

2024 SURF CAMP CONCESSION AGREEMENT

(Mission Beach, #2 Old Mission Beach Lifeguard Tower)

This CONCESSION AGREEMENT (this "**Agreement**") is entered into by and between ENDLESS SURF CAMP, 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
Mission Beach	#2 Old Mission Beach 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. **FEES.** 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 **\$4,096.49**, which is **\$341.37** 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 or 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) 236-6987

To Endless Surf Camp, LLC
Concessionaire: Attn: Cecile Santini
 4071 Boone Street
 San Diego, CA 92117-4607
 (619) 865-6248

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

(Mission Beach, #2 Old Mission Beach Lifeguard Tower)

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

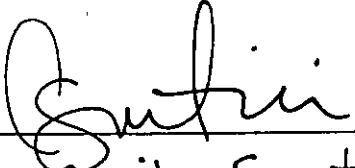
CITY:

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:

Endless Surf Camp, LLC

By: 
Name: Cecile Santini
Title: owner

Approved as to form on _____:

MARA W. ELLIOTT
City Attorney

By: Brian Byun
Brian Byun (Jun 12, 2024 09:39 PDT)
Brian Byun
Deputy City Attorney

**EXHIBIT A
TO
CONCESSION AGREEMENT**

(Mission Beach, #2 Old Mission Beach 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 C
TO
CONCESSION AGREEMENT - OPERATING PLAN
(Mission Beach, #2 Old Mission Beach Lifeguard Tower)

PROPOSED OPERATIONS FOR ENDLESS SURF CAMP

Endless Surf Camp(ESC) LLC, formally Endless Summer Surf Academy LLC, respectfully submits the following proposal to operate a surf instruction concession on City beaches. Endless Surf Camp will demonstrate the necessary organization and qualifications needed to operate a professional, credible, and successful surf instruction concession while also minimizing its impact on the local community and natural environment.

ESC's surf lessons are geared towards safety, surf instruction, conservation, and fun. Its aim is to instill a love and respect of the ocean and to promote a sense of responsibility and conservation of our ocean and its wildlife. All of our instructors are qualified and certified surfers and water men and women, who love and respect the ocean.

These proposed operations describe Endless Surf Camp's Operating Plan, which fits within the criteria set forth in the Request For Proposal for Operation of Surf Instruction Concessions.

PROPOSED AGREEMENT TERM

Endless Surf Camp proposes the maximum available term of sixty (60) months.

DESCRIPTION OF PROPOSED OPERATIONS

Endless Surf Camp is a surf school that specializes in safe, quality, and a personalized approach to surf instruction by lowering the instructor to student ratio. ESC strives to maintain a 1:4 instructor to student ratio at all times, in and out of the water. ESC believes that smaller class sizes will increase the learning potential of each individual student, while creating a safer surf environment in which to learn. Safety and quality of instruction are of the utmost importance to ESC.

ESC will encourage and guide the development of each participant, while also instilling a love and respect for the ocean and its surrounding environment. Participants can expect to receive instruction on surfboard and wave knowledge, water safety, wave etiquette, and marine and coastal preservation.

ESC recognizes the need and popularity of all girl surf instruction. Many programs will be designed to meet the specific needs of women and girls in this highly competitive and male dominated sport. ESC has a female owner who understands the demand for a stronger female influence in the surf instruction industry. ESC will always offer female participants the choice of a male or female instructor.

As surfers and water men and women, ESC employees are adamant about the preservation of our beaches and ocean. Instructors will be persistent in cleaning up trash, debris, or recyclables on the beach or floating near the shore.

COMMUNITY NEEDS

ESC serves the San Diego community in a variety of ways. ESC specifically focuses on the youth of San Diego County by providing high quality summer surf camps and lessons. Our programs provide local parents a safe, professional, and fun place for their children to spend the day. ESC has many repeat customers throughout the year and from year to year. Commitment to safe, quality, and personalized surf instruction combined with a low student to instructor ratio is of utmost importance to our clients and keeps them coming back. ESC anticipates continued growth in the years to come and plans to serve more of the San Diego community in the future.

ESC also actively participates in community service to benefit the City and its residents with a variety of charitable programs and donations. ESC donates complimentary surf instruction to private causes: San Diego City Schools, school fundraisers, local youth surf contests, and other charitable programs.

In 2015 and 2016, ESC donated a day of surf lessons to the San Diego Burn Institute. Over 40 burn survivors participated and enjoyed a fun filled surf day. In 2017 and 2018, ESC donated five days throughout the year of surf lessons to underprivileged youth in San Diego through the RE/SURF project. Beginning in summer 2024, ESC has established the Brewer Baker Surf Camp Scholarship, in loving memory of Cecile's sister who passed away this year. This scholarship will enable twelve to fifteen underprivileged youth from the Horizons at Francis Parker School program to attend a day of surf camp free of charge. ESC plans to continue to donate surf lessons and camps to the San Diego community.

