

SURF SCHOOL LICENSE AGREEMENT

June THIS CONCESSION LICENSE AGREEMENT, made and entered into as of the 18th day of ~~January~~, 2019 ("Effective Date"), by and between the City of Long Beach, a political subdivision of the State of New York, hereinafter referred to as the "City", and Surf2live, Inc., a New York Corporation whose principal place of business is 830 East Chester Street, Long Beach, New York hereinafter referred to as the "Licensee".

This License Agreement is being entered into under the authority conferred to the City Manager of the City of Long Beach by City Council Resolution 86/2014, annexed hereto as Exhibit A

WITNESSETH:

WHEREAS, the City has previously determined that it has a need for Surf School Services, as defined herein, at the Ocean Beach Park, a City operated park facility whose boundaries are defined in the City of Long Beach City Charter and the City of Long Beach Code of Ordinances; and

WHEREAS, the City, after soliciting competitive proposals for such services pursuant to a Request for Proposal ("RFP"), has accepted the proposal of the Licensee; and

WHEREAS, Licensee has represented that it is able to satisfactorily provide the services according to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above and mutual covenants contained herein, the parties agree as follows:

1. Definitions:

- a) "Contract Documents" shall mean the following documents which are incorporated herein by reference with this Agreement:
 - (i) City's Request for Proposal, addenda and attachments issued as, as maintained by its Purchasing Department and annexed hereto as Exhibit B as well as the City Council Resolution; To avoid ambiguity, to the extent there are any terms in the City's Request for Proposal or City Council Resolution that conflict with the terms herein, the terms and conditions of this Agreement shall prevail.
 - (ii) Licensee's Certificate of Insurance;
 - (iii) Licensee's Proposal, amendments and revisions as maintained by the Purchasing Department and incorporated by reference herein and made a part hereto.
 - (iv) Licensee's Surf School License Agreement with the City, dated May 18, 2017.

- b) "Surf School" shall be defined as any person, business or other entity which, for compensation, teaches individuals and groups how to board surf, body surf, boogie board, kayak surf, windsurf, kite surf, stand up paddle or perform any other ocean sport entailing the use of sport-related equipment such as, but not limited to, boards, paddles or boats. The foregoing shall include rental of surf equipment.
- c) "Contract Year" shall mean each 12 month period during the term of this Agreement with the first Contract Year commencing on May 1, 2019.
- d) "Facilities" shall mean the location(s) utilized by the Licensee, which are at the intersection of Pacific Beach and Ocean Beach Park, in the vicinity of the Pacific Boulevard Container located at the aforementioned locations. Licensee must release and hold harmless the City of Long Beach for any issue associated with maintenance of the aforementioned container and must comply with all federal, state, and local rules, regulations, laws and/or ordinances.

2. Services to be Performed:

The Licensee hereby agrees to provide the City with Surf School services at the intersection of Pacific Boulevard and the Ocean Beach Park in accordance with the Minimum Operating Standards and as provided in the Contract Documents. In the event that the ocean at the aforementioned location is excessively turbulent, the licensee may use the area to the east of Pacific Beach, between the jetties and the swim line. All of the foregoing is subject to approval by the Chief of Lifeguards at his sole discretion.

The Licensee is not authorized to provide any other services of any type not expressly authorized herein without the express written authorization of the City.

3. Term:

The Term shall consist of five (5) Ocean Beach Park seasons from October 1, 2019. The City may, at its sole discretion, have an option to extend Licensee's license under this Agreement for 1 (1) additional five (5) year term at its sole discretion, pursuant to City Council Resolution 86/2014. Should the Licensee be desirous of extending its terms past the 2024 Ocean Beach Park Season, the Licensee must express same in writing to the City at least five (5) months prior to the expiration of this Agreement.

4. Compensation:

As compensation for the privilege of providing Surf School Services to the City as described herein for each Contract Year, the Licensee shall pay the City the following annual fee:

2020: \$3,500

2021: \$3,500

2022: \$3,500

2023: \$3,500

2024: \$3,500

Payment shall be made annually on or before May 1 of the calendar year throughout the Term of this Agreement (the "Due Date"), with the first payment due on May 1, 2020. If payments are not received within ten (10) calendar days of the Due Date, then the City may terminate this Agreement and/or begin procedures to pursue any remedies as provided in this Agreement or by law. The annual payments shall be made payable to "City of Long Beach" and sent to Office of the Comptroller, City of Long Beach, 1 West Chester Street, Long Beach, New York 11561.

The City and Licensee shall negotiate the annual fee for any extension term at the time the City elects to exercise its option to renew, in the City's sole discretion.

