

# Exhibit A

BE74Q-24  
Salt Creek Beach  
(U. S. Ocean Safety, Inc.)

## JUNIOR LIFEGUARD PROGRAM DAY CAMP LICENSE

This License to use County of Orange property herein described is issued by the County of Orange, hereinafter referred to as "County," to the Licensee named below for the purpose herein specified upon the terms and conditions set forth below, the General Conditions and any Special Conditions attached hereto. By execution hereof, the Licensee agrees to comply with all such terms, General Conditions, and Special Conditions.

### 1. Parties To License

#### County and Address

County of Orange  
OC Community Resources  
Orange County Parks  
13042 Old Myford Rd.  
Irvine, CA 92602

#### Licensee and Address

Dennis Yune, President  
Jason Young, Director  
U.S. Ocean Safety, Inc.  
34241 Pacific Coast Hwy., Suite #106  
Dana Point, CA 92629

2. **Term.** This License is effective from June 1, 2010 through August 31, 2010 ("License Period") with an option to renew for two (2) additional License Periods at the County's option beginning June 1, 2011 and June 1, 2012, respectively. Program dates will change from year to year but will primarily span the months of June, July and August. Each year's program dates shall be subject to the prior written approval of the Director of OC Parks, as defined in the attached General Conditions. No program may operate on weekends or the days observed for the Memorial Day and July 4<sup>th</sup> holiday. This License shall be effective for the period as stated above and is revocable by either County or Licensee at any time and for any reason whatsoever; however, as a courtesy to Licensee, Director of OC Parks will attempt to give thirty (30) days written notice to Licensee upon revocation. All options to renew shall be subject to approval by the Director of OC Parks. Licensee shall remit a written request to the Director of OC Parks by December 1st of each calendar year requesting approval to renew this License for each successive License Period.

3. **Use.** This License allows Licensee the non-exclusive right to operate a Junior Lifeguard Day Camp Program at Salt Creek Beach. The License Area within Salt Creek Beach including the parking area shall be as described in the Special Conditions and map indicated as Exhibit 1.

Licensee agrees not to use the License Area for any other purpose nor to engage in or permit any other activity within or from the License Area. Licensee further agrees not to conduct or permit to be conducted any public or private nuisance in, on, or from the License Area, not to commit or permit to be committed waste on the License Area, and to comply with all governmental laws and regulations in connection with its use of the License Area.

Licensee understands that the License Area is also used for park or beach purposes by the public. Licensee's non-exclusive use of the License Area is contingent upon the priority use requirements of the other parties as determined by Director of OC Parks.

### 4. License Fee.

Minimum Annual Fee:	\$5,000
Percentage Fee:	15% of gross revenues for all programs

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The annual License fee for the License Period shall either be the total of the Minimum Annual Fee, as set forth within this section, or a percentage fee of the gross revenues, whichever is greater ("License Fee"). The License Fee and the due dates for said License Fees are as follows:

The Minimum Annual Fee of \$5,000 shall be paid on or before June 1<sup>st</sup> of each License Period and shall be calculated based on the approved program schedule. No refunds shall be allowed for incomplete programs. However, in the event this beach is temporarily closed by the County to the public, the applicable fee shall be refunded or credited based on a weekly proration.

5. **Payment Procedure.** All payments required under this License shall be delivered to the County of Orange, Office of the Auditor-Controller, P.O. Box 567, Santa Ana, California 92702. The designated place of payment may be changed at any time by County upon ten days written notice to Licensee. Fee payments may be made by check payable to the County of Orange. Licensee assumes all risk of loss if payments are made by mail.

At the same time payments and gross receipts statements are submitted to the Office of the Auditor-Controller, a copy of the payment check and the gross receipts statement shall be delivered to OC Parks/Lease Management, at the address set forth on Page 1 of this License.

6. **Charge For Late Payment.** Licensee hereby acknowledges that late payment of sums due hereunder will cause County to incur costs not contemplated by this License, the exact amount of which will be extremely difficult to ascertain. Such costs include but are not limited to costs such as administrative processing of delinquent notices, increased accounting costs, etc. Accordingly, if any payment pursuant to this License is not received by County by the due date, a late charge of 1.5% of the payment due and unpaid plus One Hundred Dollars (\$100) shall be added to the payment and the total sum shall become immediately due and payable to County. An additional charge of 1.5% of said payment, excluding late charges, shall be added for each additional month that said payment remains unpaid.

