

# Webcam Agreement

THIS WEBCAM AGREEMENT ("Agreement") is entered into by and between Surflin/Wavetrak, Inc., a Delaware corporation ("Surflin") and Marina Coast Water District, ~~a public agency-MCWD~~, ("Property Owner") as of the Installation Date (as defined below).

A. Surflin owns, operates and maintains internet-related computer video equipment (and associated hardware and software) (collectively "Webcam(s)") for the purpose of providing to its customers, via the Internet, real-time images of surf, snow and weather conditions at locations throughout the world.

B. Property Owner is the owner of the Property (as defined below) and intends to provide Surflin with the facilities and certain other assistance necessary ~~for Surflin~~ to install, operate and maintain a Webcam on the Property, subject to the terms and conditions of this Agreement.

C. "Property" \_\_\_\_\_ Marina Coast Water District (MCWD) \_\_\_\_\_ (Location)  
\_\_\_\_\_ 11 Reservation Road \_\_\_\_\_ (Address)  
\_\_\_\_\_ Marina, CA 93933 \_\_\_\_\_ (City/State/Zip)

"Beneficiary" \_\_\_\_\_ City of Marina \_\_\_\_\_ (Location)  
\_\_\_\_\_ 211 Hillcrest Avenue \_\_\_\_\_ (Address)  
\_\_\_\_\_ Marina, CA 93933 \_\_\_\_\_ (City/State/Zip)

"Installation Date" \_\_\_\_\_ March 2014 \_\_\_\_\_

D. Considerations: - The Property Owner agrees to assign their Considerations to their designated Beneficiary, the City of Marina. Those considerations are:  
1. Ad Banner Advertisement for Beneficiary's website :www.ci.marina.ca.us on www.surflin.com.  
2. A 30 second syndicated live feed from the HD Cam for display on the Beneficiary's website: www.ci.marina.ca.us  
3. A Monthly Cam Host Fee of \$200.00, to be paid monthly to the Beneficiary.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

## 1. Installation and Ownership

1.1. **Installation.** Property Owner grants permission to Surflin to enter onto the Property on the Installation Date for the purpose of installing a Webcam at a mutually agreed-upon location on the Property.

1.2. **Ownership of Webcam.** The Webcam is and will remain the sole and exclusive property of Surflin. Property Owner ~~shall~~ ~~will~~ not have nor ~~shall~~ ~~will~~ it ever assert any right, title or interest in or to the Webcam.

1.3. **Ownership of Images.** All images captured by the Webcam, including all copyrights and other intellectual property rights associated with such images, ~~shall~~ ~~will~~ be the sole and exclusive property of Surflin. Property Owner, ~~shall~~ ~~will~~ not have nor ~~shall~~ ~~will~~ it ever assert any right, title or interest in or to such images (see below for image usage guidelines).

## 2. Surflin Obligations

2.1. **Installation and Operation.** Surflin ~~shall~~ ~~will~~ provide the Webcam and ~~Surflin shall~~ install, operate and maintain the Webcam. Surflin ~~shall~~ ~~will~~ be solely responsible for ~~any and~~ all costs and expenses associated with the installation, operation and maintenance of the Webcam, including ~~but not limited to~~ any telephone or internet connectivity charges. Further, Surflin shall be responsible for the replacement, repair and maintenance of the Webcam, without limitation. Except as set forth in this Agreement, Property Owner shall have no other duties or obligations to Surflin.

2.2. **Indemnification.** Surflin ~~shall will~~ indemnify and hold harmless the Property Owner from and against all damages, losses, claims, suits or actions of any kind and nature whatsoever, including reasonable attorneys fees (collectively, "Losses"), associated with damage to Property Owner's property or the injury to or death of any person (including Surflin employees or agents), resulting from or alleged to have resulted from, directly or indirectly, Surflin's acts or omissions under this Agreement. Nothing in this Agreement ~~shall will~~ be construed to require Surflin to indemnify or hold harmless the Property Owner from and against Losses arising out of any grossly negligent or wrongful acts or omissions of the Property Owner.

2.3. **Limitation of Liability.** IN NO EVENT WILL SURFLINE OR ITS AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) INCURRED BY PROPERTY OWNER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

### 3. Property Owner Obligations

3.1. **Facilities.** Property Owner ~~agrees to will~~ provide Surflin with: (a) a suitable, secure location for the installation of the Webcam; (b) an environmentally stable, properly ventilated, and reasonably secure indoor space for the installation of internet equipment, (c) an electrical connection (and the costs of such electricity) for the Webcam (and its associated internet equipment).

3.2. **Installation/Maintenance Assistance.** Property Owner ~~shall will~~: (a) provide (if reasonably necessary applicable) personnel assistance during the installation of the Webcam required to ensure compliance with applicable building codes, rules, and procedures so as to accomplish a safe and lawful installation of the Webcam; and (b) wipe clean the outer lens of the Webcam with a clean cotton cloth twice per week (or more frequently if necessary due to weather conditions) to ensure high quality images. Surflin will provide personnel to clean the cam if Property Owner is unable to do so, but Property Owner ~~agrees will need~~ to provide access for this purpose.

3.3 **Access.** Property Owner hereby grants ~~to~~ Surflin access license to enter onto the Property, as reasonably necessary from time to time and upon no less than twenty-four (24) hours prior notice to Property Owner, for the sole and exclusive purpose of replacing or performing maintenance upon the Webcam or its associated computer equipment.

