaire Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier under such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, under which the carrier agrees to waive rights of recovery by way of subrogation against the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Concessionaire in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Concessionaire and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by City. Concessionaire shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Concessionaire fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties under these Insurance Requirements shall be reimbursed to City by Concessionaire in the same manner that insurance costs are reimbursable to City from Concessionaire under Section 5 of these Insurance Requirements.
- 3.11. *No Separate Insurance.* Concessionaire shall not carry separate or additional insurance coverage concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements unless the City Parties are made additional insured under such insurance coverage.

- 3.12. *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.
- 3.13. *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.
- 3.14. *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.
- 3.15. *Cause 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
4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Concessionaire to carry any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Concessionaire of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the

amounts owed, will accrue Default Interest from the date incurred until paid. Election by City to purchase or not to purchase insurance coverage otherwise required by these Insurance Requirements to be carried by Concessionaire shall not relieve Concessionaire of any Default or Event of Default or Concessionaire's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

**EXHIBIT F
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

CITY STANDARD CONTRACT PROVISIONS

1. **Concessionaire Certifications of Compliance.** By signing this Agreement, Concessionaire agrees and certifies that Concessionaire is aware of, and will comply with, all the following requirements in performance of this Agreement:

1.1. Certification for Americans with Disabilities Act ("ADA") and Related Laws. Concessionaire shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations ("Title 24"). When a conflict exists between the ADA and Title 24, Concessionaire shall comply with the most restrictive requirement (i.e., that which provides the most access). Concessionaire also shall comply with the ADA Compliance/City Contractors requirements set forth in Council Policy 100-04, which is incorporated into this Agreement by reference. Concessionaire warrants and certifies compliance with all applicable federal and state access laws and regulations and further certifies that all subcontracts relating to this Agreement, the Site, or the Proposed Development, will contain the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and all applicable federal and California access laws and regulations.

1.2. Compliance with City's Equal Employment Opportunity Program. Concessionaire shall comply with City's Equal Employment Opportunity Program, set forth in SDMC sections 22.2701 – 22.2708. Concessionaire shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Concessionaire shall provide equal opportunity in all employment practices. Concessionaire shall ensure that its subcontractors comply with this program. Nothing in this Section 1.2 shall be interpreted to hold Concessionaire liable for any discriminatory practice of its subcontractors.

1.3. Equal Benefits Ordinance Certification. Unless an exception applies, Concessionaire shall comply with the "Equal Benefits Ordinance" codified in SDMC section 22.4308.

1.4. Equal Pay Ordinance. Unless an exception applies, Concessionaire shall comply with the "Equal Pay Ordinance" codified in SDMC sections 22.4801 through 22.4809. Concessionaire shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Concessionaire to the same extent as it would apply to Concessionaire. Concessionaire shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5. Product Endorsement. Concessionaire shall comply with Council Policy 000-41 concerning product endorsement, requiring that any advertisement referring to City as a user of a good or service must have the prior written approval of the Mayor.

1.6. Business Tax Certificate. Unless City's City Treasurer determines in writing that Concessionaire is exempt from the payment of business tax, Concessionaire is required to obtain a City business tax certificate and provide a copy of such certificate to City before commencing any activities under this Agreement.

1.7. Employment of City Staff. Under City Council Policy 300-11, if Concessionaire employs an individual, who, within 12 months immediately preceding such employment, did, in the individual's capacity as a City officer or employee, participate in, negotiate with, or otherwise have an influence on the recommendation made to the Council in connection with the entry into this Agreement, City, in its sole and absolute discretion, shall have the right to unilaterally and immediately terminate this Agreement by notice to Concessionaire.

**EXHIBIT G
TO
CONCESSION AGREEMENT**

(La Jolla Shores, #10 near the Lifeguard Tower)

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Agreement cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Concessionaire and Concessionaire's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this 1G (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Concessionaire and Concessionaire's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Concessionaire and Concessionaire's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Concessionaire and Concessionaire's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Concessionaire and Concessionaire's contractors and subcontractors shall all deliver evidence of the required job site posting to City, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this

Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Concessionaire and Concessionaire's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Concessionaire and Concessionaire's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Concessionaire and Concessionaire's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Concessionaire and Concessionaire's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Concessionaire is responsible for ensuring that Concessionaire's contractors and subcontractors submit certified payroll records to City, the State Labor Commissioner, and DIR.

1.4 Apprentices. Concessionaire and Concessionaire's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Concessionaire shall be held responsible for its compliance and the compliance of Concessionaire's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Concessionaire and Concessionaire's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Concessionaire shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Concessionaire and Concessionaire's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Concessionaire and Concessionaire's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Concessionaire shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Agreement, Concessionaire is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City.

1.9 Filing of Form PWC-100. Concessionaire shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

1.10 Filing of Notice of Completion. Concessionaire shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.

05/16/2024

Attachment B

Environmental Determination (NORA)	
Environmental Planner	Zaira Marquez (zmarquez@saniego.gov)
Project Name	COSD Surf Camp Concessionaires RFP 2024
Environmental Determination	This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities)
Date NORA Posted	05/07/2024
Date NORA Removed	05/14/2024

Reilly, Iain

From: Ashlee O'grady <ashlee@belmontpark.com>
Sent: Tuesday, July 9, 2024 12:09 PM
To: Reilly, Iain; Steve Thomas
Cc: Sanchez, Roswitha
Subject: [EXTERNAL] RE: FIT Athletic unauthorized use of Beach Permit area

****This email came from an external source. Be cautious about clicking on any links in this email or opening attachments.****

Hi Iain,

Thank you for alerting us regarding the beach area and the use of the permit.

We will make them aware of this today and Steve has a meeting with Fit for this coming Thursday that was previously planned where he will make sure to discuss this with them further as well.

Thank you!

Ashlee O'grady

Executive Assistant

858-488-1549

ashlee@belmontpark.com

3146 Mission Blvd. San Diego, CA 92109

BELMONT PARK

From: Reilly, Iain <IReilly@sandiego.gov>
Sent: Tuesday, July 9, 2024 10:34 AM
To: Steve Thomas <steve@belmontpark.com>; Ashlee O'grady <ashlee@belmontpark.com>
Cc: Sanchez, Roswitha <RoswithaS@sandiego.gov>
Subject: FIT Athletic unauthorized use of Beach Permit area
Importance: High

Hi Steve and Ashlee,

I'm getting inquiries from Deputy Directors of Parks & Rec this morning that your sublessee FIT is engaged in unauthorized uses of the beach permit area – are you aware of this? Apparently they are using your permit area for yoga & fitness classes...