LIFEGUARD SERVICES SAFETY REQUIREMENTS

MAXIMUM NUMBER OF PARTICIPANTS

ESC will limit the enrollment of surf camps and clinics to eight or less, with two instructors, maintaining a 1:4 ratio of instructors to students, never exceeding a 1:5 student to instructor ratio. No more than 25 students will be in the water at one time. This creates a safe surf environment for learning and personalized attention for every student. Private and group lessons may be taught at the same time as camps or clinics. However, at no time will ESC exceed the maximum number of students or boards allowed in the water (25) or on the beach (50) specified by the City.

IDENTIFYING MARKERS

All Endless Surf Camp instructors and participants will be easily identified in and out of the water. Instructors will be wearing a red rash guard imprinted with the ESC logo on front and INSTRUCTOR on back. All participants will be wearing yellow rash guards with the ESC logo on the front. Rash guards will be worn at all times throughout the lesson.

The City issued signage will be clearly posted and placed in a location easily visible to Lifeguards and the local community. Signage will be posted prior to the start of the first lesson and remain displayed until the completion of the last lesson.

INSTRUCTOR TO STUDENT RATIO

ESC will, at all times, maintain a maximum 1:5 student to instructor ratio while on the beach and in the water. ESC prefers to maintain a 1:4 or 1:3 student to instructor ratio whenever it can, both on the beach and in the water. There will always be at least one American Red Cross certified instructor present and supervising all water lessons.

BEACH ACCESS

ESC will not exclude the public from the Site. Beach access will be kept clear at all times. The ESC 10x10 pop up tent and supplies will be organized and maintained to allow the public beach access at all times. Surfboards will be stacked, fins up and leashes wrapped, in an organized manner in front of the tent so that beach access is

not obstructed.

CONCESSION SITE/LOCATION

ESC will operate from the assigned Site on the beach and in the water. All land operations will remain within assigned Site and water operations will remain within the assigned surfing area in front of Site. If necessary due to safety conditions, ESC will move to a lifeguard approved alternate location. ESC will not set up any operations in the park or parking lot areas.

EQUIPMENT

Soft foam boards with leashes and spring wetsuits will be provided to each participant and are included in the price of a lesson(s). If deemed necessary, during an advanced level surf lesson or camp, students will be allowed to bring their own hard surfboard, providing it has nose guard and tail guard protection for safety.

REQUIREMENTS FOR INSTRUCTORS

Endless Surf Camp will seek out qualified instructors based on their experience in surfing and surf instruction or experienced surfers with a background in teaching that demonstrate trainability. ESC instructors will be 18 years of age or older and be current in all required certifications.

Instructors will be hired based on related skills, character, personality, attitude, and leadership ability. All instructors will meet the certification criteria stated below and complete an extensive training program prior to any instruction.

All ESC instructors will possess any one of the following certifications:

- American Red Cross "Lifeguarding"
- Miramar College "Introduction to Open Water Lifeguard"
- Water Safety Specialist "Surfing Instructor Safety Training"

All ESC instructors will possess any one of the following CPR certifications:

- American Red Cross
- American Heart Association

All ESC instructors will possess any one of the following certifications:

- Emergency Medical Technician (EMT)
- American Red Cross Emergency Response
- American Red Cross First Aid Basic

WAIVERS

Endless Surf Camp will have on file a signed waiver from each participant, or their legal guardian if under 18 years of age, which holds the City, it's 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 by ESC. Waivers will be completed and signed by all participants prior to any surf instruction.

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, Endless Surf Camp will arrange with the lifeguard, an initial equipment and first aid safety inspection. The first aid kit will be kept in a watertight box along with other emergency supplies, including a fully charged and functioning cell phone with 911, main Lifeguard tower phone number, and owner's phone number programmed.

EMERGENCY RESPONSE PLAN

The following Emergency Response Plan will be covered fully during training with each and every instructor and/or employee of Endless Surf Camp.

OCEAN CONDITIONS

Each day the ocean conditions will be assessed and determined if conditions are safe to conduct camps/clinics/lessons based on the skill level of the students and instructors.

GENERAL RESCUE PROCEDURES FOR WATER EMERGENCIES

1. QUICKLY SURVEY THE SCENE:

Quickly survey the scene. Instructors should take into account and assess the safety of the other students and themselves before beginning the rescue. Call the appropriate EMS (either 911 or the Lifeguard main tower; when dialing 911, instructors should request San Diego Lifeguard assistance). Provide EMS with detailed information on the emergency, location, victims, injuries, and status of the emergency. When possible, one instructor will be designated to assist the distressed or injured victim, while the other instructor maintains the safety of the rest of the group. When necessary, instructors should get help from other nearby instructors. If responding to the emergency requires two instructors, one instructor will instruct and direct the rest of the group to the shore, where they are safe, so that both instructors may effectively respond to the emergency, while ensuring the safety of the rest of the group.

