

**AGREEMENT BETWEEN THE CITY OF MANHATTAN  
BEACH AND SCOTT HUBBELL PRODUCTIONS INC.**

This Agreement is made on this 19 day of November 2013, by and between the CITY OF MANHATTAN BEACH ("City"), a municipal corporation organized under the laws of the State of California, and Scott Hubbell Productions, Inc. dba BEACHSPORT, a California corporation ("Beachsport") (collectively, the "Parties").

**RECITALS**

- A. City desires to hold the International Surf Festival's Charlie Saikley 6-Man Volleyball Tournament ("Event" or "6-Man") on Wednesday, July 30, and Thursday, July 31, 2014.
- B. The 6-Man is an iconic community event and has been held in the City of Manhattan Beach for the past 51 years.
- C. Beachsport desires to serve as the sponsorship agency for 6-Man and raise funds to offset the costs associated with the Event.
- D. City has determined that the Event is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15304(e) in that the Event is temporary in nature, involves no permanent improvements of any kind, and has no substantial impact on the environment.

NOW, THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

1. THE EVENT.

(a) The Event shall be held on Wednesday, July 30, and Thursday, July 31, 2014, in the upper and lower Manhattan Beach Pier parking lots, the base of the Pier and South of the Pier on the beach.

(b) The Event will begin at 8:00 a.m. on July 30, and conclude at approximately 8:00 p.m. on July 31, 2014.

2. CITY RESPONSIBILITIES.

The City hereby agrees to:

(a) Coordinate all aspects of the Event including: registration, administration and City services (Public Works, Parks and Recreation, Police and Fire Departments).

(b) Provide sponsorship space at the south side of the Pier base, lower Pier parking lots and on the beach for event sponsors.

(c) Provide electrical service to Beachsport for the event sound system.

### 3. BEACHSPORT RESPONSIBILITIES.

Beachsport shall:

(a) Provide pallets of water for 750 athletes, food vendors, and a sound system for the event.

(b) Designate one individual to work with City Staff.

(c) Provide a \$30,000 cash contribution to City at least 20 days prior to the Event to offset City costs.

(d) Provide marketing through the California Beach Volleyball Association for the Event.

(e) Provide insurance that covers all Surf Festival events, including the 6-Man Volleyball Tournament.

### 4. INSURANCE.

(a) Beachsport 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 Beachsport.

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 Beachsport in performing the services required by this Agreement.

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

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Beachsport; products and completed operations of Beachsport; premises owned, occupied or used by Beachsport; or automobiles owned, leased, hired or

borrowed by Beachsport. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

2. For any claims related to this Agreement, Beachsport's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Beachsport's insurance and shall not contribute with it.

3. Beachsport's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Each insurance policy, except for the professional liability policy, required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

5. Each insurance policy required by this Agreement shall be endorsed to state: should the policy be canceled before the expiration date, the issuing insurer shall mail 30 days' prior written notice to the City.

6. If insurance coverage is canceled or reduced in coverage or in limits, Beachsport shall, within two business days of notice from insurer, phone, fax and/or notify the City via certified mail, return receipt requested, of the changes to or cancellation of the policy.

(c) The City's Risk Manager may, in writing, amend and/or waive any or all of the insurance provisions set forth herein. In such case, Beachsport shall comply with the insurance provisions required by the City's Risk Manager.

(d) 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, unless waived in writing by City's Risk Manager.

(e) Beachsport 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 Beachsport's expense, the premium thereon.

(f) All insurance coverages shall be confirmed by execution of endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and

approved by City before services commence. As an alternative to City forms, Beachsport's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

(g) Any deductibles or self-insured retentions must be declared to and approved by City, and shall not exceed \$25,000.

(h) Beachsport shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.

## 5. INDEMNIFICATION.

Beachsport shall defend, indemnify, and hold harmless the City, its officials, and every officer, employee and agent of City (collectively "City") 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 Beachsport, its officials, officers, employees or agents in connection with the performance of this Agreement, except for such claim, liability or financial loss or damage arising from the sole negligence or willful misconduct of the City, as determined by final arbitration or court decision or by the agreement of the Parties. Beachsport shall defend City, with counsel of City's choice, at Beachsport's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against City. Beachsport shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Beachsport's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Beachsport or City. All duties of Beachsport under this Section shall survive termination of this Agreement.

## 6. TERM.

The term of this agreement shall be for one year from the date stated in paragraph one.

## 7. TERMINATION.

City shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to Contractor. Contractor agrees to cease all work under this Agreement on or before the effective date of such notice.

## 8. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY.

No official or employee of City shall be personally liable for any default or liability under this Agreement.

## 9. NON-DISCRIMINATION.

Beachsport covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any

activity pursuant to this Agreement.

#### 10. INDEPENDENT CONTRACTOR.

The Parties agree, understand, and acknowledge that Beachsport is not an employee of the City, but is solely an independent contractor. Beachsport expressly acknowledges and agrees that City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by Beachsport shall not be in any way an employee of the City. As such, Beachsport shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for his/her own workers' compensation and unemployment insurance and that of his/her employees or subcontractors. Neither City nor any of its agents shall have control over the conduct of Beachsport or any of Beachsport's employees. Beachsport shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City. Beachsport shall indemnify and hold harmless City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Beachsport's personnel practices. City shall have the right to offset against the amount of any fees due to Beachsport under this Agreement any amount due to City from Beachsport as a result of Beachsport's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

#### 11. COMPLIANCE WITH LAW.

Beachsport shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

#### 12. MODIFICATION.

This Agreement may be modified only by a written agreement executed by City and Beachsport.

#### 13. CALIFORNIA LAW.

This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

#### 14. ATTORNEYS' FEES.

If a party commences any legal, administrative, or other 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, in addition to such other relief as may be sought and awarded.

15. INTERPRETATION.

This Agreement shall be interpreted as though prepared by both parties.

16. 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 of Manhattan Beach  
   1400 Highland Avenue  
   Manhattan Beach, California 90266  
   Attn: Mark Leyman, Director of Parks & Recreation

If to Contractor:              Scott Hubbell Productions, Inc.  
   dba Beachsport  
   6429 Frondosa Drive  
   Malibu, California 90265  
   Attn: Scott Hubbell

17. PRESERVATION OF AGREEMENT.

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.

18. ENTIRE AGREEMENT.

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding.

19. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by their execution, the Parties are formally bound to the provision of this Agreement.

[Signatures begin next page]

IN WITNESS WHEREOF, this agreement has been duly executed in duplicate originals on the date first above written.

CITY OF MANHATTAN BEACH

SCOTT HUBBELL PRODUCTIONS

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David N. Carmany  
City Manager

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Scott Hubbell  
President

APPROVED AS TO CONTENT:

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Mark Leyman  
Director of Parks and Recreation

ATTEST:

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Liza Tamura  
City Clerk

APPROVED AS TO FORM:

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Quinn M. Barrow  
City Attorney