Licensee and County hereby agree that such late charges represent a fair and reasonable estimate of the costs that County will incur by reasons of Licensee's late payment. Acceptance of such late charges (and/or any portion of the overdue payment) by County shall in no event constitute a waiver of Licensee's default with respect to such overdue payment, or prevent County from exercising any of the other rights and remedies granted hereunder.

7. **Operations Plan Approval.** Before commencing operations under this License and on or before January 31<sup>st</sup> of each calendar year, Licensee shall submit to the Director of OC Parks for Director's review and written approval an operating schedule, list and description of classes and programs and fees charged for each program. The submittal shall include an income and expense statement of the year's operation. All subsequent changes proposed by Licensee to the most recently approved operating schedule, fees, and procedures shall be submitted to the Director of OC Parks for review a minimum of ten (10) days before implementation. All changes must be approved by Director of OC Parks in writing.

8. **Termination.** This license may be terminated for failure to comply with the terms and conditions of this license upon thirty days written notice.


9. **Attachments to License.** This License includes the following which are attached hereto and made a part hereof:

- I. General Conditions
- II. Special Conditions

# Exhibit A

IN WITNESS WHEREOF, the parties have executed this License the day and year first above written.

Approved As to Form:  
County Counsel

By   
Dated 1-14-2010

Licensee

U.S. Ocean Safety, Inc., a California corporation

By   
Dennis Yune, President

By   
Jason Young, Director

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED TO  
THE CHAIR OF THE BOARD PER G.C. SEC  
25103, RESO 79-1535

ATTEST:

By \_\_\_\_\_  
Darlene J. Bloom  
Clerk of The Board of Supervisors  
Orange County, California

County

County of Orange

By \_\_\_\_\_  
Chair, Board of Supervisors

# Exhibit A

## I. GENERAL CONDITIONS

1. **General Definitions.** The following words in this License have the significance attached to them in this clause, unless otherwise apparent from context:

"Auditor-Controller" means the Auditor-Controller of the County of Orange, or designee, or upon written notice to Licensee, such other person or entity as shall be designated by the Board of Supervisors.

"Director of Internal Audit" means the Director, Internal Audit, County of Orange, or designee, or upon written notice to Licensee, such other person or entity as shall be designated by the Board of Supervisors.

"Director of OC Parks" means the Director of Orange County Parks, OC Community Resources, of the County of Orange, or designee or upon written notice to Licensee, such other person or entity as shall be designated by the Board of Supervisors

2. **Definition of Gross Receipts.** The term "gross receipts" upon which percentage fees are to be based shall include:

A. The sale price of all goods, wares, merchandise, and products sold on or from the Premises by Licensee, whether for cash or credit, whether payment is actually made or not, whether delivery of the items sold is made from the Premises and whether title to such items is transferred;

B. The charges made by Licensee for the sale or rendition on or from the Premises of services of any nature or kind whatsoever, whether for cash or credit, whether payment is actually made or not and whether the services are actually performed or not.

C. All admission, entry, rental and other fees of any nature or kind charged by Licensee (including but not limited to deposits accepted by Licensee).

The "gross receipts" also includes the fair market rental value of facilities used by Licensee or its employees for purposes other than the business purposes for which the Premises are leased and the value of all consideration including consideration other than cash received by Licensee or its employees in exchange for the items sold or services rendered.

Gross receipts shall not include actual costs of direct pass-through expenses paid to third parties for transportation costs and lunches.

Gross receipts shall exclude all sales and excise taxes payable by Licensee to federal, state, County or municipal governments as a direct result of operations under this License. Bad debt losses shall not be deducted from gross receipts.

3. **Records and Accounts.**

A. Records. Licensee shall, at all times during the term of this License, keep or cause to be kept true and complete books, records, and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted herein. The records must be supported by source documents such as sales slips, cash register tapes, purchase invoices, or other pertinent documents.

