

**Request for Proposals
Surf Instruction Concessions
City of San Diego Beaches**

**Issued: December 11, 2007
Submittal Deadline: January 29, 2008**



**THE CITY OF SAN DIEGO
REQUEST FOR PROPOSALS FOR
SURF INSTRUCTION CONCESSIONS**

I. BACKGROUND

A. Purpose

The City of San Diego (“CITY”) is inviting proposals from qualified persons or companies to operate surf instruction concessions (“Concessions”) on CITY beaches. There are fourteen concession sites (“Sites”) available. The concession sites are currently being operated through May 31, 2008, by Surf Instruction Operations with the exception of Beryl St., Santa Monica and Newport Avenues. The current operators are encouraged to respond to this RFP. Concession Agreements (“Agreements”) will be executed with each of the selected operators (“Concessionaires”) effective June 1, 2008, through May 31, 2013, (“Initial Term”). Renting or selling of beach equipment or other merchandise is not allowed under this Agreement.

Non-profit organizations responding to this Request for Proposals (“RFP”) will be subject to all the requirements herein, including attachments and minimum fee requirements.

B. Description of Operations

1. Concession Locations. There are a total of 14 Sites located in three areas available under this RFP as designated in Exhibits A through C attached. Respondents to this proposal are encouraged to bid on multiple Sites provided that the Criteria for Selection in Section V.B. can be met.
2. Maximum Days and Hours of Operation. Maximum hours of land-based operations are 8:30 a.m. to 5:00 p.m., with water instruction permitted between 9:30 a.m. and 5:00 p.m. All Concessions must be vacated by 5:00 p.m. daily. Operations are permitted seven days a week with the following exceptions:
 - a. Under no circumstances are operations permitted on the 4th of July holiday.
3. Concession Requirements. For the safety and enjoyment of City beachgoers, the City of San Diego’s Lifeguard Services has established the Surf Concession Requirements attached as Exhibit D, which are to be strictly adhered to at all times. These requirements may be amended at any time by the CITY.

C. Form of Agreement

A copy of the Agreement to be executed with the selected proposers is attached as Exhibit F. It is the intent of the CITY that this Agreement be implemented substantially as it is written. However, the CITY reserves the right to negotiate modifications with the selected proposers to the extent deemed necessary by the CITY. The Agreement should be thoroughly read and understood by the proposers prior to the submission of the proposal. Proposals requiring deviations from the provisions of the attached Agreement should state the exact changes and specify alternate language in their proposals. Other factors being equal, the CITY will discount a proposal which requests major or numerous changes that are disadvantageous to the CITY.

D. Responsibility of Proposer

The selected proposers will be required to obtain any other necessary approvals and permits at their sole cost. The award of an Agreement by the CITY is not a waiver of such requirements, which may include business licensing, and others. The Concessionaire may be asked to submit evidence to the Real Estate Assets Department prior to commencing operations that they have obtained all necessary permits and licenses.

E. Tentative Proposal Timeline

Opening Date – Issuance of RFP	December 11, 2007
Optional Pre-Proposal Meeting	January 3, 2008
Final Opportunity to Submit Questions	January 17, 2007
Closing Date for Receipt of Proposals	January 29, 2008
Selection of Proposers	March 2008
Prepare and Execute Agreements	April 2008
City Council Approval	May/June 2008
Agreements Begin	No later than, June 1, 2008

Note: This timeline does not consider unforeseen factors that could impact the timing of this RFP. It is the intent of the CITY to keep proposers informed of changes in the timeline as they occur.

II. PROPOSAL CONTENTS

A. General Requirements

All proposals **must** include, at a minimum, the information specified below. Failure to include this information will seriously detract from a proposal and may be cause for its rejection. The inclusion of any additional information, which will assist in the evaluation, is encouraged. The adequacy, depth, and clarity of the

proposal will influence to a considerable degree its evaluation. The proposal submitted must be complete enough for a selection to be made from the material contained in it alone. Proposers are advised to make their best offer in their proposal.

B. Specific Proposal Contents

1. Consideration. Consideration shall be offered as a percentage of gross income (“Percentage Fee”) against a guaranteed minimum annual fee (“Minimum Fee”). The minimum acceptable bid at each of the Sites (**Exhibit A-C**) is as follows:

MINIMUM VERSES PERCENT RENT

LA JOLLA SHORES	MINIMUM ANNUAL RENT*	PERCENTAGE RENT**
Site 1	Submit Offer	10% gross
Site 2	Submit Offer	10% gross
Site 3	Submit Offer	10% gross
Site 4	Submit Offer	10% gross
PACIFIC BEACH		
Wilber Street	Submit Offer	10% gross
Beryl Street	Submit Offer	10% gross
North of Santa Rita Place	Submit Offer	10% gross
South of Pacific Beach Drive	Submit Offer	10% gross
MISSION/OCEAN BEACH		
Pismo Court	Submit Offer	10% gross
Ostend Court	Submit Offer	10% gross
North of the (South) Mission Beach Lifeguard Tower	Submit Offer	10% gross
South of the (South) Mission Beach Lifeguard Tower	Submit Offer	10% gross
Santa Monica Ave.	Submit Offer	10% gross
Newport Ave.	Submit Offer	10% gross

* Current operators in the above locations shall not pay less than minimum rents received during the period of June 1, 2006, through May 1, 2007.

** Minimum rents in the above locations have ranged from \$5000 - \$22,000 depending upon location. Minimum rents are the annual minimum rents required to be paid in monthly amounts equal to 1/12th of the annual minimum rent due.

*** Percentage rents are a percentage of gross sales as further defined in the Concession Agreement attached as Exhibit F.

Note: The above percentage rents are the minimum requirement. Respondents to the RFP can offer higher minimum and percentage rents.

