



# Council Agenda Report

To: Mayor Uhring and the Honorable Members of the City Council

Prepared by: Kristin Riesgo, Community Services Director

Approved by: Steve McClary, City Manager

Date prepared: April 25, 2024 Meeting date: May 28, 2024

Subject: Zuma Foundation Inc. Road Race Agreement (Continued from May 13, 2024)

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**RECOMMENDED ACTION:** 1) Review the status of the Zuma Foundation Inc. 2024 Triathlon event; 2) Consider modifications to the draft Road Race Agreement with Zuma Foundation Inc.; and 3) Provide direction to staff regarding the 2024-2028 Road Race Agreement.

**FISCAL IMPACT:** There is no fiscal impact associated with the recommended action.

**STRATEGIC PRIORITY:** This item is part of the day-to-day operations identified in the Adopted FY 2023-24 Strategic Priority Project List.

**DISCUSSION:** On January 8, 2024, Council awarded Zuma Foundation Inc. one of the two allowable Road Races in accordance City Council Policy #47 - Road Race Policy (Attachment 1) (Policy). The Policy states the City may grant a maximum of two temporary use permits for marathons, triathlons, and cycling events per calendar year.

On April 8, 2024, Council approved a modification to the Agreement regarding insurance requirements requested by Zuma Foundation Inc. The higher limits were required by the City's insurance provider, California Joint Powers Insurance Authority (JPIA). Insurance coverage and limits for triathlon events are typically higher than a standard race event, such as a 5K, due to higher-risk exposures, such as swimming and biking. However, the agreement was not signed when City staff were informed by the organizers they intended to breach the Agreement.

On April 16, 2024, Michael Epstein, Executive Director of Zuma Foundation Inc., provided staff with a formal written notice that the organization would not hold the triathlon event in 2024 and that the first event would occur in 2025. As part of the Agreement, Section 5.1,

Zuma Foundation Inc. has an obligation to conduct a race event commencing in 2024 (Attachment 2). The decision not to hold an event this year represents a breach of the draft Agreement. Mr. Epstein provided correspondence regarding the goals of the organization and the decision to postpone the Triathlon to 2025 (Attachment 3).

Council should consider how it wants to address the Road Race Agreement with Zuma Foundation Inc. in 2024. Options may include,

- Modify the agreement language to allow Zuma Foundation Inc. to not hold an event in 2024. The first triathlon event will take place in 2025.
- Decline to enter an agreement with Zuma Foundation Inc.
- Consider allowing other groups to hold a triathlon (or another race event) in 2024.
- Consider awarding a long-term agreement with another race organizer for the remaining term of the Road Race Agreement. The term of the Agreement with Zuma Foundation Inc. is five years, from 2024 to 2028.

Council may also take other actions to address the Road Race Agreement with Zuma Foundation Inc. Based on Council's decision, staff will modify the 2024-2028 Road Race Agreement and bring back an item at a future meeting.

ATTACHMENTS: 1) City Council Policy #47 – Road Race Policy  
2) Zuma Foundation Inc. Road Race Agreement  
3) Zuma Foundation Inc. Correspondence



# City of Malibu

## *City Council Policy*

*Policy #47*

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Title: Road Race Policy

Purpose: To establish a process for permitting the use of public roadways for non-motorized (walking, running, bicycling) races and events conducted by the private sector that affect residents or use of public resources.

Policy Statement:

This policy is intended to insure the city and its residents have adequate advance notice of any proposed race or related event and the cooperation of the organizers in order to properly plan city services, such as security, sanitation and traffic control, that are required for such an event.

Implementation:

This policy applies to marathons, triathlons and bicycling races or related events requiring the use of public roads in the City of Malibu.

A. Race requirements

1. A City of Malibu Temporary Use Permit is required for all race events;
2. The City may grant a maximum of two (2) temporary use permits for marathons, triathlons, and cycling events per calendar year;
3. Race courses are limited to the section of Pacific Coast Highway between Zuma Beach and the western city limits of Malibu;
4. Race events may only take place the weekend following Labor Day through April 15;
5. Race events may not be held within 30 days of another race event;
6. Race events must be held on Saturdays and/or Sundays, excluding City-designated holidays;
7. Race events must take place during daylight hours, between sunrise and sunset;
8. In the event of a "Red Flag Warning" condition, as determined by the Los Angeles County Fire Department, race organizers shall be required to cancel or postpone any race event on the affected days; and
9. The City retains the right to require cancellation or postponement of any race event that risks the health and safety of the racers, spectators, and/or residents due to inclement weather, floods, fire, or other similar circumstances which substantially interfere with the operation of the race event.

B. Requests that exceed race requirements

In order to exceed the requirements, event organizers are required to submit a completed Temporary Use Permit Application and receive City Council approval of the proposed modifications by adoption of a resolution.

C. Additional application requirements

In addition to the application requirements, the following additional information, submitted to the Planning Division, shall constitute a complete application:

1. An overall race plan which includes:
  - a. Course route designation;
  - b. Proposed road and intersection closures;
  - c. Locations of proposed first aid, water stations and restroom facilities; and
  - d. Location of medical assistance facilities, to be determined by the Los Angeles County Fire Department.
2. Maximum number of participants
3. Traffic and Parking Plan
  - a. For events on City streets, the plan shall be approved by the City Public Works Department.
  - b. For events on State highways, the plan shall be approved by the State of California Department of Transportation (Caltrans).

D. Special Event Encroachment Permit

In addition to the Temporary Use Permit, a Special Event Encroachment Permit shall be obtained from the City Public Works Department for any events, including but not limited to setup, race course, staging, and parking, to be located in any City public right-of-way.

E. Interagency permits

The applicant shall be responsible for obtaining all required permits and permissions from all applicable agencies and jurisdictions. The applicant must comply with all conditions set forth by all applicable agencies and jurisdictions, including but not limited to:

1. City of Malibu Planning Department
2. City of Malibu Public Works Department
3. State of California Department of Transportation
4. State of California Department of Parks and Recreation
5. California Highway Patrol
6. County of Los Angeles Sheriff's Department

7. County of Los Angeles Department of Beaches and Harbors
8. County of Los Angeles Department of Health Services
9. County of Los Angeles Fire Department
10. County of Los Angeles Department of Public Works

Date Adopted:

December 10, 2012

**AGREEMENT BETWEEN THE CITY OF MALIBU  
AND ZUMA FOUNDATION INC.**

This Agreement is made and entered into as of \_\_\_\_\_, by and between the City of Malibu (hereinafter referred to as the "City"), and Zuma Foundation Inc. (hereinafter referred to as "Zuma Foundation Inc.")

The City and Zuma Foundation Inc. agree as follows:

**RECITALS**

- A. The City desires to provide recreational events that are of interest and benefit to the residents of the City.
- B. Zuma Foundation Inc. produces and conducts running events and triathlons.
- C. Zuma Foundation Inc. warrants to the City that it has the qualifications, experience, and facilities to perform properly and timely the services under this Agreement.
- D. The City and Zuma Foundation Inc. have agreed that Zuma Foundation Inc. shall produce and conduct a Triathlon Race Event (as defined herein) within Malibu city limits and outlying areas pursuant to the terms and conditions set forth in Exhibit A of this Agreement.