B. Income and Expense Statements. Within sixty (60) days after the end of the License Period, Licensee shall at its own expense submit to Auditor-Controller an income and expense statement prepared in accordance with generally accepted accounting principles reflecting business transacted on or from the License Area during the preceding License Period.

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The Licensee must attest under penalty of perjury that the income and expense statement submitted is an accurate representation of Licensee's records as reported to the United States of America for income tax purposes.

Licensee acknowledges its understanding that any and all of the income and expense statements submitted to the County pursuant to this License become Public Records and are subject to public inspection pursuant to §§ 6250 et. seq. of the California Government Code.

C. Audit. All Licensee's books of account and records and supporting source documents related to this License or to business operations conducted within or from the License Area shall be kept and made available at one location within the limits of the County of Orange. County shall, through its duly authorized agents or representatives, have the right to examine and audit said books of account and records and supporting source documents at any and all reasonable times for the purpose of determining the accuracy thereof, and of the monthly statements of sales made and monies received.

Director of Internal Audit, upon request of Licensee and at said Director of Internal Audit's sole discretion, may authorize the above-referenced books and records and supporting source documents to be kept in a single location outside the limits of Orange County provided Licensee shall agree to pay all expenses including but not limited to transportation, food, and lodging necessary for Director of Internal Audit to send a representative to audit said books and records. Said right shall not be exercised by the Director of Internal Audit more than once each accounting year.

The full cost of said audit, as determined by the Director of Internal Audit, shall be borne by Licensee if either or both of the following conditions exist:

- (1) The audit reveals an underpayment of more than two percent (2%) between the fee due as reported and paid by Licensee in accordance with this License and the fee due as determined by said audit;
- (2) Licensee has failed to maintain true and complete books, records, accounts and supporting source documents in accordance with Section A "Records" above. The adequacy of records shall be determined at the sole discretion of the Director of Internal Audit.

Otherwise, County shall bear the cost of said audit, excluding the aforementioned expenses related to audit of documents kept outside the limits of Orange County.

Upon the request of Auditor-Controller, Licensee shall promptly provide, at Licensee's expense, necessary data to enable County to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this License and to Licensee's use of the License Area. Such data shall include, if required, a detailed breakdown of Licensee's receipts and expenses.

In addition to any other remedies available to County at law or in equity or under this License, in the event the Licensee fails to maintain and keep books, records, and accounts from the License Area and/or source documents relating thereto, or to make the same available to County for examination and audit, or to record sales and/or to maintain registers to record sales, or to provide financial statements and other information to County regarding gross sales as required by this License, County, at County's option, may:

- (I) Perform such examinations, audits, and/or investigations itself or through agents or employees as County and/or its auditors may deem appropriate to confirm the amount of percentage fees payable by Licensee under this License and any and all costs and/or expenses incurred by County in connection therewith shall be promptly reimbursed to County by Licensee upon demand;
- (II) Provide accounting services and/or a system for recording retail sales and charges, including without limitation, cash registers, for use by Licensee in business transactions upon or from the License Area, and, at County's option, maintain personnel on the License Area to observe and/or record such sales during Licensee's business hours, or from time to time, all at Licensee's sole

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cost and expense and, in such event, Licensee shall promptly reimburse County for any and all costs incurred by County in connection therewith; and/or

(III) Require that Licensee pay percentage fees based on County's best good faith estimate of Licensee's gross receipts from business operations conducted on or from the License Area and any such determination made by County shall be conclusive and binding upon Licensee.

The above costs payable by Licensee shall include reimbursement to County of County-provided services at such rates as County may from time to time, in good faith, establish for such services. In the case of services provided by County's employees, such rates shall be sufficient to reimburse County for employees' salaries, including employee taxes and benefits and County's overhead or, at County's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by County, if engaged by County to perform such services.

4. **Maintenance and Operations.** Licensee shall designate in writing to Director of OC Parks an on-site representative who shall be responsible for the day-day operation and level of maintenance, cleanliness, and general order.

A. Maintenance. Licensee shall, to the satisfaction of the Director of OC Parks, keep and maintain the License Area and all improvements of any kind in good condition and substantial repair. It shall be Licensee's responsibility to take all steps necessary or appropriate to maintain such standard of conditions and repair.

