

**FRANCHISE AGREEMENT FOR OPERATION OF
PRIVATE DIVE LESSONS
IN THE PUBLIC PLACES OF THE
CITY OF GULF SHORES, ALABAMA**

This Franchise Agreement is made and entered into by and between the City of Gulf Shores, Alabama (hereinafter "City") and The Down Under Dive Shop (hereinafter "Franchisee"), as of the (Monday and Day), 2026.

Recitals

The City, as a municipal corporation of the State of Alabama, desires the provision of Certified Scuba Diving trainers at The Bodenhamer Center.

1. **Grant of Franchise.** There is hereby granted by the City to the Franchisee, a non-exclusive franchise to facilitate individual scuba diving training sessions within the City on the terms and conditions hereinafter set out.

2. **Definitions.** As used in this Franchise Agreement, terms shall have the meanings as ascribed to them in this section unless the context of their usage clearly indicates another meaning.

City when referring to an entity, shall mean the City of Gulf Shores, Alabama, and when referring to a geographic location, shall mean the corporate limits of the City of Gulf Shores, Alabama.

Individual Scuba Diving Training shall notify the Recreation Manager and/or Aquatics Coordinator if more than (2) instructors/assistants will be needed for a training session.

Individual Scuba Diving Training shall be the right to conduct for profit a business providing Scuba Diving Training services at approved locations and times.

Approved Locations shall be designated areas at the David L. Bodenhamer Center as approved by the Recreation Manager and/or Aquatics Coordinator

Approved Times shall be times provided by and at the discretion of the Recreation Manager and/or Aquatics Coordinator

Effective Date shall be the date of approved by the City Council.

3. **Franchise Required, Business License Required.** It shall be unlawful to operate on City property within the corporate limits of the City unless, and until, a franchise agreement and a business license have been obtained. A valid business license must always be maintained. Failure to do so will result in franchise termination.
4. **Individual Scuba Diving Training Operations**
 - a. General Conditions
 - a. Franchisee will ensure that no condition constituting a nuisance or hazard to public health or safety will at any time exist with respect to any of its equipment. If at any time the City deems such conditions exist, it may act to cure such conditions without notice to franchisee.
 - b. The Franchisee will be responsible for all damage to City property caused by the Franchisee, its employees, or its agents. Any such damage shall be promptly corrected at the expense of the Franchisee.
 - c. Advertising signs are to be approved by the Recreation Manager and/or Aquatics Coordinator
 - d. The franchisee is limited to classes of (6) students, without prior approval of the Recreation Manager and/or Aquatics Coordinator.
 - e. All new students are required to complete the City Liability Waiver and to be delivered by the Instructor, for the sign-process at the Bodenhamer Center.
 - f. A monthly report on all sessions and customer information sheet is to be submitted to the Recreation Manager and/or Aquatics Coordinator for tracking and marketing purposes.
 - g. Marketing and promotion are the responsibility of the Franchisee. Materials must be submitted for approval to be on display in recreational facilities. These personal efforts will not be funded nor designed by the City.
 - b. Advance Notice and Scheduling
 - a. All routine training activities are subject to prior approval of the Recreation Manager and/or Aquatics Coordinator. Notice will be given by text or call the day of, for sure of pre-approved areas of the pool, during pre-approved time slots throughout the week, that have been confirmed as to not conflict with other pool activities.
 - b. Activities involving large groups, specialized equipment, or significant space usage may require additional notice at the discretion of the Recreation Manager and/or Aquatics Coordinator.
 - c. All school-related programs are subject to the same approval process. However, for all school-related programs, a headcount advance notice of 30 days is required for all recurrent students in the program. The head count for school sessions must

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- d. All scuba equipment must be properly maintained and free of rust, flaking paint, sharp edges, or defects that could cause damage to the facility.
- e. Equipment may not obstruct:
 - i. Emergency exits
 - ii. ADA access
 - iii. Lifeguard sightlines or safety zones
 - iv. Providers are financially responsible for any facility damage caused by improper equipment handling.
- g. Right to Modify or Deny Use
 - a. The City of Gulf Shores reserves the right to modify, deny, or reschedule scuba activities due to:
 - i. Staffing limitations
 - ii. Safety concerns
 - iii. Facility Maintenance needs
 - iv. Conflicts with existing programming

5. **Term of Agreement.** This agreement shall continue in force and effect for an initial one (10) month term. Expiring December 31, 2026. With a renewal option for two (2) additional one (1) year terms. Terms will begin January 1 of the upcoming year. Renewal must be mutually agreed to, in writing, 60 days prior to the current terms' expiration.

6. **Franchise Fee.** The grant and continuance of this Franchise is expressly conditioned on payment of the franchise fee to be paid by the franchisee for the operation described herein. Franchise fee shall be \$250 due with the Franchise Application.