NOW, THEREFORE, the City and Zuma Foundation Inc. agree as follows:

**1.0 INTRODUCTORY TERMS.**

**1.1 Recitals.** The statements contained in the recitals set forth above ("Recitals") are true and correct, and the Recitals are by this reference made a part of this Agreement.

**1.2 Exhibits.** The exhibits which are attached to this Agreement are by this reference made a part of this Agreement.

**1.3 Abbreviations and Definitions.** The following abbreviations and definitions will be used for purposes of this Agreement:

1.3.1 The abbreviations of the Parties set forth in the Preamble will be used for purposes of this Agreement.

1.3.2 "Additional City Services" means the following services coordinated and paid by Zuma Foundation Inc. for the Triathlon Race Event, as required by the City Temporary Use Permit, including: (1) law enforcement and fire protection; (2) garbage and refuse disposal; (3) crowd control and traffic control; (4) utilities; and (5) any additional services the City deems appropriate in its sole and absolute discretion.

1.3.3 "City Permit and Use Fees" means the fees and charges imposed by the City in connection with the issuance of permits and the fees and charges imposed by the City

in connection with Zuma Foundation Inc.'s Triathlon Race Event (as defined herein).

1.3.4 "Concessions" means all concessions associated with the Triathlon Race Event (as defined herein) offered or provided for a fee within the Race Facilities and during the Race Period, including, without limitation: (1) alcoholic and non-alcoholic beverages; (2) wearing apparel; (3) programs; (4) souvenirs; (5) seating; and (6) all other merchandise or services offered for sale in connection with the Triathlon Race Event and during the Triathlon Race Event Period.

1.3.5 "Laws" means all existing and future federal, state, and local constitutions, statutes, ordinances, rules, regulations, and resolutions, and all orders and decrees of lawful authorities having jurisdiction over the matter at issue.

1.3.6 "Race Course" means the staging and routes used by Zuma Foundation Inc. for the Triathlon Race Event as approved through the City Temporary Use Permit Application Process.

1.3.7 "Triathlon Race Event" means Zuma Foundation Inc.'s event, an athletic racing event consisting of swimming, biking, and running a race of a designated distance to be held on:

Year	Race Dates
2024	September 14 – 15
2025	September 13 – 14
2026	September 19 – 20
2027	September 18 – 19
2028	September 16 – 17

Set-up begins 5 days preceding the Triathlon Race Event date. All equipment and materials will be removed the day after the race ends.

1.3.8 "Race Facilities" means those lands, improvements, buildings, public or other rights of way, or property, owned, leased to, or controlled by the City or under City authority used by Zuma Foundation Inc. for the purpose of staging the Triathlon Race Event.

1.3.9 "Race Period" means from 7:00 AM on the Monday preceding the Triathlon Race Event until 5:00 PM on the Monday following the Triathlon Race Event.

1.3.10 "Ticket Sale Rights" means the right to sell tickets and otherwise charge for admission to, or for participation in, the Triathlon Race Event, and to sell tickets and otherwise charge for admission to, or for the use of Race Facilities in connection with Triathlon Race Event, excluding the right to sell tickets to the general public that are solely for parking.

**2.0 TERM OF AGREEMENT.** This Agreement will become effective on January 9, 2024, and will remain in effect for a period of five (5) years from said date unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

**3.0 CITY AGENT.** The City Manager, or their designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Zuma Foundation Inc. understands that the City Manager, or their designee, has the authority to provide that approval or authorization.

#### **4.0 WARRANTIES AND REPRESENTATIONS**

**4.1 Warranties and Representations by Zuma Foundation Inc.** Zuma Foundation Inc. warrants and represents to the City as follows:

4.1.1 Zuma Foundation Inc. is a non-profit corporation duly formed, presently existing, and in good standing under the laws of the State of California.

4.1.2 All appropriate action exists or has been accomplished by Zuma Foundation Inc. so as to duly authorize the officers set forth below to execute this Agreement and all documents contemplated hereby on behalf of Zuma Foundation Inc. so as to fully and firmly bind Zuma Foundation Inc. to the terms and provisions of this Agreement and such other documents.

4.1.3 Zuma Foundation Inc. has the financial capability to and shall conduct a Triathlon Race Event in accordance with this Agreement.

**4.2 Warranties and Representations by City.** The City warrants and represents to Zuma Foundation Inc. as follows:

4.2.1 The City is a municipality organized and existing under the laws of the State of California.

4.2.2 All appropriate action exists or has been accomplished by the City so as to duly authorize the officials set forth below to execute this Agreement and all documents contemplated hereby on behalf of the City so as to fully and firmly bind the City to the terms and provisions of this Agreement and such other documents.

#### **5.0 SCHEDULING AND CONDUCTING A Triathlon Race Event**

**5.1 Obligation to Conduct a Triathlon Race Event.** Zuma Foundation Inc. shall produce and conduct a Triathlon Race Event on Saturday and Sunday, commencing in the year 2024, said dates will be determined by Zuma Foundation Inc. no later than March 1 of each year and will be on the dates set forth in Exhibit B or within two weeks of such dates, excluding Labor Day weekends. Zuma Foundation Inc. shall provide the City with written notice in the form of a City Temporary Use Permit Application no later than ninety (90) days prior to the first day of the Triathlon Race Event Period.

**5.2 Triathlon Race Event.** The Triathlon Race Event shall conduct the Triathlon Course on Saturday and Sunday during the Triathlon Race Event period and shall be

held during daylight hours only. The Triathlon Race Event shall be conducted in accordance with the terms and conditions of this Agreement, the City's Road Race Policy and all necessary governmental permits and/or approvals.

**5.3 Set-Up, Operation and Dismantling Periods.** Zuma Foundation Inc. shall have the use of the Triathlon Facilities during the Triathlon Race Event Period for purposes of setup of the facilities and apparatus associated with the Triathlon Race Event provided, however, that access to the Triathlon Race Course will only be restricted during the time necessary to conduct the Triathlon Race Event. It is anticipated that all facilities and apparatus associated with the Triathlon Race Event will be set up and dismantled during the Race Period. In the event Zuma Foundation Inc. requires additional time to dismantle the facilities and apparatus following the Triathlon Race Event, Zuma Foundation Inc. shall be permitted such additional time beyond the Race Period, so long as Zuma Foundation Inc. has commenced the dismantling during the Race Period and continues to proceed in a diligent manner to complete the dismantling. Zuma Foundation Inc. shall provide the City with a schedule indicating the dates and location of setup and dismantling of the facilities and apparatus associated with the Triathlon Race Event, along with updates and changes thereto, as soon as is reasonably possible after the necessity for such updates and changes become known to Zuma Foundation Inc.

**5.4 Clean-up and Restoration.** Zuma Foundation Inc. shall be responsible for cleaning up the Race Course and Race Facilities at the end of the Triathlon Race Event. Such clean-up shall include, without limitation, removal of litter and debris from City streets and the Race Facilities.

**5.5 Conditions of Race Facilities.** Zuma Foundation Inc. shall be responsible for promptly returning the Race Facilities to the condition they were in immediately prior to the Triathlon Race Event, reasonable wear and tear excepted. Zuma Foundation Inc. shall be responsible for repairing any damage to the Race Facilities occurring during the Triathlon Race Event by acts or omissions of Zuma Foundation Inc., its patrons, or concessionaires.

