

2024 SURF CAMP CONCESSION AGREEMENT

(La Jolla, #11 La Jolla Shores)

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

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

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

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

3. CONCESSION.

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

Area/Beach	Sites
La Jolla	#11 La Jolla Shores

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 **\$44,123.58**, which is **\$3,676.97** 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 HLS Ventures, LLC
Concessionaire: dba Everyday California
2246 Avenida De La Playa
La Jolla, CA 92037
(858) 754-7802

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

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

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

49. **ENTIRE AGREEMENT.** This Agreement, along with all Exhibits and incorporated documents, constitutes the entire Agreement between the Parties and supersedes any and all prior understandings, representations, warranties, and Agreements between them and pertaining to this Agreement and Concessionaire's occupancy, use, development, and maintenance of the Sites. Any modification, alteration, or amendment of this Agreement will be in writing and signed by all the Parties hereto.

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

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

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

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

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

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

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

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

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

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

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

59. **CITY'S NOT LIABILITY.** City will not be liable to Concessionaire, its employees, agents, or representatives for any loss of revenue, business, or otherwise as a result of any weather conditions, beach closures, surf alerts, floods, fire, or any other acts of God, strikes, lockouts, labor disputes, unusual governmental delays, epidemics, freight embargoes, causes beyond the reasonable control of City, or in the City's performance of any act related to protecting the public health and safety.

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

61. **SAN DIEGO'S STRONG MAYOR FORM OF GOVERNANCE.** All references to "City" in this Agreement will be deemed to refer to "the Mayor or his/her designee." This section will remain in effect for the duration City operates under the mayor-council (commonly referred to as "strong mayor") form of governance pursuant to Article XV of the San Diego City Charter.

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

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

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

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

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

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

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

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

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

**SIGNATURE PAGE
TO
CONCESSION AGREEMENT**

(La Jolla, #11 La Jolla Shores)

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:

HLS Ventures, LLC
dba Everyday California

By: 
Name: Christopher D Lynch
Title: CEO

Approved as to form on _____:

MARA W. ELLIOTT
City Attorney

By: Brian Byun
Brian Byun (Jun 12, 2024 09:38 PDT)
Brian Byun
Deputy City Attorney

**EXHIBIT A
TO
CONCESSION AGREEMENT**

(La Jolla, #11 La Jolla Shores)

DEFINITIONS

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

12. County. The County of San Diego, California.
13. Default. Any Monetary Default or Non-Monetary Default.
14. Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.
15. Effective Date. Defined in the first paragraph of this Agreement.
16. Environmental Condition. Any of the following events relating to the Property and arising from the Permitted Use, any action by a Concessionaire Party, or any failure to act by a Concessionaire Party that had a duty to act: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.
17. Environmental Law. All Federal, State, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Government, now in effect or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under or about the Property or relating to the Permitted Use); (c) occupational or environmental conditions on, under or about the Property or relating to the Permitted Use; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.
18. Equity Interest. Any equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.
19. Event of Default. The occurrence of any one or more of the following:
- 19.1 *Monetary Default.* A Monetary Default continuing for seven (7) days after Notice from the non-defaulting Party, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;
- 19.2 *Sign Removal.* Concessionaire's failure to remove an unauthorized Sign in accordance with Section 6.5;
- 19.3 *Concessionaire Transfer.* The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 3.2 in the main body of this Agreement;
- 19.4 *Non-Monetary Default.* Any Non-Monetary Default, other than those specifically addressed in Sections 19.2 or 19.3, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of Notice of the Non-Monetary Default to the Party in Default, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after the date of Notice of such Non-Monetary Default, Notify the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) within thirty (30) days after the date of

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

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

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

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

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

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

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

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

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

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

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

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

45. Special Events. Defined in SDMC section 22.4003.

46. State. The State of California.

47. Term. Defined in Section 4.

48. Termination Date. Defined in Section 4.

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

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

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

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

EXHIBIT B
TO
CONCESSION AGREEMENT

(La Jolla, #11 La Jolla Shores)

PROPERTY & SITES DESCRIPTION

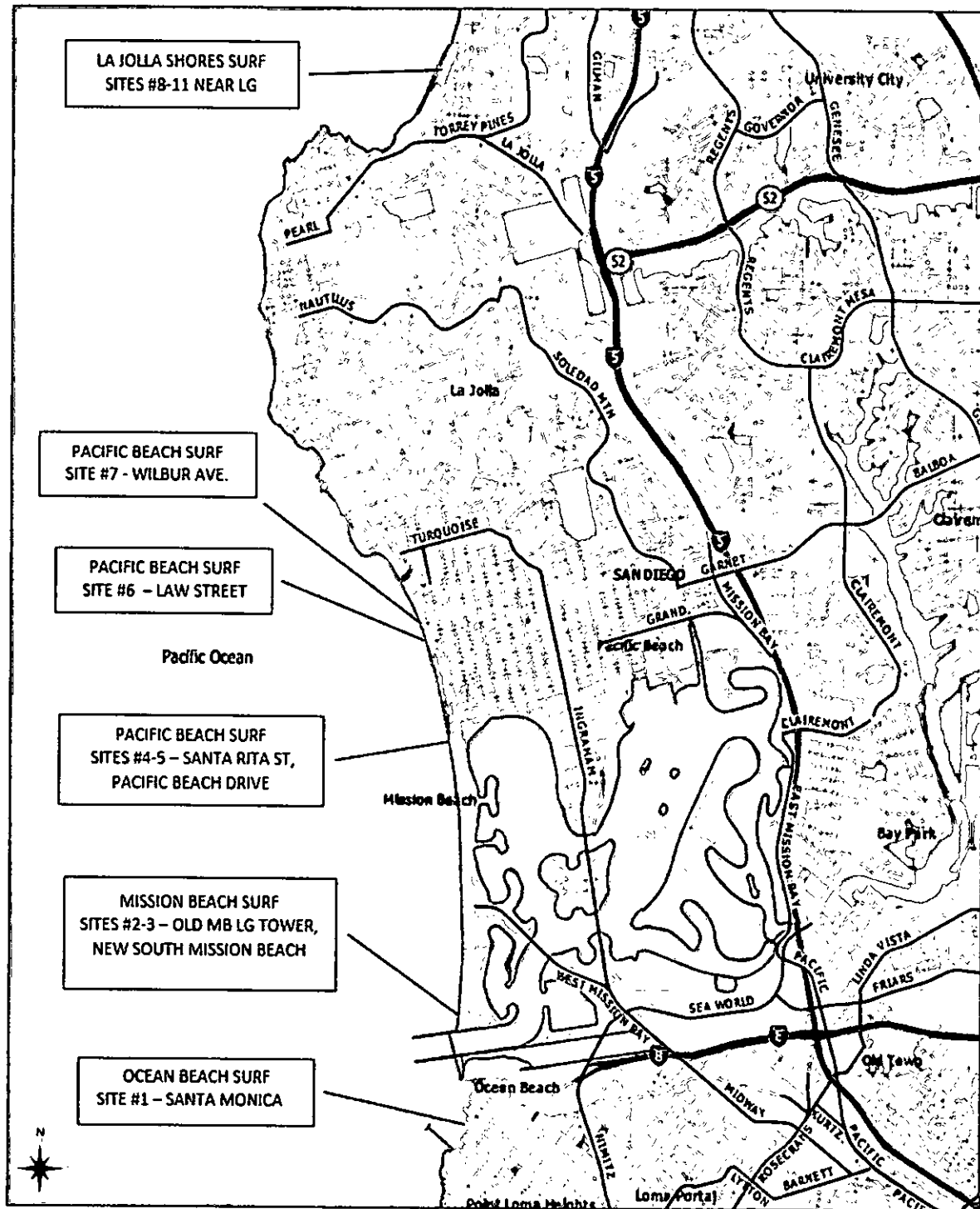


EXHIBIT B- 1
Property and Sites Description

EXHIBIT C TO CONCESSION AGREEMENT – OPERATING PLAN

E1

OPERATING PLAN

**OPERATING PLAN
PART IV
Other Personnel**

Direct Operator of Entire Site

59

**OPERATING PLAN PART V
*Emergency Response Plan***

**OPERATING PLAN
PART I**

Days & Hours of Operation	14
Schedule of Particular Classes	
Number of Students per class	
Fees & Charges	
Interpretive Program or Activity	

**OPERATING PLAN
PART II**

*Exhibit D: Lifeguard Services
Safety Requirements*

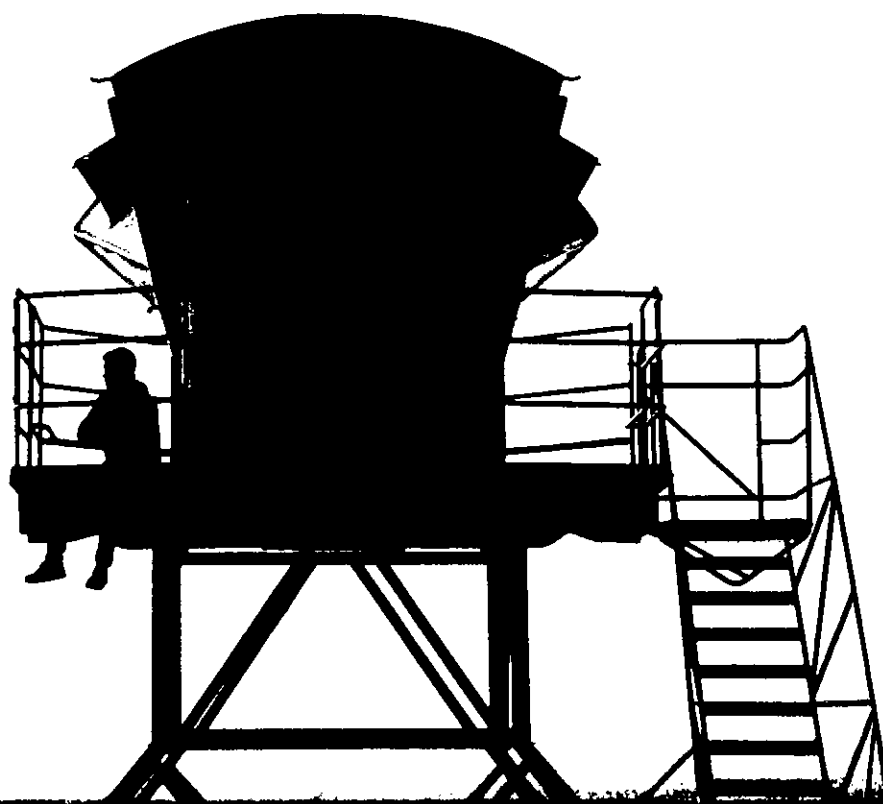
Maximum Number of Participants	31
Identifying Markers	
Student to Instructor Ratios	
Beach Access	
Concession/ Site Location	
Equipment	
Minimum Requirement for Instructors	
Waivers	
First Aid	
Emergency Response Plan for Surf Concessions	
Termination of Surf Camp Operations	
Notice of Violation	

**OPERATING PLAN PART VI
*Necessary Equipment***

**OPERATING PLAN
PART III**

Organizational Structure

Leadership/ Management Team	45
Responsibilities of Team	
Staff	



E1

OPERATING PLAN

14	OPERATING PLAN PART I Days & Hours of Operation Schedule of Particular Classes Number of Students per Class Fees & Charges Interpretive program or activity
31	OPERATING PLAN PART II EXHIBIT D3 Lifeguard Services Safety Requirements Number of Participants Identifying Markers Student Instructor Ratio Beach Access Concession Site Location Equipment Minimum requirements for instructors Staff Training Plan Waivers First Aid Kit Emergency Response Plan Outline Termination of Surf Camp Operations Notice of Violation
45	OPERATING PLAN PART III Management Team Responsibilities Staff
59	OPERATING PLAN PART IV Direct Operator of Entire Sites
60	OPERATING PLAN PART V Emergency Response Plan
80	OPERATING PLAN PART VI Necessary Equipment

OPERATING PLAN PART I

GENERAL OPERATING PLAN
JUNE 1, 2024 - MAY 31, 2025

DAYS & HOURS OF OPERATION

EDCA proposes operating hours of 8:30 am to 5:00 pm everyday throughout the year for land operation, with all water instruction to be conducted between the hours of 9:00 am and 4:30 pm per the RFP guidelines. EDCA will not operate on any of the following 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.

EDCA shall discontinue operations in the event Lifeguards deem operations unsafe to conduct due to inclement weather, adverse ocean conditions and/or water contamination. EDCA works closely with Lifeguards to ascertain permissible operational conditions to ensure the safety and security of customers and employees. EDCA may also close in accordance with any "Special Events" as determined by Lifeguards.

SCHEDULE OF CLASSES

Week Long Camps <i>Monday - Friday</i>	Morning Session: 8:30 am - 12:30 pm (water activity starts at 9am)
	Afternoon Session: 1:00 pm - 4:30 pm
Weekend Camps <i>Saturday - Sunday</i>	9:00 am - 11:00 am
	12:00 pm - 2:00 pm
	3:00 pm - 4:30 pm
Daily Surf Lessons <i>Private & Semi-Private</i>	8:30 am - 4:30 pm (water activity starts at 9:00 am)
Daily SUP Lessons <i>Private & Semi-Private</i>	8:30 am - 4:30 pm (water activity starts at 9:00 am)

NUMBER OF STUDENTS PER CLASS

EDCA will have a maximum of 50 students per Site on the beach at any one time. Of those 50 students, a maximum of 25 students per group may be in the water at any one time.