Licensee expressly agrees to maintain the License Area in a safe, clean, wholesome, and sanitary condition to the complete satisfaction of the Director of OC Parks and in compliance with all applicable laws. Licensee further agrees to provide approved containers for trash and garbage and to keep the License Area free and clear of rubbish and litter. County shall have the right to enter upon and inspect the License Area at any time for cleanliness and safety.

If Licensee fails to maintain or make repairs or replacements as required herein, County may notify Licensee in writing of said failure. Should Licensee fail to correct the situation with a reasonable time thereafter as established by the Director of OC Parks, the Director of OC Parks may have the necessary correction made and the cost thereof, including but not limited to the cost of labor, materials, and equipment and administration, shall be paid by Licensee within ten (10) days of receipt of a statement of said cost from the Director of OC Parks. Director of OC Parks may, at Director of OC Parks option, choose other remedies available herein, or by law.

B. Operations. Licensee agrees to manage the program in a competent and efficient manner at least comparable to other well-managed programs of a similar type. Licensee agrees to provide all necessary equipment to conduct the Junior Lifeguard Program Day Camp and will be further responsible for the condition of the area within the beach area from which the camp program is conducted. Location of the program shall be approved by the Director of OC Parks prior to the start of the day camp program. Any equipment brought to the beaches each day for program use shall be removed each day unless prior storage arrangements have been approved by the Director of OC Parks.

Licensee shall retain active, qualified, competent and experienced personnel to service Licensee's operation and represent and act for Licensee.

Licensee shall require attendants and employees to be properly dressed, clean, courteous, efficient, and neat in appearance at all times. Staff shall have name badges or ID card identifying them as associated with Licensee.

Licensee shall conduct background checks or other appropriate investigations of all employees or camp counselors and provide evidence of such checks or investigations to County upon request of County.

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No beverages, food, products or merchandise or any kind may be sold to program participants or the general public upon County beach or parking area property during program operation without the prior written consent of the Director of OC Parks. If merchandise or other sales are approved, the gross sales receipts will additionally be added to the percentage License fee.

NO ALCOLHOLIC BEVERAGES OR TOBACCO PRODUCTS SHALL BE SOLD OR CONSUMED WITHIN THE LICENSE AREA.

5. **Notices.** All notices pursuant to this License shall be addressed as set forth on Page 1 of this License Clause 1, (Parties to License), or as either party may hereafter designate by written notice and shall be sent through the United States mail in the State of California duly registered or certified mail. If any notice is sent by reregistered or certified mail, as aforesaid, the same shall be deemed served or delivered 24 hours after mailing thereof as above provided. Notwithstanding the above, County may also provide notices to Licensee by personal delivery or by regular mail and any such notice so given shall be deemed to have been given upon receipt.

6. **Permits and Licenses.** Licensee shall be required to obtain any and all permits and/or Licenses which may be required in connection with the operation of the License Area as set out herein. No permit, approval, or consent given hereunder by County, in its governmental capacity shall affect or limit Licensee's obligations hereunder, nor shall any approvals or consents given by County, as a party to this License, be deemed approval as to compliance or conformance with applicable governmental codes, laws, rules, or regulations.

7. **Utilities.** The use by Licensee of utilities not already in place for normal visitor use is not anticipated; but in the event that extension and use of added utilities becomes necessary, Licensee shall be responsible for and pay, prior to the delinquency date, all charges for such added utilities supplied to the License Area.

8. **Insurance.** Licensee agrees to purchase all required insurance at Licensee's expense and to deposit with the County certificates of insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this License have been complied with and to keep such insurance coverage and the certificates and endorsements therefore on deposit with the County during the entire term of this License. This License shall automatically terminate at the same time Licensee's insurance coverage is terminated. If within ten (10) business days after termination under this Clause Licensee obtains and provides evidence of the required insurance coverage acceptable to Director of OC Parks, this License may be reinstated at the sole discretion of the Director of OC Parks. Licensee shall pay County \$500.00 for processing the reinstatement of this License.