**5.6 Additional Municipal Services.** Zuma Foundation Inc. shall be responsible for the scheduling of and payment for all additional municipal services, as required by the City Temporary Use Permit. In certain circumstances, the City may facilitate the payment for additional municipal services to other federal, state or local governmental agencies. The City's role in these payments shall only be administrative only (*i.e.*, processing and ensuring the accuracy of the payments) and in no way constitutes the City's agreement or sign-off on any other services, plans or arrangements provided by other agencies. Thus, the City shall accept no other responsibility other than facilitating the payment and shall have no liability whatsoever from any claims related to Zuma Foundation Inc. and additional municipal services. Zuma Foundation Inc. shall pay the estimated costs and expenses for additional municipal services no later than sixty (60) days prior to the Triathlon Race Event. Zuma Foundation Inc. shall pay any remaining costs for additional municipal services no later than sixty (60) days following the Triathlon Race Event.

**5.7 Compliance with Laws and Related Matters.** Zuma Foundation Inc., its officers, employees, volunteers, agents, and concessionaires shall comply with all

applicable Laws throughout the Term of this Agreement.

**5.8 Liability for Expenses.** Under no circumstances shall the City be liable for any costs or expenses incurred by Zuma Foundation Inc. in any way related to or connected with the Triathlon Race Event unless specifically provided for in this Agreement.

**5.9 Authorizations.** Zuma Foundation Inc. shall be responsible for seeking and obtaining any and all permits, licenses, certifications, consents, or other authorizations required from any governmental agency or other public or private entity in order to hold the Triathlon Race Event and perform all other activities in connection therewith.

**5.10 Red Flag Warning.** In the event of a “Red Flag Warning” condition as determined by the Los Angeles County Fire Department or other relevant entity, Zuma Foundation shall either: (i) cancel the Triathlon Race Event or (ii) postpone any race event on the affected days. In the event of postponement, Zuma Foundation shall obtain written authorization from the City, which shall not be unreasonably withheld, to conduct the race event on other days outside of the days listed above. The Parties shall use their best efforts to reschedule such that it does not impact other events going on in the City or negatively impact the public health and safety.

## **6.0 GENERAL TERMS.**

**6.1 Right to Conduct Triathlon Race Event.** The City hereby grants to Zuma Foundation Inc. the right to produce and conduct a Triathlon Race Event in accordance with the terms and conditions of this Agreement and City Council Policy No. 47 (Road Race Policy). Zuma Foundation Inc. is responsible for applying for and securing all applicable governmental approvals/permits in a timely manner, prior to conducting any portion of the Triathlon Race Event or performing any setup activity related to the Triathlon Race Event and complying with the City's Road Race Policy. The City and Zuma Foundation Inc. agree that the Triathlon Race Event is one of the two road race events which are entitled to seek a City Temporary Use Permit each calendar year as set forth in the City's Road Race Policy. All discretionary authority of the City with respect to any and all such permits and/or approvals is expressly retained and nothing in this Agreement shall be construed as limiting or expanding the City's discretionary authority in any way, or committing the City to any particular decision or outcome, with respect to any requisite permits or approvals. The City's denial of any discretionary permit necessary to conduct the Triathlon Race Event shall not be deemed a breach of this Agreement, so long as such denial complies with applicable law and regulation. Zuma Foundation Inc. hereby acknowledges that the City has police powers pursuant to applicable Laws to take reasonable and appropriate action in the event the conduct of the Triathlon Race Event, or any portion thereof or activity associated therewith, is endangering the health, safety or welfare of the general public, is violating any applicable law or regulation, or is otherwise creating a public nuisance. The safety of the Triathlon Race Event participants shall be the sole responsibility of Zuma Foundation Inc.

**6.2 Concession Rights.** The City hereby grants Zuma Foundation Inc. the right to operate, or to license (in whole or in part) to others, the Concessions associated with the Triathlon Race Event during the Race Period. The City agrees not to hereafter extend any

Concession rights to any person or entity other than Zuma Foundation Inc. which would permit the operation or licensing of Concessions, or the vending or offering for sale of any goods or services competitive with the Concessions. Notwithstanding the foregoing, this grant of rights to Concessions shall not affect the activities of otherwise properly licensed Malibu merchants and business persons in conducting their trade or business during the Triathlon Race Event, or parties with which it has contracted to provide Concessions at any City-owned property or facility.

**6.3 Ticket Sale Rights and City Rights.** The City hereby grants Zuma Foundation Inc. exclusive Ticket Sale Rights for the Triathlon Race Event.

**6.4 Participation.** The total number of participants for the Triathlon Race Event shall not exceed: 4,000.

**6.5 No Interest in Land.** Zuma Foundation Inc. rights pursuant to this Agreement shall not be construed as a lease, easement, or other interest in land, buildings, or other property of the City.

**6.6 Donation.** Zuma Foundation Inc. agrees to donate not less than \$100,000 each year for the term of the Agreement to Malibu youth-based 501(c)(3) community-oriented charitable organizations no later than 60 calendar days after the final event date each year. Zuma Foundation Inc. will seek input from the City each year during the term of the Agreement as to the Malibu youth-based 501(c)(3) community-oriented charitable organization(s) who will receive the annual donation.

Zuma Foundation Inc. agrees that it will identify each benefiting non-profit or community-oriented charitable organization's specific area or areas that said donation will go towards.

This Agreement and all of its terms, conditions, and provisions is made and entered into for the sole protection and benefit of Zuma Foundation Inc. and the City and not for the benefit of any other individual or entity. No other person has any right of action of any kind based on any provision of this Agreement nor may any other person be deemed to be a third-party beneficiary under this Agreement.

**6.7 Exclusivity.** The City will not authorize, without Zuma Foundation Inc.'s permission, any Triathlon Race Event, other than the Triathlon Race Event organized and conducted by Zuma Foundation Inc., sixty (60) days before the Triathlon Race Event or sixty (60) days after the Triathlon Race Event throughout the Term of this Agreement.

**6.8 Termination.** Either the City or Zuma Foundation Inc. may terminate this Agreement, without cause, by giving the other party six (6) months written notice of such termination and the effective date thereof.

6.8.1 If Zuma Foundation Inc. or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if Zuma Foundation Inc. or the City violate any of the covenants, agreements, or stipulations of this Agreement, Zuma Foundation Inc. or the

City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. Zuma Foundation Inc. shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, Zuma Foundation Inc. shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement, and any payments due under this Agreement may be withheld to offset anticipated damages.

**6.9 Non-Assignability.** Zuma Foundation Inc. shall not assign or transfer any interest in this Agreement without the express prior written consent of the City, which consent may be withheld by the City for any reason the City Council should determine in its sole and absolute discretion. This Agreement and all right and obligations pursuant to the Agreement is/are and shall be binding on Zuma Foundation Inc., and any of its successors or assigns, including any successor by way of merger, consolidation or otherwise, and including any purchaser or acquiror of all substantially all of the assets of Zuma Foundation Inc., or any of its respective successors or assigns (in a any manner identified above); provided, however, that Zuma Foundation Inc.'s rights to pursuant to this Agreement shall automatically terminate if Zuma Foundation Inc. should, without the City's express prior written consent, consummate a merger, consolidation, asset sale, stock insurance, or other similar transaction by which ownership of more than fifty percent (50%) of Zuma Foundation Inc. or its assets should be acquired by a person or entity that is not currently the owner of at least twenty-five percent (25%) of Zuma Foundation Inc.