The annual rent due is the greater of minimum rent or % of gross sales. Minimum rents adjust annually to equal the greater of 80% of the previous year percentage rents or 105% of the previous years minimum rent.

Concession operators will not refer to CITY rent in any advertising as a tax or surcharge.

2. Proposed Agreement Term. The maximum available term is five (5) years.
3. Description of Proposed Operations. For each individual Site(s) in your proposal, submit a detailed outline of the operation proposed to fulfill the requirements of the Agreement (“Operating Plan”). Your Operating Plan(s) should cover the period from June 1, 2008, through September 30, 2008. A schedule of classes, number of students per class, days and hours of operation, and a price list must be included. The Operating Plan(s) should also include a brief summary of the material covered in each class offering. For each class meeting, one interpretive program or activity is required. These programs might include discussions on topics including marine life, coastal preservation, and water safety procedures.
4. Community Services. Briefly describe (less than 150 words) how your operation would benefit the CITY and its residents. Include plans to be implemented under this proposal, as well as any past or current activities conducted by your organization.
5. Preferred Sites. Rank each Site included in your proposal beginning with number one (1) as your top preference. The CITY can not guarantee that a proposer, even if selected, will be awarded any or all of their selected Site(s), but the CITY may instead offer the selected proposer one or more alternate Site(s). If the proposer does not wish to consider a specific Site as a possible alternate, this should be noted in the proposal. A brief rationale for each Site’s rank or, if applicable, exclusion should be provided.
6. Resume or Summary of Proposer’s Experience. The proposal must include a detailed summary of the experience of the proposer. Emphasis should be placed on those areas and qualifications which evidence the capability to effectively manage an operation of this type.

7. References. Include names, addresses, and telephone numbers of business and banking references. One or more references of clients for whom the proposer has recently provided similar services are recommended.
8. Financial Statements. Provide current financial statements listing all assets and liabilities of the proposer, initial available operating capital and its source, and the amount of any borrowed capital proposed for the operation and its source and terms of repayment. Also, include a statement of estimated gross receipts and operating expenses for years 1-3 of the Concession Agreement. **Exhibit E**, Credit Information, must be completed and included as part of the proposal. The CITY will use this information to verify the proposer's creditworthiness. Other financial data may be required as determined by the CITY.
9. Summary of Employees' Qualifications. Provide information regarding the personnel who will participate in carrying out the terms and conditions of the Agreement. In the event an individual has not been selected for a particular position at the time the proposal is submitted, provide a listing of the experience and qualifications that will be utilized in the selection process.
10. Emergency Response Plan. An Emergency Response Plan which sufficiently demonstrates the proposer's preparedness to handle any potential emergencies that might occur in conjunction with implementing this Agreement.

III. PRE-SUBMITTAL CONFERENCE

To provide the prospective proposers the opportunity to ask questions about the Agreement, proposal submittal, or related matters, a pre-submittal conference is scheduled from 1:00 p.m. to 3:00 p.m. on Thursday, January 3, 2008, in the Conference Room on the 4th floor located at 1200 Third Ave., San Diego, CA 92101. All proposers are strongly urged to attend.

IV. PROPOSAL SUBMISSION

A. Submittal of Proposals

Proposals must be received at the address listed below no later than 4:00 p.m., January 29, 2008. Proposals received after that time will not be considered.

B. Delivery of Proposals

The delivery of the proposal to the CITY prior to deadline is solely and strictly the responsibility of the proposer. The CITY will in no way be responsible for delays caused by the United States Postal Service or for delays caused by any other occurrence. Hand or mail deliver to:

CITY of San Diego
Real Estate Assets Department
1200 Third Avenue, Suite 1700
San Diego, CA 92101

Attention: Roy Nail

C. Faithful Performance Deposit

All proposals must include a cashier's check or certified check in an amount equal to two thousand five hundred dollars (\$2,500.00). The check should be payable to the City Treasurer as a faithful performance deposit to assure that, if the proposal is selected by the CITY, the proposer will enter in good faith into an Agreement containing substantially the same terms and conditions as set out in this RFP and in the selected proposal. No personal or company checks will be accepted, and no interest will be paid on deposits.

All performance deposits will be returned to unsuccessful proposers within 30 days of the approval of the selected proposers' agreements. For the selected proposers, the deposit will apply towards the security deposit, or additional security deposit, under the Agreement. Should a selected proposer unilaterally withdraw from Agreement negotiations, the deposit will be forfeited to the CITY.

D. Number of Copies

Proposers must submit one unbound original suitable for reproduction and seven bound copies of their proposal. All materials submitted by proposers become the property of the CITY and may not be returned.

E. Requests for Interpretation or Clarification

No interpretation or clarification of the RFP will be made to any proposer orally. If discrepancies or omissions are found by any prospective proposer, or there is doubt as to the true meaning of any part of the RFP, a written request for clarification or interpretation must be submitted in writing to the proposal delivery address in Section IV.B., or by e-mail to rnail@san Diego.gov. To be given consideration, all requests must be received by 8:00 a.m. on Thursday, January 17, 2008. The responses to questions will be posted on the CITY'S

website at <http://www.sandiego.gov/real-estate-assets/>. It is the responsibility of the proposer to check the CITY'S website for any responses to requests for interpretation or clarification. Failure of any proposer to receive any such addendum shall not relieve the proposer from any obligation contained in this RFP.

V. PROPOSAL EVALUATION

A. Evaluation Process

Prospective proposers should bear in mind the competitive nature of the RFP process and that the CITY will evaluate the proposals as to which ones offer the best advantage to the CITY. The criteria listed below are not necessarily in order of importance, nor are they necessarily weighted equally. The CITY will be the sole judge of the proposals, and its decision is final.