Licensee agrees that Licensee shall not operate on the License Area at any time the required insurance is not in full force and effect as evidenced by a certificate of insurance and necessary endorsements or, in the interim, an official binder being in the possession of Director of OC Parks. In no cases shall assurances by Licensee, its employees, agents, including any insurance agent, be construed as adequate evidence of insurance. Director of OC Parks will only accept valid certificates of insurance and endorsements, or in the interim, an insurance binder as adequate evidence of insurance. Licensee also agrees that upon cancellation, termination, or expiration of Licensee's insurance, County may take whatever steps are necessary to interrupt any operation from or on the License Area until such time as the Director of OC Parks reinstates the License.

If Licensee fails to provide Director of OC Parks with a valid certificate of insurance and endorsements, or binder at any time during the term of the License, County and Licensee agree that this shall constitute a material breach of the License. Whether or not a notice of default has or has not been sent to Licensee, said material breach shall permit County to take whatever steps necessary to interrupt any operation from or on the License Area, and to prevent any persons, including, but not limited to, members of the general public, and Licensee's employees and agents, from entering the License Area until such time as Director of OC Parks is provided with adequate evidence of insurance required herein. Licensee further agrees to hold County harmless for any damages resulting from such interruption of business and possession,

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including, but not limited to, damages resulting from any loss of income or business resulting from the County's action.

All contractors performing work on behalf of Licensee pursuant to this License shall obtain insurance subject to the same terms and conditions as set forth herein for Licensee. Licensee shall not allow contractors or subcontractors to work if contractors have less than the level of coverage required by the County from the Licensee under this License. It is the obligation of the Licensee to provide written notice of the insurance requirements to every contractor and to receive proof of insurance prior to allowing any contractor to begin work within the License Area. Such proof of insurance must be maintained by Licensee through the entirety of this License and be available for inspection by a County representative at any reasonable time.

All insurance policies required by this License shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County's County Executive Office (CEO)/Office of Risk Management. Licensee shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the certificate of insurance.

If the Licensee fails to maintain insurance acceptable to the County for the full term of this License, the County may terminate this License.

## **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Licensee shall provide the minimum limits and coverage as set forth below:

<b><u>Coverages</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability with broad form property damage, contractual liability and products liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability	\$1,000,000 per occurrence
Sexual Misconduct Liability	\$1,000,000 per occurrence



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All liability insurance required by this License shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability, if required, may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this License with respect to work done by the Licensee under the terms of this License (except Workers' Compensation/Employers' Liability, Professional Liability (if required) and Employee Dishonesty Coverage (if required)). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the certificate of insurance.

All insurance policies required by this License shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the Licensee's insurance is primary and non-contributing shall specifically accompany the certificate of insurance for the Commercial General Liability and Sexual Misconduct Liability (if required).

All insurance policies required by this License shall give the County of Orange thirty (30) days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the certificate of insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

~~SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.~~

All insurance policies required by this License shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

If Licensee's Professional Liability policy (if required) is a "claims made" policy, Licensee shall agree to maintain professional liability coverage for two (2) years following completion of License.

The Commercial General Liability policy shall contain a severability of interests' clause.

The Licensee is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Licensee will comply with such provisions and shall furnish the County satisfactory evidence that the Licensee has secured, for the period of this License, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the County address provided in the Clause (NOTICES) below or to an address provided by Director of OC Parks. Licensee has ten (10) business days to provide adequate evidence of insurance or this License may be cancelled.

County expressly retains the right to require Licensee to increase or decrease insurance of any of the above insurance types throughout the term of this License. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Licensee in writing of changes in the insurance requirements. If Licensee does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this License may be in breach without further notice to Licensee, and County shall be entitled to all legal remedies.

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The procuring of such required policy or policies of insurance shall not be construed to limit Licensee's liability hereunder nor to fulfill the indemnification provisions and requirements of this License.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

9. **Signs.** Licensee agrees not to construct, maintain, or allow any signs, banners, flags, etc., upon License Area except as approved by Director of OC Parks. Unapproved signs, banners, flags, etc., may be removed by Director of OC Parks without prior notice to Licensee.

10. **Construction and/or Alteration by Licensee.** No structures, improvements, or facilities shall be constructed, erected, altered, or made within the License Area.