3.4 **Exclusivity** During the Initial Term and each Renewal Term (as defined below), the Property Owner ~~shall will~~ not allow Webcams or other similar video equipment to be located on the Property for the purpose of recording or transmitting images of surf, snow or weather conditions for any party other than Surflin/Wavetrak, Inc.

4. **Consideration** In consideration of the services provided by the Property Owner, Surflin agrees to provide the Beneficiary, who is assigned by the Property Owner, the following three provisions:

1. Ad Banner Advertisement for Beneficiary's website :[www.ci.marina.ca.us](http://www.ci.marina.ca.us) on [www.surflin.com](http://www.surflin.com).
2. A 30 second syndicated live feed from the HD Cam for display on the Beneficiary's website: [www.ci.marina.ca.us](http://www.ci.marina.ca.us)
3. A Monthly Cam Host Fee of \$200.00, to be paid monthly to the Beneficiary.

### 5. Term & Termination

5.1. **Term.** This Agreement will commence as of the Installation Date and will continue in effect for three (3) years (the "Initial Term"). Unless otherwise agreed to in writing by the parties, this Agreement ~~shall will~~ automatically renew for successive terms of one (1) year each (each a "Renewal Term").

5.2. **Termination Without Cause.** Surflin may terminate this Agreement at any time without cause by giving the Property Owner; sixty (60) days prior written notice. After the Initial Term, either party may terminate this Agreement without cause by giving sixty (60) days prior written notice to the other party.

#### 5.3. Termination With Cause.

(a) If Surflin fails to provide the Consideration when due under Section 4 above, the Property Owner may

terminate this Agreement by giving Surflin fifteen (15) days prior written notice; provided, however, that if Surflin provides the Consideration to Beneficiary within such fifteen (15) day period, the notice of termination will be deemed cancelled and this Agreement will continue in full force and effect.

(b) If Property Owner commits a breach of this Agreement, Surflin may terminate this Agreement by giving Property Owner fifteen (15) days prior written notice; provided, however, that if Property Owner cures the breach within such fifteen (15) day period, the notice of termination will be deemed cancelled and this Agreement will continue in full force and effect.

(c) Surflin shall have first right of refusal for any future contract involving live or time-shifted Internet broadcasting from the Property for a period of one (1) year following termination of this agreement.

**5.4. Consequences of Termination.** Upon the termination of this Agreement by any party for any reason, Surflin shall have the right to and Property Owner hereby grants Surflin ~~access to enter upon the Property to retrieve the Webcam and all associated equipment, provided Surflin gives Property Owner license to~~, by giving no less than twenty-four (24) hours prior notice, ~~enter upon the Property to retrieve the Webcam and all associated equipment~~

## 6. Insurance

During the Initial Term and each Renewal Term, Surflin will maintain a policy of comprehensive general liability insurance, including personal injury and broad form property damage liability coverage with a minimum combined single limit of \$2,000,000 per occurrence.

## 7. Assignment

Property Owner may assign this Agreement only with the prior written consent of Surflin, which consent will not be unreasonably withheld.

## 8. Miscellaneous

**8.1. Independent Contractor.** Property Owner will at all times be an independent contractor under this Agreement, and not a co-venturer, agent, employee or representative of Surflin, and no act, action or omission of Property Owner or the Beneficiary, will in any way be binding upon or obligate Surflin.

**8.2. Governing Law; Jurisdiction; Attorneys Fees.** This Agreement will be governed by and construed in accordance with the laws of the State of California (excluding its conflict of laws principles). The parties hereby agree that the state and federal courts located in the State of California, County of Orange, will constitute the sole and exclusive forum for the resolution of any and all disputes arising out of or in connection with this Agreement, and the parties hereby irrevocably consent to the jurisdiction of such courts and irrevocably waive any objections thereto. In any action or proceeding between the parties with respect to this Agreement, the prevailing party shall be entitled to receive its costs and expenses, including reasonable attorneys fees, from the other party.

### 8.3. — Confidentiality.

~~Each of the parties agrees to keep the terms and conditions contained in this Agreement confidential, and agrees not to disclose said terms and conditions to any third parties other than its representatives, employees, agents and affiliates and/or as may be required by law or court order. The parties recognize that the Property Owner is subject to the disclosure provisions of the California Public Records Act and Surflin acknowledges that the Property Owner will comply with any request made pursuant thereto. The terms of this Agreement are confidential and proprietary, and the Property Owner will not disclose them to any third party without the prior written consent of Surflin.~~

**8.4. Entire Agreement.** This Agreement represents the entire agreement between the parties with respect to, and supersedes any and all previous oral or written agreements concerning, the subject matter hereof.

**[Signature Page Follows]**

In witness whereof, the parties have executed this Agreement as of the Installation Date.

**"Property Owner"**

**"Surflin"**

\_\_\_\_\_

\_\_\_\_\_

Entity (if any): \_\_\_\_\_

By: Kurt Herrmann

Name: \_\_\_\_\_

Title: Director Of Camera Operations & Strategy

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

"

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

**Primary Phone#: (805) 772-6254**

**Email: \_\_\_\_\_**

**SSN or Tax ID: \_\_\_\_\_**  
**(This is needed for payments)**

Address for Notice:

300 Pacific Coast Highway,  
Suite 310  
Huntington Beach, CA. 92648  
Attn: Kurt Herrmann

**Primary Phone#: (808) 375-5878**

**Email: Kurt@surflin.com**