B. Criteria for Selection

Proposals will be evaluated using the following criteria:

1. Responsiveness. The extent to which a proposal clearly addresses the elements of this RFP is a key factor in selection. A thorough, well-written response is essential.
2. Professional Experience. The past experience of the proposer in successfully managing an operation of this type, and the proposer's demonstrated ability to implement the components of this plan will be significant factors in proposal evaluation.
3. Financial Capability. The proposer must exhibit the necessary financial responsibility and strength to successfully carry out the concession operation for the term of the Agreement. The proposer must have the means to adequately staff the proposed Concession operation(s) and comply with all requirements of this Agreement.
4. Safety Standards. The proposer's Emergency Response Plan must sufficiently address any potential emergencies that might occur in connection with implementing this Agreement. Proposer's staff must possess the necessary certifications and be responsible for ensuring that the Concessionaire complies with all requirements included in attached **Exhibit D**, Surf Instruction Requirements.
5. Operating Plans. The proposer's Operating Plan for each Site included in the response to this RFP will be evaluated based on the overall reasonableness of the Plan, the scope of the instruction to be provided, and

the extent to which the Plan(s) comply with the requirements of this proposal.

6. Community Service. The proposer's ability to contribute to the residents of the City of San Diego's enjoyment of CITY beaches will be evaluated based on the overall contribution and Site specific contributions.
7. Consideration. The consideration offered is an important factor in proposal selection; however, proposers are reminded that the CITY will hold the selected proposers to their offers, and proposers are cautioned against offering more than they can realistically afford to pay.

C. Additional Information

The CITY reserves the right to request information from proposers beyond that specified in this Request for Proposals. Proposers may be requested to appear before an Evaluation Committee, although none is scheduled at this time. The proposed five (5) year concession term will require City Council approval. Selected operators are encouraged to attend the City Council meeting relative to approval of each Concession Agreement. However, the CITY may make a selection based on the information contained in the proposals alone. Therefore, proposers are advised to submit thorough, complete proposals.

D. Qualification of Proposal

The RFP does not commit the CITY to award the Agreement or any work under the Agreement. The CITY will not assume any costs incurred in the preparation or submission of a proposal pursuant to this RFP. The CITY reserves the right to accept or reject any or all proposals received as a result of this RFP. The CITY also reserves the right to revise the RFP, including, but not limited to, the submittal deadline. If the CITY revises the RFP, other than revisions or clarifications in accordance with Section IV.E., all RFP holders of record will be notified in writing by the CITY.

It is the policy of the City of San Diego to encourage equal opportunity in its professional service contracts. Toward this end, proposals from small businesses, disabled-owned businesses, women-owned businesses, and operations owned by African-Americans, Native Americans, Asian-Americans, Filipinos and Latinos, and local firms are strongly encouraged. **Operators responding to this proposal are encouraged to joint venture with these firms.** The CITY endeavors to do business with firms sharing the CITY'S commitment to equal opportunity and will not do business with any firm that discriminates on the basis of race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

VI. PUBLIC INFORMATION NOTICE

The CITY holds the names of the proposers and the contents of their proposals in confidence until after the proposal submission deadline has passed and the Agreements have been executed by the City Manager and approved by the City Attorney. At such time, all proposals become public records and will be available in the CITY'S Real Estate Assets Department ("READ") for inspection, except for certain excluded materials which are permanently confidential. These consist of personal financial statements, Credit Information (**Exhibit E**), credit reports, and rating sheets and notes resulting from the evaluation process. Proposers are therefore, requested to submit the required financial statements on separate sheets.

VII. SCHEDULE OF EXHIBITS TO RFP

- A. Northern Area Sites (La Jolla Shores)
- B. Central Area Sites (Pacific Beach)
- C. Southern Area Sites (Mission and Ocean Beaches)
- D. Surf Instruction Concession Requirements
- E. Credit Information
- F. Sample Concession Agreement

EXHIBIT A

Northern Area Sites (La Jolla Shores)