5. Time of Service:

Licensee may provide Surf School Services at Pacific Beach and the Ocean Beach Park at all times when the Ocean Beach Park is open for business and may provide surf school services seven days a week, year round, from dusk to dawn. The foregoing permissive schedule shall not override any directive from a lifeguard, police officer, or any other City Employee, as determined in the sole discretion of the City. In the event of inclement weather or unsafe water conditions and the Ocean Beach Park remaining open, Licensee may cease operations until the weather or unsafe water conditions shall improve in its reasonable discretion. The Licensee shall provide paddle boarding instruction and equipment rental at the National Boulevard Boat Ramp at any time when it is open for business providing Surf School Services at Long Beach Boulevard.

6. License for Facilities:

The City hereby grants to the Licensee, for the term of the Agreement the right, privilege and permission to provide Surf School Services at Pacific Beach and the Ocean Beach Park. These rights and privileges are subject to the following:

- a) This Agreement is made on the express condition that the Facilities shall be used only in conformance with the applicable laws and ordinances. All rights of the Licensee hereunder may be terminated by the City, effective upon receipt of written notice in the event that any other use is made thereof.
- b) The City provides, and the Licensee accepts, the Facilities "as is"
- c) Any and all construction, alterations, or additions, and/or all equipment used pursuant to this Agreement, shall meet all applicable federal, state, county and City laws and local laws. The Licensee is responsible for applying for, obtaining, and paying all costs of any required permits. The Licensee shall pay for all charges for labor, services and materials used in connection with any improvements or repairs to the Facilities undertaken by the Licensee.

- d) The Licensee shall not allow activities which are prohibited in all other City owned land under the provisions of federal, state, county or City laws, rules, regulations or ordinances.
- e) The Licensee shall be responsible for providing staff to clean and maintain the Facilities.
- f) City shall not be liable in any manner for damages to Licensee's business and/or inventory, or for any other claim by Licensee, resulting from any interruption in services pursuant to this Licensing Agreement.
- g) Licensee shall be responsible for supplying and paying for all utility services needed to perform under this Agreement, including but not limited to electricity, gas, water, and sanitation pick-up. If such charges are not paid, they may be paid by the City and billed to the Licensee, and shall be due upon the billing and be collectible.
- h) All property of any kind that may be within the Facilities during the continuance of the Agreement shall be at the sole risk of Licensee, and City shall not be liable to Licensee or any other person for any injury, loss or damage to property or to any person arising out of Licensee's activity at the Facilities.
- i) Licensee agrees that any signs or advertising utilized at the Facilities or in marketing Surf School Services must have prior written approval from the City which shall not be unreasonably withheld. During surf school hours of operation, Licensee may display a banner on the North side of the bathrooms located at Pacific Boulevard and the Ocean Beach Park, facing the street. Licensee agrees to remove said banner whenever the surf school is not operating.
- j) Licensee agrees to maintain a conspicuously posted price list for services provided at the Facilities
- k) Licensee agrees to conform with such other reasonable rules and other requirements which may be imposed by the City from time to time, in its sole discretion
- l) Licensee hereby agrees that:
 - (i) no activity will be conducted in the Ocean Beach Park that will produce any hazardous substance (the "Permitted Activities") provided. Said Permitted Activities shall be conducted in accordance with all applicable laws and shall be approved in advance, in writing, by the City.
 - (ii) no portion of the Facilities will be used as a landfill or a dump.
 - (ii) Licensee will not install any underground tanks of any type.

- (iv) Licensee will not allow any surface or subsurface conditions to come into existence that constitute, or with the passage of time may constitute, a public or private nuisance.
 - (v) Licensee will not permit any hazardous substances to be brought onto the Park property and if so brought thereon, Contractor shall immediately remove same with proper disposal and all required clean-up procedures shall be diligently undertaken pursuant to all applicable laws.
- m) All Surf School Services must be conducted in accordance with highest recommended industry standards
- n) All persons accessing the Ocean Beach Park, including those persons attending any Surf School, are required purchase and possess a valid Ocean Beach Park pass
- o) All Surf School staff, employees, students and clients must, at all times, obey the direction and commands of the Long Beach Lifeguards
- p) The Surf School shall not interfere with any other beach user or enjoy exclusive use rights over any part of the Ocean Beach Park

7. Amendment of the Contract:

This Agreement may be amended only by mutual written consent of the parties.

