

LICENSE AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH
AND HUNTINGTON SURF AND SPORT INC.

THIS AGREEMENT is made and entered into this eighth day of May, 2024 by and between THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California, hereinafter referred to as "CITY," and HUNTINGTON SURF AND SPORT INC., a California Corporation, hereinafter referred to as "HSS."

WHEREAS, CITY has an ongoing ocean education and safety program known as the Huntington Beach Junior Lifeguard Program for the benefit of the youth of Huntington Beach and surrounding communities designed to provide participants with the opportunity to learn ocean safety, surf lifesaving techniques, first aid, marine ecology, and oceanography in a context that is both physical and disciplined, fostering self-confidence and respect for others (the "PROGRAM"); and

WHEREAS, CITY has developed and owns the LOGO of the PROGRAM. Logo of the PROGRAM is the phrase "Huntington Beach Jr. Lifeguard" circling a United States Shield ("LOGO"). CITY owns the trademark to the LOGO; and

WHEREAS, all youths enrolled in the PROGRAM ("Participants") are required to wear tee-shirts and board shorts bearing the LOGO. Currently, CITY provides each Participant, as part of the PROGRAM enrollment fee, two shirts, men's or women's board shorts, and a backpack, all bearing the LOGO; and

NOW, THEREFORE, it is agreed by CITY and HSS as follows:

1. SALE OF LOGO AND PROGRAM RELATED MERCHANDISE
 - a. Effective immediately upon the execution of this Agreement by HSS and its approval by the City Council, HSS shall assume the right and obligation to manufacture procure and sell all clothing, towels, and other merchandise bearing the LOGO, including but not limited to all newly produced board shorts, backpacks, tee-shirts, sweatshirts, stickers, dog tags, license plate frames, and towels. HSS may sell additional merchandise bearing the LOGO with the approval of the Fire Chief, or his or her designee.

- b. The City reserves the right to sell any merchandise bearing the LOGO produced before the approval of this Agreement. The City agrees to give HSS the option to purchase and/or sell the goods at a rate determined to be reasonable by the CITY before the CITY sells any formerly produced merchandise bearing the LOGO.
- c. HSS shall retain or hire an artist to prepare yearly novel beach-related artwork to appear on clothing and merchandise at its sole cost and expense. HSS shall sell such clothing and merchandise to the general public.
- d. HSS shall only sell shirts, and board shorts bearing the LOGO to persons the CITY has certified are Participants in the PROGRAM.
- e. HSS shall comply with the scope of services and all production requirements contained in Request for Qualifications for Producer and Vendor of Junior Lifeguard Program Uniforms, attached as ATTACHMENT 1.
- f. HSS shall sell required clothing for the PROGRAM per ATTACHMENT 2 with any annual CPI increase capped at 5%.
- g. HSS shall be responsible for collecting and paying all sales tax on merchandise sales.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with HSS in the performance of this Agreement. The CITY may reassign the staff coordinator role or assign multiple coordinators at any time.

3. TERM OF AGREEMENT

The term of this Agreement shall be for the period commencing on May 8, 2024 ("Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless extended or sooner terminated as provided herein. Either CITY or HSS may terminate the Agreement at any time without cause with one hundred eighty (180) days prior written notice to the other party or at an earlier time with the written consent of the non-terminating party. The parties may agree in writing to extend the Agreement for one additional three-year term.

4. BOOKS AND RECORDS

A. Commencing one month after the approval of this Agreement and each month thereafter during the term of this Agreement (including any extension thereof), HSS shall prepare, maintain and transmit to CITY a monthly statement of all wholesale and retail merchandise sold by it during the previous month. Each such monthly statement shall be submitted to CITY no later than twenty (20) days after the end of the previous calendar month.

B. CITY shall have the right to inspect HSS's books and records stated and described in this section and to conduct a financial audit of such books and records with 30 days notice at any time during this agreement.

C. LICENSE shall at all times keep or cause to be kept, complete and accurate records and books of account showing the total amount of gross sales of any retail or wholesale merchandise covered by this Agreement.

D. HSS agrees to maintain for a period of seven (7) years following the close of each calendar month all records and books of account and all cash register tapes showing or in any way pertaining to the sale of retail or wholesale merchandise covered by this Agreement.

5. USE OF CITY SEALS AND LOGOS

CITY reserves the sole right to approve the use of protected CITY seals and all other protected CITY provided logos or marks as it may deem appropriate, excluding license agreements previously entered upon.