FEES & CHARGES

		<i>*price per person</i>
Private Lessons	Private Lesson 1.5 Hours 1 person	\$119
	Semi-Private Lesson 1.5 Hours 2 - 3 people	\$109
Group Lessons	Daily Group Lesson 1.5 Hours 4 - 5 people	\$99
	1 Day Summer Camp 3 Hours	\$110
Summer Camps	3 Day Summer Camp 3 Hours per Day	\$195
	5 Day Summer Camp 3 Hours per Day	\$295
	5 Day Summer Camp 6 Hours per Day	\$495

INTERPRETIVE PROGRAM OR ACTIVITY

Surfing offers a unique opportunity to connect students with the ocean and teaches the importance of stewardship to help protect this wondrous resource. Each of the following activities are taught during longer camps and selectively chosen based on evaluations of students during shorter lessons.

Water Safety: Riptide identification, ocean swell (size, direction, and force), the sting-ray shuffle, natural and man-made hazards, wave and tidal information.

Surf Etiquette: Understanding the lineup, right of way, how to stay out of someone's way, not to tailgate.

Surf Instruction: How to paddle out, popping up, keeping the nose forward, how to use the leash, etc.

Environmental Conservation: Reducing impact, picking up trash, general stewardship.

Surf History: Where surfing began, the evolution of the shape, size and materials of the surfboard, etc.

Marine Life: The wonderful biodiversity of La Jolla Shores: Leopard Sharks, Sting Rays, Garibaldi Fish, Sheepshead, Lobster, etc.

Fitness: The importance of staying fit and how to utilize public parks to exercise and enjoy life.

SUMMER CAMP

SURF LESSON PLAN



EDCA proposes to offer full and half day Surf Camps. Morning half day camps will begin at 9 a.m. and end at 12 p.m. Afternoon half day camps will begin at 1 p.m. and end at 4:30 p.m. Full Day camps will begin at 9 a.m. and end at 4:30 p.m. Surf camps will consist of a max of 50 students, with never more than 25 in the water at any given time. All camps will have one surf instructor for every five students, never exceeding the 1:4 instructor to student ration. EDCA will increase the ratio to 1:3 should the abilities of the group warrant increased safety and caution.

Students will be separated into three age groups: 5-8 years, 9-12 years, 13-17 years. All camps will be tailored towards beginner level surfers. Camps will focus on teaching students about surfing, environmental conservation, and making lifelong friends.

On the first day of camp, students will meet at the EDCA shop and be given a hat and shirt, then escorted by the staff down to the concession site. From that point forward, students will be meeting the instructors at Kellogg Park. Campers will be under the supervision of EDCA instructors and staff at all times through the duration of each camp. Once the campers are handed off by their parents, the instructors will walk them to the beach to the designated Site of operation where they will be fitted for wetsuits and given out color coordinated EDCA rash guards.

All camps will be separated into two blocks of time, ground school and water time. Camps will start the 30 minute check-in, introducing everyone to the reserve, their instructors and themselves. From there, students will start with the 20 minute ground school, followed by 40 minutes of water time.

MORNING HALF DAY CAMP SCHEDULE

8:30 am - 9:00 am	Check In
9:00 am - 9:30 am	Meet and Greet, Stretch, Ground School Session 1
9:30 am - 10:00 am	Surf Session 1
10:00 am - 10:20 am	Ground School Session 2
10:20 am - 11:00 am	Surf Session 2
11:00 am - 11:20 am	Ground School Session 3
11:20 am - 12:00 pm	Surf Session 3

Campers will be escorted and picked up from the same spot they were dropped off, at Kellogg park.

AFTERNOON HALF DAY CAMP SCHEDULE

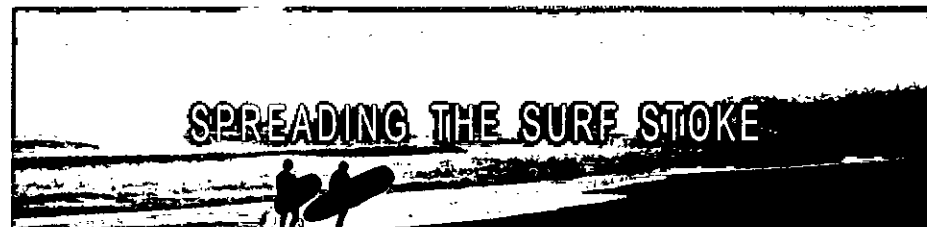
12:30 pm - 1:00 pm	Check In
1:00 pm - 1:20 pm	Meet and Greet, Stretch, Ground School Session 1
1:20 pm - 2:00 pm	Surf Session 1
2:00 pm - 2:20 pm	Ground School Session 2
2:20 pm - 3:00 pm	Surf Session 2
3:00 am - 3:20 pm	Ground School Session 3
3:20 pm - 4:30 pm	Surf Session 3

FULL DAY CAMP SCHEDULE

8:30 am - 9:00 am	Check in
9:00 am - 9:30 am	Meet and Greet, Stretch, Ground School Session 1
9:30 am - 10:00 am	Surf Session 1
10:00 am - 10:20 am	Ground School Session 2
10:20 am - 11:00 am	Surf Session 2
11:00 am - 11:20 am	Ground School Session 3
11:20 am - 12:00 pm	Surf Session 3
12:00 pm - 12:45 pm	Lunch

Campers will enjoy a 45-60 minute lunch with fellow campers and instructors, socializing and making friends. This time will be used to celebrate the efforts of campers and reinforce coastal stewardship and environmental awareness.

1:00 pm - 1:20 pm	Review of morning session's lessons and in-water experiences, Stretch, Ground school Session 4
1:20 pm - 2:00 pm	Surf Session 4
2:00 pm - 2:20 pm	Ground School Session 5
2:20 pm - 3:00 pm	Surf Session 5
3:00 pm - 3:20 pm	Ground School Session 6
3:20 pm - 4:30 pm	Surf Session 6



For more in depth ground school topics, please visit the private lesson outline page. Camps will have much more in depth focus on Surf/ Surfboard history, Environmental Conservation and the La Jolla MPA than the private surf lessons. Private lessons, depending on the allotted time will choose one to two topics, while camps will focus on all of the following topics:

1. Rules and Boundaries
2. Stretching/ Fitness/ Nutrition
3. Ocean Safety/ Surf Etiquette
4. Ocean conditions
5. Fundamental skills of surfing
6. In-water Instruction/ Surf
7. Surf history
8. Surfboard history and structure
9. Environmental Conservation
10. Spreading the Surf Stoke
11. La Jolla Ecological MPA

SUP LESSON PLAN



EDCA will be offering SUP lesson. Lesson will duration offered will be 1.5 hours or 3 hours. Private SUP lesson will be 1:1 Instructor to student ratio. Semi-Private Lesson will 1:2 (sometimes 1:3 if the group calls for it.). Group SUP lesson will be 1:5, all group lessons will launch from designated surf site and/ or from the boat launch with the Lifeguards permission and each student will be given a PFD.

Students will be checking in at EDCA Store located at 2261 Avenida De La Playa. At this point they will be offered to leave any belonging in the lockers provided at the shop. They will also be fitted for their wetsuits at the store. Once student is ready, they will be directed to the designated site on the beach where the instructor will be waiting for them with their boards & rashguards.

GREET STUDENTS

Greeting all students one by one is a very important part. It will set the tone for the lesson, this opens the door for relationship building and provides an opportunity to make an initial assessment of students comfort level and needs.

LESSON OVERVIEW

Share a general goal for the day and basic overview so participants know what to expect throughout the day.

Challenge by Choice-Instructors will respect a participant's choice regarding his or her level of participation in the lesson.

RULES & BOUNDARIES

Let students know we are operating on a public beach, and that La Jolla Shores is a very special place in the world and houses one of a kind Marine Preserve(MPA). So they should respect others, environment, themselves and the equipment.

Site Boundaries- General area near the canopy/tent. **Personal Belongings** should be kept together in a designated location. Students may not enter the water without an instructor's permission. (More specific water safety will be discussed in the Water Safety part of the lesson.)

Bathroom location.

Sun Protection- Teach the importance of applying sunscreen for all students regardless of skin color and regardless of cloud cover, hats, rash guards, and shade.

Hydration- Stress the importance of staying hydrated especially during the hot summer days. Drink a cup in the beginning, during and end of the lesson. This will help prevent dehydration. There will be a water station at the site and also the choice to use the water fountains by the public bathrooms.

STRETCHING & ENERGIZER

Stretching is a very key component to prevent physical injuries.

Basic Stretch Circle- Circle up and stretch the major muscle groups, explaining why stretching is important, and what muscles are being stretched. Here is a basic list of beginner stretches instructors can follow but will not be limited to only these:

1. Back bends/extensions (reach & touch toes)
2. Neck Roll
3. Shoulder Circles
4. Small/Large Arm Circles
5. Tricep stretch
6. Butterflies
7. Standing/Sitting Splits
8. One leg over the other back stretch
9. Any other additional or favorite stretches
10. Let students choose some favorite stretches

Energizer Games- Depending on the group and lesson it might be

a good idea to play a game before getting into the lesson. Play is often the most effective way to get students moving and interacting. There are many game variants that could work. The instructors are encouraged to personalize every lesson and get creative.

OCEAN SAFETY/SURF ETIQUETTE

Teach students about hazards they might encounter in the ocean and how to safely manage themselves for the lesson. Will help to reduce fear of unlikely hazards and increases confidence in the ocean.

1. **Boundaries** - Establish clear South & North boundaries. Point out flags, tents, lifeguard towers. While in the water students do not go deeper than your instructors. Stay in site boundaries on the beach.
2. **Rip Currents** - Rip Currents are channels of water that pull you out to deeper ocean. Demonstrate to students in the sand how waves roll in and then rips pull back out in a circular motion. If you get stuck in one do not panic and swim parallel to the shore until you are out. If you try to swim back to shore you won't get anywhere and you'll get very tired.
3. **Longshore Currents** - Longshore currents are a flow of water along the beach pushing North or South. Demonstrate in the sand. Use boundary markers to stay oriented. If you get too far down the beach, it is best to exit the water and walk back.
4. **Humans** - There are your friends, instructors, other surfer, and other swimmers in the water with you. Be aware of the space around you so you don't get hit and others don't get hit by you. Walk out next to surfers, never right in front of one. Do not let go of your board if you can help it. Watch out for surf boards and warn others of yours. Surfers at the peak have priority.
5. **Surf Boards** - The boards with a leash have a swinging radius of at least. Do not use leash to drag the board to protect others, our gear and your fingers. Watch fins when surfing in so you don't break them off. Carry board straight, nose facing the ocean. Show them how if they carry board parallel to shore a wave could knock them over. Step off board, do not dive off board. Protect head when coming out of the water.
6. **Sting Rays** - Sting rays are flatfish that bury themselves in the sand. Draw one in the sand to help students visualize. The stinger is a defense mechanism they use if you step on them. Use the stingray shuffle to warn stingrays that you are coming. Demonstrate the shuffle with students. If you get stung, tell an instructor.
7. **Sharks** - If sharks are mentioned let students know that sharks rarely come close to the shore and attacks are very rare.

GROUND SCHOOL

1. Transporting & carrying your board.
2. Handle/ shoulder/ head
3. Standing up on your board
4. Paddle Handling
5. Falling of board
6. Moving & Maneuvering

IN-WATER INSTRUCTION

1. Paddling out through the surf/ if surf is to large will move to boat launch to launch with Lifeguards
2. Head towards flat water once past the break group will gather together
3. Learn how to fall of the SUP by jumping of on purpose
4. Instructor will demonstrate pop-up & will give everyone a chance to practice.
5. Turning Practice
6. 20 min Paddle practice in the flat water parallel to the beach
7. Make your way back to the area where you are coming out.
8. Go over surf safety and game plan of the safest approach to make back in to beach.

CONCLUDE LESSON

1. Take of leashes
2. Buddy system to carry boards back up the sand
3. Overview of the lesson and any Q&A student might have
4. Direct students to the showers before heading back

After the conclusion of the SUP lesson the student will return to the shop to return their wetsuits and pick up any things that might have been stored at the shop.

PRIVATE & SEMI-PRIVATE SURF LESSON PLAN



For the proposed private surf lessons, EDCA will operate daily from 9:00 a.m. to 4:30 p.m. year-round. Private lessons will be 1.5 hours with a 1:1 Instructor to student ratio. Large private group lessons of 10 people with a 1:5 Instructor to student ration, will be 2 hours - Private lessons are one Instructor per "party" of up to 5 people.

For the proposed semi-private surf lessons, EDCA will operate daily from 9:00 a.m. to 4:30 p.m. year-round. Semi-Private Surf Lessons will have a 1:5 Instructor to student ratio, with classes of no more than 10 students.

Prior to arrival, students are instructed on where to park and to meet at the EDCA Flagship Store at 2261 Avenida De La Playa 30 minutes prior to all activities.

Upon arrival, students are instructed to sign an Electronic Release of Liability Agreement waiver form during check-in, if they have not already submitted one online prior to arrival. During the check-in process students are given the option to store personal items in available lockers and use available changing rooms and bathrooms. After check-in, students will be fitted for wetsuits if needed and be given a color-coordinated rash guard to help Lifeguards and Instructors identify them.

Students will be introduced to their Instructors at which point they will be asked if there are any medical conditions she/he should be made aware and then escorted to the appropriate site on the beach.

Once on the beach, the lesson begins.

SURF LESSON OUTLINE:

GREET STUDENTS

Greet all students one by one to open the door for relationship building and provide an opportunity to make an initial assessment of student comfort level and needs.

LESSON OVERVIEW

Share a general goal for the day and basic overview so students know what to expect throughout the day.

Challenge by Choice: Instructors will respect a student's choice regarding his or her level of participation in the lesson.

RULES & BOUNDARIES

Educate students about La Jolla Shores: the special place it holds in the world as a Marine Reserve and an Area of Special Biological Significance.

Site Boundaries: General area near the canopy/tent. Personal belongings should be kept together in a designated location. Students may not enter the water without an instructor's permission.

Bathroom location.

Sun Protection: Teach the importance of applying sunscreen for all students regardless of skin color and regardless of cloud cover, hats, rash guards, and shade.

Hydration: Stress the importance of staying hydrated, especially during hot summer days. There will be a water station at the site and also the choice to use the water fountains by the public bathrooms.