8. Assignment/Subcontracting:

The Licensee shall provide all services required by this Agreement. No assignment or subcontracting shall be allowed without the prior written consent of the City, at the City's sole discretion. In the event of a corporate acquisition and/or merger, the Licensee shall provide written notice to the City within thirty (30) business days of Licensee's notice of such action or upon the occurrence of said action, whichever occurs first. The City shall have the right to terminate this Agreement at its sole discretion.

9. Termination and or Cancellation:

Failure of the Licensee to comply with any of the provisions of this Agreement, including the terms and conditions of the Request for Proposal, shall be considered a material breach of contract and shall be cause for immediate termination of the Agreement at the sole discretion of the City.

10. Permits / Licenses:

Licensee must secure and maintain any and all permits and licenses to provide services pursuant to this Agreement. Contractor shall comply with all laws, regulations, and ordinances, whether state, local, or federal concerning its operation.

11. Minimum Insurance Requirements:

LICENSEE shall procure, pay for and maintain at a minimum the following insurance coverages during the term of the LICENSE AGREEMENT, **giving evidence of same to the City of Long Beach, on the form of Certificates of Insurance, copies of the General Liability Declaration**

Page and copy of the Additional Insured Endorsement, providing 30 days' notice of cancellation, non-renewal or material change. New York State licensed carrier is preferred; any non-licensed carriers will be accepted at the Municipalities discretion. The insurance carrier must have an A.M. Best Rating of at least A- IX. All subcontractors must adhere to the same insurance requirements.

a. COMMERCIAL GENERAL LIABILITY

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|--------------------|--|-------------|
| Coverage | Occurrence – 1988 ISO or equivalent | |
| Limits | General Aggregate | \$2,000,000 |
| | Products-Comp/Ops Aggregate | \$1,000,000 |
| | Personal & Advertising. Injury | \$1,000,000 |
| | Each Occurrence | \$1,000,000 |
| | Fire Legal (Any one Fire) | \$ 100,000 |
| | Medical Exp. (Any one Person) | \$ 1,000 |
| Additional Insured | City of Long Beach and all appointed and elected officials, employees and volunteers Using ISO form CG2026 or equivalent | |
| Mandatory | Contractual Liability extending the Indemnification and Hold Harmless | |

b. UMBRELLA-EXCESS LIABILITY

| | |
|--------------------|--|
| Coverage | Umbrella Form or Excess following form of primary General Liability |
| Minimum Limit | \$5,000,000 |
| Additional Insured | City of Long Beach and all appointed and elected officials, employees and volunteers |

12. Defense and Indemnification:

To the fullest extent permitted by law, the Licensee shall (1) immediately defend and (2) indemnify the City, and its councilmembers, officers, and employees from and against all liabilities, regardless of nature or type that arise out of, pertain to, or relate to the "Services to be Performed" as defined in this Agreement, unless arising out of the City's gross negligence. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

Additionally, Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, and employees, immediately upon tender to Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Licensee are responsible for the claim does not relieve Licensee from its separate and distinct

obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. In order for Licensee to be relieved of the duty to defend, there must be no possible factual or legal basis on which Licensee's duty to indemnify under any provision of the this indemnity agreement could be held to attach.

13. Governing Law:

The laws of the State of New York shall govern this Agreement.

14. Independent Contractor Status:

The Licensee is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of City . Licensee acknowledges that it is responsible for complying all laws and regulations relating thereto. Failure to comply with the above provisions shall be considered a material breach and shall be grounds for immediate termination of the Agreement, at the discretion of the City.

15. No Presumption Against Drafter:

The Parties herein acknowledge that they have read this Agreement, have had the opportunity to review it with an attorney of their respective choice, and have agreed to all its terms. In the event an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Agreement

16. Severability:

The terms and conditions of this agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the agreement impossible to perform.

17. Notice:

Any notice required or permitted to be given hereunder shall be delivered personally or sent by mail with postage pre-paid to the following addresses or to such other places as may be designated by the parties hereto from time to time.


For the Licensee:

Surf2live, Inc.
830 East Chester Street
Long Beach, New York 11561

For the City:
City of Long Beach
Attn: Corporation Counsel
1 West Chester Street
Long Beach, New York 11561

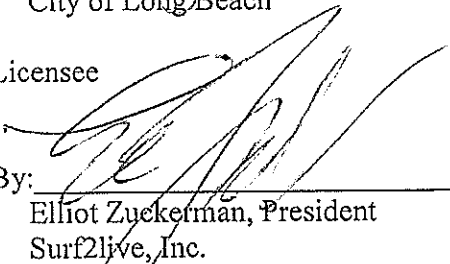
IN WITNESS WHEREOF the parties herein have executed this Surf School License Agreement for Surf School Services pursuant to authority conferred by City Council Resolution 86/2014 as of the day and year first written above.