2. CONSIDER LEVEL OF TRAINING & RESCUE SKILLS:

The instructor should consider his/her level of rescue skill prior to responding to a water rescue and exercise good judgment. All Instructors will meet the City and Lifeguard Division certification requirements. Instructors should use the knowledge gained from these certifications to determine the best course of action to respond to the water emergency. Instructors are required to respond to any water emergency, but to never exceed their own capacities or levels of training. Instructors should never attempt to use skills out of their scope of training.

3. ENSURE PROPER USE OF RESCUE EQUIPMENT:

Instructors should take steps to ensure proper use of rescue equipment. Instructors should use any protective equipment in the first aid kit to ensure their personal safety and to reduce the risk of blood borne pathogens. Instructors should only use safety and rescue equipment for their intended purposes. Instructors should state their name and level of training, and obtain consent for help, if the victim is conscious.

4. SAFELY APPROACH THE VICTIM:

The instructor should safely approach the distressed victim and determine the extent of the emergency. If there is more than one victim, instructors should determine which victim is in the most immediate need of assistance and respond accordingly. Instructors should assess additional hazards and conditions that may cause further injury and determine the appropriate response accordingly.

5. PERFORM AND RESCUE TO PROVIDE EMERGENCY CARE: Perform and rescue based on American Red Cross or accepted certification training. Continue talking to the victim and provide reassurance; provide the victim with any necessary rescue instructions.

6. MOVE THE VICTIM TO SAFETY:

Move the victim to safety, to an area free and clear of potential hazards. Perform initial assessment and provide immediate necessary care to stabilize the victim so that he/she can be transported to the shore to receive any additional care or treatment that cannot be performed in the water.

7. REMOVE THE VICTIM FROM THE WATER:

Remove the victim from the water to provide further necessary care. Once on shore, one or more instructors should remain with the victim and continue treatment, while another available instructor activates 911, requesting Lifeguard assistance. If it is an extreme emergency with life-threatening conditions, all students should be brought to shore and situated in a safe place, clear of the emergency, while instructors continue to treat the victim until EMS/Lifeguards arrive.

8. PERFORM PRIMARY SURVEY UPON RETURN TO SHORE:

Upon getting the victim to shore, perform a primary survey of the injuries or state of the victim and reassess the victim's condition.

9. IF AN EMERGENCY EXISTS, ACTIVATE 911:

If an emergency exists and EMS has not arrived yet, designate someone to call EMS again and update them on the victim's location and condition. Ensure that all other students and observers are clear of the emergency.

10. PERFORM EMERGENCY CARE:

Provide first aid, CPR, or other additional care until emergency medical services (EMS) arrive. Continue to monitor the victim's condition, providing appropriate care until more advanced medical personnel arrive (EMS).

11. CLEAR THE AREA:

If an emergency exists, instructors will bring all remaining students to shore and situate them in a safe place, clear of the emergency. All additional instructors will

assist as needed, help keep the emergency clear, and if needed, direct EMS to the precise location of the victim.

GENERAL EMERGENCY RESPONSE PROCEDURES FOR LAND EMERGENCIES

1. SURVEY THE SCENE:

Survey the scene. Instructors should take into account and assess the safety of the other students and themselves. Consider if the scene is safe, the mechanism of injury or nature of the illness or emergency, how many victims are involved, and the necessary resources.

2. APPROACH VICTIM WHEN IT IS SAFE FOR THE RESCUER:

Approach the victim when it is safe for the rescuer and perform an initial assessment. Check for conditions that are an immediate threat to the victim's life.

3. PERFORM A PRIMARY SURVEY:

Instructors should assess the victim's level of consciousness/mental status, the victim's airway, breathing, and circulation (ABC's). Also check for any severe bleeding. Determine what the victim's chief complaint or problem is, if they are injured or ill, and their age. Look for signs of an evidentiary injury or illness and symptoms mentioned by the victim. Gather information to determine a serious injury or illness that requires additional advanced care.

4. IF AN EMERGENCY EXISTS, ACTIVATE 911:

If an emergency exists: a victim is unconscious, severely bleeding, suffering a breathing emergency, heart attack, or any other emergency condition, call EMS. Activate the 911 system and ensure paramedics and San Diego Lifeguards are responding.