11. **Limitations of License.** This License and the rights and privileges granted Licensee in and to the License Area are subject to all covenants, conditions, restrictions, and exceptions of record or apparent from a physical inspection of the License Area. Nothing contained in this License or in any document related hereto shall be construed to imply the conveyance to Licensee of rights in the License Area which exceed those owned by County or set forth herein.

12. **License Organization.** The various headings and numbers herein, the grouping of provisions of this License into separate clauses and paragraphs, and the organization hereof, are for the purpose of convenience only and shall not be considered otherwise.

13. **Amendments.** This License is the sole and only agreement between the parties regarding the subject matter hereof; other agreement, either oral or written, are void. Any changes to this License shall be in writing and shall be properly executed by both parties. Additions to this License for future park locations for day camp operations shall be approved by the Director of OC Parks.

14. **Unlawful Use.** Licensee agrees no improvements shall be erected, placed upon, operated, or maintained on the License Areas nor any business conducted or carried on therein or therefrom, in violation of the terms of this License, or of any regulation, order of law, statute, bylaw, or ordinance of a governmental agency having jurisdiction.

15. **Inspection.** County or its authorized representatives shall have the right at all reasonable times to inspect the operation to determine if the activities conducted by the program are in compliance with the License agreement.

16. **Indemnification.** Licensee hereby waives all claims and recourse against County including the right of contribution for loss or damage of persons or property arising from, growing out of, or in any way connected with or related to this License except claims arising from the concurrent active or sole negligence of County, its officers, its agents, and employees. Licensee hereby agrees to indemnify, hold harmless, and defend County, its officers, agents, and employees against any and all claims, loss, demands, cost, expenses, or liability costs arising out of the operation, use, or maintenance of the property described herein, and/or Licensee's exercise of the rights under this License, except for liability arising out of the concurrent active or sole negligence of County, its officers, agents, or employees, including the cost of defense of any lawsuit arising therefrom.

In the event County is named as co-defendant, Licensee shall notify County of such fact and shall represent County in such legal action unless County undertakes to represent itself as co-defendant in such legal action, in which event Licensee shall pay to County its litigation costs, expenses, and attorney's fees. In the event judgment is entered against County and Licensee because of the concurrent active negligence of County and Licensee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

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17. **Taxes and Assessments.** Should this License create a possessory interest which is subject to the payment of taxes levied on such interest, it is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable in connection with this License or upon fixtures, equipment, or other property used in connection with this License, shall be the full responsibility of Licensee, and Licensee shall cause said taxes and assessments to be paid promptly.

18. **Partial Invalidity.** If any term, covenant, condition or provision of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

19. **Waiver of Rights.** The failure of County to insist upon strict performance of any of any of the terms, covenants, or conditions of this License shall not be deemed a waiver of any right or remedy that County may have, and shall not be deemed a waiver of the right to require strict performance of all the terms covenants and conditions of the License thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant, or condition of the License. Any waiver, in order to be effective, must be signed by the party whose right or remedy is being waived.

20. **Condition of License Area Upon Termination.** Except as otherwise agreed to herein, upon termination of this License, Licensee shall redeliver possession of said License Area to County in substantially the same condition that existed immediately prior to Licensee's entry thereon, reasonable wear and tear, flood, earthquakes, war, and any act of war excepted.

21. **Disposition of Abandoned Personal Property.** If Licensee abandons the License Area or is dispossessed thereof by process of law or otherwise, title to any personal property belonging to Licensee left on the License Area ten (10) days after such event shall be deemed, at Director of OC Parks option, to have been transferred to County. The Director of OC Parks shall have the right to remove and to dispose of such property without liability therefor to Licensee or to any person claiming under Licensee, and shall have no need to account for the property.

22. **Time of Essence.** Time is the essence of the License. Failure to comply with any time requirements of this License shall constitute a material breach of this License.

23. **No Assignment.** The License granted hereby is personal to Licensee and any assignment of said License by Licensee, voluntarily or by operation of law, shall automatically terminate the License granted hereby.

24. **Nondiscrimination.** Licensee agrees not to discriminate against any person or class of persons by reason of sex, age, race, color, creed, physical handicap, or national origin. Licensee shall make its accommodations and services available to the public on fair and reasonable terms

25. **Governing Law and Venue.** This agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to do and hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394.