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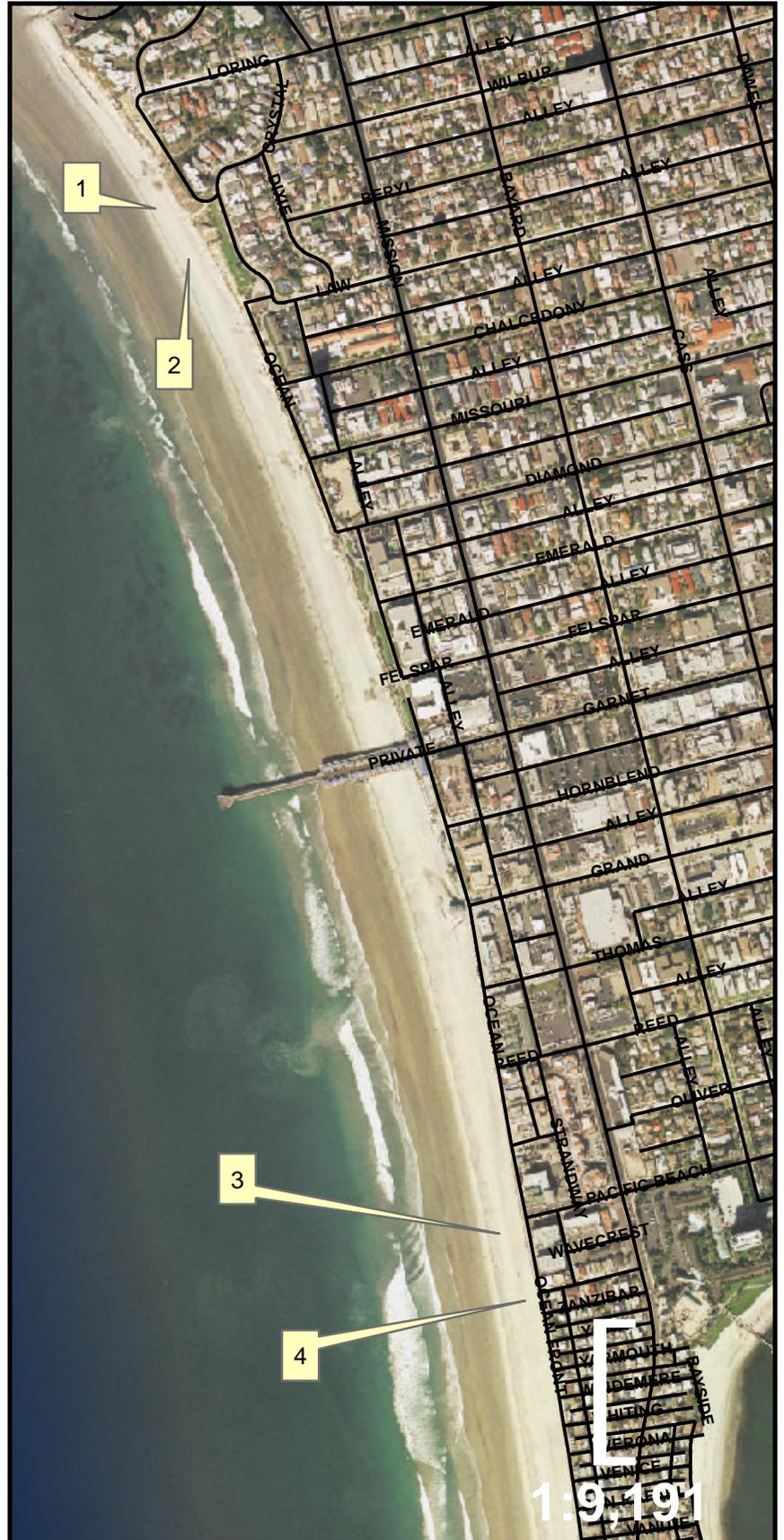
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EXHIBIT B

Central Area Sites (Pacific Beach)



Site 1 Wilbur Street

Site 2 Beryl Street

Site 3 South of Pacific Beach Drive

Site 4 North of Santa Rita Place



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EXHIBIT C

Southern Area Sites (Mission and Ocean Beaches)

- Site 1 Pismo Court
- Site 2 Ostend Court
- Site 3 North of the South Mission Beach Lifeguard Tower
- Site 4 South of the South Mission Beach Lifeguard Tower
- Site 5 Santa Monica Avenue
- Site 6 Newport Avenue



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EXHIBIT D TO CONCESSION AGREEMENT
Surf Concession Requirements

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

- 1. Maximum number of participants/boards on the beach and in the water**
A maximum of 50 students per Site may be on the beach at any one time. Of those fifty students, a maximum of twenty-five students per group may be in the water at any one time.
- 2. Identifying Markers**
Instructors must wear red rashguards with Concessionaire's name. Students must wear a color specific rashguard with Concessionaire's name. Both student and instructor rashguards are to be worn at all times while in the water. The CITY-issued sign with the Concessionaire's name must be clearly posted at each Site, whenever classes are in progress.
- 3. Student to instructor ratios.**
For every five students on the beach or in the water, one instructor must be present. Anytime students are in the water at least one American Red Cross certified instructor must be present and supervising the class.
- 4. Beach Access**
Concessionaire shall not exclude the public from any Site. Beach access must be kept clear at all times. Surfboards must be kept in a position that does not obstruct beach access.
- 5. Concession Site/Location**
Surf Concessionaires must operate from their assigned Site on the beach sand only. 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.
- 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.
- 7. CPR and First Aid**
All surf instructors must take and pass "American Red Cross Lifeguard Training and CPR for the Professional Rescuer. This is a 28.5 hour course that provides training in 'surveillance skills to help you recognize and prevent injuries, rescue skills – in the water and on land, first aid training and professional rescuer CPR...' Additionally, 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."

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 participates' 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. Minimum Age Requirements

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

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 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 Lifeguard are responding.
5. Provide emergency 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

In addition to the requirements under Section IV.H2.c. of this Agreement, 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.

EXHIBIT F TO RFP: SAMPLE CONCESSION AGREEMENT

This Concession Agreement (“Agreement”) is executed by and between the City of San Diego, a municipal corporation (“CITY”), and _____, (“Concessionaire”).

I. Location and Uses

- A. Concession Locations. Concessionaire shall operate surf instruction concessions (“Concessions”) within CITY beach sites (“Sites”) designated by the City of San Diego (“CITY”). The locations of the Sites included under this Agreement are referenced below and more specifically, designated on the attached Exhibit A. However, any of the Sites named below are subject to change at CITY’S discretion.

Area/Beach	Site

Any of the above Sites may be deleted at any time by CITY upon thirty (30) days written notice to Concessionaire. If an alternate site is not available, a proportionate amount of the minimum fixed concession fee (as specified in Section III.B.) shall be waived for the deleted Site.

- B. Permitted Use. This Agreement is granted to Concessionaire for the sole purpose of allowing Concessionaire to operate surf instruction concessions serving the general public under the terms and conditions of this Agreement. No solicitation or marketing is permitted on City beaches. Renting or selling of beach equipment or other merchandise is not allowed under this agreement.
- C. Obligation to Diligently Operate. Concessionaire covenants to operate the Concession for the above-specified purposes and diligently conduct the operations to produce a reasonable and substantial gross income.