5. PROVIDE CARE:

Determine and provide the necessary emergency care until EMS arrives. Don't move the victim unless it is absolutely necessary to provide care. Continue providing care until advanced emergency medical services arrive and continue performing an ongoing assessment of the condition of the victim. When emergency medical services arrive to take over, provide any information determined during the assessments and any other known information about the victim or the injury. All additional instructors will assist as needed, help keep the emergency clear, and if needed, direct EMS to the precise

location of the victim.

CELLULAR COMMUNICATIONS

All communication as outlined in the Emergency Response Plan will be conducted using cellular phones. A fully charged and functioning cell phone with 911, Lifeguard main tower, and owner's cell phone numbers programmed will be kept in the watertight box, also containing emergency supplies. This box will be kept under the 10 x 10 pop up tent at the Site at all times during surf instruction.

EMERGENCY SIGNALS

Whistles will be immediately available to all instructors and employees. One hand or any piece of equipment being waved overhead from side to side and/or three (3) short whistle blasts indicate that an emergency exists and immediate assistance is needed. One hand placed on the top of the head indicates that everything is all clear. All employees will be diligent to look for any signs and signals of distress when they are in the water and/or on the beach. Any emergency signal observed by personnel will cause the immediate activation of the Emergency Response Plan.

ACCIDENTS, INJURIES, AND INCIDENT SLIPS

All instructors and personnel are required to notify the owner of any incident, accident, or injury involving any and all customers and/or staff members and/or property. ESC shall alert the Lifeguard supervisor on duty, as soon as feasible, of any accident or injury occurring during surf camp operations, regardless of severity. All rescues and medical aids involving surf camp students, instructors, or other personnel will be documented on company incident slips. Incident slips shall contain the names and addresses of involved parties, a statement of the circumstances, the date and hour of the accident or injury, names and addresses of any witnesses, and any other pertinent information.

RANKING OF SITES AND OPERATING PLAN

Proper operational logistics are necessary to create a professional operation that abides by City and Lifeguard rules, enforces the safety of the public and clients, and minimizes the impact on the community to ensure a pleasurable environment for residents and tourists.

As stated in the RFP, this Operating Plan will cover the period from June 1, 2024 to May 31, 2025. The following Operating Plan, including non-summer and summer months, is ESC's bid on our number one (1) and number two (2) ranked Sites.

RANKING OF SITES

1st choice - Mission Beach Site 2: Old Mission Beach Lifeguard Tower

2nd choice - Mission Beach Site 3: New South Mission Beach

ESC respectfully requests to be allowed to stay at their original site, Mission Beach Site 2: Old Mission Beach Lifeguard Tower. ESC takes great pride in having earned the respect of the lifeguards and local surfers in the South Mission Beach area over the last ten years. All ESC instructors always show the utmost respect for the lifeguards, community, and local surfers.

For the past ten years, ESC has provided a high level of service to the community while operating, managing, and maintaining its Site in a fiscally prompt and responsible manner. ESC's mission is to operate a professional, credible, and successful surf instruction concession while minimizing impact on the local community and natural environment.

ESC's current Site location is on their website, endlessurfcamp.com, and marketing material throughout the City. It would be undesirable for ESC to change their Site location. The South Mission Beach jetty surf spot is a popular and crowded location. ESC is a small surf school with the majority of its surf lessons and camps happening during the summer months, which results in a smaller impact on the local community.

ENDLESS SURF CAMP OPERATING PLAN – JUNE 1, 2024 to MAY 31, 2025

The following Operating Plan, including non-summer and summer months, is for Endless Surf Camp.

NON-SUMMER MONTHS

During non-summer months (September 1 through May 31), Endless Surf Camp proposes to operate private, semi-private, and group surf lessons, special event lessons (birthday parties, corporate team building, bachelorette parties), and spring break surf camps on City beaches. ESC will not permit any solicitation, marketing, or renting or selling of beach equipment or other merchandise at any ESC Site.

ESC intends to maintain a 1:4 instructor to student ratio, never exceeding a 1:5 instructor ratio, both on the beach and in the water. This will ensure a safe and personal surf experience for all.

All registrations will be completed and paid in full online through our secure website found at endlessurfcamp.com. All participants will complete an online registration form, liability waiver, and make full payment online utilizing the online secure credit card link prior to their first lesson.

The website sends a paid and reserved customer an automatic confirmation email that includes: directions and parking information, cancellation policy, what to bring, and where to meet. Registration and payment must be completed online; transactions on the beach will not be permitted.

EQUIPMENT TRANSPORTATION

To ensure an organized teaching environment, special attention will be given to the quantity of items needed daily. This will diminish excessive equipment being brought to the Site. Information obtained from the online registration forms including age, weight, and height will be used to determine proper fitting of equipment for participants prior to arrival. Needed wetsuits and rashguards will be placed in bins and transported with boards, 10 x 10 pop up tent, City issued signage, and emergency supplies in a watertight box containing a cell phone.