STRETCHING & ENERGIZER

10 Minutes

Stretching is a very key component to preventing physical injuries.

Basic Stretch Circle: Circle up and stretch the major muscle groups, explain why stretching is important, and what muscles are being stretched.

- a. Back bends/extensions (reach & touch toes)
- b. Neck Roll
- c. Shoulder Circles
- d. Small/Large Arm Circles

- e. Triceps stretch
- f. Butterflies
- g. Standing/Sitting Splits
- h. One leg over the other back stretch
- i. Any other additional or favorite stretches
- j. Let students choose some favorite stretches

Energizer Games: Depending on the group and lesson it might be a good idea to play a game before getting into the lesson. Games are an effective way to get students moving and interacting. There are many game variants that could work. The instructors are encouraged to personalize every lesson and get creative.

OCEAN SAFETY & SURF ETIQUETTE

5 Minutes

Teach students about hazards they might encounter in the ocean and how to safely manage themselves for the lesson. Help reduce fear of unlikely hazards and increase confidence in the ocean.

Boundaries: Establish clear south & north boundaries. Point out flags, tents, lifeguard towers. While in the water students do not go deeper than the instructors. Stay in the site boundaries on the beach.

Rip Currents: Educate students on how to identify rip currents (channels of water that pull you out to deeper ocean) and the proper way to swim out of one (do not swim directly towards the shore, swim parallel to the shoreline until free from the rip current).

Longshore Currents: Longshore currents are a flow of water along the beach pushing north or south. Demonstrate in the sand. Use boundary markers to stay oriented. If you get too far down the beach, it is best to exit the water and walk back.

Humans: Friends, instructors, other surfers, and other swimmers in the water. Teach spatial awareness to avoid hitting others and to avoid being hit. Walk out next to surfers, never right in front of one. Do not let go of the board if it can be helped. Watch out for surf boards and warn others of yours. Surfers at the peak have priority.

Surf Boards: Be mindful of the swinging radius of the board attached to the leash. Do not use leash to drag the board to protect others, our gear and your fingers. Watch fins when surfing in so you don't break them off. Carry their board straight, nose facing the ocean. Show them that if they carry board parallel to shore, a wave could knock them over. Step off board, do not dive off board. Protect head when coming out of the water.

Sting-rays: Demonstrate sting-ray shuffle, tell an instructor if stung.

GROUND SCHOOL

10 - 15 Minutes

Introduce students to the fundamental skills of surfing. The practice of good techniques on land is an important first step to catching waves and standing up in the water.

Anatomy of the Board: Point out nose, tail, rails, deck, stringer, bottom, fins, and leash.

Goofy or Regular: Some people prefer to ride with their left foot forward "Regular Stance" while others prefer to ride with their right foot forward "Goofy Stance." If students don't know which stance is more natural for them, have them stand with their feet together and slowly fall forward. The foot they step out with to catch themselves with is most often the foot they should put in front while surfing.

Surf Position: It is helpful to demonstrate proper surf stance at the beginning of the lesson, so students have a goal in mind when learning the pop-up. Place back foot on the deck just over the fins perpendicular to the stringer. Place front foot a little more than shoulder length apart in line with the back foot at a 45-degree angle to the stringer. Bend your knees, keeping head up and back straight for balance. Look over your front shoulder where you want to go. Avoid bending at the hips.

Paddle Position: This is the position surfers use when paddling and catching waves. Lie down (only in soft sand so fins don't break) on center of the board so your weight is evenly distributed, push your body back so your toes touch the tail. We call this the "toe check," and it helps prevent the surfboard from nose-diving when you go to catch a wave. Keep your chin up and look forward.

Paddling: This is how we move the board on the water. Arch your back and keep your head up. Cup your fingers like spoons and use big, strong strokes to propel the board forward. When paddling out into waves, it is helpful to gain some speed. When you meet a wave coming at you grab the rails of the board and push your chest up. This will help you get through more easily and keep from getting knocked off your board. (For more advanced students turtle roll/duck dive techniques can be discussed).

Pop-Up: The pop-up is a single motion skill that requires repetition and practice to master. Place your palms flat on the deck of the board back by your rib cage so your arms look like chicken wings, keep looking forward, push up and arch your back so you are in cobra position, use the momentum of this push to pop up in one quick single motion by swinging your front foot forward into a lunge and bringing your back foot into position underneath you, plant your feet flat, ensure your hips and feet are in line with the stringer and stand

up into the surfing position. There are two stable positions, laying down and standing up. The quicker you go between those positions the better. Practice the pop up together several times. Once students pop up, tell them to freeze and look their feet. Instructors should be assisting students with their pop-ups and offering suggestions until the entire group has the basic motion down.

Catching Waves: Imagine catching a wave is like merging onto the freeway, you need some speed in order to make the merge. Make sure the nose of the board is pointed directly at the beach. Start paddling before the wave reaches you. As soon as you feel the board moving with the wave, give two more paddle strokes and pop up!

REVIEW CONDITIONS

2 Minutes

Conditions in the ocean can change quickly. Instructors should constantly be surveying the conditions to be able to provide the safest lesson possible.

Take time to give your students a final game plan of water conditions and safety before entering the water, such as hazards to watch for that an experienced instructor will notice but students won't.

IN-WATER INSTRUCTION & SURF

45 - 60 Minutes

Gear Check: Ensure student has put on sunscreen, wetsuit is on correctly, they are wearing the correct rash guard, they have chosen a board length appropriate for their size, and the board has a leash.

Entering the water: Practice the pop-up some more if need be and instruct them to put the leash on their back foot. Remind them of the sting-ray shuffle and how to carry a board. Choose an uncrowded area inside the boundaries to walk out.

Positioning in the water: Find a spot at least 10 feet from another group of surfers to start the in-water lesson. If the student is nervous, walk out to knee-deep water to start and gradually go deeper. If student is more confident, walk or push them out into deeper water. Stay within standing water to start the day.

Setting Up: Inform the student of what is going to happen next. Identify a good wave, turn the board around and if student is not on the board instruct them to lie down and center themselves on the board while you hold the board steady. Make sure the board is pointed straight, never in front of you. Once they have toe checked and they are balanced on the board, grab the board with both hands, one on the rail, one on the tail, gather the leash by folding it up in the hand (check for knots) that will be holding the rail to ensure you

don't get caught in it, wait for the wave to approach, and count to 3 out loud so the student knows the wave is coming. When the wave is right behind you say "THREE" and push the board by taking a few steps and pushing with your whole body. Let go of board and leash as it pulls out of your hands from momentum. Once they are in the wave yell out to pop up.

Celebration: Whether the student pops up or not, celebrate! Yell, wave, dance, smile, give them a thumbs-up, a high-five, knuckles, anything to congratulate them on their effort or first wave ridden. Spreading the stoke, love, and joy for being in the water and surfing is one of the most important parts of the lesson. Positive reinforcement is huge for everyone's confidence in and out of the water. Then setup again.

Returning Back to Instructor: Before the student walks back out to you, adjust your position to ensure proper spacing and that the longshore current didn't push you out of boundaries. You can walk back in and assist the student if they need it. Otherwise encourage students to hold the board with both hands and shuffle/paddle back out to you. Keep going!

Common Mistakes: If the student does not stand up or falls, coach them on how to adjust their technique. Falling backward could be no bend in the knee, nose dive (pearling) could be too far forward on the board, slipping off could be they just need more practice. Watch them and assess.

Steep Waves: If a wave is steep, push down on the board with all your weight as you push them into the wave. You can even ride on the back of the board if you are comfortable with this. The weight will help flatten the board out in the wave, so they don't nose dive.

Waves to avoid: Small waves with no power, double waves, offset waves, steep set waves with high likelihood of wipeout.

CONCLUSION TO LESSON

5 - 7 Minutes

Meet back on the beach. Once more, as everyone is gathering, yell, wave, dance, smile, give them a thumbs-up, a high-five, knuckles, anything to congratulate them on the awesome effort and time they just had in the water.

Check on how everyone is feeling. Make sure everyone is still feeling good physically and nobody was hurt out in the water.

Review on what they have learned and experienced. Next steps to progressing their skills.

Thank everyone and collect rash guards. Point out the beach showers and suggest that everyone rinses off. Clearly direct them back to the shop if the students need to return a rented wetsuit or grab their personal belonging from the locker.

OPERATING PLAN PART II

RESPONSE TO EXHIBIT D: LIFEGUARD SERVICES SAFETY REQUIREMENTS

Safety is always the first priority for EDCA while operating concessions in La Jolla Shores. As the central component to EDCA operations, Surf Instructors will be hired and trained to ensure student and employee safety at all times. EDCA Surf Instructors will train annually and bi-monthly throughout the non-peak season and must adequately demonstrate the ability to execute surf lesson/camp operations in accordance with Exhibit D and internal protocol to ensure safe operations year-round in water and on land.

NUMBER OF PARTICIPANTS

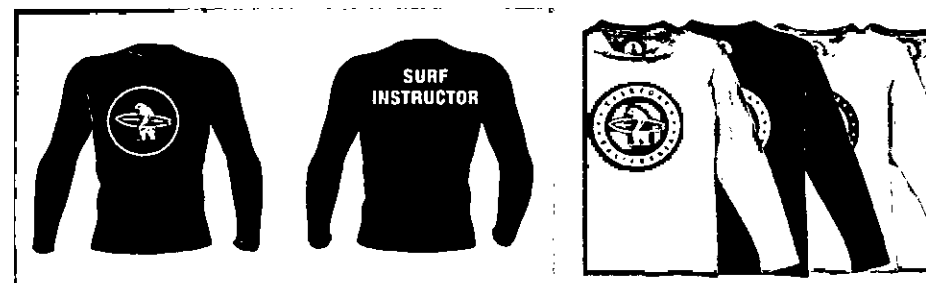
Everyday California will adhere to the maximum of 50 students on the beach, with no more than 25 students in the water at any time.

IDENTIFYING MARKERS

At all times, EDCA instructors will be wearing red rashguards clearly displaying the Everyday California logo on the front, and SURF INSTRUCTOR on the back.

Students from EDCA camps and classes will wear a color specific rashguard with the Everyday California logo. Any other EDCA employees working on the beach will be wearing an official company uniform with the Everyday California logo clearly displayed on the front, and "SURF STAFF" on the back.

The CITY-issued sign with the Everyday California logo will be clearly posted at the site when classes are in progress.

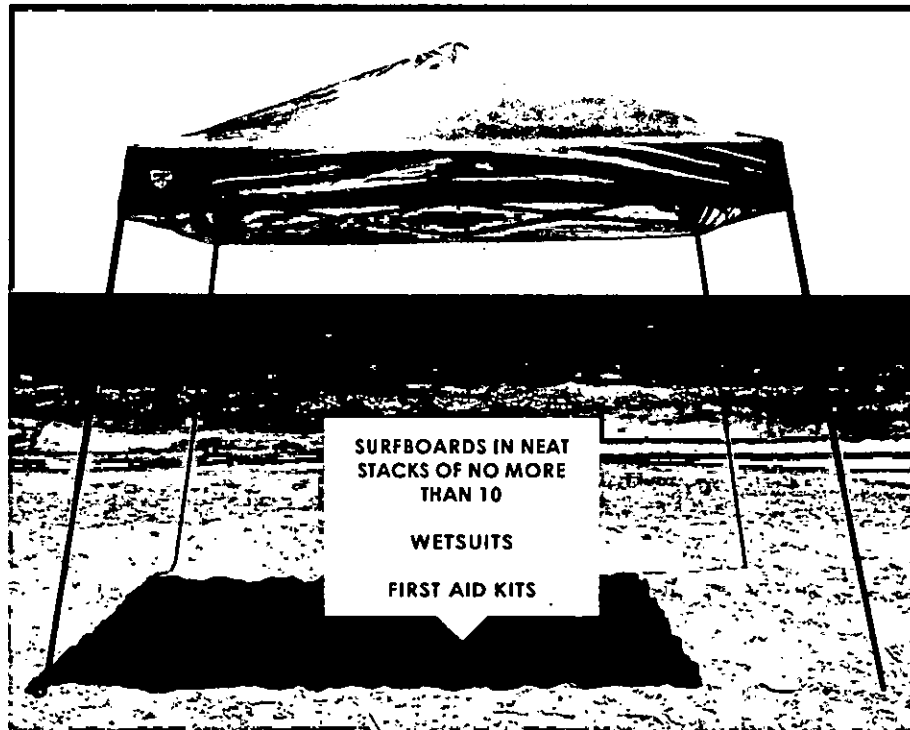


STUDENT TO INSTRUCTOR RATIOS

Per Exhibit D, for every five students on the beach or in the water, one instructor will be present. While students are in the water, an American Red Cross certified instructor will be present to supervise the class. Everyday California will also maintain a 1:2 instructor to student ratio inside the surf zone for Standup Paddleboards (SUP). For flat water SUP, there will be a 1:5 instructor to student ratio.

BEACH ACCESS

EDCA will not exclude the public from our site. Beach access will be maintained for the general public while all surfboards, wetsuits and first aid kits are neatly stored within the allotted EDCA canopy. Surfboards will be neatly stored in stacks of no more than ten. Approved concession sign will be displayed at all times during normal operating hours.



