

**CITY OF SAN DIEGO
SERVICES AGREEMENT**

This Services Agreement (Agreement) by and between Associated Students, San Diego State University, a California nonprofit corporation (ASSOCIATED STUDENTS) and the City of San Diego (CITY), is effective as of the date this Agreement is both: signed by all parties, and approved by the San Diego City Attorney in accordance with San Diego City Charter section 40 (Effective Date). ASSOCIATED STUDENTS and CITY are sometimes collectively referred to herein as "Parties", or individually as "Party".

WHEREAS, ASSOCIATED STUDENTS operates the Mission Bay Aquatics Center, located at 1001 Santa Clara Place, San Diego, CA 92109 (Center), which offers instruction and rental equipment for a variety of water sports and activities. And, for purposes of the rights afforded to Associated Students in this Agreement, Associated Students includes the State of California, the Trustees of the California State University, the Regents of the University of California, San Diego State University, the Associated Students of San Diego State University, and the officers, employees, agents and volunteers of each.

WHEREAS, the CITY organizes recreational programs, clinics, and day camps for children and adults with disabilities, throughout the City of San Diego.

WHEREAS, CITY desires to arrange for ASSOCIATED STUDENTS to conduct accessible watersports camps, lessons, clinics or activities (Activity) at various times during the Term, as defined in Section 4 herein, of this Agreement. The specific dates and times, course, activity, number of participants, and participant fees will be subject to the future agreement of the parties, and will be in the form Purchase Orders between the Parties.

WHEREAS, The CITY through the vendor process, has agreed to pay rental fees and costs associated with services provided by ASSOCIATED STUDENTS for each of the scheduled activities. ASSOCIATED STUDENTS will provide invoices for services rendered.

NOW, THEREFORE, in consideration of the covenants, conditions, and promises set forth in the Agreement, and for other good and valuable consideration, the Parties hereto agree as follows:

1. Services by CITY. CITY will organize scheduled Activities to include registration of participants, will provide completed participant information forms and participants release of liability waivers, will coordinate contracts, permits, accessible toilets, first aid supplies, and fees associated with activities conducted at CITY-owned event sites not scheduled to occur at Mission Bay Aquatic Center, and will provide staff to check-in participants and take care of participant personal care needs.
2. Payment to ASSOCIATED STUDENTS. The CITY agrees to pay the rental fees and costs associated with services provided by ASSOCIATED STUDENTS for each scheduled Activity. The specific dates, times, courses, activities, fees, and number of participants will be established by agreement between CITY and ASSOCIATED STUDENTS for each scheduled Activity, and invoiced after each Activity. The CITY will pay each invoice submitted by ASSOCIATED STUDENTS within thirty days of services rendered.
3. Term. The term of this Agreement is for a period of three years, beginning on the Effective Date (Term). CITY may, in its sole discretion, extend the Term for two additional one-year periods, but at no time will an extension exceed a period of five years from the Effective Date.

4. Fingerprinting of Employees. ASSOCIATED STUDENTS will not assign any employee to work at any Activity that is not subject to and cleared by California State University (CSU) HR 2017-17 Background Check Policy Requirements and Checking Practices (<https://www.cpp.edu/eoda/employee-labor/documents/employment-policies/hr2017-17.pdf>). HR 2017-17 requires a background check including: employment verification, education verification, reference checks, criminal records check, motor vehicle records and licensing checks, sex offender registry checks, and professional licensing and credential verification, as well as fingerprinting for all employees and volunteers who have direct contact with minor children in a recreational program or camp operated by the CSU or its auxiliaries. ASSOCIATED STUDENTS will maintain, track, and serve as the custodian of record of Live Scanned, and background screened staff cleared to work with minor participants.

5. Non-Discrimination.

5.1 ASSOCIATED STUDENTS must comply with the CITY's Equal Opportunity Contracting Program Contractor Requirements. ASSOCIATED STUDENTS must not discriminate against any employee or applicant for employment on any basis prohibited by law. ASSOCIATED STUDENTS must provide equal opportunity in all employment practices. ASSOCIATED STUDENTS must ensure that its subcontractors comply with this section. Nothing in this section may be interpreted to hold ASSOCIATED STUDENTS liable for any discriminatory practice of its subcontractors.