ESC's company vehicle will transport all necessary equipment and emergency supplies to the designated Site. The vehicle is registered, insured, regularly maintained, and kept clean and safe. Employee drivers are licensed and insured.

Drivers will adhere to the rules of the road and strictly follow the posted speed limit. The company vehicle will park in an available, legal parking space in the South Mission Beach parking lot and unload equipment. It is the policy of Endless Surf Camp to politely reject any volunteered help from customers with regard to unloading or loading equipment. This will prevent customers from incurring any injuries.

Endless Surf Camp employees will carry all equipment from the vehicle to designated Site on the beach. They will not leave equipment on the boardwalk, boardwalk wall, or in designated path for Lifeguard and City vehicles at any time. Surfboards will be neatly stacked in groups of 4 to 8, fins up and leashes wrapped, directly in front of the 10 x 10 pop up tent. Wetsuit bins and the watertight box containing emergency supplies and a cell phone will be kept under the 10 x 10 pop up tent at all times.

City issued signage will remain clearly posted at all times during surf instruction. If necessary, instructors will meet students at the designated drop off location and walk

students to the assigned Site.

ESC's company vehicle will be parked in an available, legal parking space during the day. Upon the completion of lessons, ESC's employees will carry all equipment from the Site to the vehicle. Instructors will help carry equipment to the vehicle ensuring that no equipment is left on the boardwalk, boardwalk wall, or in the designated path for Lifeguard and City vehicles at any time. The concession site will be vacated by 6:00 pm daily.

Endless Surf Camp will maintain a clean, professional, and low profile Site. All employees will ensure that no trash or possessions are left at the conclusion of the day.

BEACH OPERATIONS

A daily schedule outlining the day's lessons, including names of participants, wetsuit sizes, ability levels, and any special needs or requests will be placed in the watertight box for ESC instructors. Included on the daily schedule will be a comment section where instructors may give feedback about each lesson. This will ensure constant communication between instructors and management.

Instructors will be notified if a participant liability waiver has not been received. It will be the instructors' responsibility to be sure that the identified participant(s) completes the liability waiver and will return it to the box prior to the start of the first lesson. Extra liability waivers will be included with the daily schedule in the watertight box.

ESC believes that safety is the most important component of any lesson. Therefore, before entering the water, instructor(s) will also explain the importance of staying in the designated surfing area. Participants will be informed as to the direction of the day's longshore currents and taught the necessary actions needed to remain close to instructor(s) at all times. This will help guarantee a more cohesive unit.

If dangerous or hazardous conditions are observed in the immediate surfing area in front of Site, instructors will ask Lifeguards to approve an alternate water operations site.

ESC offers private and group lessons that can be customized to any ability level, from beginner to advanced. Being a strong swimmer and being comfortable in the ocean are prerequisites for any ESC surf lesson. The three ability levels are:

Beginner: The student has never been on a surfboard. The student has tried surfing but has difficulty standing up and catching his/her own waves consistently.

Intermediate: The student stands up consistently but needs help with bottom turns.

The student is ready to paddle themselves into waves that have not broken yet. The student is ready to move to surfing outside the breaking waves.

Advanced: The student consistently paddles into waves from the outside and can complete a bottom turn. The student can go both left and right and down the line. The student wants to learn more advanced maneuvers such as cutbacks, roundhouses, and aeriels.

PRIVATE, SEMI-PRIVATE, AND GROUP LESSONS:

Ages: 5 and up

Maximum number of students per class:

Private lesson: 1

Semi-private lesson: 2

Group lesson: 25

Instructor to student ratio:

Private lesson: 1:1

Semi-private lesson: 1:2

Group lesson: 1:4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am - 5:00pm

Private Lesson: \$115 for 90 minute lesson

Semi-private Lesson: \$100 for 90 minute lesson

Group Lesson Price: \$90 each student for 90 minute lesson

Each 90 minute surf lesson will include 30 minutes of land instruction and 60 minutes of water instruction.

The 30 minute land instruction will cover:

- Paddling technique, pop-up, positioning on the surfboard
- Water safety and ocean awareness (including longshore currents and riptides)
- Surfing etiquette
- Basic wave riding knowledge
- Marine life & stingray shuffle
- Wave and tidal formation

Also during non-summer months, ESC offers special event lessons such as birthday parties, corporate team building, and bachelor/bachelorette parties. These special event lessons follow the same format as a group lesson.