**6.10 Non-Discrimination.** Zuma Foundation Inc. shall not discriminate as to race, creed, gender, color, national origin, or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances, and codes of the Federal, State, County and City governments.

**6.11 Insurance.** The Zuma Foundation Inc. shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than ten (10) days prior to prior to Triathlon Race Event. The Zuma Foundation Inc. further agrees to comply with all provisions in the attached Exhibit C which is incorporated herein.

**6.12 Indemnification.** Zuma Foundation Inc. shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees, and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees, and all other costs and fees of litigation) of every nature arising out of or in connection with Zuma Foundation Inc.'s activities related to producing and conducting a Triathlon Race Event hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Zuma Foundation Inc.'s legal counsel unacceptable, then Zuma Foundation Inc. shall reimburse the City its costs of defense, including without limitation reasonable attorney's fees, expert fees and all other costs and fees of litigation. Zuma Foundation Inc. shall promptly pay any final judgment rendered against the City (and its officers, officials, employees, and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the

foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.13 Compliance with Applicable Law.** Zuma Foundation Inc. and the City shall comply with all applicable laws, ordinances, and codes of the federal, state, county, and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.14 Independent Contractor.** This Agreement is by and between the City and Zuma Foundation Inc. and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture, or association, as between the City and Zuma Foundation Inc.

6.14.1 Zuma Foundation Inc. shall be an independent contractor and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of Zuma Foundation Inc., or any of Zuma Foundation Inc.'s employees, except as herein set forth, and Zuma Foundation Inc. expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in any manner employees of the City, it being distinctly understood that Zuma Foundation Inc. is and shall at all times remain to the City a wholly independent contractor and Zuma Foundation Inc.'s obligations to the City are solely such as are prescribed by this Agreement.

6.14.2 Zuma Foundation Inc. shall not use the City Seal or present the Triathlon Race Event as a City-organized event without prior approval from the City.

**6.15 Legal Construction.**

6.15.1 This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed under the laws of the State of California.

6.15.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

6.15.3 The article and section, captions, and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

6.15.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.16 Counterparts.** This Agreement may be executed in counterparts and as so

executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.17 Default.** The following shall be deemed events of default ("Default") under this Agreement:

6.17.1 By City. Failure by the City to perform or comply with its obligations or responsibilities hereunder, which is not cured within a reasonable time, but in no event to exceed thirty (30) days following receipt by the City of written notice from Zuma Foundation Inc. specifying with particularity the Default so claimed. The thirty (30) day curative period provided herein may be expanded by so much additional time as is reasonably necessary to cure the Default, provided that the City commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

6.17.2 By Zuma Foundation Inc. Any one or more of the following shall be deemed a Default by Zuma Foundation Inc.:

6.17.2.1 Failure of Zuma Foundation Inc. to perform or comply with its obligations or responsibilities hereunder, which is not cured within a reasonable time, but in no event to exceed thirty (30) days following receipt by Zuma Foundation Inc. of written notice from the City specifying with particularity the Default so claimed. The thirty (30) day curative period provided herein may be expanded by so much additional time as is reasonably necessary to cure the Default provided that Zuma Foundation Inc. commences to cure such Default within such thirty (30) day period and thereafter diligently and continuously proceeds to cure the Default.

6.17.2.2 Zuma Foundation Inc. attempts to assign or transfer any interest in this Agreement without the express prior written consent of the City.

6.17.2.3 Zuma Foundation Inc. makes a voluntary assignment for the benefit of its creditors.

6.17.2.4 Zuma Foundation Inc. files a voluntary petition in bankruptcy or becomes the subject of an involuntary petition in bankruptcy which is not discharged within sixty (60) days after the filing of such involuntary petition in bankruptcy.

**6.18 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation

of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy. In no event shall either party be liable for any loss of use, loss of time, inconvenience, lost profits or other special, incidental or consequential damages in any way related to or arising from this Agreement or the Triathlon Race Event.

**6.19 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.20 Force Majeure.** Each Party shall be excused from performance of its obligations hereunder to the extent such performance has been delayed, hindered or prevented by any cause or causes beyond such Party's reasonable control, which shall include, without limitation, labor disputes, riots, civil commotion or insurrection, war, war-like operations or terrorist acts, invasion, rebellion, military or usurped power, sabotage, governmental restrictions, regulations, or controls, inability to obtain any materials or services, fire or other casualties, natural disasters or acts of God. In the event any Triathlon Race Event Facility or portion thereof is destroyed or substantially damaged at any time during the Term of this Agreement by fire, casualty or other cause, the City shall not be required to repair or rebuild such Triathlon Race Event Facilities or portion thereof. If the Race Course is unavailable due to circumstances beyond the City's control, the Parties shall mutually agree in writing on a revised RACE Course approved through the City Temporary Use Permit Application Process.

**6.21 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.22 Entire Agreement.** This Agreement constitutes the whole agreement between the City and Zuma Foundation Inc., and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and Zuma Foundation Inc.

**6.23 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**City:** Steve McClary  
City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 224  
FAX (310) 456-2760

**Zuma Foundation Inc.:** Michael Epstein  
Executive Director  
Zuma Foundation Inc.  
30765 Pacific Coast Hwy #331  
Malibu, CA 90265  
TEL: (818) 419-4231  
[michael@zumafoundation.org](mailto:michael@zumafoundation.org)

**Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.**

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

This Agreement is executed on \_\_\_\_\_, at Malibu, California, and effective as of \_\_\_\_\_.

CITY OF MALIBU:

\_\_\_\_\_  
STEVE MCCLARY, City Manager

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, City Clerk  
(seal)

DocuSigned by: ION INC.:  
*Michael Epstein*  
2BAE1BD1B2DF447...  
By: MICHAEL EPSTEIN, Executive  
Director

APPROVED AS TO FORM:

\_\_\_\_\_  
TREVOR RUSIN, Interim City Attorney

# EXHIBIT A

## EVENT GROUNDPLAN

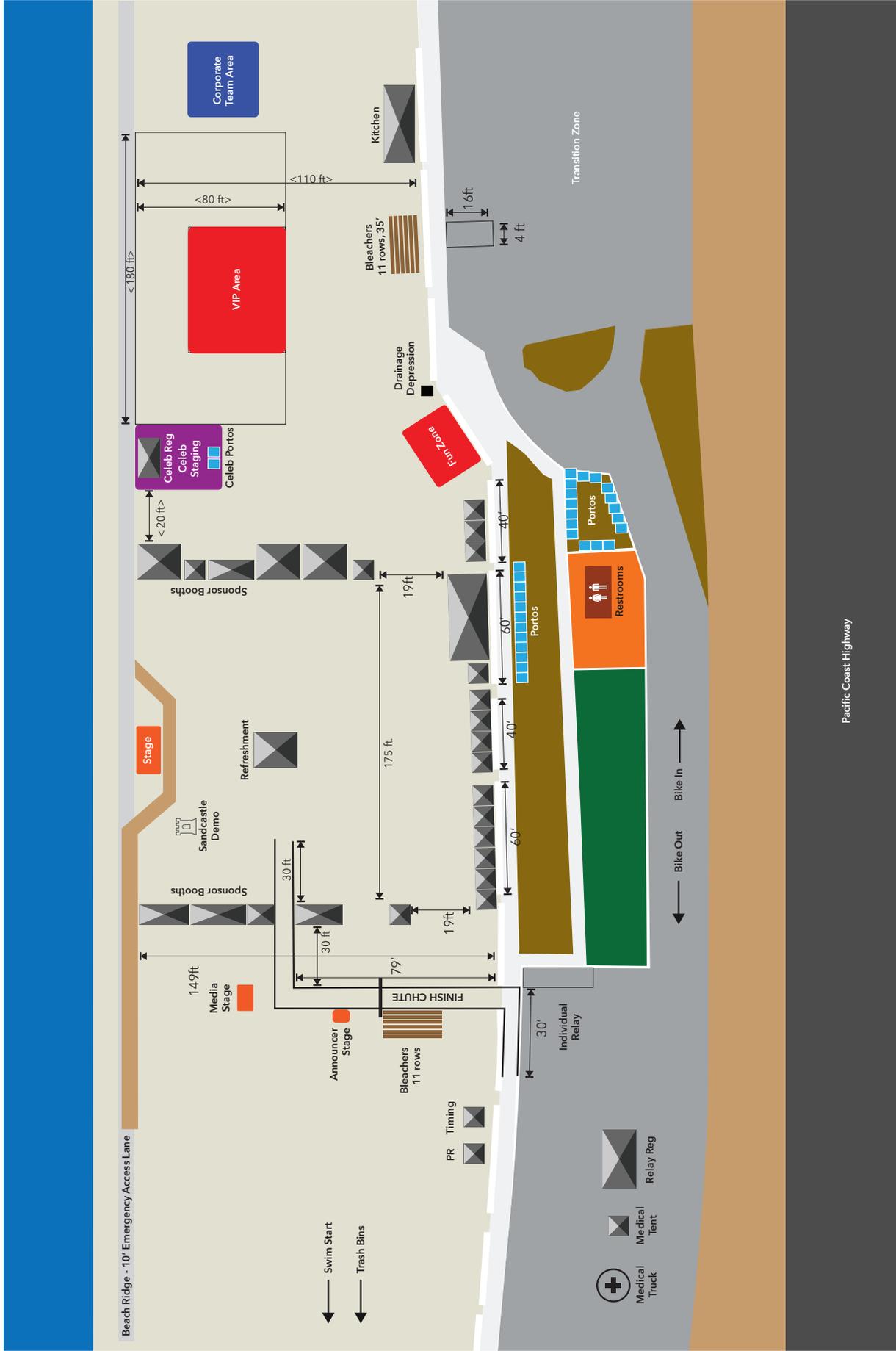
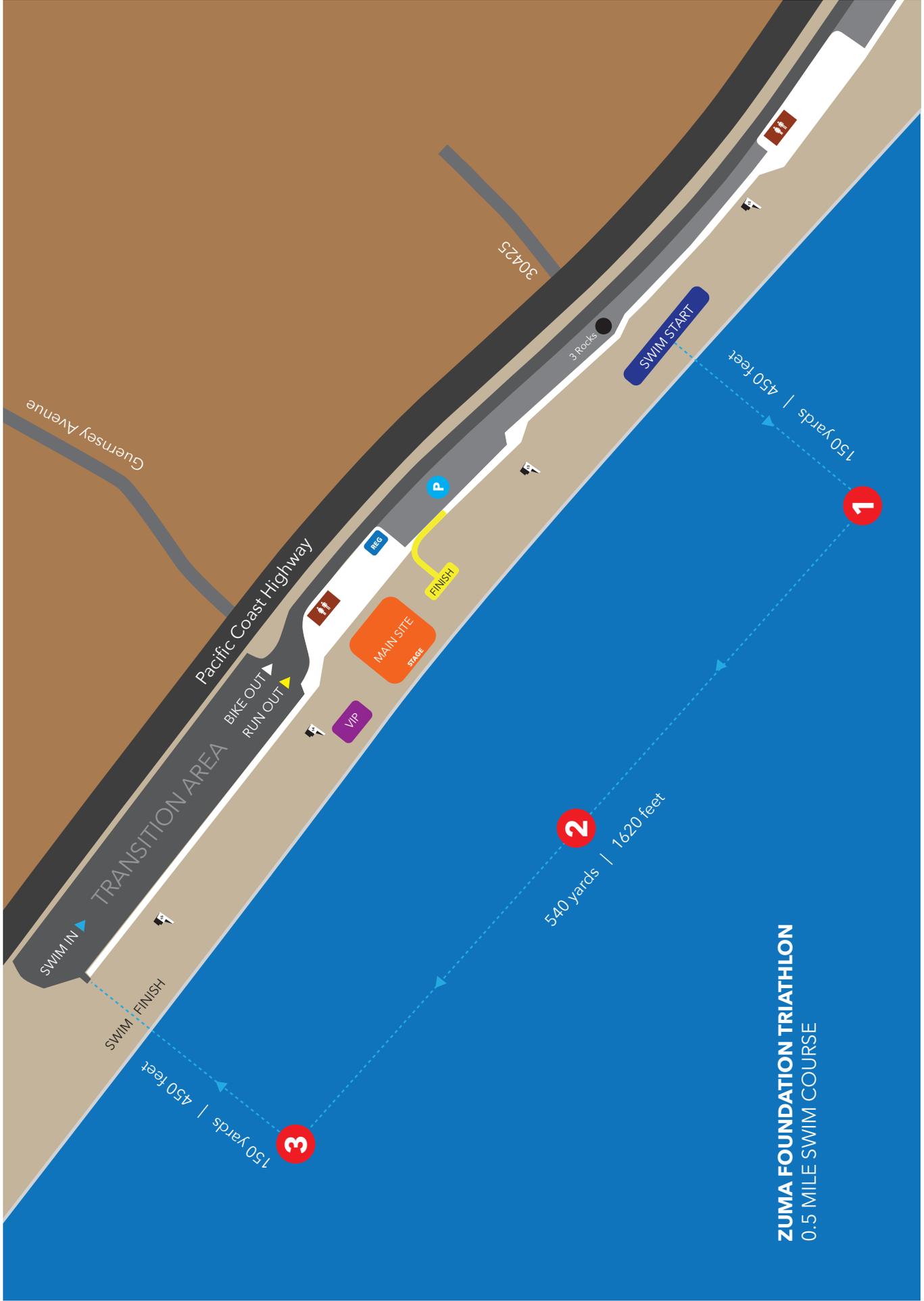
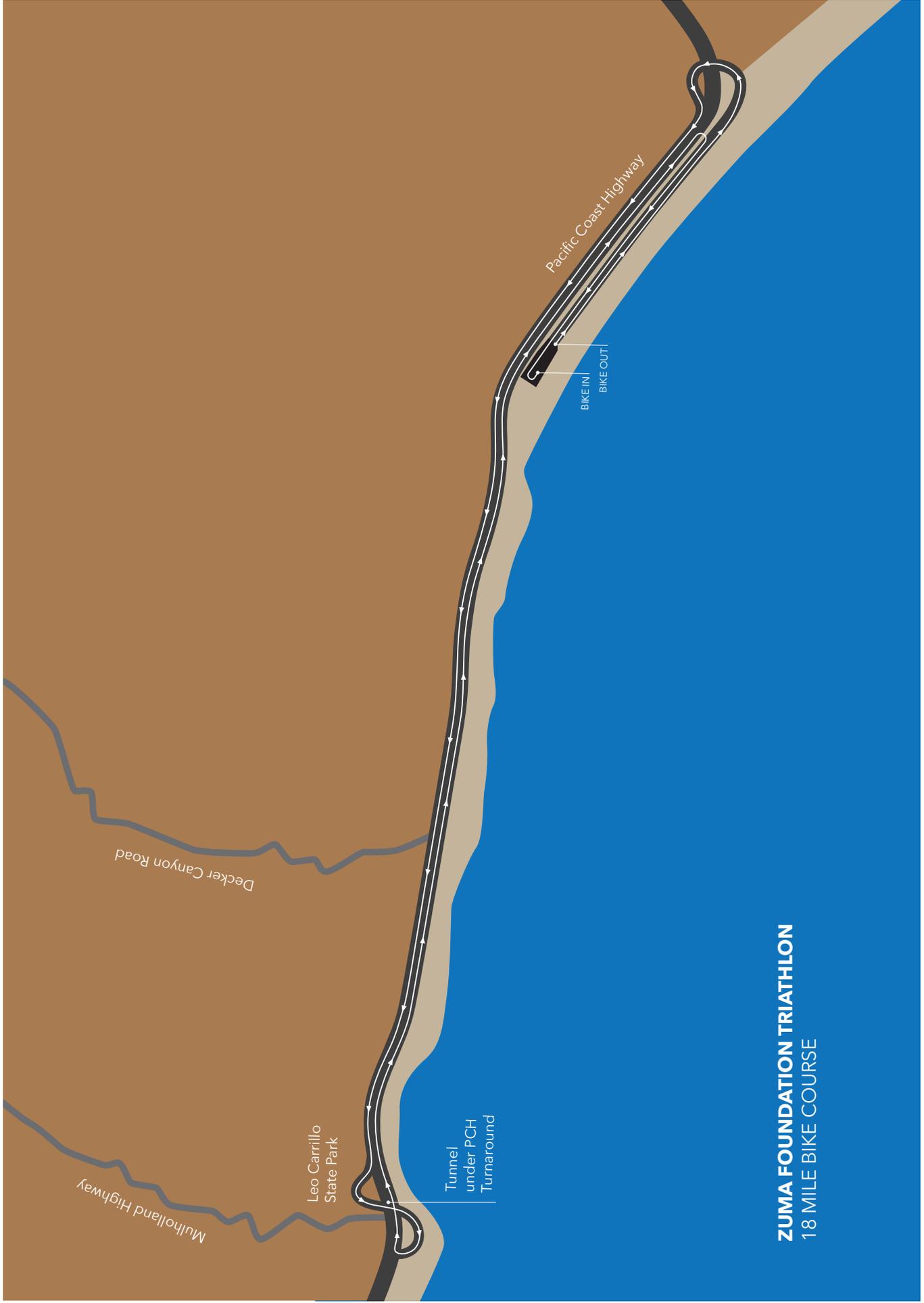