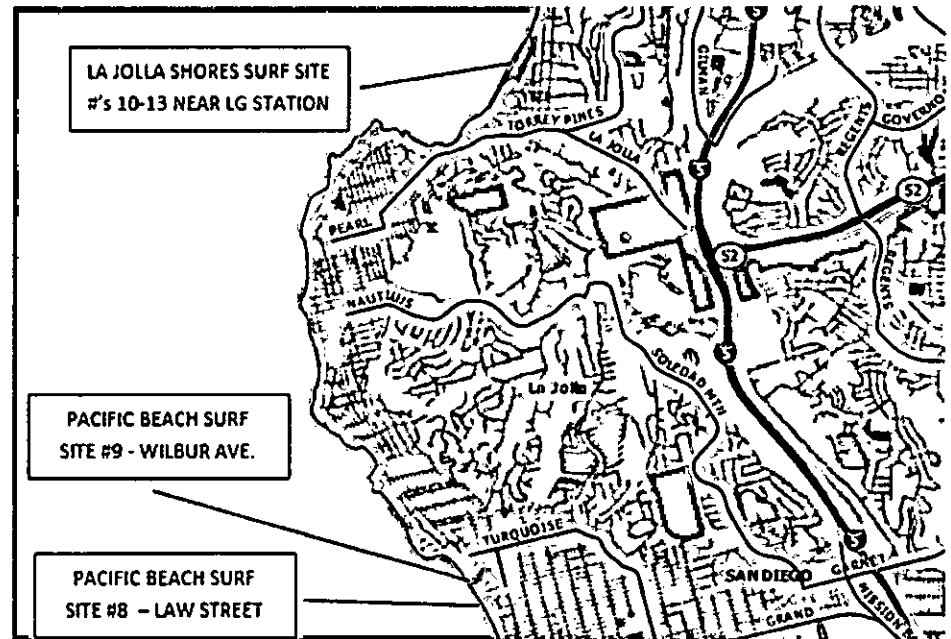
CONCESSION/ SITE LOCATION

EDCA will operate one site at La Jolla Shores (Sites 10-13).

All water activity will be conducted in the immediate designated surfing zone directly in front of the assigned beach site, unless safety is a concern due to water conditions. EDCA will consult with the San Diego Lifeguards to determine the safest alternative location for any in-water activity.

EDCA will not hold any concession operations from the park or non-assigned public beach areas. All customers and guests will check in and handle all payments and liability waiver paperwork 30 minutes prior to their lesson or camp at the EDCA flag ship location at 2261 Avenida De La Playa. EDCA will only use park facilities, parking lots and/or nearest streets to meet participants and escort them from the store to the designated site on the beach.

Standup Paddle Boards will also launch in the immediate surf zone in front of the assigned beach site. If conditions such as high surf or strong winds warrant increased safety measures, EDCA will consult with the San Diego Lifeguards to launch from the La Jolla Public Boat Launch. At this time SUPs will be considered small vessels and will require the customers to wear US Coast Guard approved Personal Floatation Devices (PFD's). Furthermore, the SUP's at this point will have to remain outside the surf area at all times unless entering or exiting the surf in the La Jolla Boat Launch.



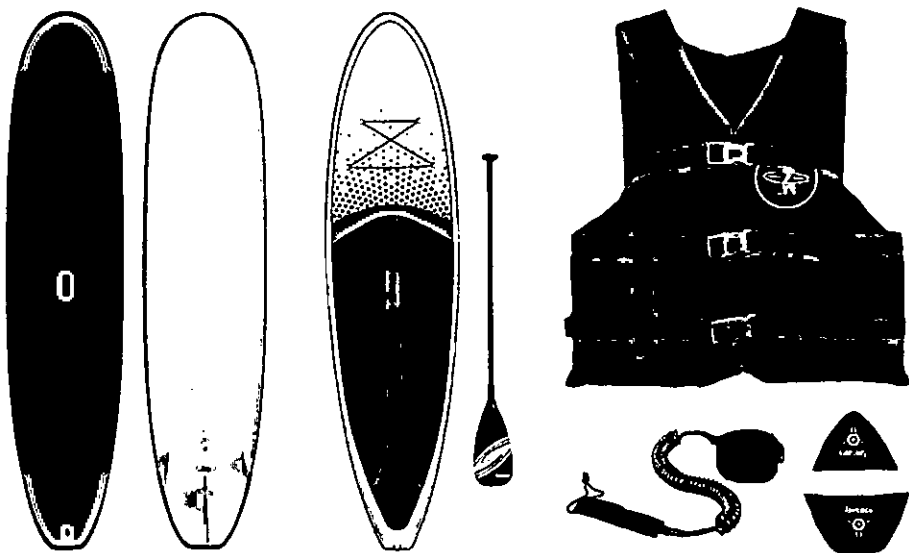
EQUIPMENT

EDCA will provide all of its students with well-functioning equipment. EDCA will have 6', 7', 8', and 9' soft-top (foam) boards available for all its students participating in both lessons and camps. All boards will have a functioning leash. Life jackets will be provided with SUPs.

If hardtop boards are used by any students or customers, they will all be fitted with a nose and tail guard protection and will also be equipped with a functioning leash.

EDCA utilizes inflatable SUPs with leashes for beginner Standup Paddle boarders. They are proven to be much safer in the surf break and are very buoyant for students who are just starting off. All hard-top SUPs will have a nose and tail guard for protection and will also come with a functioning leash. Standup Paddle Boards that are entering the La Jolla Boat Launch will be given a US Coast Guard approved PFD.

6' - 9' FOAM BOARDS | INFLATABLE SUP | HARD TOP SUP
PADDLES | LIFE JACKETS | NOSE + TAIL GUARD PROTECTION | LEASH



MINIMUM REQUIREMENTS FOR SURF INSTRUCTORS

AGE The minimum age requirement for an instructor working for EDCA will be 18 years of age.

EXPERIENCE Surf Instructors will be expected to have strong surfing and ocean knowledge. Minimum of 3 years of surfing experience. 1 year preferred of Instructor/Guide/Teacher experience.

QUALITIES Surf Instructors must show a high priority for students/customer safety, and must be reliable, punctual, organized, have excellent verbal/written communication and be compassionate. Must show general enthusiasm and love for people, ocean, surfing and environment conservation. Bilingual is a plus.

REQUIREMENTS Must be able to lift at least 50 lbs.

Per Exhibit D, all surf lesson/camp instructors will be required to have at least one certification out of each of the following sections:

American Red Cross, "Lifeguarding" / Miramar, "Intro to open water lifeguard," / Water Safety Specialist, "Surfing Instructor Safety Training." / Other: Certification who's curriculum is approved by lifeguard division.

American Red Cross / American Heart Association or any other nationally recognized basic CPR Training Certification.

Emergency Medical Technician (EMT) / American Red Cross Emergency Response/ American Red Cross First Aid Basic or any other nationally recognized First Aid course with Certification.

SAMPLE OF WAIVER

EVERYDAY CALIFORNIA

EVERYDAY CALIFORNIA LIABILITY WAIVER

IMPORTANT: PLEASE READ THIS CAREFULLY. BY SIGNING IT, YOU WILL BE GIVING UP IMPORTANT LEGAL RIGHTS.

ASSUMPTION OF RISK. There are inherent risks in water sports such as: kayaking, swimming, surfing, paddle boarding and snorkeling that can result in serious physical injury, loss, damage to personal property, or even death. These risks include, without limitation: cuts, bruises, sprains, broken bones, concussions, wildlife encounters, paralysis and drowning. The undersigned assumes all risks and voluntarily elects to participate in spite of the risks.

RELEASE OF LIABILITY. I fully and unconditionally release, and discharge HUS Ventures, LLC and its owners, agents, employees, instructors, tour guides and others acting on its behalf ("Everyday California") from any and all claims, loss, damages or costs arising from my participation, including, but not limited to, inside the store, walking to and from the beach, in the ocean, or while using any equipment. I further agree Everyday California **WILL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR ANY REASON**, whether arising from ordinary NEGLIGENCE OR OTHERWISE, except for the gross negligence or willful misconduct by Everyday California. This release extends to any damage to persons, pets, or other property which may be connected to my participation in the activities.

INDEMNITY. I agree to indemnify, defend and hold harmless Everyday California, the City of San Diego, its agents, employees, representatives and volunteers ("Indemnitees") against all loss, liability, damages, or costs, including court costs and attorneys' fees, that the Indemnitees may incur arising out of or in any way related to my participation in this activity, to the maximum extent permitted by law.

WARRANTY OF CONDITION: EMERGENCY CARE. I understand this activity may involve strenuous exercise. I represent and warrant I am in a condition to safely participate in the activities without harming myself or others. Everyday California disclaims any investigation into my medical history or background, and is relying on my representations for my participation. Everyday California reserves the right, in its sole discretion, to deny my participation in this activity for any reason. I consent to emergency medical care and transport in the event of injury to me.

OTHER. In the event that any provision of this release is found to be invalid or unenforceable, the remaining parts will not be invalidated, and shall remain in full force and effect. California law applies. This release shall be binding upon the heirs and successors of each participant. The enforceability or validity of this release shall not be affected by the number of parties who sign it.

CONSENT/CONDITION OF EQUIPMENT. I have read this Waiver and Release of Liability Agreement and understand I am giving up legal rights. I further accept full responsibility for any loss or damage of rental gear and will be charged as follows:

LOST MASK (\$17.00), LOST FIN (\$22.00), LOST SNORKEL (\$15.00), LOST WETSUIT (\$77.00), LOST LOCKER KEY (\$15) DAMAGED SURF BOARD (\$30.00 per inch), LOST SURF BOARD (\$180.00), LOST BOOGIE BOARD (\$50.00)

CONSENT: I HAVE READ THIS WAIVER/RELEASE AGREEMENT IN ITS ENTIRETY, FULLY UNDERSTAND THAT I AM GIVING UP SUBSTANTIAL LEGAL RIGHTS, INCLUDING THE RIGHT TO SUE, AND SIGN IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT. I WAS FULLY INFORMED ABOUT THE RISKS, OFF LIMIT ZONES, AND FINES THAT PERTAIN TO THE ACTIVITY I AM ABOUT TO ENGAGE.

SAMPLE OF WAIVER

WHO ARE YOU SIGNING FOR?

ADULT

MINOR(S)

ADULT AND MINORS

Parents / Guardians are required to sign for minors.

GUEST INFORMATION

Full Legal Name

Required

Date of Birth

MM/DD/YYYY

MM

Email

Required

Phone

(no spaces)

Required

☐ YES, I want to sign up for texts and receive coupons, exclusive offers & the latest info from Everyday California. By checking this box, you agree to receive recurring automated promotional and personalized marketing text messages (e.g. cart reminders) from Everyday California at the cell number used when signing up. Consent is not a condition of any purchase. Reply HELP for help and STOP to cancel. Msg frequency varies. Msg & data rates may apply. View Terms: <https://event1.com/privacy>

How did you hear about us?

Select value

GUEST SIGNATURE

ADD SIGNATURE

ELECTRONIC SIGNATURE CONSENT

☐ By checking here, you are consenting to the use of your electronic signature in lieu of an original signature on paper. You have the right to request that you sign a paper copy instead. By checking here, you are waiving that right. After consent, you may, upon written request to us, obtain a paper copy of an electronic record. No fee will be charged for such copy and no special hardware or software is required to view it. Your agreement to use an electronic signature with us for any documents will continue until such time as you notify us in writing that you no longer wish to use an electronic signature. There is no penalty for withdrawing your consent. You should always make sure that we have a current email address in order to contact you regarding any changes, if necessary.

✓ FINISH AND AGREE

FIRST AID KIT

An American Red Cross First Aid Kit, approved by a City of San Diego Lifeguard, is always going to be kept on site. There will also always be a backup kit held nearby. Prior to the initial class EDCA will arrange with the San Diego Lifeguards for an initial equipment and first aid safety inspection.

EMERGENCY RESPONSE PLAN FOR SURF CONCESSIONS

The purpose of this emergency response plan is to establish procedures, responsibilities, and duties; to promote planning and to establish training for employees and individuals at EDCA in the event of an emergency.

The following plan is the minimum level of response and readiness for EDCA during emergency situations. EDCA will distribute the detailed version of the Emergency Response Plan to all of its employees. It will also be fully covered during the Instructor training sessions.

OCEAN CONDITIONS

Everyday California will only operate if the ocean conditions are considered safe by the San Diego Lifeguards. If all conditions are cleared for surfing/SUP then the Shop Manager/Senior Instructor will evaluate the conditions on the beach and the skill level of the customers/students and facilitate a lesson that is consistent with maintaining safety given their abilities.

In the event that an emergency does arise while a participant or other individual is in the water our protocol is as follows:

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

Everyday California 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 Everyday California instructors and surf camp personnel.

One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed.

One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

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

ACCIDENTS, INJURIES AND INCIDENT SLIPS

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



OUR INSTRUCTORS PRIORITIZE SAFETY

Everyday California's number one focus has always been safety. To ensure that all guests get the best quality lessons and camps, all instructors and guides are put through in-house training on top of the CITY required certifications. Instructor training will ensure each individual is equipped with the skills and tools to carry out the most safe, educating, and enjoyable lessons possible.

All instructor applicants will have to first pass an in-water surf test before qualifying for an interview. This test will be graded on a 1-10 scale, judging the applicant's knowledge on basic surfing and ocean skills. They will be tested on their knowledge of:

1. Riptides
2. Currents
3. Surf Etiquette
4. Maneuvers
5. Wave selection

After the interview process, new instructors will have to shadow an experienced instructor on five lessons before being allowed to lead their own class. All training is overseen by the Director of Operations and senior instructors.