City of Long Beach

By: 
Robert Agostisi, Acting City Manager
City of Long Beach

Date: 6/19/19


Licensee

By: 
Elliot Zuckerman, President
Surf2live, Inc.

Date: 6/12/19

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this 16th day of June, in the year 2019, before me personally came **Elliot Zuckerman**, to me known, who, being by me duly sworn did depose and say that he/she has a principal place of business at 830 East Chester Street, Long Beach, New York; that he/she is the President of Surf2live, Inc., the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.



Notary Public

GREGORY KALNITSKY
NOTARY PUBLIC-STATE OF NEW YORK
No. 02KA6306137
Qualified In Nassau County
My Commission Expires June 16, 2022

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

On this ____ day of June, in the year 2019, before me personally came Robert Agostisi, to me known, who, being by me duly sworn did depose and say that maintains a principal place of business at 1 West Chester Street, Long Beach, New York; that he/she is the Acting City Manager of the City of Long Beach, the municipal corporation described in and which executed the above instrument; and that he/she signed his/her name hereto.

Notary Public

June 17, 2014

Item No. 3
Resolution No. 86/14

The following Resolution was moved by Ms. Goggin
and seconded by Ms. Adelson :

Resolution Authorizing the City Manager to Grant Licenses
for the Operation of Ocean Surfing, Open Water Safety Instruction
and Paddle Boarding Programs.

WHEREAS, after due advertising therefore, proposals were received in the Office of the City Purchasing Agent on Wednesday, June 11, 2014 at 11:00 a.m. for agreements with the City of Long Beach in order to provide for the operation of ocean surfing and open water safety instruction at Pacific Boulevard on the Ocean Beach Park and at Long Beach Boulevard on the Ocean Beach Park and for the operation of paddle boarding instruction and equipment rental at the National Boulevard Boat Ramp; and

WHEREAS, these activities will enhance the recreational and educational water amenities available to both children and adults; and

WHEREAS, all persons accessing the Ocean Beach Park are required to have a valid Ocean Beach Park pass; and

WHEREAS, Surf 2Live, Inc., 830 East Chester Street, Long Beach, New York 11561 will provide their services for surfing and water safety instruction at Pacific Beach at an annual rate of \$3,200.00 for a period of five years, with an annual increase of \$100, plus sanitation fees to be paid to the City and provide liability insurance indemnifying the City of Long Beach; and

WHEREAS, Skudin Surf, Inc., 218 East Park Avenue, Long Beach, New York 11561 will provide their services for surfing and water safety instruction at Long Beach Boulevard and paddle boarding instruction and equipment rental at the National Boulevard Boat Ramp at an annual rate of \$6,000.00 for a period of five years, with an annual increase of \$200, plus sanitation fees to be paid to the City and provide liability insurance indemnifying the City of Long Beach;

NOW, THEREFORE, be it

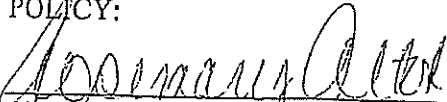
RESOLVED, by the City Council of the City of Long Beach, New York that the City Manager is hereby authorized to grant licenses to Surf2Live, Inc. at Pacific Boulevard for surfing and open water safety instruction at the Ocean Beach Park and Skudin Surf, Inc. at Long Beach Boulevard for surfing and open water safety instruction at the Ocean Beach Park and Paddle Boarding at the National Boulevard Boat Ramp, beginning October 1, 2014 for a period of five years, with the option to renew for two additional five-year terms; and be it further

RESOLVED, that said agreements shall contain such other terms, conditions and provisions as the City Manager and Corporation Counsel shall deem necessary and proper.

June 17, 2014

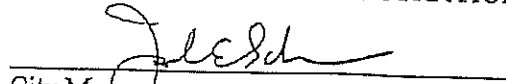
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Item No. 3
Resolution No. 86/14

APPROVED/ADHERES TO PURCHASING
POLICY:




City Purchasing Agent

APPROVED AS TO ADMINISTRATION:



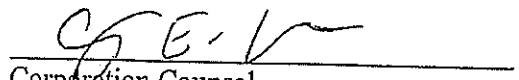
City Manager

APPROVED AS TO FUNDS:



City Comptroller

APPROVED AS TO FORM & LEGALITY:



Corporation Counsel

VOTING:

Council Member Adelson - AYE
Council Member Eramo - AYE
Council Member Goggin - AYE
Council Member Torres - RECUSED
President Mandel - AYE