EXHIBIT A



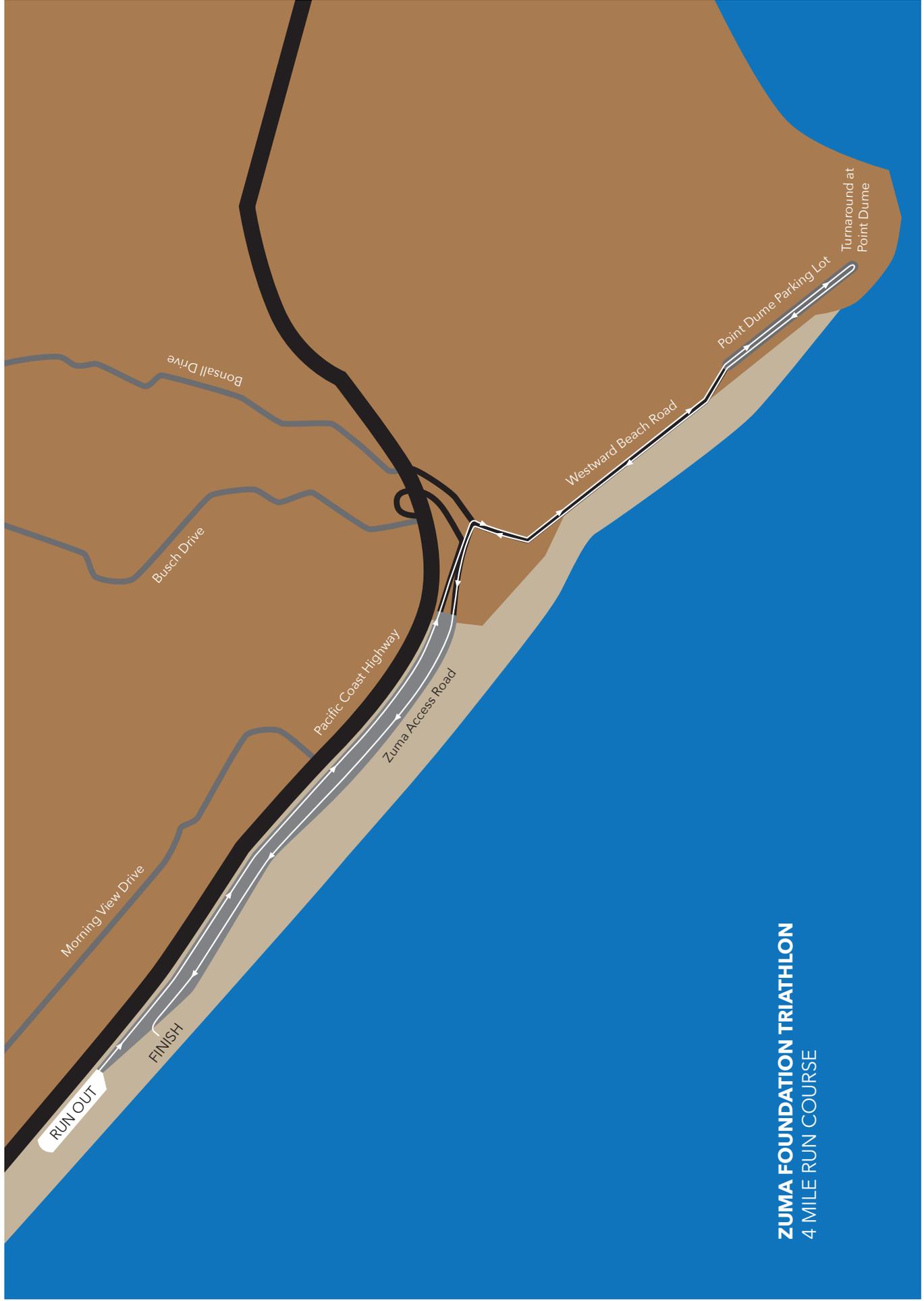
**ZUMA FOUNDATION TRIATHLON**  
0.5 MILE SWIM COURSE