5.2 ASSOCIATED STUDENTS must comply with the CITY's *Nondiscrimination in Contracting Ordinance*, San Diego Municipal Code sections 22.3501 through 22.3517. ASSOCIATED STUDENTS must not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. ASSOCIATED STUDENTS must provide equal opportunity for subcontractors to participate in subcontracting opportunities. ASSOCIATED STUDENTS understands and agrees that violation of this clause may be considered a material breach of the contract, and may result in contract termination, debarment, or other sanctions. This language must be in contracts between ASSOCIATED STUDENTS and any subcontractors, vendors, and suppliers.

5.3 Upon the CITY's request, ASSOCIATED STUDENTS agrees to provide to the CITY, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that ASSOCIATED STUDENTS has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by ASSOCIATED STUDENTS for each subcontract or supply contract. ASSOCIATED STUDENTS further agrees to fully cooperate in any investigation conducted by the CITY pursuant to the CITY's *Nondiscrimination in Contracting Ordinance* (Municipal Code Sections 22.3501-22.3517). ASSOCIATED STUDENTS understands and agrees that violation of this clause may be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions. ASSOCIATED STUDENTS further understands and agrees that the procedures, remedies and sanctions provided for in the *Nondiscrimination in Contracting Ordinance* apply only to violations of said *Nondiscrimination in Contracting Ordinance*.

6. Equal Benefits Ordinance. This Agreement is subject to the City of San Diego's Equal Benefits Ordinance (EBO), Chapter 2, Article 2, Division 43 of the San Diego Municipal Code. In accordance with the EBO, ASSOCIATED STUDENTS must certify it will provide and

maintain *equal benefits* as defined in SDMC §22.4302 for the duration of the Agreement. Failure to maintain *equal benefits* is a material breach of the Agreement. ASSOCIATED STUDENTS must notify employees of ASSOCIATED STUDENTS' equal benefits policy at the time of hire and during open enrollment periods and must post a copy of the following statement in an area frequented by employees:

During the performance of this Agreement, ASSOCIATED STUDENTS will provide equal benefits to its employees with spouses and its employees with domestic partners.

ASSOCIATED STUDENTS also must give CITY access to documents and records sufficient for CITY to verify ASSOCIATED STUDENTS is providing equal benefits and otherwise complying with EBO requirements.

The full text of the EBO and the Rules Implementing the Equal Benefits Ordinance are posted on the CITY's website at www.sandiego.gov/purchasing/ or can be requested from the Equal Benefits Program at (619) 533-3948.

7. Drug Free Workplace. It is the policy of CITY that all facilities and programs provided under this Agreement must be utilized and operated in a drug-free environment. ASSOCIATED STUDENTS certifies that it is aware of and will comply with Council Policy 100-17, adopted by Resolution No. R-277952, relating to the Drug Free Workplace requirements.

8. Insurance. Prior to the Effective Date, ASSOCIATED STUDENTS must: (a) provide to CITY insurance certificates reflecting evidence of all insurance required below, however, CITY reserves the right to request, and ASSOCIATED STUDENTS must submit, copies of any policy upon reasonable request by CITY; (b) obtain CITY approval of each insurance company or companies; and (c) confirm with CITY that all policies contain the specific provisions required below. ASSOCIATED STUDENTS' liabilities, including but not limited to ASSOCIATED STUDENTS' indemnity obligations, under this Permit, must not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Permit and ASSOCIATED STUDENTS' failure to maintain or renew coverage or to provide evidence of renewal during the Term may be treated as a material breach of contract by CITY. ASSOCIATED STUDENTS must not modify any policy or endorsement thereto which increases City's exposure to loss for the Term of this Agreement.

8.1 Types of Insurance: At all times during the Term of this Agreement, ASSOCIATED STUDENTS must maintain the following insurance coverage:

- i. Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which must cover liability arising from all personal injury or property damage with limits no less than \$1 million per occurrence and subject to an annual aggregate of \$2 million. There must be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims, or contractual liability. All defense costs must be outside the limits of the policy.
- ii. Commercial Automobile Liability. For all ASSOCIATED STUDENTS' automobiles including owned, hired, and non-owned automobiles, ASSOCIATED STUDENTS must keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined

limit no less than \$1 million per occurrence. Insurance certificate must reflect coverage for any automobile (any auto).

- iii. Workers' Compensation. For all ASSOCIATED STUDENTS' employees who are subject to this Permit and to the extent required by the applicable state or federal law, ASSOCIATED STUDENTS must keep in full force and effect, a Workers' Compensation policy. That policy must provide a minimum of \$1 million of employers' liability coverage, and ASSOCIATED STUDENTS must provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents, and representatives.
- iv. Causes of Loss - Special Form Property. ASSOCIATED STUDENTS must obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of ASSOCIATED STUDENTS' insurable property related to the Permit Use of the Premises under this Permit or the Premises in an amount to cover 100% of the replacement cost.