SPECIAL EVENT LESSONS

Age groups: 5 and up

Maximum number of students: 25

Minimum number of students: 4

Instructor to student ratio: 1: 4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am – 5:00pm

Price: \$90 each student (price increase per student for added amenities)

Each special event lesson includes instructional sessions covering:

- Water safety (rip-tides, longshore currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Wave formation
- Marine life and stingray shuffle
- Conservation and coastal preservation

SPRING BREAK SURF CAMPS:

Half Day Camps:

Ages: 5-17

Maximum number of students per camp: 8

Minimum number of students per camp: 4

Instructor to student ratio: 1:4, max 1:5

Maximum number of students in water at one time: 25

Schedule: weekly from March through April

Days of operation: Monday - Friday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Hours: 9:00am - 12:00pm

Price: \$425 per camper

Topics for daily instructional sessions are:

- Water safety (rip-tides, currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Surf history
- Wave formation

- Bottom contours (beach breaks, point breaks, reef breaks)
- Tidal information/moon phases

Half Day Camp Morning Schedule: 9am - 12:00pm

9:00am: Arrival, apply sunscreen, and suit up

9:10 am - 9:30 am: Instructional session & stretching

9:30 am - 10:30 am: Surf session #1

10:30 am - 11:00 am: Lunch/snack break

11:00 am - 11:50 am: Surf session #2

12:00 pm: End of camp

SUMMER MONTHS

During summer months (June through August), Endless Surf Camp proposes to operate surf camps, private, semi-private, and group surf lessons, and special event lessons (birthday parties, corporate team building, bachelor/bachelorette parties) on City beaches. ESC will not permit any solicitation, marketing, or renting or selling of beach equipment or other merchandise at any ESC Site.

Endless Surf Camp intends to maintain a 1:4 instructor to student ratio, never exceeding a 1:5 instructor to student ratio, both on the beach and in the water. This will ensure a safe and personal surf experience for all. All registrations will be completed and paid in full online through our secure website found at endlessurfcamp.com. All participants will complete an online registration form, liability waiver, and make full payment online utilizing the secure online credit card link prior to their first lesson.

The website has a customized system that sends a paid and reserved customer an automatic confirmation email that includes: directions and parking information, cancellation policy, what to bring, and where to meet. Registration and payment must be completed online; transactions on the beach will not be permitted.

EQUIPMENT TRANSPORTATION

To ensure an organized teaching environment, special attention will be given to the quantity of items needed daily. This will diminish excessive equipment being brought to the Site. Information obtained from the online registration forms including age, weight, and height will be used to determine proper fitting of equipment for participants prior to arrival. Needed wetsuits and rashguards will be placed in bins and transported with boards, 10 x 10 pop up tent, City issued signage, and emergency supplies in a watertight box containing a cell phone.

ESC's company vehicle will transport all necessary equipment and emergency supplies to the designated Site. The vehicle is registered, insured, regularly maintained, and kept clean and safe. Employee drivers are licensed and insured.

Drivers will adhere to the rules of the road and strictly follow the posted speed limit. The company vehicle will park in an available, legal parking space in the South Mission Beach parking lot and unload equipment. It is the policy of Endless Surf Camp to politely reject any volunteered help from customers with regard to unloading or loading equipment. This will prevent customers from incurring any injuries.

Endless Surf Camp employees will carry all equipment from the vehicle to designated Site on the beach. They will not leave equipment on the boardwalk, boardwalk wall, or in the designated path for Lifeguard and City vehicles at any time. Surfboards will be neatly stacked in groups of 4 to 8, fins up and leashes wrapped, directly in front of the 10 x 10 pop up tent. Wetsuit bins and the watertight box containing emergency supplies and a cell phone will be kept under the 10 x 10 pop up tent at all times.

City issued signage will remain clearly posted at all times during surf instruction. If necessary, instructors will meet students at the designated drop off location and walk students to the assigned Site.

ESC's company vehicle will be parked in an available, legal parking space during the day. Upon the completion of lessons, ESC's employees will carry all equipment from the Site to the vehicle. Instructors will help carry equipment to the vehicle ensuring that no equipment is left on the boardwalk, boardwalk wall, or in the designated path for Lifeguard and City vehicles at any time. The concession site will be vacated by 6:00 pm daily.

Endless Surf Camp will maintain a clean, professional, and low profile Site. All employees will ensure that no trash or possessions are left at the conclusion of the day.

BEACH OPERATIONS

A daily schedule outlining the day's camps and/or lessons, including names of participants, wetsuit sizes, ability levels, and any special needs or requests will be placed in the watertight box for ESC instructors. Included on the daily schedule will be a comment section where instructors may give feedback about each lesson. This will ensure constant communication between instructors and management.

Instructors will be notified if a participant liability waiver has not been received. It will be the instructors' responsibility to be sure that the identified participant(s) completes the liability waiver and will return it to the box prior to the start of the first lesson. Extra

liability waivers will be included with the daily schedule in the watertight box.