6. INDEMNIFICATION DEFENSE HOLD HARMLESS

HSS hereby agrees to protect, defend, indemnify and hold and save harmless CITY, its officers and employees against any and all liability, claims, lawsuits, judgments, costs and demands, however caused, including those resulting from death or injury to HSS's employees and damage to HSS's property, arising directly or indirectly out of the obligations or operations herein undertaken by HSS, including those arising from the passive concurrent negligence of CITY, but save and except those which arise out of the active concurrent negligence, sole negligence, or the sole willful misconduct of CITY.

HSS will conduct all defense at its sole cost and expense. CITY shall be reimbursed by HSS for all costs or attorney fees incurred by CITY in enforcing this obligation.

7. WORKERS' COMPENSATION

HSS shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of the California Labor Code and all amendments thereto; and all similar state and federal acts or laws applicable and shall indemnify, defend and hold harmless CITY from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs presented, brought or recovered against CITY, for or on account of any liability under any said acts which may be incurred by reason of work to be performed by HSS under this Agreement.

HSS shall obtain and furnish to CITY, as required by the State of California, evidence of maintenance of statutory workers' compensation insurance and employers' liability in an amount of not less than \$1,000,000 per accident for bodily injury or disease. If the organization/company

has no compensated employees working, HSS may complete and return a "non-employer status" form to be used in lieu of a workers' compensation insurance certificate.

8. GENERAL LIABILITY INSURANCE

HSS shall obtain and furnish to CITY a policy of general public liability insurance, including motor vehicle coverage. Said policy shall indemnify HSS, its officers, agents and employees, while acting within the scope of their duties, against any and all claims arising out of or in connection with this Agreement, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of \$1.00 per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than \$1,000,000. Said policy shall name CITY, its officers, agents and employees as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to this Agreement shall be deemed excess coverage and that HSS's insurance shall be primary.

9. CERTIFICATES OF INSURANCE

Prior to commencing performance of the work hereunder, HSS shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement, said certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall promise to provide that such policies will not be canceled or modified without thirty (30) days prior written notice to CITY.

HSS shall maintain the foregoing insurance coverages in force until the work under this Agreement is fully completed and accepted by CITY. The requirement for carrying the foregoing insurance coverages shall not derogate from the provisions for indemnification of CITY by HSS under this Agreement. CITY or its representative at all times have the right to demand the original or a copy of all said policies of insurance. HSS shall pay, in a prompt and timely manner, the premiums on all forms of insurance hereinabove required.

10. INDEPENDENT CONTRACTOR

HSS is, and shall be, acting at all times in the performance of this Agreement as an independent contractor. HSS shall secure at its expense, and be responsible for any and all payments of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for HSS and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

11. CITY EMPLOYEES AND OFFICIALS

HSS shall employ neither CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code Section 1090 et seq.

12. PHOTOGRAPHY

CITY may grant permits to persons engaged in the production of still and motion pictures, television programs, advertising and related activities, to take photographs and/or motion pictures of the PROGRAM and its LOGO.

13. NON-ASSIGNABILITY

HSS shall not sell, assign, transfer, convey or encumber this Agreement. Any such sale, assignment, transfer, conveyance or encumbrance shall be deemed null and void as to CITY and shall be of no force and effect. Any encumbrance, assignment or transfer, without the prior written consent of the other party, whether it be voluntary or involuntary, by operation of law or otherwise, is void and shall, at the option of the other party, terminate this Agreement.

14. CUMULATIVE REMEDIES

The remedies given to the parties in this Agreement shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law or elsewhere provided in this Agreement.

15. WAIVER OF BREACH

The waiver by CITY of any breach by HSS of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such breach or a waiver of any subsequent breach by HSS either of the same or another provision of this Agreement.

16. FORCE MAJEURE - UNAVOIDABLE DELAYS

Should the performance of any act required by this Agreement to be performed by either CITY or HSS be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability to secure materials, restrictive governmental laws or regulations, or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.

17. NOTICES

Any notices of special instructions required to be given in writing under this Agreement shall be given either by personal delivery to HSS's agent or to CITY's Office of Business Development as the situation shall warrant, or by enclosing the same in a sealed envelope,

postage prepaid, and depositing the same in the United States Postal Services, addressed as follows:

TO CITY:

City of Huntington Beach
ATTN: Fire Chief
2000 Main Street
Huntington Beach, CA 92648

TO: HUNTINGTON SURF & SPORT

Huntington Surf & Sport
ATTN: Aaron Pai
300 Pacific Coast Highway, Suite 410
Huntington Beach, CA 92648

18. IMMIGRATION

HSS shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

19. LEGAL SERVICES SUBCONTRACTING PROHIBITED

HSS and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. HSS understands that pursuant to Huntington Beach Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by HSS for whatever reason.