8.2 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any work is initiated under this Permit.

i. Commercial General Liability Insurance Endorsements:

Additional Insured. To the fullest extent allowed by law, including California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by ASSOCIATED STUDENTS or on ASSOCIATED STUDENTS' behalf, (b) ASSOCIATED STUDENTS' products, (c) ASSOCIATED STUDENTS' work, including but not limited to ASSOCIATED STUDENTS' completed operations performed by ASSOCIATED STUDENTS or on ASSOCIATED STUDENTS' behalf, and (d) premises owned, leased, controlled or used by ASSOCIATED STUDENTS.

Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives is in excess of ASSOCIATED STUDENTS' insurance, and must not contribute to it.

Severability of Interest. The policy or policies must be endorsed to provide that ASSOCIATED STUDENTS' insurance must 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 and must provide cross-liability coverage.

ii. Automobile Liability Insurance Endorsements:

Additional Insured. To the fullest extent allowed by law, including California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of ASSOCIATED STUDENTS.

Severability of Interest. The policy or policies must be endorsed to provide that ASSOCIATED STUDENTS' insurance must 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 and must provide cross-liability coverage.

iii. Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the City of San Diego and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the City of San Diego.

8.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Permit must only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California, and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all the requirements for policies of insurance provided by admitted carriers described herein.

8.4 Deductibles. All deductibles on any policy will be the responsibility of ASSOCIATED STUDENTS, and must be disclosed to CITY at the time the evidence of insurance is provided.

8.5 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving ASSOCIATED STUDENTS 30 days prior written notice. ASSOCIATED STUDENTS must also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to Permit Use.

8.6 Accident Reports. ASSOCIATED STUDENTS must immediately report to CITY any accident-causing property damage or injury to persons on the Premises or otherwise related to the Permit Use. Such report must contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

9. Sublicensee Insurance and Indemnification of CITY. Unless ASSOCIATED STUDENTS' insurance covers activities performed by all of ASSOCIATED STUDENTS' sublicensees

partaking in the Permit Use or utilizing the Premises, ASSOCIATED STUDENTS must require ASSOCIATED STUDENTS' sublicensees to indemnify CITY and to maintain insurance coverage pursuant to section 9 of this Permit, including section 9's subsections, and all of the endorsements set forth in section 9's subsections, including naming the City of San Diego and its respective elected officials, officers, employees, agents, and representatives as an Additional Insured in each insurance policy.

10. Liability for Loss, Injury or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from CITY's negligence or willful misconduct, ASSOCIATED STUDENTS agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of ASSOCIATED STUDENTS' equipment, material or personal property placed on the Center and for any injury to persons which occurs on the Premises as a result of the Permit Use.

11. Accessibility Compliance. ASSOCIATED STUDENTS must, as applicable to the Center and ASSOCIATED STUDENTS' possession, use, and occupancy of the Center, comply with all accessibility requirements under California Government Code sections 11135 through 11139.5; Title 24 of the California Code of Regulations; section 504 of the Federal Rehabilitation Act of 1973; the Americans with Disabilities Act (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, ASSOCIATED STUDENTS will follow the most restrictive accessibility requirement (i.e., that which provides the most access).

12. Indemnification and Hold Harmless. Each Party must defend, indemnify, release and hold the other Party, their officers, agents, employees, and volunteers harmless from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement or performance of any Activity, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, employees, or volunteers.

13. Independent Contractor. ASSOCIATED STUDENTS must perform the services outlined in this Agreement as an independent contractor and will not be an agent or employee of the CITY. ASSOCIATED STUDENTS must not represent or otherwise hold out itself or any of its subcontractors, sub-subcontractors, directors, officers, partners, employees, or agents to be an agent or employee of the CITY. ASSOCIATED STUDENTS must notify all prospective subcontractors of its independent status hereunder.