STAFF TRAINING PLAN

ORIENTATION

1. Company Policies & Procedures
2. Human Resources
3. Employee Handbook
4. OSHA Policies & Safety in the workplace
5. Employee Code of Conduct
6. Uniform Policy
7. Drug Free Workplace
8. Harassment Free Workplace

PRELIMINARY TRAINING

*Operating Procedures &
Protocols*

Review of Surf Concessions Requirements set forth by Exhibit D

1. Ocean Conditions & safety
2. Identifying Markers
3. Concession Site Regulations
4. Beach Access
5. Water Activity Zones & Areas of special Interests
6. Equipment
7. Waivers
8. Safety Precautions/ Emergency Response Plan
9. Minimum Requirements for Instructors
10. Violations/Safety Notice
11. Additional Concession Stipulation

OVERVIEW OF LA JOLLA SHORES BEACH & ECOLOGICAL PRESERVE (MPA)

1. Local Rules & Laws pertaining to water activity Zones
 - a. Control Zones
 - b. Board Surfing zones
 - c. Swim Zones
 - d. Boat Launch Zone
2. Local Rules & laws pertaining to La Jolla Ecological Preserve
 - a. Definition According To SDMC
 - b. Boundaries
 - c. "Look but don't touch"
 - d. 5 mph
 - e. No commercialization without a Permit
 - f. Marine Mammal Protection Act
3. Hazardous Areas
4. La Jolla Cove & Swim Lane
5. Marine Life
 - a. 4 Micro Habitats (Sandy Flats/ Rocky Reef/ Kelp Forest/ Submarine Canyons)
 - b. Sea Lions
 - c. Harbor Seals
 - d. Leopard Sharks
 - e. Garibaldi

**WEATHER & SURF
CONDITIONS**

- f. Grey Whales
- g. Brandt's Cormorants
- h. California Brown Pelicans
- i. Sting Rays
- 6. Environmental Awareness
 - a. 1% For the Planet
 - b. Help the Kelp
 - c. GreenWave
- 1. Daily Surf Report
- 2. Wind Swell
- 3. Ground Swell
- 4. Currents
 - a. Surface Currents- Surface Circulation
 - b. Deep Water Currents- Thermohaline Circulation
 - c. Longshore
 - d. Rip Currents
- 5. Swell periods and Intervals
- 6. Wave Formation
- 7. Swell Direction/Activity & Vulnerable Areas
- 8. Overview of Swell Directions and tide impact
- 9. Temperature
 - a. Extreme Heat
 - b. Extreme Cold
- 10. Hazard alerts
- 11. Operations & Logistics under various conditions

SURFING HAZARDS

- 1. Overview of Sandy Flats Hazards
- 2. Overview of Rocky Reef Hazards
- 3. Large Surf
- 4. Wind
- 5. Tides
- 6. Rip Currents
- 7. Breaks and white water
- 8. Water depth
- 9. Proper Positioning of instructor/student/board
- 10. Student/Customer Swim & Strength abilities
- 11. Sting Rays
- 12. Rocks/Shells
- 13. Jellyfish
- 14. Bee Sting

**EMERGENCY RESPONSE
PLAN**

- 1. General Rescue Procedure for water emergencies
- 2. General Rescue Procedures for Land Emergencies
- 3. Cellular Communications
- 4. Identifying Potential Emergencies
- 5. Emergency Signals
- 6. Accidents/Injuries/ and Incident Slips
- 7. Review of General Lifeguard Operations
- 8. Emergency Access & Evacuation Routes, Summoning & Assisting EMS

**CAMP & PRIVATE
LESSONS**

- 1. Flow of traffic/Meeting locations
- 2. Responsibilities related to customers/ students/ campers
- 3. Assessing abilities
- 4. Wetsuit & Surfboard/SUP Fitting
- 5. Teaching water/beach safety
- 6. Teaching ocean preservation & conservation/ Environmental Awareness
- 7. Marine Life
- 8. Stretching & Energizer Techniques
- 9. Surf /Surfboard Shaping/SUP History
- 10. Ground School
- 11. Surf/SUP Etiquette/ Ocean Awareness
- 12. In Water Surf/SUP Instruction/ Techniques

**WAIVERS**

EDCA will 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 the agreement.

Waiver are signed and stored digitally in the cloud for easy access. See "Sample of Waiver" on page 36.

TERMINATION OF SURF CAMP OPERATIONS

EDCA clearly understands that Lifeguards reserve the right to suspend or terminate surf camp operations based on safety considerations.

NOTICE OF VIOLATION

EDCA 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.

OPERATING PLAN PART III

ORGANIZATIONAL STRUCTURE

COMPANY'S QUALIFICATIONS

For 13 years EDCA has partnered with the City of San Diego, Lifeguard Services, San Diego Tourism Authority, and Visit California to share adventures and promote tourism throughout La Jolla. Over this time EDCA has safely operated surf lessons and camps, kayak tours and rentals, snorkeling tours and rentals, surf board and boogie board rentals, and SUP rentals in La Jolla Shores. We feel fortunate to have been afforded the opportunity to run a business that allows us to hire talented people, give back to the community and provide people from all over the world with lasting memories. We take this opportunity very seriously and are confident in our continued ability to successfully operate a Surf Camp and School Concession.

EDCA began as a small start-up owned and operated by the current management team who ran the day to day operations for years. Owners and directors took every call, ran every tour, cleaned the bathroom, moved the boats and did anything else that was needed. As EDCA began to grow we hired and trained the best available talent in order to grow our ever expanding business. EDCA has done a tremendous job hiring and recruiting talent, in particular with the help of Lifeguard Services, in finding a diverse group of employees that shared our belief in making fun happen and using business to protect the environment. EDCA is fortunate to operate in La Jolla and strives to better the community by being a good neighbor, giving back to ocean conservation, and most importantly by being safe on the water.

EDCA believes that being safe on the water and running a successful adventure business doesn't start when the customer arrives at the shop. It starts by evaluating talent and hiring the right people and personally training them year-round. Retaining these employees throughout the year and keeping them incentivized and appreciated is paramount to our success. EDCA has maintained employee retention by offering competitive wages, health insurance, 401k plans, monthly award presentations and company sponsored gatherings.

Since the founding of EDCA, hundreds of thousands of people from around the United States and abroad have been on an adventure with our staff. In the past decade people of different race, ethnicity, gender, age, education, profession, occupation, and income level have visited Everyday California. The feedback from this diverse customer base has been a resoundingly positive reaction for San Diego Tourism and EDCA (4.5 Stars Yelp, 4.5 Stars TripAdvisor, 4.7 Stars Google).



CHRIS LYNCH
Managing Partner

BRIAN STEVENS
Director of Operations

HARRY THOMAS
Director of Sales

APRIL STIERS
Retail Manager

COREY DREW-BELL
Logistics Manager

CREATIVE TEAM

JANNA EGGLESTON
Graphic Design & Marketing

JOSH SVORINIC
Operations Manager

WILL SPEEGLE
Sales Manager

RETAIL STAFF
10 Employees

ALEXANDRA
MIER Y TERAN
Marketing

BRANDON FAUST
SNR Manager

JOHN HARDISTY
Sales & Donations

BAILEE HICKS
Social Media

DEVAN BURNAM
EMILY PORT
Limo Managers

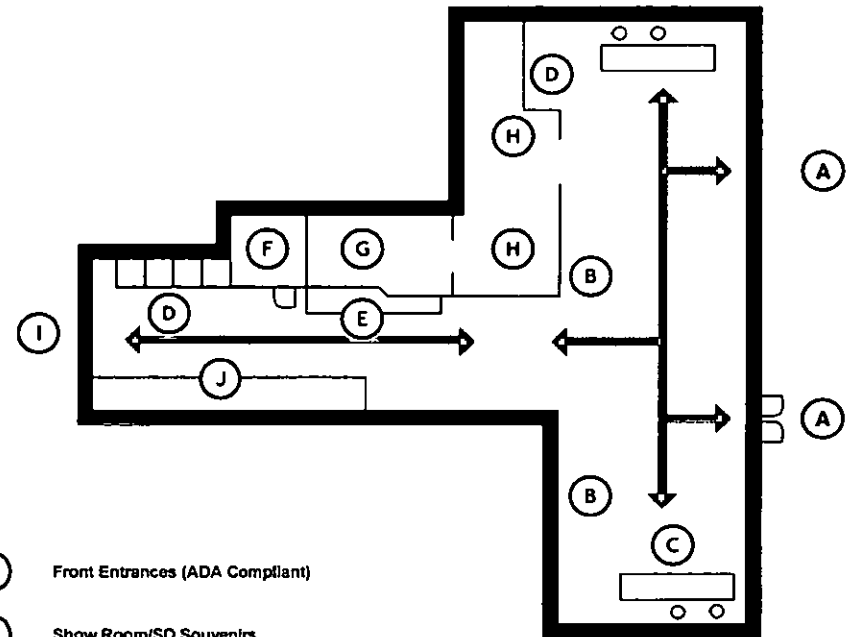
CHRISTIAN
DOUGLAS
JAMES WEEKS
Search Coordinators

TOUR GUIDES/
INSTRUCTORS
48 Employees

EVERYDAY CALIFORNIA FLAGSHIP STORE

2569 Square Ft.

2261 Avenida De La Playa
La Jolla, Ca 92037



(A) Front Entrances (ADA Compliant)

(B) Show Room/SD Souvenirs

(C) Guest Check In (4 Spots)

(D) Changing Rooms (5)

(E) Lockers

(F) Bathroom (ADA Compliant)

(G) Wash Room/Storage

(H) Board Storage

(I) Emergency Exit

(J) Gear Room

PHOTOS OF OPERATION



Outside the Flagship Shop



Changing rooms



Restrooms



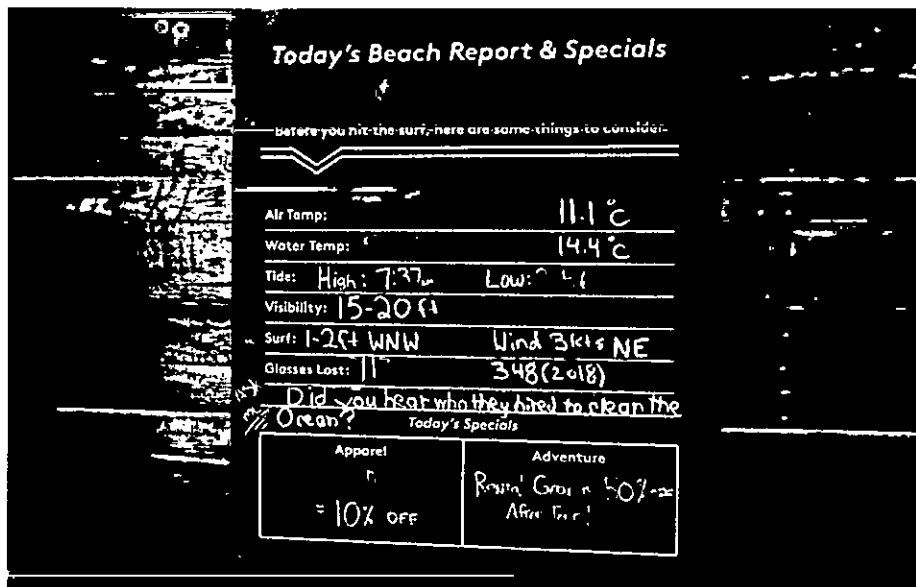
Wetsuit Storage



Front Desk



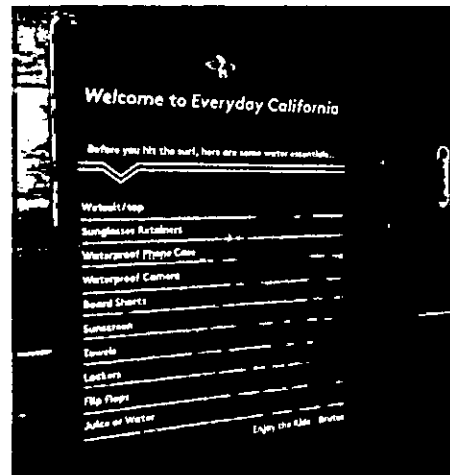
Shop wall, where images + info about tours are displayed for customers



Conditions Report on the Flagship Store wall, visible to all customers and updated daily



Lockers

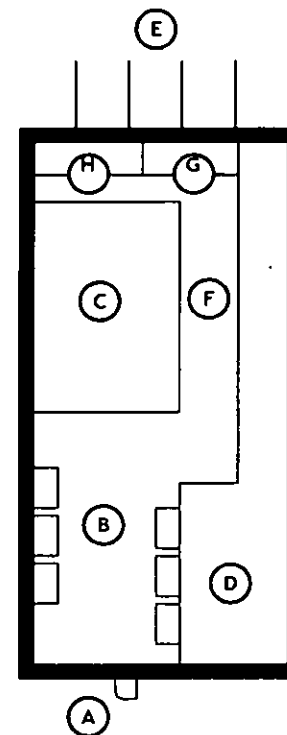


Welcome Sign

EVERYDAY CALIFORNIA OFFICE

First Floor

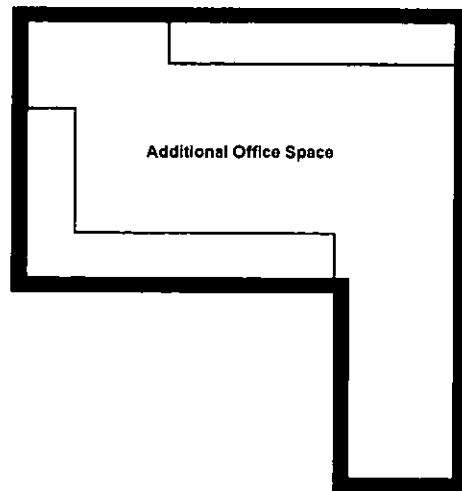
**2246 Avenida De La Playa
La Jolla, Ca 92037**



- A** Front Entrances (ADA Compliant)
- B** Sales/Marketing
- C** Kayak/Board Storage
- D** Wash Room/Gear Storage
- E** EDCA Parking Spaces
- F** Retail Inventory
- G** Bathroom (ADA Compliant)
- H** Tool Shed/Gear Storage

EVERYDAY CALIFORNIA OFFICE
Second Floor

2246 Avenida De La Playa
La Jolla, Ca 92037



Outside the Office

SUMMARY OF EMPLOYEE'S QUALIFICATIONS

During peak season, EDCA employs over 80 qualified watermen and waterwomen that are trained both in-house and by the San Diego Lifeguards. Per Exhibit D for the San Diego surf concession, all current Everyday California instructors must be over the age of 18. Also, each individual instructor is responsible for completing and maintaining a valid basic First-Aid certification and a valid CPR certification for the Professional Rescuer. On top of this, each instructor must complete Everyday California's in-house surf instructor certification which has been approved by the lifeguard division.