26. **Child Support Enforcement.** In order to comply with child support enforcement requirements of the County of Orange, Licensee agrees to furnish Director of OC Parks, County's standard form District Attorney Child Support Enforcement Certification Requirements, which includes the following information.

- a) In the case where Licensee is doing business as an individual, Licensee's name, date of birth, Social Security Number, and residence address;

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- b) In the case where Licensee is doing business in a form other than as an individual, the name, date of birth, Social Security Number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;
- c) A certification that the Licensee has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d) A certification that the Licensee has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of Licensee to timely submit data and/or certifications required above or to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this License. Failure to cure such breach within sixty (60) days of notice from the Director of OC Parks shall constitute grounds for termination of this Lease.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and will not be used for any other purpose.

# Exhibit A

## II. SPECIAL CONDITIONS

The following Special Conditions apply to the Commercial Day Camp License for US Ocean Safety (USOS) Junior Lifeguard Program at the south end of Salt Creek Beach (Strand Beach). The Coastal Operations Supervisor must approve any changes.

**Program Description:** The USOS Junior Lifeguard Program consists of three 3 week long day camps providing instruction in first aid, health, CPR, ocean safety, rescue techniques, surfing and body boarding and ocean swimming with instruction, supervision and activities managed by the program operators. The goal of the program is to provide an educational and recreational environment instructing young people on how to handle themselves safely in a variety of ocean situations and to increase environmental awareness and how it relates to our lives. Participants are aged 9 to 15 years old. A Swim test is administered as a requirement of this camp program. Details of this requirement are available on the [U.S. Ocean Safety.com](http://U.S.OceanSafety.com) website.

**Operational Dates:** Three three-week sessions of the USOS Program will operate as follows: Session 1 is from June 28, 2010 through July 16, 2010; Session 2 is from July 19 through August 6; and Session 3 is from August 9 through August 27. No programs will operate on July 4<sup>th</sup>. The program will start at 9:00 a.m. and finish at 3:00 p.m. weekdays only.

**Location:** The location is Salt Creek Beach at Pacific Coast Highway and Selva Rd. The program will set up and operate on Strand Beach (at the south end of Salt Creek Beach) adjacent to the restroom (see attached aerial photograph). Cones may be used during program operation to define the operational area.

**Parking, Entry and Exit Procedures:** Participant parking or drop-off and pick-up point will be at the Selva Road parking lot.

Participants will be dropped off starting at 8:30 a.m. Pick-up will be between 3:00 p.m. and 3:30 p.m. All participants must be picked up and dropped off in the Selva Road parking lot.

Participants congregating in the parking lot will be escorted by a group leader to the program area upon arrival. Noise and conversation will be monitored by the leaders to prevent disturbance to the surrounding residents.

Information bulletins regarding program details and drop-off and pick-up procedures must be included in the registration information package and on the program web site.

**Beach Operational Location:** The attached aerial photograph map depicts the area of the beach area to be used for the program.

**Instructors:** Program staff consists of first aid and CPR-certified instructors at least 18 years old. The ratio of instructors to participants is one instructor to a maximum of 15 participants. Assistant instructors are previous Junior Lifeguard participants trained in basic first aid and rescue; they must have completed a full summer of the oldest age group USOS camp and attended eight hours of formal training. Assistant instructors are identified by the yellow buoy they carry. Their leadership is to assist in the land side and water related activities. Assistant instructor's water oversight of program participants is by age groups of 9 to 10 years old, 11 to 12 years old, and 13 years old and up and must be restricted to groups of less than 15 children.

**"OC Jr. Lifeguards" Brand:** OC Parks has secured the DBA for the name "OC Jr. Lifeguards". The Licensee may utilize the name "OC Jr. Lifeguards" in its operation.

The "OC Jr. Lifeguards" logo may be utilized on staff and participant uniforms and equipment and on program literature and promotional material. The design of the logo must be approved in advance by the Director, OC Parks.

The Licensee has the non-exclusive right to sell merchandise with the "OC Jr. Lifeguards" logo, subject to the above approval condition.



USOS Program Location  
at Salt Creek Beach

Exhibit 1