II. Term of Agreement

- A. Commencement and Termination. The initial term of this Agreement shall be five (5) years commencing on June 1, 2008, and expiring on May 31, 2013, (“Initial Term”). This Agreement may be terminated at any time by either party upon thirty (30) days prior written notice to the other party. It is mutually agreed that CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by Concessionaire as a result of termination of this Agreement and further, that Concessionaire expressly waives any claim for loss or expense which Concessionaire might incur as a result of termination of this Agreement.

- B. Security Deposit. The Concessionaire shall deliver to CITY with the executed copies of this Agreement, a good faith deposit in the amount of two thousand five hundred dollars (\$2,500.00). If at the end of the term of this Agreement, Concessionaire has performed all of the provisions of the Agreement, the deposit or any remaining balance shall be returned to the Concessionaire without interest. The security deposit may be increased by CITY proportionate to any increase in Minimum Fees.
- C. Holding Over. Any use of the Concession Sites by Concessionaire after the expiration of this Agreement is not permitted. Any extension of the term of the Agreement beyond five years shall require approval of CITY Council.

III. CONSIDERATION

- A. Time and Place of Payment. Beginning on the effective date of this Agreement, Concessionaire shall pay to CITY, monthly in arrears, on or before the last day of the calendar month following the calendar month in which the revenue subject to concession fees was earned the greater of the Minimum Fee or percentage fee pursuant to Section III.B., Minimum Fees. All concession fees must be made payable to "CITY Treasurer" and mailed to the Office of the City Treasurer, City of San Diego, P.O. Box 122289, San Diego, California 92112, or delivered to the Office of the City Treasurer, Civic Center Plaza, 1200 Third Avenue, First Floor, M.S. 51T, San Diego, California 92101.

The place of payment may be changed at any time by the CITY upon thirty (30) days prior written notice to Concessionaire. Mailed payments of the concession fee shall be deemed paid on the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed paid upon actual receipt by the CITY Treasurer. Concessionaire assumes all risk of loss and responsibility for late payment charges if payments are made by mail.

- B. Percentage Fees. Percentage fees will be calculated on a calendar month basis and will consist of ten percent (10.00%) of the gross income resulting from the operations permitted under this Agreement. The City Manager, in his sole discretion, may approve another percentage rate or minimum rate for each other incidental service or operation supplementary to the permitted uses stated in Section I.B., Permitted Use, as may be approved in writing by the City Manager prior to the commencement of any additional service or operation. Provided however, any activity conducted on the premises without the prior written approval of the City Manager shall be subject to the requirements of Section III.F., Unauthorized Use Charge.
- C. Minimum Fees. The annual Minimum Fee established for the first year following the effective date of this Agreement is _____(\$_____), which is _____(\$_____) on a monthly installment basis.

If the Minimum Fee is greater than the percentage fee on a calendar month basis, then (1/12) of the Minimum Fee is required to be paid for that month. Minimum Fees are to be paid in monthly installments on or before the day of the calendar month when percentage rents are due pursuant to Section III.A., Time and Place of Payment. Provided; however, in the event that the combined total percentage fee payments and monthly installments of the Minimum Fee during any Agreement year or exceed the required Minimum Fee for that year, then for the balance of that year, Concessionaire shall discontinue paying monthly installments of the Minimum Fee until the beginning of the next Agreement Year. Provided; further; if in any Agreement Year, Minimum Fees paid plus percentage fees paid exceed the annual minimum fee and also exceed the fee which would have been paid if the percentage fee had been paid on total gross income. The excess over the total fee owed shall be credited against the next payable fee as it becomes due. It is the intent of this provision that Concessionaire shall pay monthly installments of the annual Minimum Fee as a guarantee against the percentage fee requirement and that the greater of the two requirements, minimum or percentage, whichever occurs throughout the term, shall prevail on an annual basis.

- D. Minimum Fee Adjustment. Effective at the beginning of the first day of the 13th, 25th, 37th, and 49th month of this Agreement, the annual Minimum Fee shall be eighty percent (80.00%) of the annual average of actual rents paid in the Initial Term plus any option terms exercised under this Agreement. The annual average shall then be divided by twelve (12) to establish the new monthly Minimum Fee. It is recognized that the adjustments shall be calculated by the CITY upon completion of payments due for the preceding year in order to determine the amount of the Minimum Fee for the option period. Until such calculations are completed, Concessionaire shall continue paying monthly Minimum Fees at the prior rate. Any additional fees determined by the adjustment to be due for the months previously paid at the prior rate shall be paid to the CITY within thirty (30) days following written notice. In no event shall the Minimum Fee Adjustment result in a decrease in the Minimum Fee requirement in effect immediately prior to the adjustment date.
- E. Delinquent Concession Fee. If Concessionaire fails to pay any concession fees when due, Concessionaire will pay, in addition to the unpaid concession fees, a fee of \$25.00. If the fees are still unpaid at the end of the fifteen (15) days, Concessionaire shall pay a fee of \$50.00, which is mutually agreed by the parties to this Agreement to be appropriate to compensate the CITY for loss resulting from concession fee delinquency, including lost interest opportunities, legal costs, and the cost of servicing the delinquent account.
- F. Unauthorized Use Charge. Concessionaire shall pay CITY fifty percent (50.00%) of the gross receipts for any service or use that is not permitted by this Agreement. This payment is subject to the due date provided in this Agreement for minimum guaranteed fees payments and the provision for delinquent

concession fees payments and the provision for delinquent concession fees. The existence of the fifty percent (50.00%) charge in this clause and the payment of this charge or any part of it, do not constitute an authorization for a particular service or use, and does not waive any CITY rights to terminate a service or use or to default Concessionaire for participating in or allowing any unauthorized use.