20. ATTORNEY'S FEES

In the event of any litigation to enforce the terms and provisions of this AGREEMENT, each party shall bear its own costs and attorney's fees. The prevailing party shall not be entitled to recover its attorneys' fees from the non-prevailing party.

21. CONTROLLING LAW AND VENUE

The rights and liabilities of the parties, and the interpretation and construction of this Agreement, shall be determined in accordance with the laws of the State of California. Any controversy arising out of or under this Agreement, if litigated, shall be adjudicated in a court of competent jurisdiction in Orange County, California.

22. SECTION TITLES

Section titles in this Agreement are used only as a matter of convenience and for reference, and in no way define, limit or describe the scope of intent of this Agreement or in any way affect this Agreement.

23. TIME OF ESSENCE

Time is of the essence with respect to all provisions of this AGREEMENT in which a definite time for performance is specified including, but not limited to, the expiration of this Agreement.

24. PARTIAL INVALIDITY

Should any provision of this AGREEMENT be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding, so long as the reasonable expectations of the parties hereto are not materially impaired.

25. ENTIRETY

The foregoing sets forth the entire Agreement between the parties, and supersedes any prior agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first written above.
HUNTINGTON SURF & SPORT, INC.

Taylor Pai

By: *Taylor Pai - Vice President*

CITY:
CITY OF HUNTINGTON BEACH, a
Municipal corporation of the State of California

Mayor

ATTEST:

City Clerk
INITIATED AND APPROVED:

Fire Chief

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

City Attorney

CCM

23. TIME OF ESSENCE

Time is of the essence with respect to all provisions of this AGREEMENT in which a definite time for performance is specified including, but not limited to, the expiration of this Agreement.

24. PARTIAL INVALIDITY

Should any provision of this AGREEMENT be held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by the holding, so long as the reasonable expectations of the parties hereto are not materially impaired.

25. ENTIRETY

The foregoing sets forth the entire Agreement between the parties, and supersedes any prior agreements.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first written above.
HUNTINGTON SURF & SPORT, INC.

CITY:
CITY OF HUNTINGTON BEACH, a
Municipal corporation of the State of California

By: _____

Taylor Pi - VP

Mayor

ATTEST:

City Clerk
INITIATED AND APPROVED:

[Signature]

Fire Chief

REVIEWED AND APPROVED:

City Manager

APPROVED AS TO FORM:

[Signature]

City Attorney

Attachment 1
JR. LIFEGUARD & SAND CRAB
UNIFORM & EQUIPMENT DETAIL & SIZE SHEET

Note: The quantities are for year one estimates that incorporates previous years remaining stock. The following years are estimated to be higher and will be discussed with the vendor

SWEATSHIRTS

Hooded pullover with 10 oz (330 gm) cotton/polyester blend 3-end fleece with ring spun cotton, 70% Cotton/30% Polyester with 100% cotton 32 singles face yarn. Other features are fleece lined hoods, split stitch double needle sewing on all seams for durability, twill neck tape for extra reinforcement and comfort. Nickel eyelets, 100% cotton round braided drawcord and 1x1 ribbing at cuffs and waistband.

- Print 4-Color design logo on back and front chest
- Art work will be available once awarded. Color to be determined

Sizes Needed:

20 – Youth Small
120 – Youth Medium 230 – Youth Large
320 – Adult Small 230 – Adult Medium
200 – Adult Large 70 – Adult X-Large
15 – Adult XX Large

Total = 1,205

T-SHIRTS

Premium Blank T-Shirt with 4.5 oz weight with 100% Ring-Spun Cotton, Preshrunk Fabric. Each has elf jersey neck tape, double needle bottom and sleeve hems. With navy blue and red print

- Screen print font Junior Guard emblem upper left front
- Full size Junior Guard emblem on the back

Sizes Needed:

400 – Youth Medium 250 – Youth Large
0 – Youth X-Large 100 – Adult Small
150 – Adult Medium 60 – Adult Large
40 – Adult XL 0 – Adult XXL

Total = 1,000

BOYS BOARDSHORTS

Boardshorts that are lightweight and flexible with a straight hem outseam, 91% recycled polyester 9% spandex, 4-way stretch fabric and zig zag interior stitch waistband. Signature metal rivet, custom flat tubular drawcord with hand dipped ends. Left leg patch pocket with velcro pocket flap closure, interior pocket shock cord key loop, right side seam zip pocket with signature pull.