We have countless surf instructors and tour guides come to us with a lifeguard background and/or go on to work for the San Diego Lifeguards. Many of these employees have competitive surfing backgrounds and surf for San Diego State University, the University of San Diego, and the University of California San Diego. Everyday California has numerous experienced and qualified men and women to run surf lessons and surf camps in La Jolla Shores.

SUMMARY OF PROPOSED INSTRUCTOR & STAFF EXPERIENCE



JOSH SVORINIC
Operations Manager

Josh has worked as a kayak guide and surf instructor at Everyday California since May of 2018. As a La Jolla Shores resident, Josh is an experienced waterman, a family man, a musician, and a life-long ambassador for the outdoors. Josh enjoys helping others experience the ocean, learn about conservation and sustainability, and experience the joy of riding a wave.



WENDY DE LEON
Operations Manager

Wendy joined the team in 2020, and designed the EDCA Summer Surf Camp program. When she's not teaching our local kids how to surf, she's teaching them high school math. As a certified teacher and surf instructor, she understands that the number one priority during surf camps and lessons is keeping our students and instructors safe. Having completed the Water Safety Specialists course herself, she will be co-leading our Surf Instructor Training Program.



BRANDON PAUST
Shift Manager

From the Pacific Northwest, Brandon grew up playing all kinds of sports, but focusing mostly on baseball, wake surfing, and fishing. While in college, Brandon got his first taste of businesses when he and his family started an LLC in the construction industry. In 2021, Brandon moved to San Diego to experience what business is like on the ocean.



DEVIN BURNAM
Line Manager | Surf Instructor

Devin is California born, and has called San Diego home for the better part of a decade. She holds a bachelor's degree from SDSU. She provides leadership through example, helping new surf instructors reach fun levels without sacrificing safety or customer service.

Certifications:
CPR/First Aid for the Professional Rescuer.
Water Safety Specialist.



EMILY PORT
Line Manager | Surf Instructor

Growing up in Encinitas, Emily was first introduced to surfing while participating in Jr. Lifeguards and various local surf camps. Since then, she has been surfing all over the world, including teaching surf lessons for four years in New Zealand and Australia.

Education:
University of Oregon - Public Relations & Business Admin.

**CHRISTIAN DOUGLAS***Beach Coordinator*

As a California native, Christian has lived all over the state before settling down in San Diego. Christian has made a living on the ocean, focusing on free diving, surfing, and sailing.

Certifications:

CPR/First Aid for the professional rescuer.

**JAMES WEEKS***Beach Coordinator | Surf Instructor*

James is 24 years old, and grew up in San Diego. As an ocean lover, he's been surfing for over 7 years and loves introducing people to the sport. "One of my favorite things is getting people comfortable with the ocean when they previously had a fear of it."

Certifications & Education:

CPR/First Aid.

Water Safety Specialists.

Associates in Oceanography.

**WILL SPEEGLE***Sales & Customer Relations Manager*

Will was born and raised in San Diego, but chose to head up north for school where he studied communication and worked in the Food & Beverage industry. Soon after graduating, he returned home to start working at Everyday California. Will quickly rose up through the ranks and was promoted to Sales Manager following his one year anniversary with the team.

Education:

San Francisco State University - Communication Studies.

**JOHN HARDISTY***Sales & Donations*

Originally from the east coast, John moved to LA to pursue acting where he attended the New York Film Academy. After years in that field, he pivoted towards aviation and secured his commercial pilot license. Finally he moved to San Diego to be closer to family and his love of the ocean. John brings a variety of skills to the team in his never ending mission to partner with businesses and nonprofits throughout Southern California.

**APRIL STIERS***Merchandiser*

April is a retail and customer service professional with over 9 years of experience in operations management, customer service, and inventory control. Graduating on the Dean's List for excellent academics, April earned her Associate of Arts in December of 2021 from St. Charles College in Missouri. She has been with Everyday California for two years and has mastered both in-store and on-water standards of operations. Her skills help keep the shop organized and customers happy.

**COREY DREW-BELL***Logistics Manager*

A United States Marine Veteran and member of the BIPOC community, Corey has been surfing for over 6 years and loves nothing more than the opportunity to share his passion for the ocean with others. When he's not busy managing the Everyday California product line, you can find him out on the water catching some waves and teaching his kids how to surf.

**JANNA EGGLESTON***Design Director*

Janna has worked on the branding team at Everyday California for six years designing digital and printed graphics, as well as using her product development knowledge to create sustainable garments using recycled materials and plant-based textiles.

Education:

California State Polytechnic University, Pomona - Graphic Design.



ALEXANDRA MIER Y TERAN

Marketing Manager

Born and raised in San Diego, Alexandra has an extensive background in swimming, surfing and scuba diving. Since 2019, she has worked for Everyday California in a variety of roles including leading tours, shipping coordinator, and even the store manager. Al also finds the time to work as a surf therapy mentor for Urban Surf 4 Kids.

Education:

Dickinson College - International Business & Management.



BAILEE HICKS

Social Media

Originally from Las Vegas, Nevada, Bailee moved to San Diego where she attended and graduated from San Diego State University. Bailee is responsible for social media marketing, sms marketing, influencer marketing, collaborations, and brand activities. She's also CPR certified, was a lifeguard, and still enjoys getting out on the water to gather content.

Education:

SDSU - Journalism and Media Studies.

OPERATING PLAN PART IV

DIRECT OPERATOR OF ENTIRE SITES

Proposer, or signatory to the proposal, must be the direct operator of the entire Sites under the Agreement.

Should the City award EDCA with a Surf Camp and School Concessions permit, EDCA will continue to be the sole operator of said permit per the guidelines stated in the RFP.

OPERATING PLAN PART V

EMERGENCY RESPONSE PLAN

BACKGROUND

With over a decade of operating surf lessons and camps, sea cave tours, kayak whale watching tours, kayak/snorkel tours and surfboard and SUP rentals in the La Jolla Shores, Everyday California is qualified to safely and efficiently operate a Surf Camp concession.

EDCA's hiring practices and comprehensive employee training have created a lean and efficient staff that have elevated EDCA to one of the safest operator in the adventure industry. In 2023 alone, 60,000 people visited EDCA from all over the world.

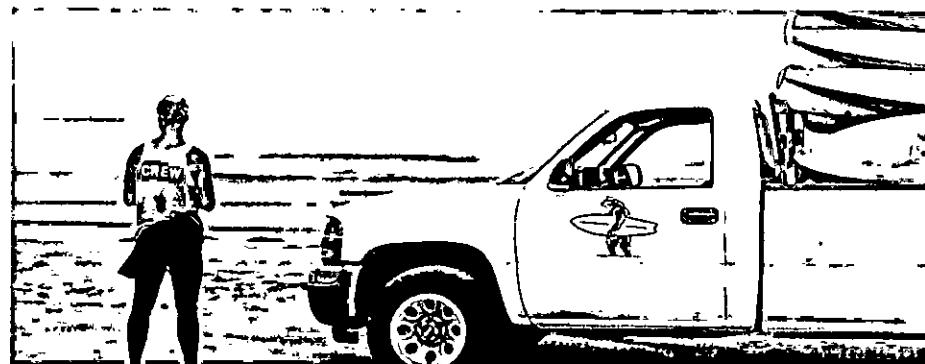
While operating year round, EDCA instructors competently lead the general public through favorable and sometimes unfavorable weather conditions. Understanding the humbling power of mother nature, it is known that the weather conditions can change at any moment. EDCA is confident in our ability to train staff to manage and prepare for the unthinkable. This is possible by always having a safety first mentality, and taking a proactive approach to operating.

EDCA staff is dedicated to ensuring the safety and satisfaction of our customers, both within our shop premises and along the coastal waters. Throughout the year, our responsibilities encompass a wide range of activities — from conducting surf lessons, kayak tours, and snorkeling excursions amidst powerful surf conditions, to providing care for guests experiencing sea sickness, hypothermia, or exhaustion. Our staff is adept at managing the diverse personalities of our guests, securing drifting equipment amid challenging wind and current conditions, and navigating numerous other environmental obstacles. All these tasks are performed with the utmost diligence and care, ensuring a memorable and safe experience for every guest, all completed before the day ends.

Throughout our tenure in La Jolla, Everyday California has happily worked alongside the San Diego Lifeguards and continues to uphold their partnership with the highest regard.

While EDCA prides itself on it's highly trained and capable staff, there are unthinkable and unexpected accidents and scenarios that even the most skilled waterman could find themselves in. EDCA respects this reality and knows how and when to appropriately call on the help of the San Diego Lifeguards when an emergency occurs.

With sound leadership, knowledgeable management, trained and experienced staff, and the guidance of the San Diego Lifeguards, EDCA is fully ready and equipped to safely operate a Surf Concession in La Jolla Shores.



DOCUMENTATIONS & QUALIFICATIONS

EDCA has continuously worked with the San Diego Lifeguards to create one of the safest surfing experiences for both customers and staff. To ensure a professional and positive experience, listed below are a set of standards that EDCA upholds:

1. All surf staff will be CPR certified for the professional rescuer by American Red Cross or its equivalent.
2. All surf staff will be First Aid certified for the professional rescuer by American Red Cross or its equivalent.
3. All surf staff will be Lifesaving certified instructors or a Waterfront Safety Specialist certification.
4. Instructor to student ratio will be 1:5, unless rough conditions warrants a 1:4 or 1:3 ratio.
5. Surf instructors will don a bright red long sleeve rash guard with the EDCA logo, "Surf Instructor", and "Everyday California" clearly printed on the front and back.
6. Customers will be wearing bright colored rashguards to clearly identify them as students or campers.
7. Every operating day, staffers will erect a 10 by 10 canopy to provide shade from the sun.
8. A city approved sign will be posted at the site for public information.

Everyday California understands the importance of readiness and prevention. All employees are prepared to properly handle emergencies on the beach, in the shop, and out on the water. Before teaching a lesson, all surf instructor applicants will have to pass an in-water surf test before qualifying for an interview. This test will include but not limited to water conditioning, identifying water hazards such as rip currents, endurance, wave and surfer awareness, skills, technique and form.

In addition to the initial screening, applicants are then required to shadow a minimum of 5 surf lessons with an experienced instructor to gain real world, first hand practice. While it is encouraged that all EDCA new hires have a background in surfing, shadowing shifts enable EDCA to install a safety first mentality as the standard operating procedure.



PURPOSE & OBJECTIVES

The purpose of this emergency response plan is to establish procedures, responsibilities, and duties; to promote planning and to establish training for employees and individuals at EDCA in the event of an emergency.

Potential emergencies such as high winds, dangers along coastal geography, medical conditions, marine life encounters, surf zone collisions, hypothermia or shock, etc., may require instructors to perform specific actions to protect their own personal safety and the safety of all lesson or class participants, minimize uncontrollable consequences and assist the lifeguards. It is the intent of this plan to assist in pre-planning for these emergencies and to provide specific procedures in the event an emergency occurs.

EDCA understands the importance of readiness and prevention. All employees are prepared to properly handle emergencies on the beach, in the shop, and out on the water. It is mandatory that each employee, including all instructors and managers, complete the following certifications before leading a class or lesson: American Red Cross "Lifeguarding" (or its equivalent), American Red Cross CPR (or its equivalent) and American Red Cross First Aid Basic (or its equivalent). The following outlines EDCA objective strategies for the Emergency Response Plan.

CPR FOR THE PROFESSIONAL RESCUER

American Red Cross or Equivalent

1. Learn CPR (one and two rescuer)
2. Primary assessment
3. Ventilations including use of CPR breathing barriers and (BVM) Bag-Valve-Masks
4. Choking victims (conscious or unconscious)
5. How to use AED (automated external defibrillator)

BASIC FIRST AID

American Red Cross or Equivalent

Learn how to identify and care for victims from an array of injury and or illness

- a. Minimize shock
- b. Stop or control bleeding
- c. Treat people with heat or cold related injuries
- d. Call for and assist Professional Medical Personnel

AMERICAN RED CROSS "LIFEGUARDING" OR EQUIVALENT

1. 500-yard swim with a 20 yard 10lb object retrieval
2. Passive Submerged Victim in the surf break
3. Triage care for multiple victims
4. Head-hold Escape both front and back
5. Spinal stabilization in shallow water and deep water
6. Spinal stabilization for submerged victims
7. Using backboards in deep water
8. Circulation and controlled bleeding
9. Applying a "sling and binder"
10. Head/neck Immobilization on dry land

EMERGENCY RESPONSE PLAN

Conducting Water Rescues

SCENE SAFETY

Always make sure that you and your students are positioned in a safe location. It is difficult to provide help and assistance if you become a victim, so make sure you and the rest of the group are out of danger.

Take into account other customers or unknown individuals out on the water, making sure to keep everyone out of the danger area to prevent more victims. During water based emergencies, lessons and classes will be instructed to leave the surf immediately and to regroup in front of the EDCA canopy.

When possible, the lead instructor will assist the person in distress, while the other staff will maintain a safe distance with the rest of the group. Staff will promptly notify the San Diego Lifeguards.

Dangerous conditions could be large waves, short interval surf, strong rip currents, sharp rocks, dense fog, and dangerous sea life.

SCENE ASSESSMENT

Keep an eye on the victim at all times. If there are multiple victims, then the instructor must determine who needs immediate assistance. Promptly alert the San Diego Lifeguards.

Determine if it is an illness or injury. An example for an injury would be falling on the board and hitting their head. An illness would be seasickness.

Other life threatening situations

- a. Allergic reaction
- b. Asthma attacks
- c. Psychologically induced panic

- d. Epileptic seizure
- e. Stingrays or other wildlife

Determine if emergency medical services will be needed.

Assess the victims for life threatening conditions, monitor their level of consciousness, and check their ABCs (airway, breathing, circulation or major bleeding).