- a. Due quarterly, a total and summary of training based upon \$10.00 per student/per session.

Gross receipts do not include sales tax charged to the customer. All payments must be submitted to the City of Gulf Shores, Revenue Division, on or before the specified due date.

7. **Reports and Records.** The books and records of the franchisee relative to this agreement shall be available for inspection or audit by the City during the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday, legal holidays excepted. If such books and records are not regularly maintained by the Franchisee within the corporate limits of the City, Franchisee shall present such books and records for inspection or audit at City Hall within twenty-four (24) hours of any issued oral or written demand.

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8. **Insurance.** The Franchisee shall furnish, pay for, and maintain during the life of the agreement with the City of Gulf Shores:

Professional Liability Insurance in the amount of at least \$1,000,000/\$5,000,000 naming the City of Gulf Shores as an additional insured. Franchisee must agree to hold harmless and indemnify the city, its employees, and its agents from any scuba-related claims.

All policies shall name the City of Gulf Shores as additional insured (with proper endorsements) and shall contain provisions requiring thirty (30) days' notice of cancellation to be given to the City by the insurer should the Franchisee allow said policy to lapse. The franchise shall provide copies of such policies to the City of Gulf Shores' Revenue Division, showing the required insurance is in full force an effect prior to operating or providing any concessions.

Additional Benefits for City of Gulf Shores. (4) Lifeguard Scuba Certifications Per Year (Dive Center/Instruction Portion) E-Learning purchased separately & (4) Bi-Monthly "Try Scuba" sessions, outside of summer season, Dual Promotion

Transfer Prohibited. This Franchise may not be transferred or assigned in whole or in part.

Termination of Franchise. The City shall have the right to cancel this agreement for any reason deemed appropriate to the health, safety or welfare of the public by the City Council in its discretion including without limitation, material insufficiency or irregularity of services, material financial irregularities, violation of governmental fees, taxes or imposts, or other material misfeasance or nonfeasance under this agreement.

In the event the City believes cause for termination exists, it will give written notice to the Franchisee of the basis of which it believes cause for termination exists and will give Franchisee not less than fourteen (14) days written notice of an opportunity to appear before a regular or special meeting of the City Council to present any evidence or explanation on the existence of cause for termination. Following such presentation, if the cause cited in such notice has not been cured in full, the City Council may elect to terminate this Franchise, may elect to continue this Franchise, either as written or under probationary conditions, or may elect such other action as may be in the best interest of the public. Franchisee shall be given written notice of the action of the City Council, and no termination shall become effective earlier than thirty (30) days following the giving of the notice.

Franchisee shall have the right to cancel this Franchise for any reason deemed appropriate to Franchisee with thirty (30) days prior written notice to the City.

Compliance with All Applicable Legal Requirements. Franchisee shall at all times be and remain in compliance with the municipal, state, and federal laws and regulations applicable to its business and operations, including, without limitation, all licensing and taxation laws and

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regulations.

Retained Authority of City. Nothing in this Franchise is to be construed as a limitation on the City's authority to further regulate the business or other incidences of Franchisee's business or operations by municipal ordinance under the City's plenary authority to regulate and control the use of its streets, alleys, and public ways.

Indemnification of City by Franchisee. Franchisee shall indemnify the City and its officers, agents and employees from any liability or actions for damages of any character to any person or entity, including personal injuries resulting in death or property damage directly or indirectly related to the conduct of Franchisee's business. Franchisee shall pay any judgment, with costs obtained against the City, its officers, agents, or employees arising out of any such injury or damage.

In the event the City finds it necessary to employ legal counsel in connection with the enforcement of this Franchise Agreement or the defense of actions taken with regard to the termination or suspension of this Franchise Agreement or the defense of claims brought against the City by third parties, Franchisee shall reimburse City for all expenses incurred, including a reasonable attorney's fee.

Notices. Notices under the terms of this Franchise shall be deemed sufficiently given or served if in writing and delivered or tendered either in person or when deposited in the U.S. Mail in a sealed certified mail envelope with postage prepaid, addressed to the following parties or persons to be served.

To the Franchisee:

Down Under Dive Shop
251-968-3483
1129 Gulf Shores Parkway,
Gulf Shores, AL 36542
info@downunderdiveshop.com

To the City:

Grant Brown, Recreation & Cultural Affairs Director
P.O. Box 299
Gulf Shores, Alabama 36547
gbrown@gulfshoresal.gov

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed in its name by its proper officers on the date and year first above written.

THE CITY OF GULF SHORES

By: _____
Robert Craft, Mayor

By: _____
Jeremy Lee, Down Under Dive Shop, Franchisee

THIS AGREEMENT is entered this _____ day of _____, _____, by and between the City of Gulf Shores, an Alabama Municipal Corporation, and Down Under Dive Shop, Franchisee.

Attest: _____
Tobi Waters, City Clerk