- Color must be red and match prior inventory.
- Junior Lifeguard patch to be sewn on the front left leg of boardshorts.

Sizes Needed:

Size 20 – 0 Size 22 – 100 Size 24 – 150
Size 26 – 100 Size 28 – 100 Size 30 – 100

Size 32 – 80 Size 34 – 10 Size 36 – 0
Size 38 – 0 Size 40 – 0
Total = 640

GIRLS BOARDSHORTS – (GIRLS CUT)

Boardshorts that are lightweight and flexible with a straight hem outseam, 91% recycled polyester 9% spandex, 4-way stretch fabric and zig zag interior stitch waistband. Signature metal rivet, custom flat tubular drawcord with hand dipped ends. Left leg patch pocket with velcro pocket flap closure, interior pocket shock cord key loop, right side seam zip pocket with signature pull.

-Color must be red and match prior inventory.

-Junior Lifeguard patch to be sewn on the front left leg of boardshorts.

Sizes Needed:

Size Triple 0 – 50 Size Double 0 – 80 Size 0 – 80

Size 1 – 80 Size 3 – 0 Size 5 – 0

Size 7 – 0 Size 9 – 0 Size 11 – 0

Size 13 – 0 Size 15 – 0 Size 17 – 0

Size 19 – 0

Total = 290

HATS

Superior Cotton Twill Flat Bill w/ Superior Polyester Mesh Back and custom embroidered log. Made with a 100% Cotton front and 100% Polyester Mesh back. A structured firm front panel, 5 panel cap and seamed front panel with full Buckram. Also each hat has a square flat Visor, 4 sewn eyelets, 8 rows stitching on flat visor, matching fabric sweatband and plastic snap closure. An adult OSFM (one size fits most, 58cm/22.8")

Total = 400

VISORS

A red visor with Velcro back closure. Custom embroidered HBJG logo on the front.

Total = 0

Note: None needed to be produced for year 1 due to previous inventory. Future production is to be determined.

BACKPACKS

A red backpack to match the quality and esthetic of the backpack currently held in inventory.

Main compartment must be large enough to hold swim fins, lunch, drink bottle, beach towel, and sweatshirt.

Embroidered Junior Guard design on the front.

Total = 0

Note: None needed to be produced for year 1 due to previous inventory. There will be demand for production in future years.

SAND CRAB T-SHIRTS

Premium Blank T-Shirt with 4.5 oz weight with 100% Ring-Spun Cotton, Preshrunk Fabric. Each has elf jersey neck tape, double needle bottom and sleeve hems. With navy blue and red print .

- Screen print font Sand Crab Artwork on upper left front

- Full size Sand Crab Artwork on the back

Size Youth XS - 0 Size Youth S- 50 Size Youth M - 200

Size Youth L- 120 Size Youth XL- 50 Size Adult S- 0

Total = 420

SAND CRAB SWEATSHIRTS

Hooded pullover with 10 oz (330 gm) cotton/polyester blend 3-end fleece with ring spun cotton, 70% Cotton/30% Polyester with 100% cotton 32 singles face yarn. Other features are fleece lined hoods, split stitch double needle sewing on all seams for durability, twill neck tape for extra reinforcement and comfort.

- Sand Crab artwork logo on back and front chest

- Art work will be available once awarded. Orange color must match prior inventory

Size Youth S- 5 Size Youth M - 60 Size Youth L- 80

Size Youth XL- 0 Size Adult S- 40

Total = 185

Attachment 2

Bid Sheet

Vendor is to provide pricing for year 1 for each uniform article. The following years can be revised but not to exceed the CPI for Los Angeles-Long Beach-Anaheim.

| Item | Wholesale Cost | Retail Price |
|------------------------------------------------------------------|----------------|--------------|
| HBJG Sweatshirt | \$17.31 | \$39.99 |
| HBJG T-Shirt | \$9.80 | \$19.99 |
| Boys Boardshort | \$31.49 | \$49.99 |
| Girls Boardshort | \$31.49 | \$49.99 |
| HBJG Hat | \$19.80 | \$24.99 |
| Backpack | \$24.45 | \$35.99 |
| Visor | \$16.49 | \$16.99 |
| Sand Crab T-Shirt | \$10.93 | \$18.99 |
| Sand Crab Sweatshirt | \$19.81 | \$34.99 |
| Package Deal (T-Shirt, Sweatshirt, Visor, Backpack, Boardshorts) | \$99.54 | \$150.00 |