



City of Manhattan Beach

Parks & Recreation

Phone: (310) 802-5448
FAX: (310) 802-5051
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LICENSE AGREEMENT BETWEEN NIKAU KAI WATERMAN SHOP, INC. AND THE CITY OF MANHATTAN BEACH FOR USE OF CITY PROPERTY TO PROVIDE BEACH WELCOME CENTER AND BEACH EQUIPMENT RENTALS.

THIS AGREEMENT is made and entered into on this day of _____
2015 ("Effective Date") by and between the City of Manhattan Beach, a
municipal corporation ("City") and Nikau Kai Waterman Shop, Inc. a California
corporation ("Licensee") (collectively, the "Parties").

RECITALS

A. Licensee wishes to provide Beach Welcome Center and Beach Equipment Rentals and Retail (Exhibit A) at the sand lot south of the lower south pier parking lot in the City of Manhattan Beach. (Exhibit B).

B. City desires to allow Licensee to use City property to rent beach activity equipment pursuant to the terms stated in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein, the Parties agree as follows:

Section 1. Premises. City hereby grants Licensee a nonexclusive license to use the sand lot south of the lower south pier parking lot in the City, as indicated in Exhibit A ("Premises") for the purposes stated in this Agreement in exchange for a portion of the gross receipts generated by the rentals provided at the Premises.

Section 2. Term of Agreement. This Agreement shall commence on the Effective Date and shall terminate on September 30, 2016 unless sooner terminated by City.

Section 3. Payment. For the rights granted hereunder, Licensee shall pay City 15% of the monthly gross receipts from rental activities held at the Premises, to be paid to City on a monthly basis ("License Fee") no later than the 15th of each month. Such License Fee shall be separate from and supplemental to any amount owed to the

City for any other license or permit, including a business license. Contractor shall submit an annual gross receipts report to City by December 15, 2016.

Section 4. City's Obligation. City's sole obligation is to grant Licensee the license stated in Section 1 of this Agreement. City shall not be liable for any injuries or damages related to the use of Premises by Licensee, or Licensee's clients or invitees, or any damage or injury related to the use of any paddle boards rented by Licensee.

Section 5. Use of Premises.

(a) Licensee shall use the Premises only for the purpose of providing beach activity equipment concessions (Attachment B).

(b) Licensee shall not damage the Premises. Licensee shall maintain the Premises in a good, safe, neat, and sanitary condition to the satisfaction of the City.

(c) Licensee shall not use the Premises for any immoral or unlawful purpose, and shall comply with all Local, State, and Federal laws and regulations.

(d) Licensee shall leave open an emergency access lane at all times.

Section 6. Insurance.

(a) Licensee shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$2,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by Contractor.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by Contractor in performing the Scope of Work required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.

(c) Licensee agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Licensee's expense, the premium thereon.

(d) At all times during the term of this Agreement, Licensee shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. Licensee shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(e) The insurance provided by Licensee shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(f) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Licensee shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Contractor shall procure a bond guaranteeing payment of losses and expenses.

Section 7. Indemnification. Licensee shall defend, indemnify, and hold City, and its elected officials, officers, agents and employees free and harmless from any claim, liability or financial loss (including, without limitation, attorneys' fees and costs), injuries to property or persons (including without limitation, attorneys' fees and costs) arising out of any acts or omissions of Licensee, its officials, officers, employees or agents in connection with the performance of this Agreement or the use of the Premises, except for such claim, liability or financial loss or damage arising from the gross negligence, sole negligence, or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Licensee shall defend City, with counsel of City's choice, at Licensee's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Licensee shall reimburse City for any and all legal expenses and costs incurred by City in connection therewith or in enforcing the indemnity herein provided. Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Licensee or City. All duties of Licensee under this Section shall survive termination of this Agreement.

Section 8. Audit.

(a) Licensee shall maintain accurate books and records in connection with the amount of gross receipts paid to City, including the basis for such amount, for a period of at least three years following the conclusion of each agreement year. City shall have the right, upon reasonable notice being given to Licensee, to review and audit Licensee's records.

(b) If upon independent examination of Licensee's records and the data provided to City, City discovers that the amount due to City pursuant to this Agreement has been understated, City shall notify Licensee of the deficiency, and Licensee shall pay the City the amount of such deficiency plus interest thereon at the lesser of (i) the rate of ten percent (10%) or (ii) the maximum rate allowable by law from the date payment of such sums was due until the date paid. If such independent examination reflects an underpayment of five percent (5%) or more of the sums due during the relevant period, Licensee shall pay City's reasonable costs of such examination.