G. Gross Income. “Gross income” or “gross receipts”, as used in this Agreement shall include all income resulting from the Concession from whatever source derived whether received or to become due. Provided; however, gross income shall not include federal, state, or municipal taxes collected from the consumer (regardless of whether the amount is stated to the consumer as a separate charge) and paid over periodically by Concessionaire to a governmental agency accompanied by a tax return or statement as required by law. Possessory interest taxes or other property taxes shall not be deducted by Concessionaire in computing gross income. Gross income shall not include refund of deposits. The amount of taxes and refunds shall be clearly shown on the books and records of Concessionaire. The percentage concession fees shall be calculated and paid by Concessionaire on the basis of gross income whether the income is received by Concessionaire or by any permittee or licensee, or their agents, and all gross income received by any permittee, licensee, or other party as a result of occupancy or operation of the Site(s) shall be regarded as gross income of Concessionaire for the purpose of calculating the percentage concession fees required to be paid by Concessionaire to CITY, except as may be otherwise specified by or pursuant to this Agreement.

H. Inspection Of Records.

1. Records. Concessionaire shall, at all times during the Agreement 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(s). The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices, class lists, or other documents as necessary to allow CITY to easily determine the gross income. 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 shall be read and recorded at the beginning and end of each business day. In the event of admission charges or concession rents, Concessionaire shall issue serially numbered tickets for such admission or concession fees and shall keep an adequate record of such tickets, as well as a record of unissued tickets. All retail sales and charges may be recorded by a system other than cash registers of other comparable devices provided such a system is approved by the CITY.

2. Financial Statements. Within sixty (60) days after the end of the Initial Term and any subsequent option terms, Concessionaire will, at its expense, submit to CITY a statement in which the total gross receipts and the corresponding amounts of concession percentage fees paid CITY for the year are classified according to the categories of business established for any percentage concession fees and for any other business conducted on or from the Site(s). The statement shall be signed by Concessionaire and Financial Representative of Concessionaire attesting to the accuracy thereof, which shall be legally binding upon Concessionaire.
3. Right to Inspect. All Concessionaire's books of account, records, and supporting documentation, as described under Section III.F.(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(s). The CITY, at its discretion, shall have the right to inspect and audit the business of Concessionaire, its agents, permittees, and licensees operating on, and in connection with, the Site(s) as necessary and appropriate for CITY to determine the amounts of concession fees due CITY in compliance with the requirements of this Agreement. At CITY'S request, Concessionaire shall promptly provide, at Concessionaire's expense, any necessary data to enable CITY to fully comply will 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.
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 \$10,000.00, which ever is less, between the concession fees due as reported and paid by Concessionaire, pursuant to this Agreement and concession fees determined by the audit(s).
 - b. Concessionaire has failed to maintain complete and true books, records, accounts, and supporting documents in strict accordance with this section.

Any underpayment of concession fees less than five percent (5.00%) revealed by the audit may be paid within thirty (30) days written notice from the CITY without penalty, otherwise, Concessionaire shall incur interest charges on the delinquent amount as defined in Section III.C., DELINQUENT CONCESSION FEES. CITY will credit any overpayment against

incoming concession fees. Any overpayment determined after the end of this Agreement will be refunded by CITY within thirty (30) days of confirmation by the City Manager of the audit(s) findings.

- I. Default. Concessionaire's failure to keep complete and accurate records by means of double-entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Agreement, a breach of this Agreement and cause for termination.

IV. GENERAL PROVISIONS

- A. Time Is Of The Essence. Time is of the essence in performance of all the terms covenants, and conditions of this Agreement, and, except as otherwise provided in this Agreement, all of the terms, covenants, and conditions of this Agreement shall apply to benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- B. Assignments. Concessionaire may not assign this Agreement or interest in this Agreement.
- C. Encumbrance. Concessionaire shall not encumber this Agreement by deed of trust, mortgage, chattel mortgage, or other security instrument during the term hereof.
- D. Defaults and Remedies.
 1. Default by Concessionaire. In the event that:
 - a. Concessionaire shall default in the performance or fulfillment of any covenant or condition required by this Agreement to be performed or fulfilled by Concessionaire and shall fail to cure the default within thirty (30) days following written notice from CITY; or if any default is not curable within thirty (30) days, and Concessionaire shall fail to commence to cure the default(s) within said thirty (30) day period and diligently pursue cure to completion;
 - b. Concessionaire shall voluntarily file or have involuntarily filed against it any petition under bankruptcy or insolvency act or law; or
 - c. Concessionaire shall make a general assignment for the benefit of creditors;

then CITY may, at its option, without further notice or demand upon Concessionaire or upon any person claiming rights through

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

2. Abandonment by Concessionaire. Even though Concessionaire has breached the Agreement and abandoned the Concession Site(s), this Agreement shall continue in full force and effect for so long as CITY does not terminate this Agreement, and CITY may enforce all its rights and remedies under this Agreement, including, but not limited to, the right to recover the concession fee as it becomes due, plus damages. For purposes of this section, the following do not constitute a termination of Concessionaire's right to possession or operation:

- a. Acts by CITY of maintenance, preservation, or efforts to negotiate a new Agreement.
- b. The appointment of a receiver upon initiative of CITY to protect CITY'S interest under this Agreement.

E. Damages. Damages which CITY may recover in the event of default under this Agreement include the worth, at the time of the award, of the amount by which the unpaid concession fee for the balance of the term after the date of award or for any shorter period of time specified in this Agreement exceeds the amount of concession fee loss for the same period that the Concessionaire proved could be reasonably avoided. The remedies provided by this section are not exclusive and shall be cumulative to all other rights and remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies possessed by CITY, and nothing contained herein shall be construed so as to defeat any other rights or remedies to which CITY may be entitled.