ESC believes that safety is the most important component of any lesson. Therefore, before entering the water, instructor(s) will also explain the importance of staying in our designated surfing area. Participants will be informed as to the direction of the day's longshore currents and taught the necessary actions needed to remain close to instructor(s) at all times. This will help guarantee a more cohesive unit.

If dangerous or hazardous conditions are observed in the immediate surfing area in front of Site, instructors will ask Lifeguards to approve an alternate water operations site.

ESC surf lessons and camps are offered at three different ability levels. Being a strong swimmer and being comfortable in the ocean are prerequisites for any ESC surf camp. The three ability levels are:

Beginner: The student has never been on a surfboard. The student has tried surfing but has difficulty standing up and catching his/her own waves consistently.

Intermediate: The student stands up consistently but needs help with bottom turns. The student is ready to paddle themselves into waves that have not broken yet. The student is ready to move to surfing outside the breaking waves.

Advanced: The student consistently paddles into own waves from the outside and can complete a bottom turn. The student can go both left and right, down the line. The student wants to learn more advanced maneuvers such as cutbacks, roundhouses, and aerials.

SURF CAMPS:

Half-Day Camps:

Ages: 5-17

Maximum number of students per camp: 10

Minimum number of students per camp: 4

Instructor to student ratio: 1:4, max 1:5

Maximum number of students in the water at one time: 25

Schedule: weekly from June through August (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Days of operation: Monday - Friday

Hours: 9:00am - 12:00pm

Price: \$425 per camper

Topics for daily instructional sessions are:

- Water safety (rip-tides, currents, hazards)
- Paddling technique, pop-up, positioning on surfboard
- Surfing etiquette
- Surf history
- Wave formation
- Bottom contours (beach breaks, point breaks, reef breaks)
- Tidal information/moon phases
- Surfboard types, construction & repair
- Marine life and stingray shuffle
- Conservation and preservation
- Balance exercises (indo-boarding)

Half-day Camp Schedule: 9am - 12:00pm

9:00am: Arrival, apply sunscreen, and suit up

9:10 am - 9:30 am: Instructional session & stretching

9:30 am - 10:30 am: Surf session #1

10:30 am - 11:00 am: Lunch/snack break

11:00 am - 11:50 am: Surf session #2

12:00 pm: End of camp

Full Day Camps:

Ages: 5-17

Maximum number of students per camp: 10

Minimum number of students per camp: 4

Instructor to student ratio: 1: 4, max 1:5

Maximum number of students in the water at one time: 25

Schedule: weekly from June through August (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Days of operation: Monday - Friday

Hours: 9:00am - 2:00pm

Price: \$650 per camper

Full Day Camp Schedule: 9am - 2pm

9:00am: Arrival, apply sunscreen, and suit up

9:10 am - 9:30 am: Instructional session & stretching

9:30 am - 10:30 am Surf session #1

10:30 am - 11:00 am Lunch/snack break

11:00 am - 12:30 pm Surf session #2

12:30 pm - 1:00 pm Lunch/snack break

1:00 pm - 1:50 pm Surf session #3

2:00 pm: End of camp

PRIVATE, SEMI-PRIVATE, AND GROUP LESSONS:

Ages: 5 and up

Maximum number of students per class:

Private lesson: 1

Semi-private lesson: 2

Group lesson: 25

Instructor to student ratio:

Private lesson: 1:1

Semi-private lesson: 1:2

Group lesson: 1:4; max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am - 5:00pm

Private Lesson: \$115 for 90 minute lesson

Semi-private Lesson: \$100 each student for 90 minute lesson

Group Lesson Price: \$90 each student for 90 minute lesson

Each 90 minute surf lesson will include 30 minutes of land instruction and 60 minutes of water instruction.

The 30 minute land instruction will cover:

- Paddling technique, pop-up, positioning on the surfboard
- Water safety and ocean awareness (including longshore currents and riptides)
- Surfing etiquette
- Basic wave riding knowledge
- Marine life & stingray shuffle
- Wave and tidal formation

Also during summer months, ESC offers special event lessons such as birthday parties, corporate team building, and bachelorette parties. These special event lessons will follow the same format as a group lesson.

SPECIAL EVENT LESSON

Age groups: 5 and up

Maximum number of students: 25

Minimum number of students: 3

Instructor to student ratio: 1:4, max 1:5

Days of operation: Sunday through Saturday (excluding all City holidays: New Year's

Day, Martin Luther King Jr. Day, President's Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day)

Schedule: Year round

Hours: 9:00am – 5:00pm

Price: \$90 each student (price increase per student for added amenities)

Each special event lesson includes instructional sessions covering:

- Paddling technique, pop-up, positioning on the surfboard
- Water safety and ocean awareness (including longshore currents and riptides)
- Surfing etiquette
- Basic wave riding knowledge
- Marine life & stingray shuffle
- Wave and tidal formation

SAMPLE ENDLESS SURF CAMP INTERPRETIVE PROGRAMS

CURRENTS: What kinds of currents are there?