14. Notices. Any notice required or permitted to be given under this Agreement must be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed as follows:

If to ASSOCIATED STUDENTS:

ASSOCIATED STUDENTS OF SAN DIEGO STATE UNIVERSITY
c/o Mission Bay Aquatic Center
ATTENTION: Kevin Waldick
1001 Santa Clara Point
San Diego, CA 92109-7299

If to the CITY as follows:

THE CITY OF SAN DIEGO
ATTENTION: Gerald Cunanan
3901 Landis Street, MS 38
San Diego, CA 92105

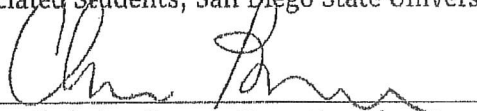
15. Compliance with the Law. ASSOCIATED STUDENTS must, at its sole cost and expense, comply with all rules, regulations, laws, and directives of competent governmental authorities, applicable to this Agreement. In addition, ASSOCIATED STUDENTS must comply with all directives issued by CITY or its authorized representatives under authority of any laws, statutes, ordinances, rules, or regulations as long as such statutes, ordinance, rules, or regulations do not conflict with such items required by the California State University system or San Diego State University.
16. No Assignment. ASSOCIATED STUDENTS may not assign any rights granted by this Agreement, nor any interest therein without the prior written approval of the CITY. Approval of any such proposed assignment may be withheld at the sole and absolute discretion of the CITY. Any assignment by operation of law will automatically terminate this Agreement.
17. Entire Agreement. This Agreement represents all the terms and conditions agreed upon by the Parties and supersedes all prior understandings and agreements, oral or written, relating to this Agreement. No other statements or representations, written or oral, may be deemed a part hereof.
18. Cumulative Remedies. CITY's rights and remedies under this Agreement are cumulative, and do not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
19. Survival. Any obligation which accrues under this Agreement prior to its expiration or termination will survive such expiration or termination until satisfied.
20. Integration and Amendments. This Agreement represents the entire understanding of the Parties as to those matters contained herein. No prior or written understanding is of any force or effect with respect to those matters covered hereunder. This Agreement may be amended by mutual agreement of the Parties. Such amendments are not binding unless they are in writing, and signed by personnel authorized to bind each of the Parties.
21. Controlling Law/Venue. This Agreement is governed by, and must construed under the laws of the State of California, and the State of California will also be the venue for any disputes arising hereunder.
22. Counterparts. This Agreement may be executed in counterparts, which, when taken together, will constitute a single signed original as though all Parties had executed the same page.
23. No Waiver. No failure of any Party to insist upon the strict performance by another of any covenant, term, or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, will constitute a waiver of any such breach of such covenant, term, or condition. No waiver of any breach may affect or alter this Agreement, and every term and condition hereof will continue in full force and effect without respect to any existing or subsequent breach.

24. Authority to Contract. Each individual executing this Agreement on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Agreement on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper, and under such legal entity's articles, charter, bylaws, other written rules of conduct, or government agreement, and that this Agreement is binding upon such person or entity in accordance with its terms. Each person executing this Agreement on behalf of another person or legal entity represents and warrants such entity is a valid legal entity in good standing in its home state and that such entity is qualified to do business in California.

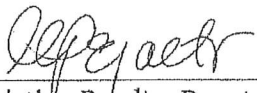
IN WITNESS WHEREOF, this Agreement is executed by CITY, acting by and through its Deputy Chief Operating Officer whose authority is delegated by the Mayor of the City of San Diego pursuant to San Diego City Charter sections 260 and 28, authorizing such execution, and by ASSOCIATED STUDENTS.

ASSOCIATED STUDENTS:

Associated Students, San Diego State University, a California nonprofit corporation

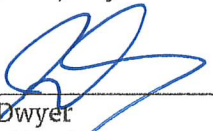
By:  _____ Date: 6/20/24
Christina Brown, Executive Director

CITY:

By:  _____ Date: 6/24/24
Kristina Peralta, Deputy Chief Operating Officer
Neighborhood Services

Approved as to form
this 24th day of June, 2024

MARA W. ELLIOTT, City Attorney

By:  _____
Jon D. Dwyer
Deputy City Attorney

This Agreement's environmental determination is reflected in Attachment A, attached hereto.

cc: Andy Field, Director,
Kristi Fenick, District Manager
Salome Martinez, Program Manager

05/03/24

Attachment A

Environmental Determination	
Environmental Planner	Greg Johansen gjohansen@sandiego.gov
Project Name	SUP for Associated Students of SDSU
Environmental Determination	This activity is not a "project" as defined in California Environmental Quality Act (CEQA) Guidelines Sections 15378 (b)(2) and 15378 (b)(5) as this services agreement by and between the Associated Students of San Diego State University, and the City of San Diego is a government fiscal activity that on its own accord will not cause a significant environmental impact, and it constitutes organizational or administrative activities of governments, which will not result in direct or indirect physical changes in the environment. As such, this activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).
Date Environmental Determination made	05/03/2024