EXHIBIT A



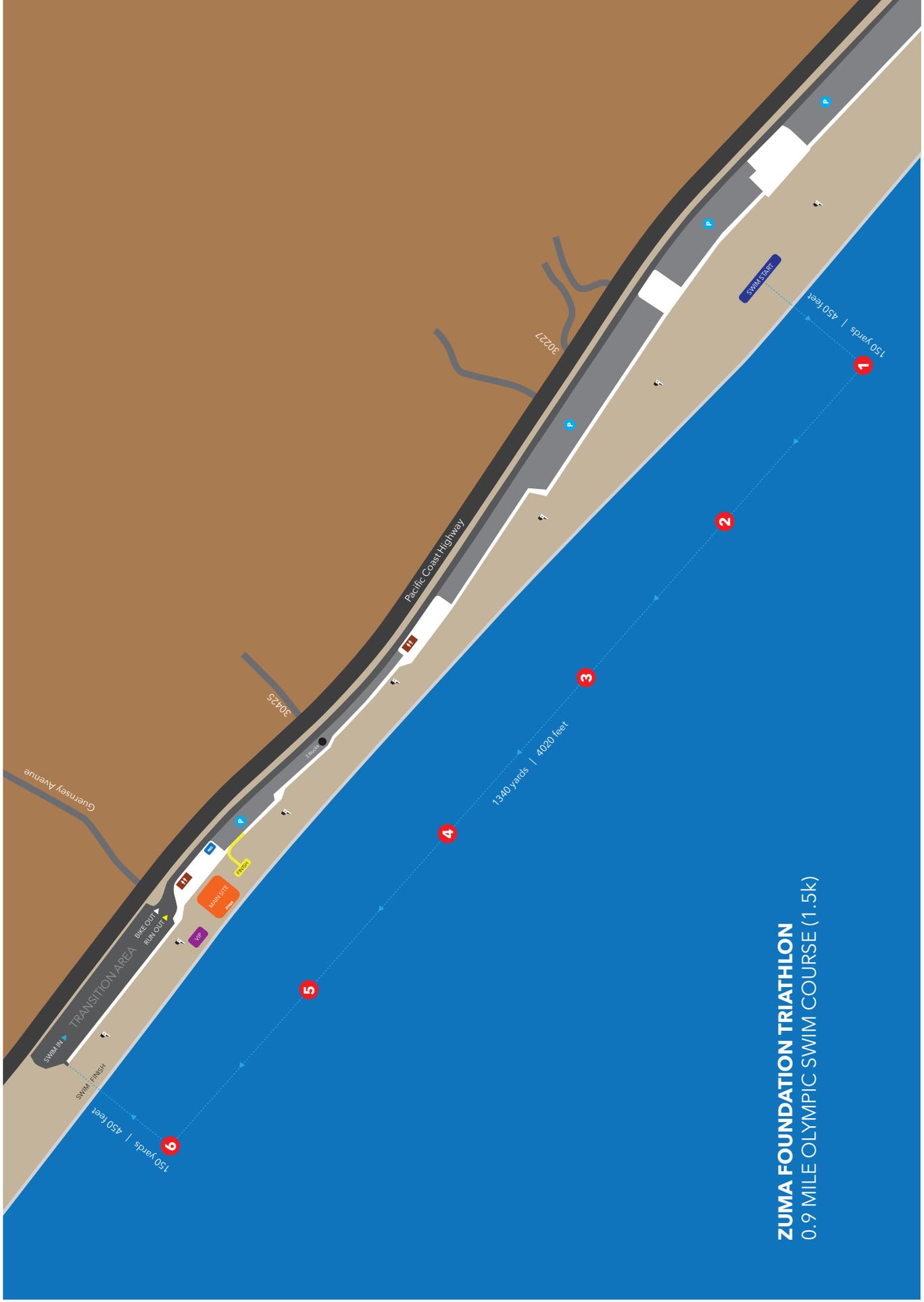
**ZUMA FOUNDATION TRIATHLON**  
18 MILE BIKE COURSE

EXHIBIT A



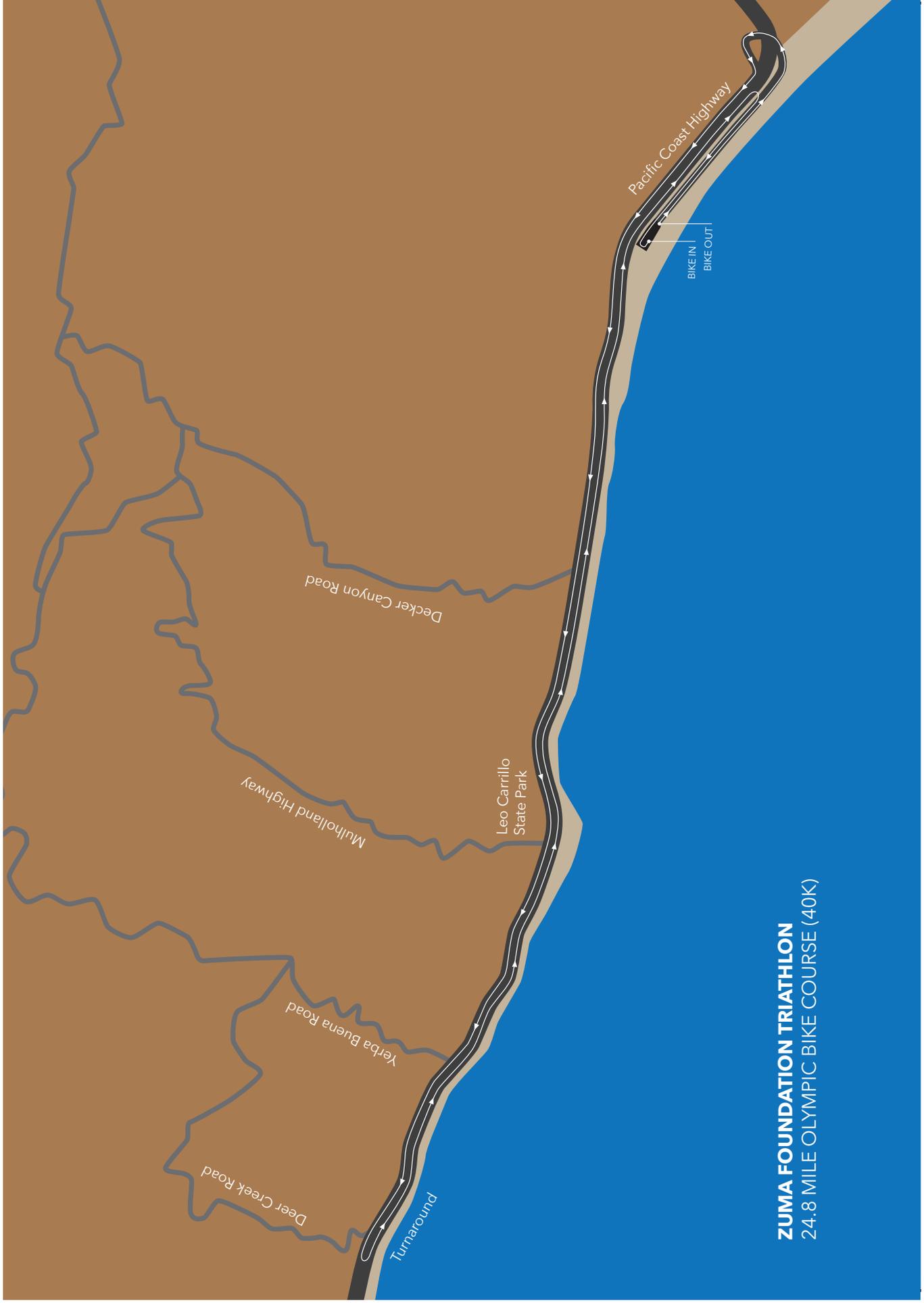
**ZUMA FOUNDATION TRIATHLON**  
4 MILE RUN COURSE