TAKING ACTION

Reassure the victim and stay with them throughout the incident.

The Surf Instructors are highly trained to provide assistance in multiple water emergencies. They are required to respond to all emergencies but never use skills that are outside of their scope of practice.

Provide necessary care based on the training from the American Red Cross in CPR and in First Aid.

The Surf Instructors must use their skills to the best of their knowledge until professional medical rescuers arrive.

Once the instructor starts emergency care, they must not stop until help arrives.

SIGNALING EMERGENCY MEDICAL SERVICES

Anyone who requests medical attention, no matter how serious of an emergency, must be taken to a lifeguard or emergency response personnel.

In case of an emergency, the staff is instructed to dial 911, and request San Diego Lifeguard assistance.

Use SAILS while talking to dispatch. This acronym will help prepare the professional rescuers to better help the victim.

SEX: Report male or female (e.g., victim is a female)

AGE: Report a rough estimate on their age (e.g., mid 50's)

ILLNESS or INJURY: Report briefly what the problem or signs and symptoms are (e.g., complaining of heart pain, shortness of breath)

LOCATION: Report exact location (e.g., in front of Surf Site 1)

STATUS: Report on the status of the victim. This is similar to reporting the signs and symptoms but gives a more detailed description of the scenario. (e.g., The victim is breathing normal and continues to stay alert and oriented. I do not see any major bleeding.)

NON LIFE THREATENING EMERGENCY

These types of emergencies include, but are not limited to: small cuts, nausea, muscle fatigue and acute hypothermia.

Comfort the victim, reassure that they are being helped and or that help is on the way.

Move the victim away from any hazardous threats.

Using the skills and best practices described by the American Red Cross, apply the necessary first aid required to help the victim.

Get the victim to the beach for additional care as soon as possible.

Do not leave the victim until they are returned to a safe location.

LIFE THREATENING EMERGENCY

These types of emergencies include, but are not limited to: obstructed airway, unconsciousness, drowning, trauma to the head, severe seasickness.

Immediately call 911, ask for La Jolla Water Rescue service. Use SAILS.

Make sure the scene is safe, keep all other customers and bystanders away from danger.

Only move the victim if there is immediate threat to you or the victim.

Keep group together and under control.

Begin CPR or First Aid as necessary. Remember, once you begin CPR do not stop until instructed by Professional

Personnel.

Gather any information possible to help assist the Professional Personnel.

Before your shift is over, fill out a complete incident report and attach the liability form along with the lifeguard reports.

LAND EMERGENCIES**SCENE SAFETY**

Determine that the scene is safe for yourself, other customers, and professional rescuers.

USE OF BODY SUBSTANCE ISOLATION

Latex gloves and a pocket mask are located in the bright orange emergency bag in the shop location. Use personal protective equipment.

Determine the nature of illness or mechanism of injury.

Determine the number of victims.

For non-life threatening emergencies, small cuts, nausea, muscle fatigue, and acute hypothermia:

Assess the scene and make sure both you and the victim are out of harm's way. Only move the victim if there is an immediate threat from the surrounding area.

Identify yourself and your level of emergency training.

Ask what the problem is, use H.A.M (History Allergies Medications) to help you and/or professional rescuers.

Use basic first aid to care for and comfort the victim. Walk the victim back to the shop or a safe location.

If additional care is requested or required, help the victim over to the lifeguard tower.

If an additional emergency arises or further resources are needed, call 911.

For Life threatening emergencies, unconsciousness, drowning, trauma to the head, severe seasickness:

Assess the scene and make sure both you and the victim are out of harm's way. Only move the victim if there is an immediate threat from the surrounding area.

Call 911. Use SALS.

Assign an employee or a nearby person to contact the lifeguards and to help signal the position of the victim.

Begin to use First Aid and or CPR if the situation requires.

Continue helping victim until Professional Medical Rescuers arrive. Once they arrive on scene and take over, assist the emergency personnel.

Contact the general manager or owner immediately after.

Before your shift is over, fill out a complete incident report and attach the liability form along with the lifeguard reports.

PREVENTATIVE MEASURES

Accidents will happen. It is in the customer's, the community's, and EDCA's best interest that EDCA employees do everything possible to prevent accidents and minimize their negative consequences. EDCA promotes safety and uses multiple preventative standard operating procedures to help reduce the potentiality of emergencies.

INSTRUCTORS & STAFF

Equipped and Prepared

Besides completing many practical skills training courses and obtaining professional medical equivalent rescue certifications, instructors and staff must also dress the part. They wear tight fitting water wicking material like rash guards and neoprene. EDCA will issue red, 1mm rash guard uniform tops with the EDCA logo on the chest and SURF INSTRUCTOR or STAFF clearly marked on the back. Guides also use high SPF sunscreen, hats, and polarized sunglasses for sun protection. The EDCA site will also be equipped with a canopy on the beach to help prevent extreme exposure to the sun.

Sunscreen is readily available for our staff and for any students that may have forgotten to pick up some at the shop.

Wetsuits are highly recommended for both staff and guests as the water or air temperature starts to drop.

CONDITIONS ASSESSMENT

Opening managers call the San Diego Lifeguard beach conditions report and record the daily conditions. It is located on the entrance

wall of the shop for all employees and customers to view the current weather conditions. Conditions are monitored throughout the day and continually updated. If there are ever questions regarding safety in the ocean, lifeguards are immediately sought out to ask their opinion.

During the lessons, instructors will identify and point out any rip currents or hazards to the students.

If conditions are too dangerous, classes and lessons will be cancelled by the Manager on Duty, and classes will be rescheduled to a later date.

KNOW & UNDERSTAND THE CUSTOMERS

EDCA has customers from all different walks of life, some are water people and others are not. Instructors are taught to ascertain each participant's level of ability and adjust the lessons appropriately.

Identify the stronger, more advanced surfers who have surfed before, from those who are first timers.

There might be medical conditions that could be hidden but important to address before hitting the water.

PROPER GEAR & EQUIPMENT

For comfort and for safety, each client is prepped on what is appropriate to wear and what not to wear.

Bathing suits are mandatory, and neoprene always recommended with cooler temperatures. Each student will be provided with a brightly colored and logoed rashguard. Any cotton, denim, or other heavy materials are not allowed, and can be safely secured in our customer lockers in our flagship store.

For SUP lessons in utilizing the Boat Launch, life jackets are coast guard certified and are categorized in multiple sizes. Instructors will pick out the correct fitting life jacket. PDFs run from a youth size, to 5XL, adequately fitting a 6 year old to a large adult with up to a 70 inch chest.

BOARD MAINTENANCE

To maintain seaworthy surfboards and SUPs, each board is visually inspected before hitting the surf.

After every lesson, each board is properly rinsed off in the surf and checked for any cracks, divots, or tears.

Surf leashes are visually inspected before and after each lesson, and the Velcro strap is to be opened and closed to check performance. After the lesson, the leash is to be tightly wrapped around the board to avoid dragging and wear and tear.

Any board with cracks, delamination, or tears are immediately pulled out of the quiver and marked for repair. A manager is then notified to handle future repairs.

RENTAL PROTOCOL

Each morning the call to rent is made by the manager on duty. If renting is a go, no one hits the water without a mandatory safety briefing.

There are two rental briefings, one at the shop location in front of a giant La Jolla Shores map, and the final at the beach where swim zones, WAZ, or any beach hazards can be pointed out by a beach staff member at the EDCA site.

INSTRUCTOR TO STUDENT RATIO

It is well known by EDCA to maintain a safe instructor-to-student ratio. No instructor can ever take out more than 5 students at once. For younger students and campers, we will use a one to four ratio if conditions warrant increased safety measures. This is to make sure that EDCA staff can adequately handle any situation to the best of their ability and remain in compliance with regulations stipulated in Exhibit D.

BI-WEEKLY TRAINING PROGRAM

It is important to stay fresh and current with the best practices and procedures. EDCA conducts bi-weekly training to ensure guides remain in peak physical condition and aware of any changes made by Lifeguard Services or EDCA.

INCIDENT REPORTS

All of the accidents and incidents that happen are recorded by EDCA. Once the accident or incident has occurred, the EDCA employee that was on the water or on the beach at the time fills out the Incident Report Form. When the form is completed, it is attached to any related liability forms or paperwork from EMS and filed in the Incident/Accident report binder. The binder is located at the Avenida De La Playa shop. The general manager or company owner must be notified immediately.

INCIDENT REPORT

Incident Report Form

Date of Report: _____ Date of Incident: _____ Time of Incident: _____ AM PM

Facility Information

Facility: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

Information on Person Assisted (Complete a separate form involving more than one person)

Name: _____ Age: _____ Gender: Male Female

Address: _____ City: _____ State: _____ Zip: _____

Phone: _____ Work Home Cell Email Address: _____

Family Contact (Name and Phone Number): _____

Incident Data

Location of Incident (specific): _____

Description of Incident: _____

I, the participant, have read this incident report and acknowledge that by signing below, the statements contained in this form are true and accurate to the best of my knowledge.

Participants Signature: _____ Date: _____

INCIDENT REPORT

Did an Injury Occur: YES NO

If yes, describe the type of injury and location on body: _____

Witness Statements/Tour Guide

1. Name: _____ Phone: _____

Email Address: _____

Address: _____ City: _____ State: _____ Zip: _____

2. Name: _____ Phone: _____

Email Address: _____

Address: _____ City: _____ State: _____ Zip: _____

Emergency Care Provider

Where emergency medical services (EMS) personnel called? YES NO

If yes, by whom? _____

Time EMS personnel called: _____ AM PM

INCIDENT REPORT

Time EMS personnel arrived: _____ AM PM

Was the victim transported to an emergency facility? YES NO

If yes, where? _____ If no, person returned to activity? YES NO

If the victim is a minor, were the minor's parents contacted (if not present)? YES NO

Facility Data

Number of lifeguards on duty at time of incident: _____

Weather conditions at time of incident: _____

Name(s) of any lifeguards involved in incident: _____

Lifeguard(s) signatures: _____ Date: _____

Report Prepared By:

Name: _____ Position: _____

Signature: _____ Date: _____

Attachments

Note any attachments such as EMS personnel report or follow-up conversations with victim and/or Parents or guardians

Records Retention

EXECUTING THE EMERGENCY RESPONSE PLAN

QUICKLY SURVEY
THE SCENE

Survey the scene in under ten seconds. Call the appropriate EMS (either 911 or the Lifeguard main tower: when dialing 911, surf instructors request San Diego Lifeguard Assistance and specify La Jolla Shores). Provide EMS with detailed and concise information in the S.A.L.L.S. format. Surf instructors defer to EMS in all situations and assist as requested. Surf instructors remain control of the rest of students and ensure they do not get in the way of EMS and ensure the continued safety of the rest of the group.

CONSIDER LEVEL OF
TRAINING & RESCUE
SKILLS

EDCA instructors and beach staff are trained to consider individual level of rescue skill prior to responding to a water rescue. Instructors are equipped with certifications in CPR for the professional rescuer and first aid. Instructors are required to respond to any water emergency while never exceeding their own capacities and to always defer to EMS.

ENSURE PROPER USE
OF RESCUE EQUIPMENT

Instructors are trained to use any protective equipment in the first aid kit to ensure their personal safety and to reduce the risk of blood borne pathogens. Instructors are trained to use safety and rescue equipment for their intended purposes only.

SAFELY APPROACH
THE VICTIM

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. Assess additional hazards and conditions that may cause further injury and determine the appropriate response.

PERFORM ANY
NECESSARY RESCUE

Perform and rescue based San Diego Lifeguard and American Red Cross training. Continue talking to the victim and provide reassurance; provide the victim with any necessary rescue instructions.

MOVE THE VICTIM TO
SAFETY

Move the victim to safety, away from rocks, reef and/or cliffs, to an area free and clear of potential hazards only if they are in a position of danger. Perform an initial assessment and then provide the immediate necessary care to stabilize the victim so that he/she can be transported to the closest, safest land area to receive additional care or treatment that cannot be performed on the water.

REMOVE THE VICTIM FROM THE WATER

Remove the victim from the water to provide further necessary care. Return to the beach immediately with the victim and update EMS on location and direction of land reentry. Radio for assistance to the Beach Manager and Manager on Duty at the shop to confirm their location or point of entry back to land. Land based personnel will update EMS on the location of entry from the water and relay any other information they have if any changes occur. In extreme emergencies get the victim to the closest safest land area where the victim can receive immediate additional EMS care.

PERFORM PRIMARY SURVEY UPON RETURN TO LAND

Upon returning to land, perform a primary survey of the injuries or state of the victim and reassess the victim's condition. If EMS has not arrived or is not on the scene at the point of reentry, designate someone to call EMS again and update them on the victim's location.

PERFORM EMERGENCY CARE

Provide first aid, CPR or other additional care until emergency medical services arrive. Continue monitoring the victim's condition and providing the appropriate care until more advanced medical personnel arrive.

CLEAR THE AREA

If other instructors and students are in the water, they should be directed safely leave the surf zone and head to the EDCA canopy, where they can stay clear of the area until the emergency is over. Other beach staff should provide assistance as needed, including directing ambulance and Lifeguards to the precise location of the victim, getting blankets or towels to minimize shock, and keeping other clear of the emergency.

REPORT INCIDENT

After EMS have taken over the emergency, the responding employee is to return the shop and report to the Manager on Duty, fill out an incident report and contact the managing partners.

POTENTIAL EMERGENCIES

EDCA trains all staff members on potential emergencies that may arise during surf camp activities and lessons, and how to sufficiently address these emergencies. Some of these potential emergencies include, but are not limited to, submersion, injuries to the head and neck, severe bleeding, drowning and unconsciousness.

Other potential emergencies may arise including hypothermia, hyperthermia, paralyzing seasickness,

anaphylactic shock from marine life stings, dehydration, heart attack and diabetic shock.

By being able to recognize the signs and symptoms associated with these type of emergencies, tour guides can respond accordingly.