F. Waiver. The waiver by CITY of any breach by Concessionaire of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of such term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition. The subsequent acceptance of the concession fee by CITY shall not be deemed a waiver of any preceding breach by Concessionaire of any term, covenant, or condition of this Agreement, regardless of CITY's knowledge of such preceding breach at the time of acceptance of

concession fee. Failure on the part of CITY to require or exact full and complete compliance with any of the covenants, conditions, or terms of this Agreement shall not be constructed as in any manner changing the terms of this Agreement and shall not prevent the CITY from enforcing any provision hereof.

- G. Indemnity. Concessionaire agrees to defend, indemnify, protect, and hold the CITY, its agents, officers, and employees harmless from and against all claims asserted or liability established for damages or injuries to any person or property, including injury to Concessionaire's employees, invitees, guests, agents, or officers, which arise out of or are in any manner directly or indirectly connected with the work and operations to be performed under this Agreement, and all expenses of investigating and defending against same, provided; however, that Concessionaire's duty to indemnify and hold harmless shall not include any claims or liability arising from the established active negligence, sole negligence, or sole willful misconduct of the CITY, its agents, officers, or employees.
- H. Insurance. On or before the effective date, PERMITTEE shall deliver to CITY a current certificate of insurance for a Commercial General Liability policy providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence.
1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
 2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY. The policies shall be kept in force for the duration of the Term and any extended use. The certificate(s) of insurance shall be filed with CITY'S Real Estate Assets Department upon execution of this Permit.
 3. Qualified Insurer(s): All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
 4. Deductibles/Retentions: All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.

5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit.
6. Modification. To assure protection from and against the kind and extent of risk existing on the Permit Area, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, in order to meet the requirements of this Permit.
7. Accident Reports. PERMITTEE shall report to CITY any accident causing property damage or injury to persons on the Permit Area. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
8. All-Risk Property Insurance. PERMITTEE shall obtain and maintain, at its sole cost, All-Risk Property insurance on all insurable property on the Permit Area in an amount to cover 100 percent (100%) of the replacement cost. PERMITTEE shall deliver to CITY a certificate of such insurance.
9. Failure to Comply. If Concessionaire fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. Concessionaire shall reimburse CITY for the premiums paid with interest from the effective date of coverage at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. Reimbursement and interest shall be paid by Concessionaire on the first (1st) day of the month following the notice of payment by the CITY.

Notwithstanding the preceding provisions of this Subsection (d), if Concessionaire fails or refuses to take out or maintain insurance, CITY has the right to declare this Agreement in default without further notice to Concessionaire, and CITY shall be entitled to exercise all legal remedies in the event of such default.

- I. Waste, Damage, or Destruction. Concessionaire agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Concession Site(s) clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If Concession Site(s) shall be damaged by any cause which puts the Concession Site(s) into a condition which is not decent safe, healthy, and sanitary, Concessionaire agrees to

make or cause to be made full repair of said damage and to restore the Concession Site(s) to the condition which existed prior to such damage.

- J. Security Deposit. A security deposit shall be paid to CITY by Concessionaire in the sum of twenty percent (20%) of the annual Minimum Fee (\$) on or before the Commencement Date of this Agreement. All or any portion of the principal sum shall be available unconditionally to CITY for payment of delinquent concession fees, for correcting any default or breach of this Agreement by Concessionaire, Concessionaire's successors or assignees, or for payment of expenses incurred by CITY as a result of Concessionaire's failure to faithfully perform all terms, covenants, and conditions of this Agreement.
- K. Improvements and Alterations. Concessionaire shall make no improvements or alterations to the Concession or other CITY owned property without prior approval of the CITY Manager.
- L. Signs. Only official City of San Diego signs with official seal may be posted at each Site. No other sign of any kind shall be installed at any Site without prior written approval of CITY. CITY approval for any signs, including the CITY-issued signs, may be revoked at any time without liability to the CITY.
- M. 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.
- N. Taxes. Concessionaire agrees to pay, before delinquency, all taxes, assessments and fees assessed or levied upon Concessionaire or the Concession, including land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Concessionaire, or levied by reason of the business or other Concessionaire activities related to the operation of the Concession, including licenses or permits. Concessionaire recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Concessionaire may be subject to the payment of taxes levied on such interest, and that Concessionaire further agrees that payment for such taxes, rebates, and assessments will not reduce any concession fee due CITY.
- O. Nondiscrimination. Concessionaire agrees not to discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in Concessionaire's use of the Concession, including but not limited to

the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.

- P. 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 any other applicable federal and state laws and regulations hereafter enacted. Concessionaire will not discriminate against any employee or applicant based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Concessionaire will submit a Workforce Report and an Equal Opportunity Plan which set forth the actions that Concessionaire will take to achieve the CITY'S goals for the employment of African-Americans, American Indians, Asians, Filipinos, Latinos, women, and people with disabilities. Further, Concessionaire will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor. Concessionaire understands that failure to comply with the requirements listed above and/or submitting false information in response to these requirements may result in termination of this Agreement and debarment from participating in CITY contract for a period of not less than one (1) year.
- Q. Legal Proceedings. Concessionaire agrees that should it become necessary for CITY to commence legal proceedings to collect concession fees, recover possession, or enforce any other provision of this Agreement, the prevailing party will be entitled to legal costs in connection therewith, including reasonable attorneys' fees, as determined by the court. The parties agree that the laws of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine all rights and obligations hereunder. Personal services either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this Agreement. The parties agree that venue for any action arising out of this Agreement shall be San Diego, California.
- R. Entire Understanding. This Agreement contains the entire understanding of the parties. Concessionaire, by signing this Agreement, agrees that there is no other written or oral understanding between the parties with respect to the Concession. Each party has relied on its own examination of the Concession Sites, advice from its attorneys, and the warranties, representations, and covenants of the Agreement itself. Each of the parties in this Agreement agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Agreement.