The bigger the surf, the stronger the currents will be. The two most common types of currents are rip currents and longshore currents.

Longshore currents move parallel to the shore or up and down the beach. Longshore currents are usually more of a nuisance than a danger, unless you are near a jetty or pier. However, it is always good to be aware of which direction the longshore current is moving so that you don't get swept too far up or down the beach.

Rip currents are the most dangerous. As waves wash toward the shore, they carry a lot of water with them. Water pools up next to the beach and forms a longshore current on the inside. As the water moves down the beach, it will sometimes funnel back out to sea in a deeper spot, a spot of least resistance. This creates a rip current. This current is usually very swift and goes straight out past the surf zone and then dissipates. Strong rip currents look like rivers and are often visible, if you look closely.

What do you do if you get caught in a rip current? Do not try to swim against it! It is almost impossible to swim against a strong rip current and the effort will tire you out. The best way to get free of a rip current is to swim parallel to shore, or up or down the beach, until you are out of the current (they are usually not very wide) and then swim in to shore. Always remember that the universal distress signal is to wave one arm above your head.

WAVES: How are waves created?

Waves and swells are created by wind. Around the earth there are areas of high pressure and low pressure. The areas of high pressure are always trying to fill the areas of low pressure. The transition of air from high pressure areas to low pressure areas is wind.

When the wind blows over the ocean, it creates small ripples on the surface of the water. As the ripples grow, the wind gets better friction on the ocean surface. The ripples then grow into small waves. As the wind continues to blow, the small waves turn into larger and larger waves.

Waves are created when wind transfers its energy from the air to the water. The harder the wind blows, the longer the wind blows, and the greater the distance it blows, the bigger the waves. As the waves grow larger, the energy transfers deep below the ocean surface. The stronger waves with more energy below the surface will maintain their strength over the distance and will become deep-water waves or swell.

When waves approach the shore, the energy of the wave below the surface drags across the shallower ocean floor and the friction will slow the wave down. The wave energy below the surface of the ocean is pushed upward, causing the height of the wave to increase. As the wave gets closer to shore, more and more energy is pushed upward making the wave steeper and more unstable, until it finally breaks.

A wave traveling over a gradual sloping ocean floor, such as a beach, will become a crumbly, slow breaking wave. While a wave traveling over a steep ocean floor, such as a reef, will result in a faster, more hollow breaking wave.

BOTTOM CONTOURS: What are the different bottom contours?

Different bottom contours create different types of waves. Beach-breaks: beach-break waves break over a sand bottom and are usually more erratic and shifty than other breaks. Beach-breaks have fewer hazards and are usually good for beginners. Point breaks: point-breaks occur when there is a dip in the headland, creating a bend in the coast. Point-breaks have the potential to create perfect long, tapering waves. Reef breaks: a reef-break is a wave that breaks over a rock or coral shelf. Due to the consistent bottom, reef-breaks are consistent in their shape and location. Some of the

world's best waves are reef-breaks (Pipeline and Teahupoo) and are not recommended for beginners.

The incline or slope of the bottom contour also plays a major role in the way the wave breaks. Mushy or slow rolling waves occur when a swell approaches a more gradual sloping bottom contour. These waves are great for beginners since they are softer and more forgiving. Plunging or hollow waves occur when the swell comes out of deep water and hits a shallow sand bar or reef. These waves tend to break fast and from top to bottom making them more challenging and not very good for beginners.

EQUIPMENT LIST

The following is a list of all necessary equipment used and owned by ESC to provide the level of service required by the surf instruction concession agreement.

- 2006 GMC 10 ft. Box Truck - used to transport all equipment
- Twenty-five (25) 8 ft. Foam Surfboards with leashes
- Two 9 ft. Foam Surfboards with leashes
- Sixty-five (65) Spring Wetsuits in various sizes
- Forty (40) Rash Guards in red for instructors and yellow for students
- 10 x 10 Pop Up Tent
- Underwater Camera
- Indo Board for balance practice
- First Aid Kit with Lifeguard required supplies including a cell phone
- Box for waivers, incident reports, sunscreen, cell phone
- Tubs to transport wetsuits and rash guards
- City approved concession sign

**EXHIBIT D
TO
CONCESSION AGREEMENT**

(MISSION BEACH, #2 OLD MISSION BEACH 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.
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**

(Mission Beach, #2 Old Mission Beach 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**

(Mission Beach, #2 Old Mission Beach 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**

(Mission Beach, #2 Old Mission Beach 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