MARINE LIFE STINGS & ANAPHYLACTIC SHOCK

The Ecological Preserve is home to jellyfish and stingrays and many people may allergically react to the toxins from stings from jellyfish and stingrays. Symptoms of anaphylactic shock include swelling, quickly spreading rashes, lightheadedness and breathing difficulties.

Should a customer be stung by marine life in the water, the participant should be moved to land as quickly as possible. The victim should be taken to the nearest Lifeguard Station or EMS should be summoned, especially if the victim has a history of allergic reactions, or the victim is stung on the face, neck, chest or is having difficulty breathing.

When stung by a Jellyfish, the victim may complain of burning sensations at the sting site. Soaking the affected area in white vinegar to offset and neutralize the toxin can treat such stings. If an allergic reaction ensues, the victim is at risk for anaphylactic shock and advanced medical care should be summoned and provided immediately.

Should a student be stung by a stingray, the victim should be immediately transported to the Lifeguard tower for treatment. Stingray stings are characterized by punctured skin and throbbing up the calf and leg. The venom from stingrays causes extreme, debilitating pain for hours after the initial wound. Typically, victims cannot walk for a length of time after being stung. Treatment for stingray stings typically includes inspecting the puncture site for remnants of the barb, in which case the remaining barb must be removed by EMS. The wound is then bandaged, and the victim's entire leg is immersed in very hot, non-scalding water for one or more hours. The hot water breaks down the proteins in the venom, alleviating much of the pain. Signs of infection should be monitored and a tetanus shot may be required.

COLLISIONS & TRAUMA TO THE BODY

In the event of that a collision occurs the first order of action is to assess the injuries. EMS should be summoned immediately, and the appropriate care should be provided until EMS arrives.

SEASICKNESS

Seasickness can result in other emergency conditions such as dehydration and can actually be contagious. Surf instructors look for

a sudden drop in energy or talkativeness, discoloration or paleness in skin tone, excessive swallowing and/or gagging. Should a student not be able to continue the lesson, instructors radio for assistance to the Beach Manager so that students that are unable to paddle may be taken back to shore.

HYPOTHERMIA

Hypothermia is a dangerous drop in body temperature typically caused by prolonged exposure to extreme cold. EDCA encourages students to rent wetsuits during especially cold times to prevent hypothermia. If a student is at risk for hypothermia, instructors or staff notify Lifeguard Services immediately. Instructors try to conserve the victim's energy as further exertion draws warm blood away from the core, where it is needed most. Further exertion also uses up energy reserves that the body needs to generate heat for the core and vital organ function. Excess wet clothing is removed, and measures are taken to stabilize and reheat the victim as much as possible. If the victim is immersed in water, the first thing to be done is remove the victim from the water.

Treatment for hypothermia once reaching land is to quickly get the victim indoors, remove any wet clothing and reheat them with blankets and dry clothing. Water consumption is vital to avoid dehydration if hypothermia has set in.

HYPERVENTILATION

The shock of cold water can cause erratic, shallow breathing and force a participant into over-breathing. Signs and symptoms of hyperventilation include weakness, dizziness, short, shallow breathing and pressure in the abdomen.

Victims are encouraged to take deep, slow breaths to relax and return to a state of calm. Instructors are to use training in voice modulation and continual talking to help victims return to a state of calm.

HYPERTHERMIA

Hyperthermia is caused by the body overheating and is characterized in stages including heat cramps, heat exhaustion and heat stroke. Heat stroke is severe and potentially life threatening. Heat cramps are usually a result of excess sweating. Profuse sweating depletes the body of moisture and salt, which can lead to painful muscle cramps. Heat cramps usually affect the abdomen, arms, or legs and can also be a symptom of heat exhaustion. Heat cramps can be treated by ceasing activity, cooling down in the shade or in cool water and through drinking liquids.

Heat exhaustion is caused when the body overheats and loses too much water and salt through sweating and the body struggle to maintain normal body temperatures. Symptoms of heat exhaustion include nausea, vomiting, fatigue, weakness, dizziness and muscle cramping.

Heat stroke results if heat exhaustion is untreated. Heat stroke occurs when the body's temperature rises to an abnormally high level because the body is no longer able to dissipate heat. Heat stroke is life threatening if untreated. Symptoms of heat stroke include the absence of sweating, red or flushed skin tones, rapid pulse, breathing difficulties, hallucinations, confusion, disorientation, and even seizure.

DEHYDRATION

Symptoms of dehydration include lightheadedness, dry mouth and muscle cramping. When instructors or staff recognize these symptoms, they can treat dehydration by having the victim remove clothing layers and encouraging the victim to drink water. Dehydration can result from prolonged exposure to the sun. Dehydration increases the risk of both hypothermia and hyperthermia making it important for tour guides to identify dehydration early and take the necessary steps to treat it appropriately.

EXTREME SUN EXPOSURE

EDCA encourages all students, staff and customers to wear secured sunglasses, sunscreen and lip balm when spending long durations of time on the beach. Sun exposure can have damaging effects on the body while out on the water even when it is not particularly hot.

These safety measure are extremely important for young children, the elderly and fair-skinned persons.

WATER CONTAMINATION EXPOSURE

EDCA adheres to any issued water contamination warning from Environmental Services to avoid water contamination exposure to tour participants and staff.

HEART ATTACK

Cardiac arrest is life threatening and requires the immediate calling for EMS. Symptoms of heart attack include shortness of breath, profuse sweating, nausea, persistent chest pain, radiating pain down the left arm, shoulder or neck. Stabilize heart attack victims and immediately call 911. Time is critical in heart attack emergencies.

**INSULIN SHOCK,
INSULIN REACTION
& DIABETIC COMA**

Customers affected by diabetes can store insulin shots or snacks to stabilize blood sugar levels in a dry box or dry bag. These items are to be in the possession of the beach staff to prevent insulin shock or diabetic coma. Symptoms of insulin shock include hunger, shakiness, dizziness, lightheadedness, confusion and feelings of anxiety or weakness, abnormal pulse and abnormal skin characteristics. In the event that insulin shock is suspected, the victim should be assisted to the shore immediately for treatment. Insulin shock can be treated by providing sugar to the victim. Beach staff carry a roll of lifesavers or sugar packets in their dry boxes at all times to accommodate this potentiality. If the victim's condition does not improve within a few minutes, EMS should be summoned immediately.

**CELLULAR
COMMUNICATIONS**

Everyday California 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 Everyday California instructors and surf camp personnel.

One hand or any piece of equipment being waved overhead from side to side, or three short whistle blasts will indicate that an emergency exists and immediate assistance is needed.

One hand placed on the top of the head will indicate that everything is all clear. Instructors and other surf camp personnel will be diligent to look for any signs and signals of distress when they are at the beach.

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

**ACCIDENTS, INJURIES
AND INCIDENT SLIPS**

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

EMERGENCY RESPONSE PLAN FLOW CHART**LIFE-THREATENING
SITUATION**

*Medical Emergency
Drowning
Spinal Injury
Epileptic Seizure
Severe Open Wound
Shark Attack
Septic Shock from
Stingray*

*Assess the scene, ensure
you and victim are out of
harm's way, call 911, use
SAfLS and administer first
aid or CPR if situation
requires, until EMS arrives*

*Once scene is clear
contact Director of
Operations or Owner, fill
out Incident report and
turn it into management/
lifeguard services*

*Director of Operations or
owner will follow up with
injured customer*

**NON LIFE-
THREATENING
SITUATION**

*Laceration
Stingray, no septic shock
Panic Attack
Heat Exhaustion
Nausea
Muscle Fatigue
Acute Hypothermia*

*Assess the scene, ensure
you and victim are out of
harm's way, use first aid
skills and best practices
by the American Red
Cross. Comfort victim.*

*Once scene is clear
contact Director of
Operations or Owner, fill
out Incident report and
turn it into management/
lifeguard services*

PREVENTATIVE MEASURES

Ensure conditions are safe, and keep your group of 5 or less students counted and accounted for at all times. Maintain spatial awareness with other surfers. Stingray shuffle. Discuss medical history with parents. Protect your students at all times.

OPERATING PLAN PART VI

NECESSARY EQUIPMENT PROVIDED BY THE PROPOSER

EQUIPMENT

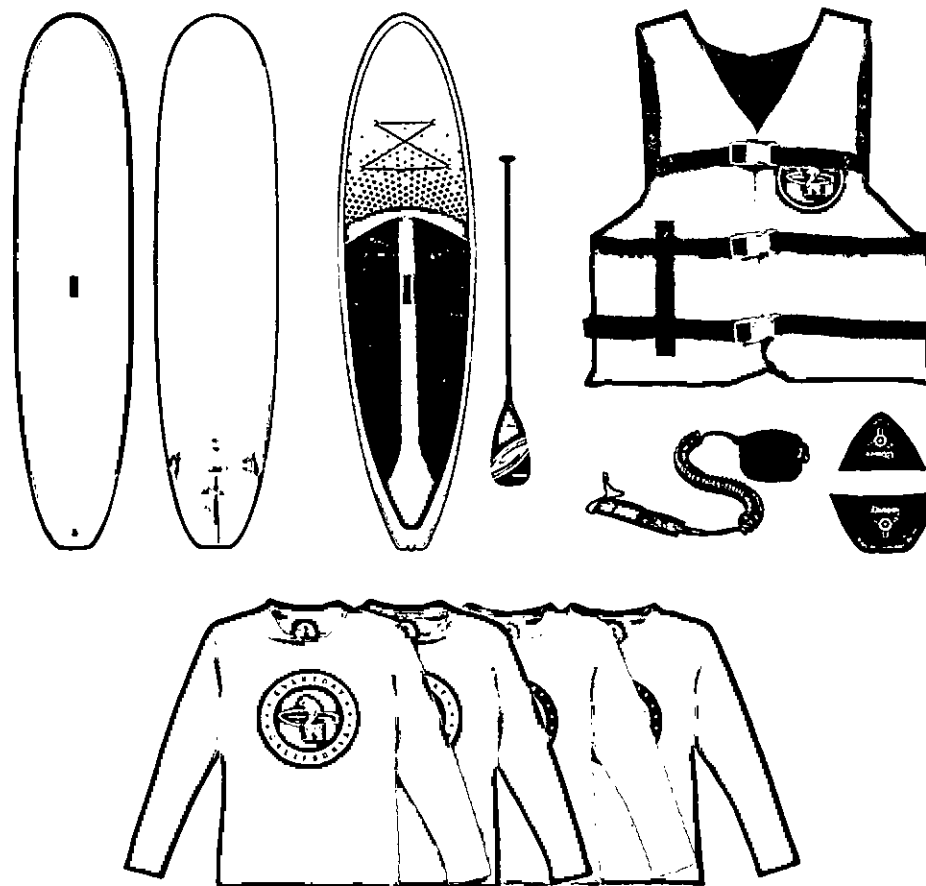
EDCA will provide all of its students with well-functioning equipment. EDCA maintains 6', 7', 8', 9', and 10' soft-top (foam) boards available for all its students participating in both lessons and camps. All boards will have a functioning leash. Life jackets will be provided with SUPs.

If hardtop boards are used by any students or customers, they will all be fitted with a nose and tail guard protection and will also be equipped with a functioning leash.

EDCA utilizes inflatable SUPs with leashes for beginner Standup Paddle boarders. They are proven to be much safer in the surf break and are very buoyant for students who are just starting off. All hard-top SUPs will have a nose and tail guard for protection and will also come with a functioning leash. Standup Paddle Boards that are entering the La Jolla Boat Launch will be given a US Coast Guard approved PFD.

6' - 9' FOAM BOARDS | INFLATABLE SUP | HARD TOP SUP PADDLES | LIFE JACKETS | NOSE + TAIL GUARD PROTECTION | LEASH

In addition to the equipment necessary to surf and/or paddle board, students from EDCA camps and classes will wear a color specific rashguard with the Everyday California logo.



**EXHIBIT D
TO
CONCESSION AGREEMENT**

(LA JOLLA, #11 LA JOLLA SHORES)

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**

(La Jolla, #11 La Jolla Shores)

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

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

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

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

- 3.12. *Continuity of Coverage.* All policies will be in effect on or before the first day of the Term, except "course of construction fire insurance" will be in force on commencement of all authorized construction, and full applicable fire insurance coverage will be effective upon completion of each insurable improvement. The policies will be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, Concessionaire will furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Agreement. Concessionaire will provide proof of continuing insurance at least annually during the Term and otherwise upon City's request. If insurance lapses or is discontinued for any reason, Concessionaire will immediately notify City and will immediately obtain replacement insurance as soon as possible.
- 3.13. *Modification.* To assure protection from and against the kind and extent of risk existing with the Allowed Uses, City, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving Concessionaire thirty (30) days prior written notice. Concessionaire will also obtain any additional insurance required by City for new improvements, changed circumstances, or City's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 3.14. *Accident Reports.* Concessionaire will immediately report to City any accident causing property damage or injury to persons on the Site or otherwise related to the Allowed Uses. Such report will contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 3.15. *Cause of Loss – Special Form Property Insurance.* Concessionaire will obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of Concessionaire's insurable property related to the Allowed Uses of the Site under this Agreement or the Site in an amount to cover 100 percent (100%) of the replacement cost. Concessionaire will deliver a certificate of such insurance to City's Real Estate Assets Department
4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Agreement and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Agreement, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Agreement or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Concessionaire to carry any insurance coverage required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase such required insurance coverage. City shall be entitled to immediate payment from Concessionaire of all premiums and associated reasonable costs paid by City to obtain such insurance coverage. Each amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the

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

**EXHIBIT F
TO
CONCESSION AGREEMENT**

(La Jolla, #11 La Jolla Shores)

CITY STANDARD CONTRACT PROVISIONS

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

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

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

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

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

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

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

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

**EXHIBIT G
TO
CONCESSION AGREEMENT**

(La Jolla, #11 La Jolla Shores)

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