EXHIBIT A



**ZUMA FOUNDATION TRIATHLON**  
0.9 MILE OLYMPIC SWIM COURSE (1.5k)

EXHIBIT A



**ZUMA FOUNDATION TRIATHLON**  
24.8 MILE OLYMPIC BIKE COURSE (40K)

# EXHIBIT A



**ZUMA FOUNDATION TRIATHLON**  
6.2 MILE OLYMPIC RUN COURSE (10K)

## **EXHIBIT B**

### **Zuma Foundation Inc. 2024 – 2028 Race Dates**

<b>Year</b>	<b>Race Dates</b>
2024	September 14 – 15
2025	September 13 – 14
2026	September 19 – 20
2027	September 18 – 19
2028	September 16 – 17

#### **General Logistics Timeline**

Set up will start at Zuma Beach on the Monday prior to race weekend, all week of set up will be confined to the beach and parking lots at Zuma Beach County Property.

Taking place on the Saturday of the event weekend, the Zuma Foundation's Triathlon for Kids will be fully self-contained inside the Zuma Beach parking lot.

Race packets pick up will take place at Zuma Beach on the Saturday afternoon.

Sunday of each year will feature the Malibu Foundation Sprint and Olympic distance events.

## **EXHIBIT C INSURANCE LANGUAGE**

Without limiting Zuma Foundation Inc.'s indemnification of City, and prior to commencement of work and/or services under this Agreement, Zuma Foundation Inc. shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

**General Liability Insurance.** Zuma Foundation Inc. shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$7,000,000 per occurrence, \$9,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

**Automobile Liability Insurance.** Zuma Foundation Inc. shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Zuma Foundation Inc. arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than 2,000,000 combined single limit for each accident.

**Workers' Compensation Insurance.** Zuma Foundation Inc. shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

Zuma Foundation Inc. shall submit to Agency, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

**Athletic Participant Medical Expense Insurance.** Zuma Foundation shall obtain and maintain athletic participant medical expense insurance with a \$25,000 limit per participant. This coverage should extend to volunteers, event officials if applicable, and other attendees involved in the event who may not be participants.

**Sexual Abuse/Molestation Insurance.** Zuma Foundation shall procure and maintain sexual abuse and molestation liability coverage in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate. This coverage may be part of commercial general liability coverage, professional liability coverage, or a separate policy.

**Participant Race Waiver.** Zuma Foundation shall include waiving claims against the City of Malibu on all participant race waivers, forms, and documents.

### **OTHER PROVISIONS OR REQUIREMENTS**

**Proof of Insurance.** Zuma Foundation Inc. shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract

period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

**Duration of Coverage.** Zuma Foundation Inc. shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Zuma Foundation Inc., their agents, representatives, employees, or sub Zuma Foundation Inc.

**Primary/Noncontributing.** Coverage provided by Zuma Foundation Inc. shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

**City's Rights of Enforcement.** In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Zuma Foundation Inc. or City will withhold amounts sufficient to pay premium from Zuma Foundation Inc. payments. In the alternative, City may cancel this Agreement.

**Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

**Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Zuma Foundation Inc. or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Zuma Foundation Inc. hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its sub Zuma Foundation Inc.

**Enforcement of Contract Provisions (Non Estoppel).** Zuma Foundation Inc. acknowledges and agrees that any actual or alleged failure on the part of the City to inform Zuma Foundation Inc. of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

**Requirements Not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver

of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Zuma Foundation Inc. maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Zuma Foundation Inc. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

**Notice of Cancellation.** Zuma Foundation Inc. agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Zuma Foundation Inc.'s insurers are unwilling to provide such notice, then Zuma Foundation Inc. shall have the responsibility of notifying the City immediately in the event of Zuma Foundation Inc.'s failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

**Additional Insured Status.** General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

**Prohibition Of Undisclosed Coverage Limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

**Separation of Insureds.** A severability of interests' provision must apply for all additional insureds ensuring that Zuma Foundation Inc.'s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

**Pass Through Clause.** Zuma Foundation Inc. agrees to ensure that its sub Zuma Foundation Inc., subcontractors, and any other party who is brought onto or involved in the project/service by Zuma Foundation Inc. (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Zuma Foundation Inc. under this Agreement. Zuma Foundation Inc. agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Zuma Foundation Inc.'s Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Zuma Foundation Inc. may still be able to utilize the Subcontractor provided Zuma Foundation Inc. shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Zuma Foundation Inc., but in all other terms consistent with the Zuma Foundation Inc.'s requirements under this Agreement. This provision does not relieve the Zuma Foundation Inc. of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Zuma Foundation Inc. with the ability to utilize a Subcontractor who may be otherwise qualified

to perform the work or services but may not carry the same insurance limits as required of the Zuma Foundation Inc. under this Agreement given the limited scope of work or services provided by the subcontractor. Zuma Foundation Inc. agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

**City's Right to Revise Specifications.** The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Zuma Foundation Inc. ninety (90) days' advance written notice of such change. If such a change results in substantial additional costs to the Zuma Foundation Inc., the City and Zuma Foundation Inc. may renegotiate the Zuma Foundation Inc.'s compensation.

**Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by the City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

**Timely Notice Of Claims.** Zuma Foundation Inc. shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Zuma Foundation Inc.'s performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

**Additional Insurance.** The Zuma Foundation Inc. shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

## Kristin Riesgo

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**From:** Michael Epstein <michael@zumafoundation.org>  
**Sent:** Monday, April 29, 2024 10:15 AM  
**To:** Kristin Riesgo  
**Cc:** Steve McClary  
**Subject:** Re: Triathlon Update

ok, thanks, in the mean time please use the following statement for the packet:

With the goal of producing a world-class triathlon event for the City of Malibu, the local community, participants, and all stakeholders involved, the Zuma Foundation is requesting to postpone The Zuma Beach Triathlon to the Fall of 2025. This decision prioritizes the safety of participants and ensures the delivery of a world-class event for the City of Malibu, local residents and athletes.

The health and wellbeing of our race participants is of the utmost importance. The ongoing construction and repair issues on Pacific Coast Highway, including the delayed completion of the Trancas Bridge project, among others, have led us to reschedule the event due to safety concerns for the thousands of athletes that come to Malibu to train on the course leading up to the race.

The Zuma Foundation is committed to delivering an exceptional triathlon experience. By adjusting our timeline to take into account the ongoing repairs on the course and Pacific Coast Highway, we can ensure optimal course conditions and a truly unforgettable event. Most importantly, this decision prioritizes the safety of all athletes participating.

Thank you for your understanding and support of the Zuma Foundation during this transitional year.

The Zuma Foundation Board of Directors

*Michael Epstein*  
*Executive Director*  
*Zuma Foundation Inc.*  
*30765 Pacific Coast Highway*  
*Malibu, CA 90265*