Section 9. Termination.

(a) City shall have the right to terminate this Agreement for any reason or for no reason upon 30 calendar days' written notice to Licensee.

(b) In the event of termination or cancellation of this Agreement by City, Licensee agrees to cease use of the Premises within 30 calendar days of receipt of such notice.

Section 10. Permits. Licensee shall obtain and maintain during the term of this Agreement all necessary licenses, permits, and certificates required by law for the provision of services under this Agreement, including a business license.

Section 11. Assignment. This Agreement shall not be assigned, in whole or in part, by Licensee without the prior written approval of City. Any attempt by Licensee to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 12. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

If to City: City Hall
 1400 Highland Avenue
 Manhattan Beach, California 90266
 Attn: Jessica Vincent, Recreation Manager

With a copy to: City Hall
 1400 Highland Avenue
 Manhattan Beach, California 90266
 Attn: Quinn M. Barrow, City Attorney

If to Licensee: Nikau Kai, Inc.
1300 Highland Avenue #103
Manhattan Beach, CA 90266
Attn: Jason Shanks

With a copy to: Jason Shanks
2318 Park Avenue
Hermosa Beach, CA 90254

Section 13. Attorneys' Fees. If either Party commences an action against the other Party arising out of or in connection with this Agreement, the prevailing Party in such action shall be entitled to have and recover from the losing Party all of its attorneys' fees and other costs incurred in connection therewith.

Section 14. Entire Agreement; Amendment. This Agreement represents the entire integrated agreement between City and Licensee, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both City and Licensee.

Section 15. Governing Law and Venue. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Any action commenced related to or concerning this Agreement shall be filed in the appropriate court in Los Angeles County.

Section 16. City Not Obligated to Third Parties. City shall not be obligated or liable under this Agreement to any party other than Licensee.

Section 17. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

[Signatures begin next page]

EXECUTED on the date first written above in Manhattan Beach, California.

CITY OF MANHATTAN BEACH

LICENSEE

MARK DANAJ
City Manager



ATTEST




LIZA TAMURA
City Clerk

APPROVED AS TO FORM



QUINN M. BARROW
City Attorney

APPROVED AS TO CONTENT



MARK LEYMAN
Director, Parks & Recreation

EXHIBIT A
SCOPE OF SERVICES

Contractor shall provide the following tasks and services upon request by City.

1. **Provide a beach concession/welcome information center to include the following:**
 - a. Contractor shall provide a portable facility that is a maximum of 30x10 feet
 - b. Contractors shall install and remove portable facility by October 1.
 - c. Contractor shall maintain the facility and ensure the area around the facility is clean and free of debris
 - d. Contractor shall provide and maintain an ADA compliant access way
 - e. Contractor shall be open for beach equipment rentals and an information center 9am to 7pm daily.
 - f. Contractor must remain closed during the International Surf Festival (July 31-August 2) and Manhattan Beach Open Volleyball Tournament (August 10-16)
 - g. Contractor shall provide and maintain the following beach and rental equipment:
 - i. Maximum of 8 Bikes (locks and helmets included in rental)
 - ii. Maximum of 10 Surfboards
 - iii. Maximum of 8 Stand Up Paddleboards
 - iv. Maximum of 20 Bodyboards
 - v. Volleyballs
 - vi. Chairs
 - vii. Beach Chairs
 - viii. Umbrellas
 - h. Contractor shall stock and merchandise:
 - i. Sunscreen
 - ii. Beach Towels
 - iii. Water
 - iv. Sports drinks
 - v. Sand toys
 - vi. Waterproof cases
 - vii. Frisbees
 - viii. Volleyballs
 - ix. Hats

- x. Fin keys
- xi. Wax
- xii. Leashes
- xiii. Energy bars
- xiv. Energy Gels
- xv. Sunglasses
- xvi. Bike Locks
- xvii. Bike multi-tools
- xviii. Tire repair kits
- xix. Intertubes
- xx. Bottle cages
- xxi. Water bottles
- xxii. Brake pads
- xxiii. Chains
- xxiv. Bells
- xxv. Lights
- xxvi. Baskets

Exhibit B

Contractor shall place a 30x10 foot container as indicated in the site plan below.