The failure or refusal of any party to read the Agreement or other documents, inspect the Concession Sites, and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Agreement will be valid unless it is in writing and signed by all parties.

- S. Compliance With State And Local Laws And Regulations. Concessionaire shall at all times in the construction, maintenance, occupancy, and operation of the Concession comply with all applicable laws and regulations at Concessionaire’s sole cost and expense. In addition, Concessionaire shall comply with any and all notices issued by the CITY Manager or his authorized representative under the authority of any such laws, statutes, ordinances and regulations of CITY, county, state, and federal governments related to offsite storage and handling of equipment and personal property used to carry out the obligations of this Agreement.

- T. City Approval and Consent. The approval or consent of CITY, wherever required in this Agreement, shall mean the written approval or consent of the CITY Manager, or his designee, unless otherwise specified.

- U. Administration and Notices. Control and administration of this Agreement is under the jurisdiction of the CITY Manager of CITY as to CITY’s interest herein, and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law to be given CITY may be served personally or by certified letter deposited in the United States mail, postage pre-paid and addressed to:

City Manager
 Real Estate Assets Department
 Attention: Real Estate Assets Director
 City Administration Building
 202 C Street, M.S. 9B
 San Diego, CA 92101-4155

Any notice or notices provided by this Agreement or by law to be given Concessionaire may be served personally or by certified letter deposited in the United States mail, postage pre-paid, and addressed to Concessionaire at:

- V. San Diego’s Strong Mayor Form of Governance. All references to “City Manager” in the Agreement and all subsequent Amendments to the Agreement shall be deemed to refer to “Mayor”. This section shall remain in effect for the duration the City operates under the Mayor-Council (commonly referred to as “Strong Mayor”) form of governance pursuant to Article XV of the City of San Diego Charter.

V. SPECIAL PROVISIONS

- A. Operating Plan. The Operating Plan(s) for June 2008 through May 2009 submitted with the Concessionaire's response to the CITY'S Request for Proposal, shall be revised by Concessionaire, if required by CITY to meet CITY'S approval, and the final CITY approved Plan(s) shall be incorporated into this Agreement as Exhibit B. Beginning June 1, 2009, and for every 12 months thereafter, the Concessionaire shall provide the CITY with an Operating Plan for the coming quarter for the CITY'S approval. All Operating Plans submitted to the CITY should be consistent with the format and content of the Plans included as Exhibit B. CITY shall have the right to approve or disapprove the proposed plan. Once approved, Concessionaire shall not make any changes to the Plan without prior written approval of CITY. At all times, the Concessionaire shall ensure that all operations permitted under this Agreement comply with the Surf Instruction Requirements incorporated herein as Exhibit C.
- B. Restricted Events. Unless otherwise authorized by the CITY Manager, Concessionaire shall have no rights within certain areas of its Concession Sites or designated portions thereof during days in which special events are scheduled by CITY in these areas. CITY shall give Concessionaire advance written notice of any such special events.
- C. Exclusiveness of Agreement and Unauthorized Vending. In addition to special events described in Section V.(2), CITY may, during the term of this Agreement, enter into agreements with other Concessionaires to provide surf instructions during times not scheduled for operations in the approved Operating Plan(s) at the Sites permitted in this Agreement. However, CITY, by granting this Agreement to Concessionaire, makes no warranty that the Sites shall be free of unauthorized vending or that any specific level of police or lifeguard enforcement against such activities shall be maintained.
- D. Concession Sites. On each Site included in this Agreement, Concessionaire shall erect no improvements except one shade structure no greater than twenty (20) feet by twenty (20) feet or, no more than two shade structures no greater than ten (10) feet by ten (10) feet in size, or as shall, in the opinion of the CITY be needed to adequately serve the public. CITY reserves the right to request that the Concessionaire modify the dimensions of the structure. The Sites must be designed and maintained so as to present a neat and attractive appearance to the satisfaction of the CITY. Any items or improvements brought on the Sites by the Concessionaire must be approved by CITY and shall not remain on location after permitted hours of operation, unless prior approval of CITY is obtained. If in the opinion of CITY, the number of Sites within any Concession covered under this Agreement at any time falls short of or exceeds the number of Sites needed to adequately serve the public, Concessionaire shall, without liability to the CITY, upon receipt of notice from CITY, adjust the number of Sites to the number specified by CITY as adequate to serve the public. Until such time as CITY

requires Concessionaire, or agrees to a request from Concessionaire, to increase or decrease the number of Sites Concessionaire shall operate no more and no fewer than the Sites designated in this Agreement. At each Site, Concessionaire shall occupy no more than two and no less than one area of the dimensions specified herein.

- E. Maintenance of Sites. Concessionaire agrees not to commit or allow to be committed any waste or injury or any public or private nuisance, to keep the Sites clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in or about said spaces to the satisfaction of CITY and at Concessionaire's sole cost. All Sites must be cleaned up nightly by Concessionaire or more often, as required.

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

VI. SIGNATURE PAGE

This Agreement is executed by CITY and by CONCESSIONAIRE, acting by and through its lawfully authorized officers.

Approved By:

CITY OF SAN DIEGO

Date _____

James F. Barwick, Director
Real Estate Assets Department

CONCESSIONAIRE

Date _____

Business Name: _____

Signature: _____

Name: _____

Title: _____

APPROVED as to form and legality this ____ day of _____, 2007.

Michael G. Aguirre, City Attorney

By: _____

Deputy CITY Attorney

12/6/07

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Exhibit A to Concession Agreement
Designated Sites

Exhibit B to Concession Agreement
Operating Plan